

AP US Government & Politics Core Documents & Supreme Court Cases

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Federalist No. 78

**Federalist No. 10: The Same Subject Continued— the Utility of the Union as a Safeguard
Against Domestic Faction and Insurrection**

Publius (James Madison)
November 22, 1787

Among the numerous advantages promised by a well constructed union, none deserves to be more accurately developed, than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion, introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have every where perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labour, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said, than of the first remedy, that it is worse than the disease. Liberty is to faction, what air is to fire, an aliment, without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties, is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them every where brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-operate for their common good. So strong is this propensity of mankind, to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and

those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests, forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction, must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice and the public good. The apportionment of taxes, on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party, to trample on the rules of justice. Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor, in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought, is, that the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence

under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know, that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure democracy, by which I mean, a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronised this species of government, have erroneously supposed, that, by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations.

In the first place, it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy

combination in this respect; the great and aggregate interests, being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic . . . is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied, that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: a religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any

other improper or wicked project, will be less apt to pervade the whole body of the union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.

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Source: *The Federalist: The Gideon Edition*, eds. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 42-49.

Related Documents:

Vices of the Political System of the United States by James Madison | April 1787

Notes of Debates in the Federal Convention of 1787 by James Madison | 1787

Brutus I by Brutus | October 18, 1787

Federal Farmer I October 08, 1787

Federalist No. 9 by Publius (Alexander Hamilton) | November 21, 1787

Federalist No. 14 by Publius (James Madison) | November 30, 1787

Federalist No. 51 by Publius (James Madison) | February 6, 1788

Source: <http://teachingamericanhistory.org/library/document/federalist-no-10/>

Brutus No. 1: To the Citizens of the State of New York

Brutus

October 18, 1787

To the Citizens of the State of New-York.

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United-States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to [your acceptance], be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty — if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be [shut] up, and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

With these few introductory remarks I shall proceed to a consideration of this constitution: The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution,

or the laws made in pursuance of it, or with treaties made under the authority of the United States. — The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance — there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation; but this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare: this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits

which are set by this constitution, to the late governments, on this article of raising money. No state can emit paper money — lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States. The only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct tax[s], when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty. — I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each state at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer

thereof, is a power very comprehensive and definite, and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding. — By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the marquis Beccarari.

History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come

together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very

diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people. Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large

would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power. These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental, that they ought

to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections — they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice — perfection is not to be expected in any thing that is the production of man — and if I did not in my conscience believe that this scheme was defective in the fundamental principles — in the foundation upon which a free and equal government must rest — I would hold my peace.

Source: *The Complete Anti-Federalist*, ed. Herbert J. Storing (Chicago: The University of Chicago Press, 1981) Volume Two, Part 2, 363-372.

Related Documents:

Objections to the Constitution by George Mason | September 13, 1787

Centinel I by Centinel | October 05, 1787

Brutus IV by Brutus | November 29, 1787

Federalist No. 10 by Publius (James Madison) | November 22, 1787

Federalist No. 38 by Publius (James Madison) | January 12, 1788

Federalist No. 39 by Publius (James Madison) | January 16, 1788

Source:

<http://teachingamericanhistory.org/library/document/brutus-i/>

The Declaration of Independence

In Congress, July 4, 1776.

The unanimous Declaration of the thirteen united States of America, When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

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

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

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

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

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

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

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

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

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

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

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

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

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

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

Georgia

Button Gwinnett
Lyman Hall
George Walton

North Carolina

William Hooper
Joseph Hewes
John Penn

South Carolina

Edward Rutledge
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton

Massachusetts

John Hancock

Maryland

Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton

Virginia

George Wythe
Richard Henry Lee
Thomas Jefferson
Benjamin Harrison

Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton

Pennsylvania

Robert Morris
Benjamin Rush
Benjamin Franklin
John Morton
George Clymer
James Smith
George Taylor
James Wilson
George Ross

Delaware

Caesar Rodney
George Read
Thomas McKean

New York

William Floyd
Philip Livingston
Francis Lewis
Lewis Morris

New Jersey

Richard Stockton
John Witherspoon
Francis Hopkinson
John Hart
Abraham Clark

New Hampshire

Josiah Bartlett
William Whipple

Massachusetts

Samuel Adams
John Adams
Robert Treat Paine
Elbridge Gerry

Rhode Island

Stephen Hopkins
William Ellery

Connecticut

Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott

New Hampshire

Matthew Thornton

The Articles of Confederation and Perpetual Union — 1777

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

Whereas the Delegates of the United States of America, in Congress assembled, did, on the 15th day of November, in the Year of Our Lord One thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America, agree to certain articles of Confederation and perpetual Union between the States of New-hampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia in the words following, viz. "Articles of Confederation and perpetual Union between the states of New-hampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia".

Article I.

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

Article II.

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

Article III.

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

Article IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state, of which the Owner is an inhabitant;

provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them. If any Person guilty of, or charged with treason, felony, — or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall, upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence. Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Article V.

For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

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

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states. In determining questions in the united states in Congress assembled, each state shall have one vote.

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

Article VI.

No state, without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

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

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

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

Article VII.

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

Article VIII.

All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be def rayed

out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time direct and appoint.

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

Article IX.

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

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number

not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the united states.

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

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states — fixing the standard of weights and measures throughout the united states — regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated — establishing or regulating post offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office — appointing all officers of the land forces, in

the service of the united states, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expences to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloth, arm and equip them in a soldier like manner, at the expence of the united states; and the officers and men so cloathed, armed and quipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be

built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

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

Article X.

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

Article XI.

Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

Article XII.

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

Article XIII.

Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles

of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

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

In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

On the part of & behalf of the State of **New Hampshire**:

- Josiah Bartlett
- John Wentworth. Junr; August 8th, 1778

On the part and behalf of the State of **Rhode-Island and Providence Plantations**:

- William Ellery
- Henry Marchant
- John Collins

On the part and behalf of the State of **New York**:

- Jas Duane
- Fra: Lewis
- Wm Duer
- Gouvr Morris

On the part and behalf of the State of **Pennsylvania**:

- Robert Morris
- Daniel Roberdeau
- Jon. Bayard Smith
- William Clingan
- Joseph Reed; 22d July, 1778

On the part and behalf of the State of **Maryland**:

- John Hanson; March 1, 1781
- Daniel Carroll, do.

On the part and behalf of the State of **North Carolina**:

- John Penn; July 21st, 1778
- Corns Harnett
- Jno Williams

On the part and behalf of the State of **Georgia**:

- Jno Walton; 24th July, 1778
- Edwd Telfair
- Edwd Langworthy

On the part of & behalf of the State of **Massachusetts Bay**:

- John Hancock
- Samuel Adams
- Elbridge Gerry
- Francis Dana
- James Lovell
- Samuel Holten

On the part and behalf of the State of **Connecticut**:

- Roger Sherman
- Samuel Huntington
- Oliver Wolcott
- Titus Hosmer
- Andrew Adams

On the Part and in Behalf of the State of **New Jersey**, November 26th, 1778:

- Jno Witherspoon
- Nathl Scudder

On the part and behalf of the State of **Delaware**:

- Thos McKean; Febr 22d, 1779
- John Dickinson; May 5th, 1779
- Nicholas Van Dyke

On the part and behalf of the State of **Virginia**:

- Richard Henry Lee
- John Banister
- Thomas Adams
- Jno Harvie
- Francis Lightfoot Lee

On the part and behalf of the State of **South Carolina**:

- Henry Laurens
- William Henry Drayton

- Jno Mathews
- Richd Hutson
- Thos Heyward, junr.

Source:

<http://www.ushistory.org/documents/confederation.htm>

The Constitution of the United States (including the Bill of Rights and following Amendments)

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

Article. I.

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 chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

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

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 Behaviour, 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 Defence 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 Offences 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 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;

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

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 it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

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 chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

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

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 Offences 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 Behaviour, 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 Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

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 the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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.

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

Attest William Jackson Secretary 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 Independance of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

G°. Washington
*Presidt and deputy from
Virginia*

Delaware
Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland
James McHenry
Dan of St Thos. Jenifer
Danl. Carroll

Virginia
John Blair
James Madison Jr.

North Carolina
Wm. Blount
Richd. Dobbs Spaight
Hu Williamson

South Carolina
J. Rutledge
Charles Cotesworth
Pinckney
Charles Pinckney
Pierce Butler

Georgia
William Few
Abr Baldwin

New Hampshire
John Langdon
Nicholas Gilman

Massachusetts
Nathaniel Gorham
Rufus King

Connecticut
Wm. Saml. Johnson
Roger Sherman

New York
Alexander Hamilton

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

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

Source:
<https://www.archives.gov/founding-docs/constitution-transcript>

The U.S. Bill of Rights

The Preamble to The Bill of Rights

Congress of the United States begun and held at the City of New-York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

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 offence 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 defence.

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 re-examined 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.

Amendment XI

Passed by Congress March 4, 1794. Ratified February 7, 1795.

Note: Article III, section 2, of the Constitution was modified by amendment 11.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII

Passed by Congress December 9, 1803. Ratified June 15, 1804.

Note: A portion of Article II, section 1 of the Constitution was superseded by the 12th amendment.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists 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 for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, 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. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators,

and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. *Superseded by section 3 of the 20th amendment.

Amendment XIII

Passed by Congress January 31, 1865. Ratified December 6, 1865.

Note: A portion of Article IV, section 2, of the Constitution was superseded by the 13th amendment.

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

**Changed by section 1 of the 26th amendment.*

Amendment XV

Passed by Congress February 26, 1869. Ratified February 3, 1870.

Section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude--

Section 2.

The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI

Passed by Congress July 2, 1909. Ratified February 3, 1913.

Note: Article I, section 9, of the Constitution was modified by amendment 16.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

Passed by Congress May 13, 1912. Ratified April 8, 1913.

Note: Article I, section 3, of the Constitution was modified by the 17th amendment.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

Passed by Congress December 18, 1917. Ratified January 16, 1919. Repealed by amendment 21.

Section 1.

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

Passed by Congress June 4, 1919. Ratified August 18, 1920.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Passed by Congress March 2, 1932. Ratified January 23, 1933.

Note: Article I, section 4, of the Constitution was modified by section 2 of this amendment. In addition, a portion of the 12th amendment was superseded by section 3.

Section 1.

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2.

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3.

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4.

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5.

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Passed by Congress February 20, 1933. Ratified December 5, 1933.

Section 1.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII

Passed by Congress March 21, 1947. Ratified February 27, 1951.

Section 1.

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII

Passed by Congress June 16, 1960. Ratified March 29, 1961.

Section 1.

The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV

Passed by Congress August 27, 1962. Ratified January 23, 1964.

Section 1.

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

Passed by Congress July 6, 1965. Ratified February 10, 1967.

Note: Article II, section 1, of the Constitution was affected by the 25th amendment.

Section 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI

Passed by Congress March 23, 1971. Ratified July 1, 1971.

Note: Amendment 14, section 2, of the Constitution was modified by section 1 of the 26th amendment.

Section 1.

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

Originally proposed Sept. 25, 1789. Ratified May 7, 1992.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Source:

<https://www.archives.gov/founding-docs/bill-of-rights-transcript>

Federalist 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments

By Publius (James Madison)
February 6, 1788

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 developement of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments, would be less difficult in practice, than it may in contemplation appear. Some difficulties, however, and some additional expense, would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle; first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other, would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is, to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual may be a centinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.

But it is not possible to give to each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature, appears, at first view, to be the natural defence with which the executive magistrate should be armed. But perhaps it would be neither altogether safe, nor alone sufficient. On ordinary occasions, it might not be exerted with the requisite firmness; and on extraordinary occasions, it might be perfidiously abused. May not this defect of an absolute

negative be supplied by some qualified connexion between this weaker department, and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several state constitutions, and to the federal constitution, it will be found, that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are moreover two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people, is submitted to the administration of a single government; and the usurpations are guarded against, by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.

Second. It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one, by creating a will in the community independent of the majority, that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from, and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government, the security for civil rights must be the same as that for religious rights. It consists

in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government: since it shows, that in exact proportion as the territory of the union may be formed into more circumscribed confederacies, or states, oppressive combinations of a majority will be facilitated; the best security under the republican form, for the rights of every class of citizens, will be diminished; and consequently, the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been, and ever will be, pursued, until it be obtained, or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature, where the weaker individual is not secured against the violence of the stronger: and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak, as well as themselves: so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted, that if the state of Rhode Island was separated from the confederacy, and left to itself, the insecurity of rights under the popular form of government within such narrow limits, would be displayed by such reiterated oppressions of factious majorities, that some power altogether independent of the people, would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects, which it embraces, a coalition of a majority of the whole society could seldom take place upon any other principles, than those of justice and the general good: whilst there being thus less danger to a minor from the will of the major party, there must be less pretext also, to provide for the security of the former, by introducing into the government a will not dependent on the latter: or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the *federal principle*.

PUBLIUS

Source: *The Federalist: The Gideon Edition*, eds. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 267-272.

Related Documents:

Spirit of the Laws by Montesquieu | 1752

Thoughts on Government by John Adams | 1776

Centinel I by Centinel | October 05, 1787

Federal Farmer III | October 10, 1787

Brutus V by Brutus | December 13, 1787

Federalist No. 47 by Publius (James Madison) | January 30, 1788

Federalist No. 48 by Publius (James Madison) | February 01, 1788

Federalist No. 63 by Publius (James Madison) | March 01, 1788

Federalist No. 70 by Publius (Alexander Hamilton) | March 15, 1788

Federalist No. 71 by Publius (Alexander Hamilton) | March 18, 1788

Federalist No. 78 by Publius (Alexander Hamilton) | May 28, 1788

Spirit of Governments by James Madison | February 18, 1792

Source:

<http://teachingamericanhistory.org/library/document/federalist-no-51/>

Letter from Birmingham Jail

by Martin Luther King, Jr.

From the Birmingham jail, where he was imprisoned as a participant in nonviolent demonstrations against segregation, Dr. Martin Luther King, Jr., wrote in longhand the letter which follows. It was his response to a public statement of concern and caution issued by eight white religious leaders of the South. Dr. King, who was born in 1929, did his undergraduate work at Morehouse College; attended the integrated Crozer Theological Seminary in Chester, Pennsylvania, one of six black pupils among a hundred students, and the president of his class; and won a fellowship to Boston University for his Ph.D.

WHILE confined here in the Birmingham city jail, I came across your recent statement calling our present activities "unwise and untimely." Seldom, if ever, do I pause to answer criticism of my work and ideas. If I sought to answer all of the criticisms that cross my desk, my secretaries would be engaged in little else in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine good will and your criticisms are sincerely set forth, I would like to answer your statement in what I hope will be patient and reasonable terms.

I think I should give the reason for my being in Birmingham, since you have been influenced by the argument of "outsiders coming in." I have the honor of serving as president of the Southern Christian Leadership Conference, an organization operating in every Southern state, with headquarters in Atlanta, Georgia. We have some eighty-five affiliate organizations all across the South, one being the Alabama Christian Movement for Human Rights. Whenever necessary and possible, we share staff, educational and financial resources with our affiliates. Several months ago our local affiliate here in Birmingham invited us to be on call to engage in a nonviolent direct-action program if such were deemed necessary. We readily consented, and when the hour came we lived up to our promises. So I am here, along with several members of my staff, because we were invited here. I am here because I have basic organizational ties here.

Beyond this, I am in Birmingham because injustice is here. Just as the eighth-century prophets left their little villages and carried their "thus saith the Lord" far beyond the boundaries of their hometowns; and just as the Apostle Paul left his little village of Tarsus and carried the gospel of Jesus Christ to practically every hamlet and city of the Greco-Roman world, I too am compelled to carry the gospel of freedom beyond my particular hometown. Like Paul, I must constantly respond to the Macedonian call for aid.

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. Never again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can never be considered an outsider.

You deplore the demonstrations that are presently taking place in Birmingham. But I am sorry that your statement did not express a similar concern for the conditions that brought the demonstrations into being. I am sure that each of you would want to go beyond the superficial social analyst who looks merely at effects and does not grapple with underlying causes. I would not hesitate to say that it is unfortunate that so-called demonstrations are taking place in Birmingham at this time, but I would say in more emphatic terms that it is even more unfortunate that the white power structure of this city left the Negro community with no other alternative.

IN ANY nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices are alive, negotiation, self-purification, and direct action. We have gone through all of these steps in Birmingham. There can be no gainsaying of the fact that racial injustice engulfs this community. Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of police brutality is known in every section of this country. Its unjust treatment of Negroes in the courts is a notorious reality. There have been more unsolved bombings of Negro homes and churches in Birmingham than in any other city in this nation. These are the hard, brutal, and unbelievable facts. On the basis of them, Negro leaders sought to negotiate with the city fathers. But the political leaders consistently refused to engage in good-faith negotiation.

Then came the opportunity last September to talk with some of the leaders of the economic community. In these negotiating sessions certain promises were made by the merchants, such as the promise to remove the humiliating racial signs from the stores. On the basis of these promises, Reverend Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to call a moratorium on any type of demonstration. As the weeks and months unfolded, we realized that we were the victims of a broken promise. The signs remained. As in so many experiences of the past, we were confronted with blasted hopes, and the dark shadow of a deep disappointment settled upon us. So we had no alternative except that of preparing for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and national community. We were

not unmindful of the difficulties involved. So we decided to go through a process of self-purification. We Letter From Birmingham Jail 2 started having workshops on nonviolence and repeatedly asked ourselves the questions, "Are you able to accept blows without retaliating?" and "Are you able to endure the ordeals of jail?" We decided to set our direct-action program around the Easter season, realizing that, with exception of Christmas, this was the largest shopping period of the year. Knowing that a strong economic withdrawal program would be the by-product of direct action, we felt that this was the best time to bring pressure on the merchants for the needed changes. Then it occurred to us that the March election was ahead, and so we speedily decided to postpone action until after election day. When we discovered that Mr. Conner was in the runoff, we decided again to postpone action so that the demonstration could not be used to cloud the issues. At this time we agreed to begin our nonviolent witness the day after the runoff.

This reveals that we did not move irresponsibly into direct action. We, too, wanted to see Mr. Conner defeated, so we went through postponement after postponement to aid in this community need. After this we felt that direct action could be delayed no longer.

You may well ask, "Why direct action, why sit-ins, marches, and so forth? Isn't negotiation a better path?" You are exactly right in your call for negotiation. Indeed, this is the purpose of direct action. Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has consistently refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. I just referred to the creation of tension as a part of the work of the nonviolent resister. This may sound rather shocking. But I must confess that I am not afraid of the word "tension." I have earnestly worked and preached against violent tension, but there is a type of constructive nonviolent tension that is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, we must see the need of having nonviolent gadflies to create the kind of tension in society that will help men to rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood. So, the purpose of direct action is to create a situation so crisis-packed that it will inevitably open the door to negotiation. We therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in the tragic attempt to live in monologue rather than dialogue.

One of the basic points in your statement is that our acts are untimely. Some have asked, "Why didn't you give the new administration time to act?" The only answer that I can give to this inquiry is that the new administration must be prodded about as much as the outgoing one before it acts. We will be sadly mistaken if we feel that the election of Mr. Boutwell will bring the millennium to Birmingham. While Mr. Boutwell is much more articulate and gentle than Mr. Conner, they are both segregationists, dedicated to the task of maintaining the status quo. The hope I see in Mr. Boutwell is that he will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from the devotees of civil rights. My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure. History is the long and tragic story of the fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups are more immoral than individuals.

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have never yet engaged in a direct-action movement that was "well timed" according to the timetable of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "wait." It rings in the ear of every Negro with a piercing familiarity. This "wait" has almost always meant "never." It has been a tranquilizing thalidomide, relieving the emotional stress for a moment, only to give birth to an ill-formed infant of frustration. We must come to see with the distinguished jurist of yesterday that "justice too long delayed is justice denied." We have waited for more than three hundred and forty years for our God-given and constitutional rights. The nations of Asia and Africa are moving with jetlike speed toward the goal of political independence, and we still creep at horse-and-buggy pace toward the gaining of a cup of coffee at a lunch counter. I guess it is easy for those who have never felt the stinging darts of segregation to say "wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick, brutalize, and even kill your black brothers and sisters with impunity; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she cannot go to the public amusement park that has just been advertised on television, and see tears welling up in her little eyes when she is told that Funtown is closed to colored children, and see the

depressing clouds of inferiority begin to form in her little mental sky, and see her begin to distort her little personality by unconsciously developing a bitterness toward white people; when you have to concoct an answer for a five-year-old son asking in agonizing pathos, "Daddy, why do white people treat colored people so mean?"; when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger" and your middle name becomes "boy" (however old you are) and your last name becomes "John," and when your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never knowing what to expect next, and plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodyness" -- then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over and men are no longer willing to be plunged into an abyss of injustice where they experience the bleakness of corroding despair. I hope, sirs, you can understand our legitimate and unavoidable impatience.

YOU express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, it is rather strange and paradoxical to find us consciously breaking laws. One may well ask, "How can you advocate breaking some laws and obeying others?" The answer is found in the fact that there are two types of laws: there are just laws, and there are unjust laws. I would agree with St. Augustine that "An unjust law is no law at all."

Now, what is the difference between the two? How does one determine when a law is just or unjust? A just law is a man-made code that squares with the moral law, or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority. To use the words of Martin Buber, the great Jewish philosopher, segregation substitutes an "I - it" relationship for the "I - thou" relationship and ends up relegating persons to the status of things. So segregation is not only politically, economically, and sociologically unsound, but it is morally wrong and sinful. Paul Tillich has said that sin is separation. Isn't

segregation an existential expression of man's tragic separation, an expression of his awful estrangement, his terrible sinfulness? So I can urge men to obey the 1954 decision of the Supreme Court because it is morally right, and I can urge them to disobey segregation ordinances because they are morally wrong.

Let us turn to a more concrete example of just and unjust laws. An unjust law is a code that a majority inflicts on a minority that is not binding on itself. This is difference made legal. On the other hand, a just law is a code that a majority compels a minority to follow, and that it is willing to follow itself. This is sameness made legal. Let me give another explanation. An unjust law is a code inflicted upon a minority which that minority had no part in enacting or creating because it did not have the unhampered right to vote. Who can say that the legislature of Alabama which set up the segregation laws was democratically elected? Throughout the state of Alabama all types of conniving methods are used to prevent Negroes from becoming registered voters, and there are some counties without a single Negro registered to vote, despite the fact that the Negroes constitute a majority of the population. Can any law set up in such a state be considered democratically structured?

These are just a few examples of unjust and just laws. There are some instances when a law is just on its face and unjust in its application. For instance, I was arrested Friday on a charge of parading without a permit. Now, there is nothing wrong with an ordinance which requires a permit for a parade, but when the ordinance is used to preserve segregation and to deny citizens the First Amendment privilege of peaceful assembly and peaceful protest, then it becomes unjust.

Of course, there is nothing new about this kind of civil disobedience. It was seen sublimely in the refusal of Shadrach, Meshach, and Abednego to obey the laws of Nebuchadnezzar because a higher moral law was involved. It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks before submitting to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practiced civil disobedience.

We can never forget that everything Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. But I am sure that if I had lived in Germany during that time, I would have aided and comforted my Jewish brothers even though it was illegal. If I lived in a Communist country today where certain principles dear to the Christian faith are suppressed, I believe I would openly advocate disobeying these anti-religious laws.

I MUST make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the last few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizens Councilor or the Ku Klux Klanner but the white moderate who is more devoted to order than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says, "I agree with you in the goal you seek, but I can't agree with your methods of direct action"; who paternalistically feels that he can set the timetable for another man's freedom; who lives by the myth of time; and who constantly advises the Negro to wait until a "more convenient season." Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

In your statement you asserted that our actions, even though peaceful, must be condemned because they precipitate violence. But can this assertion be logically made? Isn't this like condemning the robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical delvings precipitated the misguided popular mind to make him drink the hemlock? Isn't this like condemning Jesus because His unique God-consciousness and never-ceasing devotion to His will precipitated the evil act of crucifixion? We must come to see, as federal courts have consistently affirmed, that it is immoral to urge an individual to withdraw his efforts to gain his basic constitutional rights because the quest precipitates violence. Society must protect the robbed and punish the robber. I had also hoped that the white moderate would reject the myth of time. I received a letter this morning from a white brother in Texas which said, "All Christians know that the colored people will receive equal rights eventually, but is it possible that you are in too great of a religious hurry? It has taken Christianity almost 2000 years to accomplish what it has. The teachings of Christ take time to come to earth." All that is said here grows out of a tragic misconception of time. It is the strangely irrational notion that there is something in the very flow of time that will inevitably cure all ills. Actually, time is neutral. It can be used either destructively or constructively. I am coming to feel that the people of ill will have used time much more effectively than the people of good will. We will have to repent in this generation not merely for the vitriolic words and actions of the bad people but for the appalling silence of the good people. We must come to see that human progress never rolls in on wheels of inevitability. It comes through the tireless efforts and persistent work of men willing to be

coworkers with God, and without this hard work time itself becomes an ally of the forces of social stagnation.

YOU spoke of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of an extremist. I started thinking about the fact that I stand in the middle of two opposing forces in the Negro community. One is a force of complacency made up of Negroes who, as a result of long years of oppression, have been so completely drained of self-respect and a sense of "somebodyness" that they have adjusted to segregation, and, on the other hand, of a few Negroes in the middle class who, because of a degree of academic and economic security and because at points they profit by segregation, have unconsciously become insensitive to the problems of the masses. The other force is one of bitterness and hatred and comes perilously close to advocating violence. It is expressed in the various black nationalist groups that are springing up over the nation, the largest and best known being Elijah Muhammad's Muslim movement. This movement is nourished by the contemporary frustration over the continued existence of racial discrimination. It is made up of people who have lost faith in America, who have absolutely repudiated Christianity, and who have concluded that the white man is an incurable devil. I have tried to stand between these two forces, saying that we need not follow the do-nothingism of the complacent or the hatred and despair of the black nationalist. There is a more excellent way, of love and nonviolent protest. I'm grateful to God that, through the Negro church, the dimension of nonviolence entered our struggle. If this philosophy had not emerged, I am convinced that by now many streets of the South would be flowing with floods of blood. And I am further convinced that if our white brothers dismiss as "rabble-rousers" and "outside agitators" those of us who are working through the channels of nonviolent direct action and refuse to support our nonviolent efforts, millions of Negroes, out of frustration and despair, will seek solace and security in black nationalist ideologies, a development that will lead inevitably to a frightening racial nightmare.

Oppressed people cannot remain oppressed forever. The urge for freedom will eventually come. This is what has happened to the American Negro. Something within has reminded him of his birthright of freedom; something without has reminded him that he can gain it. Consciously and unconsciously, he has been swept in by what the Germans call the *Zeitgeist*, and with his black brothers of Africa and his brown and yellow brothers of Asia, South America, and the Caribbean, he is moving with a sense of cosmic urgency toward the promised land of racial justice. Recognizing this vital urge that has engulfed the Negro community, one should readily understand public demonstrations. The Negro has many pent-up resentments and latent

frustrations. He has to get them out. So let him march sometime; let him have his prayer pilgrimages to the city hall; understand why he must have sit-ins and freedom rides. If his repressed emotions do not come out in these nonviolent ways, they will come out in ominous expressions of violence. This is not a threat; it is a fact of history. So I have not said to my people, "Get rid of your discontent." But I have tried to say that this normal and healthy discontent can be channeled through the creative outlet of nonviolent direct action. Now this approach is being dismissed as extremist. I must admit that I was initially disappointed in being so categorized.

But as I continued to think about the matter, I gradually gained a bit of satisfaction from being considered an extremist. Was not Jesus an extremist in love? -- "Love your enemies, bless them that curse you, pray for them that despitefully use you." Was not Amos an extremist for justice? -- "Let justice roll down like waters and righteousness like a mighty stream." Was not Paul an extremist for the gospel of Jesus Christ? -- "I bear in my body the marks of the Lord Jesus." Was not Martin Luther an extremist? -- "Here I stand; I can do no other so help me God." Was not John Bunyan an extremist? -- "I will stay in jail to the end of my days before I make a mockery of my conscience." Was not Abraham Lincoln an extremist? -- "This nation cannot survive half slave and half free." Was not Thomas Jefferson an extremist? -- "We hold these truths to be self-evident, that all men are created equal." So the question is not whether we will be extremist, but what kind of extremists we will be. Will we be extremists for hate, or will we be extremists for love? Will we be extremists for the preservation of injustice, or will we be extremists for the cause of justice?

I had hoped that the white moderate would see this. Maybe I was too optimistic. Maybe I expected too much. I guess I should have realized that few members of a race that has oppressed another race can understand or appreciate the deep groans and passionate yearnings of those that have been oppressed, and still fewer have the vision to see that injustice must be rooted out by strong, persistent, and determined action. I am thankful, however, that some of our white brothers have grasped the meaning of this social revolution and committed themselves to it. They are still all too small in quantity, but they are big in quality. Some, like Ralph McGill, Lillian Smith, Harry Golden, and James Dabbs, have written about our struggle in eloquent, prophetic, and understanding terms. Others have marched with us down nameless streets of the South. They sat in with us at lunch counters and rode in with us on the freedom rides. They have languished in filthy roach-infested jails, suffering the abuse and brutality of angry policemen who see them as "dirty nigger lovers." They, unlike many of their moderate

brothers, have recognized the urgency of the moment and sensed the need for powerful "action" antidotes to combat the disease of segregation.

LET me rush on to mention my other disappointment. I have been disappointed with the white church and its leadership. Of course, there are some notable exceptions. I am not unmindful of the fact that each of you has taken some significant stands on this issue. I commend you, Reverend Stallings, for your Christian stand this past Sunday in welcoming Negroes to your Baptist Church worship service on a nonsegregated basis. I commend the Catholic leaders of this state for integrating Springhill College several years ago.

But despite these notable exceptions, I must honestly reiterate that I have been disappointed with the church. I do not say that as one of those negative critics who can always find something wrong with the church. I say it as a minister of the gospel who loves the church, who was nurtured in its bosom, who has been sustained by its Spiritual blessings, and who will remain true to it as long as the cord of life shall lengthen.

I had the strange feeling when I was suddenly catapulted into the leadership of the bus protest in Montgomery several years ago that we would have the support of the white church. I felt that the white ministers, priests, and rabbis of the South would be some of our strongest allies. Instead, some few have been outright opponents, refusing to understand the freedom movement and misrepresenting its leaders; all too many others have been more cautious than courageous and have remained silent behind the anesthetizing security of stained-glass windows.

In spite of my shattered dreams of the past, I came to Birmingham with the hope that the white religious leadership of this community would see the justice of our cause and with deep moral concern serve as the channel through which our just grievances could get to the power structure. I had hoped that each of you would understand. But again I have been disappointed.

I have heard numerous religious leaders of the South call upon their worshipers to comply with a desegregation decision because it is the law, but I have longed to hear white ministers say, follow this decree because integration is morally right and the Negro is your brother. In the midst of blatant injustices inflicted upon the Negro, I have watched white churches stand on the sidelines and merely mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our nation of racial and economic injustice, I have heard so many ministers say, "Those are social issues which the gospel has nothing to do with," and I have watched so many churches commit themselves to a completely otherworldly religion which made a strange distinction between bodies and souls, the sacred and the secular.

There was a time when the church was very powerful. It was during that period that the early Christians rejoiced when they were deemed worthy to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was the thermostat that transformed the mores of society. Wherever the early Christians entered a town the power structure got disturbed and immediately sought to convict them for being "disturbers of the peace" and "outside agitators." But they went on with the conviction that they were "a colony of heaven" and had to obey God rather than man. They were small in number but big in commitment. They were too God-intoxicated to be "astronomically intimidated." They brought an end to such ancient evils as infanticide and gladiatorial contest.

Things are different now. The contemporary church is so often a weak, ineffectual voice with an uncertain sound. It is so often the arch supporter of the status quo. Far from being disturbed by the presence of the church, the power structure of the average community is consoled by the church's often vocal sanction of things as they are.

But the judgment of God is upon the church as never before. If the church of today does not recapture the sacrificial spirit of the early church, it will lose its authentic ring, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no meaning for the twentieth century. I meet young people every day whose disappointment with the church has risen to outright disgust.

I hope the church as a whole will meet the challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are presently misunderstood. We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with the destiny of America. Before the Pilgrims landed at Plymouth, we were here. Before the pen of Jefferson scratched across the pages of history the majestic word of the Declaration of Independence, we were here. For more than two centuries our foreparents labored here without wages; they made cotton king; and they built the homes of their masters in the midst of brutal injustice and shameful humiliation -- and yet out of a bottomless vitality our people continue to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

I must close now. But before closing I am impelled to mention one other point in your statement that troubled me profoundly. You warmly commended the Birmingham police force for keeping "order" and "preventing violence." I don't believe you would have so warmly commended the police force if you had seen its angry violent dogs literally biting six unarmed, nonviolent Negroes. I don't believe you would so quickly commend the policemen if you would observe their ugly and inhuman treatment of Negroes here in the city jail; if you would watch them push and curse old Negro women and young Negro girls; if you would see them slap and kick old Negro men and young boys, if you would observe them, as they did on two occasions, refusing to give us food because we wanted to sing our grace together. I'm sorry that I can't join you in your praise for the police department.

It is true that they have been rather disciplined in their public handling of the demonstrators. In this sense they have been publicly "nonviolent." But for what purpose? To preserve the evil system of segregation. Over the last few years I have consistently preached that nonviolence demands that the means we use must be as pure as the ends we seek. So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more, to use moral means to preserve immoral ends.

I wish you had commended the Negro demonstrators of Birmingham for their sublime courage, their willingness to suffer, and their amazing discipline in the midst of the most inhuman provocation. One day the South will recognize its real heroes. They will be the James Merediths, courageously and with a majestic sense of purpose facing jeering and hostile mobs and the agonizing loneliness that characterizes the life of the pioneer. They will be old, oppressed, battered Negro women, symbolized in a seventy-two-year-old woman of Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride the segregated buses, and responded to one who inquired about her tiredness with ungrammatical profundity, "My feets is tired, but my soul is rested." They will be young high school and college students, young ministers of the gospel and a host of their elders courageously and nonviolently sitting in at lunch counters and willingly going to jail for conscience's sake. One day the South will know that when these disinherited children of God sat down at lunch counters they were in reality standing up for the best in the American dream and the most sacred values in our Judeo-Christian heritage.

Never before have I written a letter this long -- or should I say a book? I'm afraid that it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else is there to do when you are

alone for days in the dull monotony of a narrow jail cell other than write long letters, think strange thoughts, and pray long prayers? If I have said anything in this letter that is an understatement of the truth and is indicative of an unreasonable impatience, I beg you to forgive me.

If I have said anything in this letter that is an overstatement of the truth and is indicative of my having a patience that makes me patient with anything less than brotherhood, I beg God to forgive me.

Yours for the cause of Peace and Brotherhood, MARTIN LUTHER KING, JR.

Source:

http://web.cn.edu/kwheeler/documents/Letter_Birmingham_Jail.pdf

Federalist No. 70: The Executive Department Further Considered

By Publius (Alexander Hamilton)

The Executive Department Further Considered

March 15, 1788

There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman history knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome. There can be no need, however, to multiply arguments or examples on this head. A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive; it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the executive are unity; duration; an adequate provision for its support; and competent powers.

The ingredients which constitute safety in the republican sense are a due dependence on the people, secondly a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justness of their views have declared in favor of a single executive and a numerous legislature. They have with great propriety, considered energy as the most

necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority, or by vesting it ostensibly in one man, subject in whole or in part to the control and co-operation of others, in the capacity of counselors to him. Of the first, the two consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have entrusted the executive authority wholly to single men. Both these methods of destroying the unity of the executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches anything, it teaches us not to be enamored of plurality in the executive. We have seen that the Achaeans on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the consuls, and between the military tribunes, who were at times substituted to the consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal is matter of astonishment, until we advert to the singular position in which the republic was almost continually placed and to the prudent policy pointed out by the circumstances of the state, and pursued by the consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebians for the preservation of their ancient authorities and dignities; the consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the consuls to divide the administration between themselves by lot—one of them remaining at

Rome to govern the city and its environs; the other taking the command in the more distant provinces. This expedient must no doubt have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, and attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon, contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener

an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissention in the executive department. Here they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the executive which are the most necessary ingredients in its composition—vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the executive is the bulwark of the national security, everything would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed—that is, to a plurality of magistrates of equal dignity and authority, a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness. But one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan is that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds—to censure and to punishment. The first is the most important of the two, especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been

mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

“I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point.” These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happened to be a collusion between the parties concerned, how easy is it to cloth the circumstances with so much ambiguity as to render it uncertain what was the precise conduct of any of those parties?

In the single instance in which the governor of this state is coupled with a council—that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases indeed have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council; who on their part have charged it upon his nomination; while the people remain altogether at a loss to determine by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, *first*, the restraints of public opinion, which lose their efficacy as well on account of the division of the censure attendant on bad measures among a number as on account of the uncertainty on whom it ought to fall; and, *second*, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department—an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his

own conduct in the exercise of his office and may observe or disregard the council given to him at his sole discretion.

But in a republic where every magistrate ought to be personally responsible for his behavior in office, the reason which in the British Constitution dictates the propriety of a council not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the Chief Magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid and ingenious," that "the executive power is more easily confined when it is one"; that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us that the species of security sought for in the multiplication of the executive is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse and more dangerous when abused, than if it be lodged in the hands of one man, who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The decemvirs of Rome, whose name denotes their number, were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers is not too great for an easy combination; and from such a combination America would

have more to fear than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad, and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility.

I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our Constitution.

PUBLIUS

Source: *The Federalist: The Gideon Edition*, eds. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 362-369.

Source:

<http://teachingamericanhistory.org/library/document/federalist-no-70/>

Federalist No. 78: The Judiciary Department

By Publius (Alexander Hamilton)

A View of the Constitution of the Judicial Department in Relation to the Tenure of Good Behavior

May 28, 1788

We proceed now to an examination of the judiciary department of the proposed government.

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

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2nd. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts and their relations to each other.

First. As to the mode of appointing the judges: this is the same with that of appointing the officers of the Union in general and has been so fully discussed in the two last numbers that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places: this chiefly concerns their duration in office; the provisions for their support, and the precautions for their responsibility.

According to the plan of the convention, all the judges who may be appointed by the United States are to hold their offices *during good behavior*, which is conformable to the most approved of the State constitutions, and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its

functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter: I mean, so long as the judiciary remains truly distinct from both the legislative and executive. For I agree that “there is no liberty if the power of judging be not separated from the legislative and executive powers.” And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and in a great measure as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would

imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers and that the construction they put upon them is conclusive upon the other departments it may be answered that this cannot be the natural presumption where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course; to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing

any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is mere rule of construction, not derived from any positive law but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable that between the interfering acts of an *equal* authority that which was the last indication of its will, should have the preference.

But in regard to the interfering acts of a superior and subordinate authority of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that, accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved any thing, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection,

have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing Constitution would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it prior to such an act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of an iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more states than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the

foundations of public and private confidence and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weighty reason for the permanency of the judicial offices which is deducible from the nature of the qualifications they require. It has been frequently remarked with great propriety that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind that the records of those precedents must unavoidably swell to a very considerable bulk and must demand long and laborious study to acquire a competent knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us that the government can have no great option between fit characters; and that a temporary duration in office which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench would have a tendency to throw the administration of justice into hands less able and less well qualified to conduct it with utility and dignity. In the present circumstances of this country and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established *good behavior* as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

PUBLIUS

Source: *The Federalist: The Gideon Edition*, eds. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 401-408.

Source:

<http://teachingamericanhistory.org/library/document/federalist-no-78/>

Required Supreme Court Cases

EU1.D: Federalism reflects the dynamic distribution of power between national and state governments.

McCulloch v. Maryland (1819)

Established supremacy of the U.S. Constitution and federal laws over state laws.

United States v. Lopez (1995)

Congress may not use the commerce clause to make possession of a gun in a school zone a federal crime.

EU2.A: Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.

Engel v. Vitale (1962)

School sponsorship of religious activities violates the establishment clause.

Wisconsin v. Yoder (1972)

Compelling Amish students to attend school past the eighth grade violates the free exercise clause.

Tinker v. Des Moines Independent Community School District (1969)

Public school students could wear black armbands in school to protest the Vietnam War.

New York Times Company v. United States (1971)

Bolstered the freedom of the press, establishing a “heavy presumption against prior restraint” even in cases involving national security.

Schenck v. United States (1919)

Speech creating a “clear and present danger” is not protected by the First Amendment.

EU2.B: The due process clause of the 14th Amendment has been interpreted to prevent the states from infringing upon basic liberties.

Gideon v. Wainwright (1963)

Guaranteed the right to an attorney for the poor or indigent.

Roe v. Wade (1973)

Extended the right of privacy to a women’s decision to have an abortion.

Gitlow v. New York (1925)

States may prohibit speech having a tendency to cause danger to public safety.

McDonald v. Chicago (2010)

The Second Amendment right to keep and bear arms for self-defense is applicable to the states.

EU2.C: The 14th Amendment’s “equal protection clause” has often been used to support the advancement of equality.

Plessy v. Ferguson (1896)

Upheld “separate but equal” racial segregation by the states.

Brown v. Board of Education, I (1954)

Race-based school segregation violates the equal protection clause.

Brown v. Board of Education, II (1955)

School districts and federal courts must implement the Court's decision in *Brown v. Board of Education, I (1954)* "with all deliberate speed."

EU4.E: The impact of federal policies on campaigning and electoral rules continues to be contested by both sides of the political spectrum.

Buckley v. Valeo (1976)

Campaign spending is a form of protected speech under the First Amendment, subject to the restrictions on campaign contributions by individuals.

Citizens United v. Federal Election Commission (FEC) (2010)

Political spending by corporations, associations, and labor unions is a form of protected speech under the First Amendment

EU5.A: The republican ideal in the U.S. is manifested in the structure and operation of the legislative branch.

Baker v. Carr (1961)

Court-enforced redistricting based on the principle of "one-person-one-vote" ensured that urban constituencies were represented proportionally equal to rural area constituents.

Shaw v. Reno (1993)

Legislative redistricting must be conscious of race and ensure compliance with the Voting Rights Act of 1965

EU5.C: The design of the judicial branch protects the Court's independence as a branch of government, and the emergence and use of judicial review remains a powerful judicial practice.

Marbury v. Madison (1803)

Established the principle of judicial review empowering the Court to nullify an act of the legislative or executive branch that violates the Constitution.