

An Examination into the Leading Principles of the Federal Constitution

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Into The
Leading Principles
Of The
Federal Constitution
Proposed By The Late
Convention
Held At Philadelphia
With
Answer To The Principal Objections
That Have Been Raised Against The System.
By A Citizen Of America

Ut patria sua felicitate caetris praestaret, efficit.
Xenoph. Lacedaem. Resp.

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Another source of power in government is a military force. But this, to be efficient, must be superior to any force that exists among the people, or which they can command: for otherwise this force would be annihilated, on the first exercise of acts of oppression. Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination, to resist the execution of a law which appears to them unjust and oppressive. In spite of all the nominal powers, vested in Congress by the constitution, were the system once adopted in its fullest latitude, still the actual exercise of them would be frequently interrupted by popular jealousy. I am bold to say, that ten

just and constitutional measures would be resisted, where one unjust or oppressive law would be enforced. The powers vested in Congress are little more than nominal; nay real power cannot be vested in them, nor in any body, but in the people. The source of power is in the people of this country, and cannot for ages, and probably never will, be removed.

In what then does real power consist? The answer is short and plain—in property. Could we want any proofs of this, which are not exhibited in this country, the uniform testimony of history will furnish us with multitudes. But I will go no farther for proof, than the two governments already mentioned, the Roman and the British.

Rome exhibited a demonstrative proof of the inseparable connexion between property and dominion. The first form of its government was an elective monarchy—its second, an aristocracy; but these forms could not be permanent, because they were not supported by property. The kings at first and afterwards the patricians had nominally most of the power; but the people, possessing most of the lands, never ceased to assert their privileges, till they established a commonwealth. And the kings and senate could not have held the reigns of government in their hands so long as they did, had they not artfully contrived to manage the established religion, and play off the superstitious credulity of the people against their own power. “Thus this weak constitution of government,” says the ingenious Mr. Moyle, speaking of the aristocracy of Rome, “not founded on the true center of dominion, land, nor on any standing foundation of authority, nor rivetted in the esteem and affections of the people; and being attacked by strong passion, general interest and the joint forces of the people, mouldered away of course, and pined of a lingering consumption, till it was totally swallowed up by the prevailing faction, and the nobility were moulded into the mass of the people.”* The people, notwithstanding

* Essay on the Roman government.

the nominal authority of the patricians, proceeded regularly in enlarging their own powers. They first extorted from the senate, the right of electing tribunes, with a negative upon the proceedings of the senate.† They obtained the right of proposing and debating laws; which before had been vested in the senate; and finally advanced to the power of enacting laws, without the authority of the senate.‡ They regained the rights of election in their comitia, of which they had been deprived by Servius Tullius.§ They procured a permanent body of laws, collected from the Grecian institutions. They destroyed the influence of augurs, or diviners, by establishing the tributa comitia, in which they were not allowed to consult the gods. They increased their power by large accessions of conquered lands. They procured a repeal of the law which prohibited marriages between the patricians and plebians. The Licinian law limited all possessions to five hundred acres of land; which, had it been fully executed, would have secured the commonwealth.#

The Romans proceeded thus step by step to triumph over the aristocracy, and to crown their privileges, they procured the right of being elected to the highest offices of the state. By acquiring the property of the plebians, the nobility, several times, held most of the power of the state; but the people, by reducing the interest of money, abolishing debts, or by forcing

*Livy, 2. 33. †Livy, 3. 54. ‡Livy, 3. 33. §Livy, 4. 6. #Livy, 6. 35. 42. “Ne quis plus quingenta jugera agri possideret.”

other advantages from the patricians, generally held the power of governing in their own hands.

In America, we begin our empire with more popular privileges than the Romans ever enjoyed. We have not to struggle against a monarch or an aristocracy—power is lodged in the mass of the people.

On reviewing the English history, we observe a progress similar to that in Rome—an incessant struggle for liberty from the date of Magna Charta, in John’s reign, to the revolution. The struggle has been successful, by abridging the enormous power of the nobility. But we observe that the power of the people has increased in an exact proportion to their acquisitions of property. Wherever the right of primogeniture is established, property must accumulate and remain in families. Thus the landed property in England will never be sufficiently distributed, to give the powers of government wholly into the hands of the people. But to assist the struggle for liberty, commerce has interposed, and in conjunction with manufacturers, thrown a vast weight of property into the democratic scale. Wherever we cast our eyes, we see this truth, that property is the basis of power; and this, being established as a cardinal point, directs us to the means of preserving our freedom. Make laws, irrevocable laws in every state, destroying and barring entailments; leave real estates to revolve from hand to hand, as time and accident may direct; and no family influence can be acquired and established for a series of generations—no man can obtain dominion over a large territory—the laborious and saving, who are generally the best citizens, will possess each his share of property and power, and thus the balance of wealth and power will continue where it is, in the *body of the people*.

A general and tolerably equal distribution of landed property is the whole basis of national freedom: The system of the great Montesquieu will ever be erroneous, till the words property or lands in fee simple are substituted for virtue, throughout his Spirit of Laws.

Virtue, patriotism, or love of country, never was and never will be, till men’s natures are changed, a fixed, permanent principle and support of government. But in an agricultural country, a general possession of land in fee simple, may be rendered perpetual, and the inequalities introduced by commerce, are too fluctuating to endanger government. An equality of property, with a necessity of alienation, constantly operating to destroy combinations of powerful families, is the very *soul of a republic*—While this continues, the people will inevitably possess both power and freedom; when this is lost, power departs, liberty expires, and a commonwealth will inevitably assume some other form.

The liberty of the press, trial by jury, the Habeas Corpus writ, even Magna Charta itself, although justly deemed the palladia of freedom, are all inferior considerations, when compared with a general distribution of real property among every class of people.* The power of entailing estates is more dangerous to liberty and republican government, than all the constitutions that can be written on paper, or even than a standing army. Let the people have property, and they will have power—a power that will for ever be exerted to prevent a restriction of the press, and abolition of trial by jury, or the abridgement of any other privilege. The liberties of America, therefore, and her forms of government, stand on the

broadest basis. Removed from the fears of a foreign invasion and conquest, they are

*Montesquieu supposed virtue to be the principle of a republic. He derived his notions of this form of government, from the astonishing firmness, courage and patriotism which distinguished the republics of Greece and Rome. But this virtue consisted in pride, contempt of strangers and a martial enthusiasm which sometimes displayed itself in defence of their country. These principles are never permanent—they decay with refinement, intercourse with other nations and increase of wealth. No wonder then that these republics declined, for they were not founded on fixed principles; and hence authors imagine that republics cannot be durable. None of the celebrated writers on government seems to have laid sufficient stress on a general possession of real property in fee-simple. Even the author of the Political Sketches, in the Museum for the month of September, seems to have passed it over in silence; although he combats Montesquieu's system, and to prove it false, enumerates some of the principles which distinguish our governments from others, and which he supposes constitutes the support of republics.

The English writers on law and government consider Magna Charta, trial by juries, the Habeas Corpus act, and the liberty of the press, as the bulwarks of freedom. All this is well. But in no government of consequence in Europe, is freedom established on its true and immoveable foundation. The property is too much accumulated, and the accumulations too well guarded, to admit the true principle of republics. But few centuries have elapsed, since the body of the people were vassals. To such men, the smallest extension of popular privileges, was deemed an invaluable blessing. Hence the encomiums upon trial by juries, and the articles just mentioned. But these people have never been able to mount to the source of liberty, estates in fee, or at least but partially; they are yet obliged to drink at the streams. Hence the English jealousy of certain rights, which are guaranteed by acts of parliament. But in America, and here alone, we have gone at once to the fountain of liberty, and raised the people to their true dignity. Let the lands be possessed by the people in fee-simple, let the fountain be kept pure, and the streams will be pure of course. Our jealousy of trial by jury, the liberty of the press, &c., is totally groundless. Such rights are inseparably connected with the power and dignity of the people, which rest on their property. They cannot be abridged. All other nations have wrested property and freedom from barons and tyrants; we begin our empire with full possession of property and all its attending rights.

not exposed to the convulsions that shake other governments; and the principles of freedom are so general and energetic, as to exclude the possibility of a change in our republican constitutions.

But while property is considered as the basis of the freedom of the American yeomanry, there are other auxiliary supports; among which is the information of the people. In no country, is education so general—in no country, have the body of the people such a knowledge of the rights of men and the principles of government. This knowledge, joined with a keen sense of liberty and a watchful jealousy, will guard our constitutions, and awaken the people to an instantaneous resistance of encroachments.

But a principal bulwark of freedom is the right of election. An equal distribution of property is the foundation of a republic; but popular elections form the great barrier, which defends it from assault, and guards it from the slow and imperceptible approaches of corruption. Americans! never resign that right. It

is not very material whether your representatives are elected for one year or two—but the right is the Magna Charta of your governments. For this reason, expunge that clause of the new constitution before mentioned, which gives Congress an influence in the election of their own body. The time, place and manner of chusing senators or representatives are of little or no consequence to Congress. The number of members and time of meeting in Congress are fixed; but the choice should rest with the several states. I repeat it—reject the clause with decency, but with unanimity and firmness.

Excepting that clause the constitution is good—it guarantees the fundamental principles of our several constitutions—it guards our rights—and while it vests extensive powers in Congress, it vests no more than are necessary for our union. Without powers lodged somewhere in a single body, fully competent to lay and collect equal taxes and duties—to adjust controversies between different states—to silence contending interests—to suppress insurrections—to regulate commerce—to treat with foreign nations, our confederation is a cobweb—liable to be blown asunder by every blast of faction that is raised in the remotest corner of the United States.

Every motive that can possibly influence men ever to unite under civil government, now urges the unanimous adoption of the new constitution. But in America we are urged to it by a singular necessity. By the local situation of the several states a few command all the advantages of commerce. Those states which have no advantages, made equal exertions for independence, loaded themselves with immense debts, and now are utterly unable to discharge them; while their richer neighbors are taxing them for their own benefit, merely because they can. I can prove to a demonstration that Connecticut, which has the heaviest internal or state debt, in proportion to its number of inhabitants, of any in the union, cannot discharge its debt, on any principles of taxation ever yet practised. Yet the state pays in duties, at least 100,000 dollars annually, on goods consumed by its own people, but imported by New York. This sum, could it be saved to the state by an equal system of revenue, would enable that state to gradually sink its debt.*

New Jersey and some other states are in the same situation, except that their debts are not so large, in proportion to their wealth and population.

The boundaries of the several states were not drawn with a view to independence; and while this country was subject to Great Britain, they produced no commercial or political inconveniences. But the revolution has placed things on a different footing. The advantages of some states, and the disadvantages of others are so great—and so materially affect the business and interest of each, that nothing but an equalizing system of revenue, that shall reduce the advantages to some equitable proportion, can prevent a civil war and save the national debt. Such a system of revenue is the sine qua non of public justice and tranquillity.

It is absurd for a man to oppose the adoption of the constitution, because he thinks some part of it defective or exceptionable. Let every man be at liberty to expunge what he judges to be exceptionable, and not a syllable of the constitution

*The state debt of Connecticut is about 3,500,000 dollars, its proportion of the federal debt about the

same sum. The annual interest of the whole 420,000 dollars.

will survive the scrutiny. A painter, after executing a masterly piece, requested every spectator to draw a pencil mark over the part that did not please him; but to his surprise, he soon found the whole piece defaced. Let every man examine the most perfect building by his own taste, and like some microscopic critics, condemn the whole for small deviations from the rules of architecture, and not a part of the best constructed fabric would escape. But let any man take a comprehensive view of the whole, and he will be pleased with the general beauty and proportions, and admire the structure. The same remarks apply to the new constitution. I have no doubt that every member of the late convention has exceptions to some part of the system proposed. Their constituents have the same, and if every objection must be removed, before we have a national government, the Lord have mercy on us!

Perfection is not the lot of humanity. Instead of censuring the small faults of the constitution, I am astonished that so many clashing interests have been reconciled—and so many sacrifices made to the general interest! The mutual concessions made by the gentlemen of the convention, reflect the highest honor on their candor and liberality; at the same time, they prove that their minds were deeply impressed with a conviction, that such mutual sacrifices are essential to our union. They must be made sooner or later by every state; or jealousies, local interests and prejudices will unsheath the sword, and some Cæsar or Cromwell will avail himself of our divisions, and wade to a throne through streams of blood.

It is not our duty as freemen, to receive the opinions of any men however great and respectable, without an examination. But when we reflect that some of the greatest men in America, with the venerable Franklin and the illustrious Washington at their head; some of them the fathers and saviors of their country, men who have labored at the helm during a long and violent tempest, and guided us to the haven of peace—and all of them distinguished for their abilities [and] their acquaintance with ancient and modern governments, as well as with the temper, the passions, the interests and the wishes of the Americans;—when we reflect on these circumstances, it is impossible to resist impressions of respect, and we are almost impelled to suspect our own judgements, when we call in question any part of the system, which they have recommended for adoption. Not having the same means of information, we are more liable to mistake the nature and tendency of particular articles of the constitution, or the reasons on which they were admitted. Great confidence therefore should be reposed in the abilities, the zeal and integrity of that respectable body. But after all, if the constitution should, in its future operation, be found defective or inconvenient, two-thirds of both houses of Congress or the application of two-thirds of the legislatures, may open the door for amendments. Such improvements may then be made, as experience shall dictate.