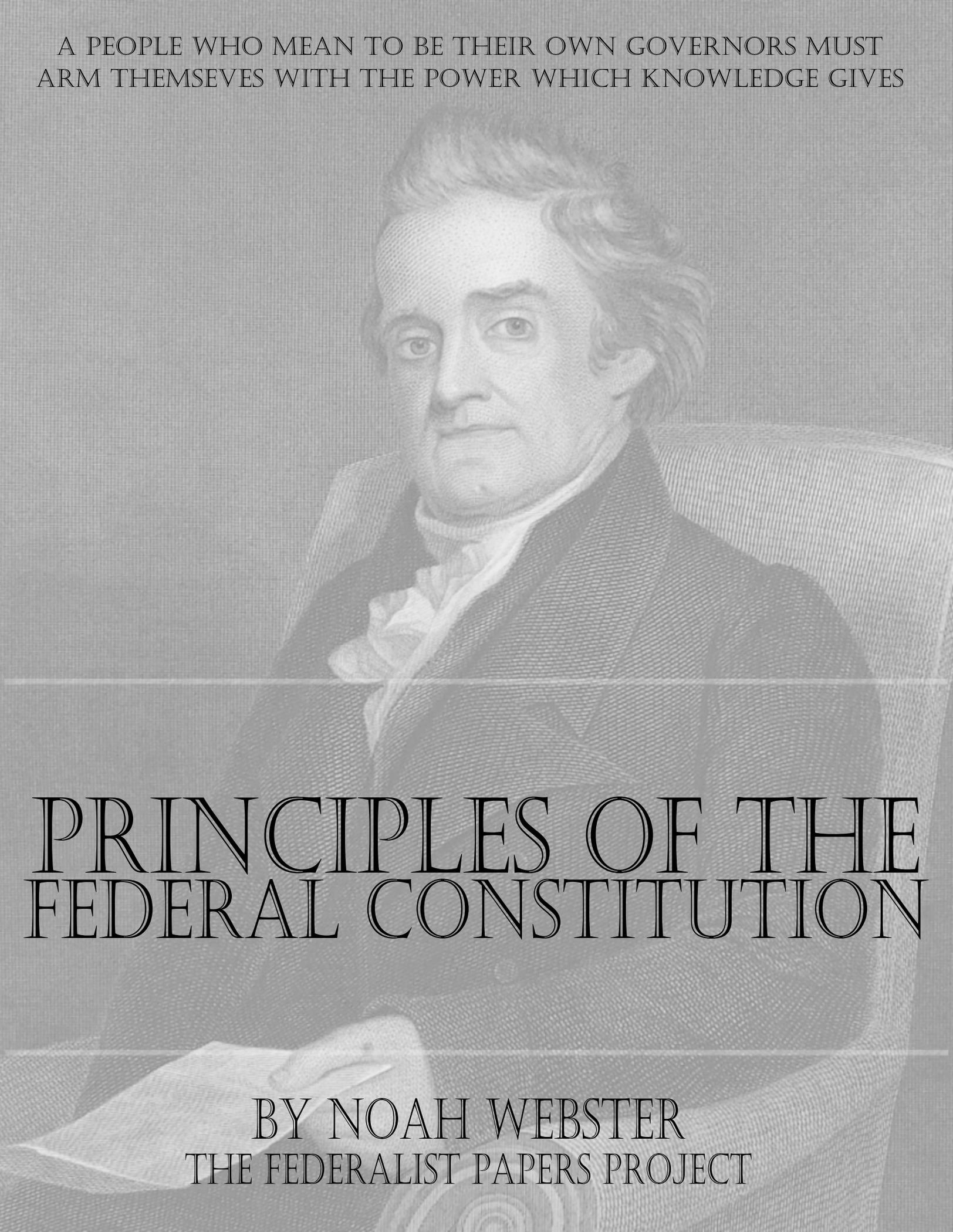


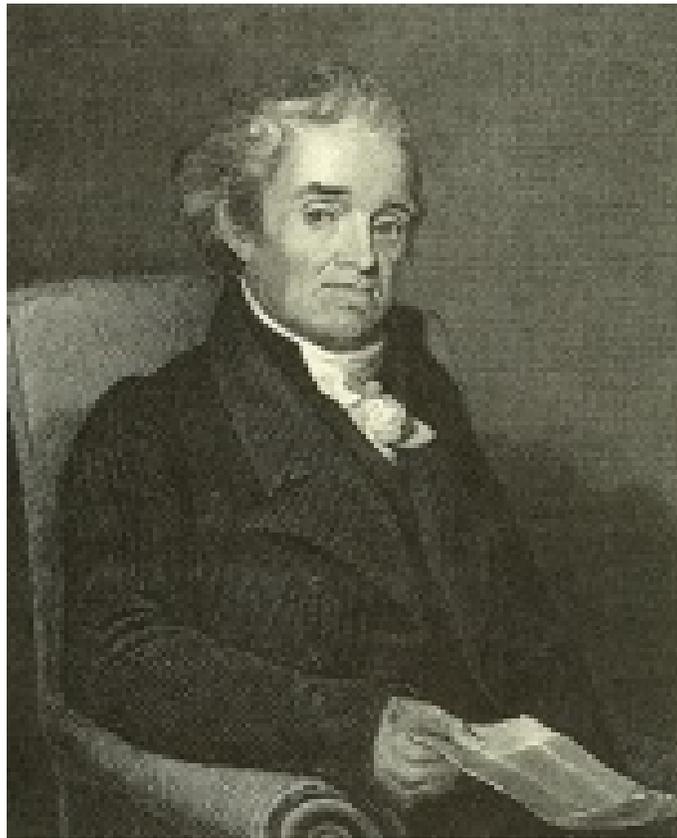
A PEOPLE WHO MEAN TO BE THEIR OWN GOVERNORS MUST
ARM THEMSEVES WITH THE POWER WHICH KNOWLEDGE GIVES



PRINCIPLES OF THE
FEDERAL CONSTITUTION

BY NOAH WEBSTER
THE FEDERALIST PAPERS PROJECT

**AN EXAMINATION INTO THE LEADING
PRINCIPLES OF THE FEDERAL CONSTITUTION**



By Noah Webster
The Federalist Papers Project
www.thefederalistpapers.org

An Examination into the Leading Principles of the Federal Constitution

Philadelphia, 17 October 1787

Of all the memorable æras that have marked the progress of men from the savage state to the refinements of luxury, that which has combined them into society, under a wise system of government, and given form to a nation, has ever been recorded and celebrated as the most important. Legislators have ever been deemed the greatest benefactors of mankind—respected when living, and often deified after their death. Hence the fame of Fohi and Confucius—of Moses, Solon and Lycurgus—of Romulus and Numa—of Alfred, Peter the Great, and Mango Capac; whose names will be celebrated through all ages, for framing and improving constitutions of government, which introduced order into society and secured the benefits of law to millions of the human race.

This western world now beholds an æra important beyond conception, and which posterity will number with the age of Czar of Muscovy, and with the promulgation of the Jewish laws at Mount Sinai. The names of those men who have digested a system of constitutions for the American empire, will be enrolled with those of Zamolxis and Odin, and celebrated by posterity with the honors which less enlightened nations have paid to the fabled demi-gods of antiquity.

But the origin of the American Republic is distinguished by peculiar circumstances. Other nations have been driven together by fear and necessity—the governments have generally been the result of a single man’s observations; or the offspring of particular interests. In the formation of our constitution, the wisdom of all ages is collected—the legislators of antiquity are consulted—as well as the opinions and interests of the millions who are concerned. In short, it is *an empire of reason*.

In the formation of such a government, it is not only the *right*, but the indispensable *duty* of every citizen to examine the principles of it, to compare them with the principles of other governments, with a constant eye to our particular situation and circumstances, and thus endeavor to foresee the future operations of our own system, and its effects upon human happiness.¹

Convinced of this truth, I have no apology to offer for the following remarks, but an earnest desire to be useful to my country.

In attending to the proposed Federal Constitution, the first thing that presents itself to our consideration, is the division of the legislative into two branches. This article has so many advocates in America, that it needs not any vindication.* —But it has its opposers, among whom are some respectable characters, especially in Pennsylvania; for which reason, I will state some of the arguments and facts which incline me to favor the proposed division.

On the first view of men in society, we should suppose that no man would be bound by a law to which he had not given his consent. Such would be our first idea of political obligation. But experience, from time immemorial, has proved it to be impossible to unite the opinions of all the members of a community, in every case; and hence the doctrine, that the opinions of a *majority* must give law to the *whole State*: a doctrine as universally received, as any intuitive truth.

Another idea that naturally presents itself to our minds, on a slight consideration of the subject, is, that in a perfect government, all the members of a society should be present, and each give his suffrage in acts of legislation, by which he is to be bound. This is impracticable in large states; and even were it not, it is very questionable whether it would be the *best* mode of legislation. It was however practised in the free states of antiquity; and was the cause of innumerable evils. To avoid these evils, the moderns have invented the doctrine of *representation*, which seems to be the perfection of human government.

Another idea, which is very natural, is, that to complete the mode of legislation, all the representatives should be collected into *one body*, for the purpose of debating questions and enacting laws. Speculation would suggest the idea; and the desire of improving upon the systems of government in the old world, would operate powerfully in its favor.

But men are ever running into extremes. The passions, after a violent constraint, are apt to run into licentiousness; and even the reason of men, who have experienced evils from the *defects* of a government, will sometimes coolly condemn the *whole system*.

Every person, moderately acquainted with human nature, knows that public bodies, as well as individuals, are liable to the influence of sudden and violent passions, under the operation of which, the voice of reason is silenced. Instances of such influence are not so frequent, as in individuals; but its effects are extensive in proportion to the numbers that compose the public body. This fact suggests the expediency of dividing the powers of legislation between the two bodies of men, whose debates shall be separate and not dependent on each other: that, if at any time, one part should appear to be under any undue influence, either from passion, obstinacy, jealousy of particular men, attachment to a popular speaker, or other extraordinary causes, there might be a power in the legislature sufficient to check every pernicious measure. Even in a small republic, composed of men, equal in property and abilities, and all meeting for the purpose of making laws, like the old Romans in the field of Mars, a division of the body into two independent branches, would be a necessary step to prevent the disorders, which arise from the pride, irritability and stubbornness of mankind. This will ever be the case, while men possess passions, easily inflamed, which may bias their reason and lead them to erroneous conclusions.

Another consideration has weight: A single body of men may be led astray by one person of abilities and address, who, on the first starting [of] a proposition, may throw a plausible appearance on one side of the question, and give a lead to the whole debate. To prevent any ill consequence from such a circumstance, a separate discussion, before a different body of men, and taken up on new grounds, is a very eligible expedient.

Besides, the design of a senate is not merely to check the legislative assembly, but to collect wisdom and experience. In most of our constitutions, and particularly in the proposed federal system, greater age and longer residence are required to qualify for the senate, than for the house of representatives. This is a wise provision. The house of representatives may be composed of new and unexperienced members—strangers to the forms of proceeding, and the science of legislation. But either positive institutions, or customs, which may supply their place, fill the senate with men venerable for age and respectability, experienced in the ways of men, and in the art of governing, and who are not liable to the bias of passions that govern the young. If the senate of Rhode Island is an exception to this observation, it is a proof that the mass of the people are corrupted, and that the senate should be elected less frequently than the other house: Had the old senate in Rhode Island held their seats for three years; had they not been chosen, amidst a popular rage for paper money, the honor of that state would probably have been saved. The old senate would have stopped the measure for a year or two, till the people could have had time to deliberate upon its consequences. I consider it as a capital excellence of the proposed constitution, that the senate can be wholly renewed but once in six years.

Experience is the best instructor—it is better than a thousand theories. The history of every government on earth affords proof of the utility of different branches in a legislature. But I appeal only to our own experience in America. To what cause can we ascribe the absurd measures of Congress, in times past, and the speedy rescision of whole measures, but to the want of some check? I feel the most profound deference for that honorable body, and perfect respect for their opinions; but some of their steps betray a great want of consideration—a defect, which perhaps nothing can remedy, but a division of their deliberations. I will instance only their *resolution* to build a *Federal Town*. When we were involved in a debt, of which we could hardly pay the interest, and when Congress could not command a shilling, the very proposition was extremely absurd. Congress themselves became ashamed of the resolution, and rescinded it with as much silence as possible. Many other acts of that body are equally reprehensible—but respect forbids me to mention them.

Several states, since the war, have experienced the necessity of a division of the legislature. Maryland was saved from a most pernicious measure, by her senate. A rage for paper money, bordering on madness, prevailed in their house of delegates—an emission of £.500,000 was proposed; a sum equal to the circulating medium of the State. Had the sum been emitted, every shilling of specie would have been driven from circulation, and most of it from the state. Such a loss would not have been repaired in seven years—not to mention the whole catalogue of frauds which would have followed the measure. The senate, like honest, judicious men, and the protectors of the interests of the state, firmly resisted the rage, and gave the people time to cool and to think. Their resistance was effectual—the people acquiesced, and the honor and interest of the state were secured.

The house of representatives in Connecticut, soon after the war, had taken offence at a certain act of Congress. The upper house, who understood the necessity and expediency of the measure, better than the people, refused to concur in a remonstrance to Congress. Several other

circumstances gave umbrage to the lower house; and to weaken or destroy the influence of the senate, the representatives, among other violent proceedings, resolved, not merely to remove the seat of government, but to make every county town in the state the seat of government, by rotation. This foolish resolution would have disgraced school-boys—the senate saved the honor of the state, by rejecting it with disdain—and within two months, every representative was ashamed of the conduct of the house. All public bodies have these fits of passion, when their conduct seems to be perfectly boyish; and in these paroxisms, a check is highly necessary.

Pennsylvania exhibits many instances of this hasty conduct. At one session of the legislature, an armed force is ordered, by a precipitate resolution, to expel the settlers at Wioming from their possessions—at a succeeding session, the same people are confirmed in their possessions. At one session, a charter is wrested from a corporation—at another, restored. The whole state is split into parties—everything is decided by party—any proposition from one side of the house, is sure to be damned by the other—and when one party perceives the other has the advantage, they play truant—and an officer or a mob hunt the absconding members in all the streets and alleys in town. Such farces have been repeated in Philadelphia—and *there alone*. Had the legislature been framed with some check upon rash proceedings, the honor of the state would have been saved—the party spirit would have died with the measures proposed in the legislature. But now, any measure may be carried by party in the house; it then becomes a law, and sows the seeds of dissension throughout the state.*

A thousand examples similar to the foregoing may be produced, both in ancient and modern history. Many plausible things may be said in favor of pure democracy—many in favor of uniting the representatives of the people in one single house—but uniform experience proves both to be inconsistent with the peace of society, and the rights of freemen.

The state of Georgia has already discovered such inconveniences in its constitution, that a proposition has been made for altering it; and there is a prospect that a revision will take place.

People who have heard and read of the European governments, founded on the different ranks of *monarch, nobility and people*, seem to view the *senate* in America, where there is no difference of ranks and titles, as a useless branch—or as a servile imitation of foreign constitutions of government, without the same reasons. This is a capital mistake. Our senates, it is true, are not composed of a different order of men; but the same reasons, the same necessity for distinct branches of the legislature exists in all governments. But in most of our American constitutions, we have all the advantages of checks and balance, without the danger which may arise from a superior and independent order of men.

It is worth our while to institute a brief comparison between our American forms of government, and the two *best constitutions* that ever existed in Europe, the *Roman* and the *British*.

In England, the king or supreme executive officer, is hereditary. In America, the president of the United States, is elective. That this is an advantage will hardly be disputed.

In ancient Rome, the king was elective, and so were the consuls, who were the executive officers in the republic. But they were elected by the body of the people, in their public assemblies; and this circumstance paved the way for such excessive bribery and corruption as are wholly unknown in modern times. The president of the United States is also elective; but by a few men—chosen by the several legislatures—under their inspection—separated at a vast distance—and holding no office under the United States. Such a mode of election almost precludes the possibility of corruption. Besides, no state however large, has the power of choosing a president in that state; for each elector must choose at least one man, who is not an inhabitant of that State to which he belongs.

The crown of England is hereditary—the consuls of Rome were chosen annually—both these extremes are guarded against in our proposed constitution. The president is not dismissed from his office, as soon as he is acquainted with business—he continues four years, and is re-eligible, if the people approve his conduct. Nor can he canvass for his office, by reason of the distance of the electors; and the pride and jealousy of the states will prevent his continuing too long in office.

The age requisite to qualify for this office is thirty-five years.* The age requisite for admittance to the Roman consulship was forty-three years. For this difference, good reasons may be assigned—the improvements in science, and particularly in government, render it practicable for a man to qualify himself for an important office, much earlier in life, than he could among the Romans; especially in the early part of their commonwealth, when the office was instituted. Besides it is very questionable whether any inconvenience would have attended admission to the consulship at an earlier age.

The powers vested in the president resemble the powers of the supreme magistrates in Rome. They are not so extensive as those of the British king; but in one instance, the president, with concurrence of the senate, has powers exceeding those of the Roman consuls; I mean in the appointment of judges and other subordinate executive officers. The prætors or judges in Rome were chosen annually by the people. This was a defect in the Roman government. One half the evils in a state arise from a lax execution of the laws; and it is impossible that an executive officer can act with vigor and impartiality, when his office depends on the popular voice. An annual popular election of executive officers is the sure source of a negligent, partial and corrupt administration. The independence of the judges in England has produced a course of the most just, impartial and energetic judicial decisions, for many centuries, that can be exhibited in any nation on earth. In this point therefore I conceive the plan proposed in America to be an improvement on the Roman constitution. In all free governments, that is, in all countries, where *laws govern*, and not *men*, the supreme magistrate should have it in his power to execute any law, however unpopular, without hazarding his person or office. The laws are the sole *guardians* of right, and when the magistrate dares not act, every person is insecure.

Let us now attend to the constitution and the powers of the senate.

The house of lords in England is wholly independent of the people. The lords spiritual hold their seats by office; and the people at large have no voice in disposing of the ecclesiastical dignities. The temporal lords hold their seats by hereditary right or by grant from the king: And it is a branch of the king's prerogative to make what peers he pleases.

The senate in Rome was elective; but a senator held his seat for life.*

The proposed senate in America is constituted on principles more favorable to liberty: The members are elective, and by the separate legislatures: They hold their seats for six years—they are thus rendered sufficiently dependent on their constituents; and yet are not dismissed from their office as soon as they become acquainted with the forms of proceeding.

It may be objected by the larger states, that the representation is not equal; the smallest states having the privilege of sending the same number of senators as the largest. To obviate this objection, I would suggest but two or three ideas.

I. If each state had a representation and a right in deciding questions, proportional to its property, three states would almost command the whole. Such a constitution would gradually annihilate the small states; and finally melt down the whole United States into one undivided sovereignty. The free states of Spain and the heptarchy in England, afford striking examples of this.

Should it be said that such an event is desirable, I answer; the states are all entitled to their respective sovereignties, and while they claim independence in international jurisdiction, the federal constitution ought to guarantee their sovereignty.

2. Another consideration has weight—There is, in all nations, a tendency toward an accumulation of power in some point. It is the business of the legislator to establish some barriers to check the tendency. In small societies, a man worth £.100,000 has but one vote, when his neighbors, who are worth but fifty pounds, have each one vote likewise. To make property the sole basis of authority, would expose many of the best citizens to violence and oppression. To make the number of inhabitants in a state, the rule of apportioning power, is more equitable; and were the United States one indivisible interest, would be a perfect rule for representation. But the detached situation of the states has created some separate interests—some local institutions, which they will not resign nor throw into the hands of other states. For these peculiar interests, the states have an *equal* attachment—for the preservation and enjoyment of these, an *equal* sovereignty is necessary; and the sovereignty of each state would not be secure, had each state, in both branches of the legislature an authority in passing laws, proportioned to its inhabitants.

3. But the senate should be considered as representing the confederacy in a body. It is a false principle in the vulgar idea of representation, that a man delegated by a particular district in a state, is the representative of that district only; whereas in truth a member of the legislature from any town or county, is the representative of the whole state. In passing laws, he is to view the

whole collective interest of the state, and act from that view; not from a partial regard to the interest of the town or county where he is chosen.

The same principle extends to the Congress of the United States. A delegate is bound to represent the true local interest of his constituents—to state in its true light to the whole body—but when each provincial interest is thus stated, every member should act for the *aggregate interest* of the whole confederacy. The design of representation is to bring the collective interest into view—a delegate is not the legislator of a single state—he is as much the legislator of the whole confederacy as of the particular state where he is chosen; and if he gives his vote for a law which he believes to be beneficial to his own state only, and pernicious to the rest, he betrays his trust and violates his oath. It is indeed difficult for a man to divest himself of local attachments and act from an impartial regard to the general good; but he who cannot for the most part do this, is not a good legislator.

These considerations suggest the propriety of continuing the senators in office, for a longer period, than the representatives. They gradually lose their partiality, generalize their views, and consider themselves as acting for the whole confederacy. Hence in the senate we may expect union and firmness—here we may find the *general good* the object of legislation, and a check upon the more partial and interested acts of the other branch.

These considerations obviate the complaint, that the representation in the senate is not equal; for the senators represent the whole confederacy; and all that is wanted of the members is information of the true situation and interest of each state. As they act under the direction of the several legislatures, two men may as fully and completely represent a state, as twenty; and when the true interest of each state is known, if the senators perform the part of good legislators, and act impartially for the whole collective body of the United States, it is totally immaterial where they are chosen.*

The house of representatives is the more immediate voice of the separate states—here the states are represented in proportion to their number of inhabitants—here the separate interests will operate with their full force, and the violence of parties and the jealousies produced by interfering interests, can be restrained and quieted only by a body of men, less local and dependent.

It may be objected that no separate interests should exist in a state; and a division of the legislature has a tendency to create them. But this objection is founded on mere jealousy, or a very imperfect comparison of the Roman and British governments, with the proposed federal constitution.

The house of peers in England is a body originally and totally independent of the people—the senate in Rome was mostly composed of patrician or noble families, and after the first election of a senator, he was no longer dependent on the people—he held his seat for life. But the senate of the United States can have no separate interests from the body of the people; for they live among

them—they are chosen by them—they *must* be dismissed from their place once in six years and *may* at any time be impeached for mal-practices—their property is situated among the people, and with their persons, subject to the same laws. No title can be granted, but the temporary titles of office, bestowed by the voluntary election of the people; and no pre-eminence can be acquired but by the same means.

The separation of the legislature divides the power—checks—restrains—amends the proceedings—at the same time, it creates no division of interest, that can tempt either branch to encroach upon the other, or upon the people. In turbulent times, such restraint is our greatest safety—in calm times, and in measures obviously calculated for the general good, both branches must always be unanimous.

A man must be thirty years of age before he can be admitted into the senate—which was likewise a requisite in the Roman government. What property was requisite for a senator in the early ages of Rome, I cannot inform myself; but Augustus fixed it at six hundred sesteria—between six and seven thousand pounds sterling. In the federal constitution, money is not made a requisite—the places of senators are wisely left open to all persons of suitable age and merit, and who have been citizens of the United States for nine years; a term in which foreigners may acquire the feelings and acquaint themselves with the interests, of the native Americans.

The house of representatives is formed on very equitable principles; and is calculated to guard the privileges of the people. The English house of commons is chosen by a small part of the people of England, and continues for seven years. The Romans never discovered the secret of representation—the whole body of citizens assembled for the purposes of legislation—a circumstance that exposed their government to frequent convulsions, and to capricious measures. The federal house of representatives is chosen by the people qualified to vote for state representatives,* and continues two years.

Some may object to their continuance in power *two years*. But I cannot see any danger arising from this quarter. On the contrary, it creates less trouble for the representatives, who by such choice are taken from their professions and obliged to attend Congress, some of them at the distance of at least seven hundred miles. While men are chosen by the people, and responsible to them, there is but little danger from ambition or corruption.

If it should be said that Congress may in time become triennial, and even septennial, like the English parliaments, I answer, this is not in their power. The English parliament had power to prolong the period of their existence—but Congress will be restrained by the different legislatures, without whose constitutional concurrence, no alteration can be made in the proposed system.

The fourth section, article I, of the new constitution declares that “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. “ Here let us pause—What did the convention mean by giving Congress power to *make regulations*, prescribed by the legislatures? Is this expression accurate or intelligible? But the word *alter* is very intelligible, and the clause puts the election of representatives *wholly*, and the senators *almost wholly*, in the power of Congress.

The views of the convention I believe to be perfectly upright—They might mean to place the election of representatives and senators beyond the reach of faction—They doubtless had good reasons, in *their* minds, for the clause—But I see no occasion for any power in Congress to interfere with the choice of their own body—They will have power to suppress insurrections, as they ought to have; but the clause in *Italics* gives *needless* and *dangerous* powers—I hope the states will reject it with decency, and adopt the whole system, without altering another syllable.

The method of passing laws in Congress is much preferable to that of ancient Rome or modern Britain. Not to mention other defects in Rome, it lay in the power of a single tribune to obstruct the passing of a law. As the tribunes were popular magistrates, the right was often exercised in favor of liberty; but it was also abused, and the best regulations were prevented, to gratify the spleen, the ambition, or the resentment of an individual.

The king of Great-Britain has the same power, but seldom exercises it. It is however a dangerous power—it is absurd and hazardous to lodge in *one man* the right of controlling the will of a state.

Every bill that passes a majority of both houses of Congress, must be sent to the president for his approbation; but it must be returned in ten days, whether approved by him or not; and the concurrence of two thirds of both houses passes the bill into a law, notwithstanding any objections of the president. The constitution therefore gives the supreme executive a check but no negative, upon the sense of Congress.

The powers lodged in Congress are extensive; but it is presumed that they are not too extensive. The first object of the constitution is to *unite* the states into one *compact society*, for the purpose of government. If such *union* must exist, or the states be exposed to foreign invasions, internal discord, reciprocal encroachments upon each others property—to weakness and infamy, which no person will dispute; what powers must be collected and lodged in the supreme head or legislature of these states. The answer is easy: This legislature must have exclusive jurisdiction in all matters in which the states have a mutual interest. There are some regulations in which all the states are equally concerned—there are others, which in their operation, are limited to one state. The first belongs to Congress—the last to the respective legislatures. No one state has a right to supreme control, in any affair in which the other states have an interest, nor should Congress interfere in any affair which respects one state only. This is the general line of division, which the convention have endeavored to draw, between the powers of Congress and the rights of the individual states. The only question therefore is, whether the new constitution delegates to Congress any powers which do not respect the general interest and welfare of the United States. If these powers intrench upon the present sovereignty of any *state*, without having for an object the *collective interest* of the whole, the powers are too extensive. But if they do not extend to all

concerns, in which the states have a mutual interest, they are too limited. If in any instance, the powers necessary for protecting the *general* interest, interfere with the constitutional rights of an *individual* state, such state has assumed powers that are inconsistent with the safety of the United States, and which ought instantly to be resigned. Considering the states as individuals, on equal terms, entering into a social compact, no state has a right to any power which may prejudice its neighbors. If therefore the federal constitution has collected into the federal legislature no more power than is necessary for the *common defence and interest*, it should be recognized by the states, however particular clauses may supersede the exercise of certain powers by the individual states.

This question is of vast magnitude. The states have very high ideas of their separate sovereignty; altho' it is certain, that while each exists in its full latitude, we can have no *Federal sovereignty*. However flattered each state may be by its independent sovereignty, we can have no union, no respectability, no national character, and what is more, no national justice, till the states resign to one *supreme head* the exclusive power of *legislating, judging and executing*, in all matters of a general nature. Every thing of a private or provincial nature, must still rest on the ground of the respective state-constitutions.²

After examining the limits of the proposed congressional powers, I confess I do not think them too extensive—I firmly believe that the life, liberty and property of every man, and the peace and independence of each state, will be more fully secured under such a constitution of federal government, than they will under a constitution with more limited powers; and infinitely more safe than under our boasted distinct sovereignties. It appears to me that Congress will have no more power than will be necessary for our union and general welfare; and such power they must have or we are in a wretched state. On the adoption of this constitution, I should value real estate twenty per cent. higher than I do at this moment.

I will not examine into the extent of the powers proposed to be lodged in the supreme federal head; the subject would be extensive and require more time than I could bestow upon it. But I will take up some objections, that have been made to particular points of the new constitution.

Most of the objections I have yet heard to the constitution, consist in mere insinuations unsupported by reasoning or fact. They are thrown out to instil groundless jealousies into the minds of the people, and probably with a view to prevent all government; for there are, in every society, some turbulent geniuses whose importance depends solely on faction. To seek the insidious and detestable nature of these insinuations, it is necessary to mention, and to remark on a few particulars.

I. The first objection against the constitution is, that the legislature will be more expensive than our present confederation. This is so far from being true, that the money we actually lose by our present weakness, disunion and *want of government* would support the civil government of every state in the confederacy. Our public poverty does not proceed from the expensiveness of Congress, nor of the civil list; but from want of power to command our own advantages. We pay

more money to foreign nations, in the course of business, and merely for *want of government*, than would, under an efficient government, pay the annual interest of our domestic debt. Every man in business knows this to be *truth*; and the objection can be designed only to delude the ignorant.

2. Another objection to the constitution, is the division of the legislature into two branches. Luckily this objection has no advocates but in Pennsylvania; and even here their number is dwindling. The factions that reign in this state, the internal discord and passions that disturb the government and the peace of the inhabitants, have detected the errors of the constitution, and will some time or other produce a reformation. The division of the legislature has been the subject of discussion in the beginning of this essay; and will be deemed, by nineteen-twentieths of the Americans, one of the principal excellencies of the constitution.

3. A third insinuation, is that the proposed federal government will annihilate the several legislatures. This is extremely disingenuous. Every person, capable of reading, must discover, that the convention have labored to draw the line between the federal and provincial powers—to define the powers of Congress, and limit them to those general concerns which *must* come under federal jurisdiction, and which *cannot* be managed in the separate legislatures—that in all internal regulations, whether of civil or criminal nature, the states retain their sovereignty, and have it guaranteed to them by this very constitution. Such a groundless insinuation, or rather mere surmise, must proceed from dark designs or extreme ignorance, and deserves the severest reprobation.

4. It is alledged that the liberty of the press is not guaranteed by the new constitution. But this objection is wholly unfounded. The liberty of the press does not come within the jurisdiction of federal government. It is firmly established in all the states either by law, or positive declarations in *bills of right*; and not being mentioned in the federal constitution, is not—and cannot be abridged by Congress. It stands on the basis of the respective state-constitutions. Should any state resign to Congress the exclusive jurisdiction of a certain district, which should include any town where presses are already established, it is in the power of the state to reserve the liberty of the press, or any other fundamental privilege, and make it an immutable condition of the grant, that such rights shall never be violated. All objections therefore on this score are “*baseless visions.*”

5. It is insinuated that the constitution gives Congress the power of levying internal taxes at pleasure. This insinuation seems founded on the eighth section of the first article, which declares, that “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.”

That Congress should have power to collect duties, imposts and excises, in order to render them uniform throughout the United States will hardly be controverted. The whole objection is to the right of levying internal taxes.

But it will be conceded that the supreme head of the states must have power, competent to the purposes of our union, or it will be, as it now is, a *useless body*, a mere expense, without any advantage. To pay our public debt, to support foreign ministers and our own civil government, money must be raised; and if the duties and imposts are not adequate to these purposes, where shall the money be obtained? It will be answered, let Congress apportion the sum to be raised, and leave the legislatures to collect the money. Well this is all that is intended by the clause under consideration; with the addition of a federal power that shall be sufficient to oblige a delinquent state to comply with the requisition. Such power must exist somewhere, or the debts of the United States can never be paid. For want of such power, our credit is lost and our national faith is a bye-word.

For want of such power, one state now complies fully with a requisition, another partially, and a third absolutely refuses or neglects to grant a shilling. Thus the honest and punctual are doubly loaded—and the knave triumphs in his negligence. In short, no honest man will dread a power that shall enforce an equitable system of taxation. The dishonest are ever apprehensive of a power that shall oblige them to do what honest men are ready to do voluntarily.

Permit me to ask those who object to this power of taxation, how shall money be raised to discharge our honest debts which are universally acknowledged to be just? Have we not already experienced the inefficacy of a system without power? Has it not been proved to demonstration, that a voluntary compliance with the demands of the union can never be expected? To what expedient shall we have recourse? What is the resort of all governments in cases of delinquency? Do not the states vest in the legislature, or even in the governor and council, a power to enforce laws, even with the militia of the states? And how rarely does there exist the necessity of exerting such a power? Why should such a power be more dangerous in Congress than in a legislature? Why should more confidence be reposed in a member of one legislature than of another? Why should we choose the best men in the state to represent us in Congress, and the moment they are elected arm ourselves against them as against tyrants and robbers? Do we not, in this conduct, act the part of a man, who, as soon as he has married a woman of unsuspected chastity, locks her up in a dungeon? Is there any spell or charm, that instantly changes a delegate to Congress from an honest man into a knave—a tyrant? I confess freely that I am willing to trust Congress with any powers that I should dare lodge in a state-legislature. I believe life, liberty, and property is as safe in the hands of a federal legislature, organized in the manner proposed by the convention, as in the hands of any legislature, that has ever been or ever will be chosen in any particular state.

But the idea that Congress can levy taxes *at pleasure* is false, and the suggestion wholly unsupported. The preamble to the constitution is declaratory of the purposes of our union, and the assumption of any powers not necessary to *establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity*, will be unconstitutional, and endanger the existence of Congress. Besides, in the very clause which gives the power of levying duties and taxes, the purposes to which the money shall be appropriated are specified, viz. *to pay the debts and*

*provide for the common defence and general welfare of the United States.** For these purposes money must be collected, and the power of collection must be lodged, sooner or later, in a federal head; or the common defence and general welfare must be neglected.

The states in their separate capacity, cannot provide for the *common* defence; nay in case of a civil war, a state cannot secure its own existence. The only question therefore is, whether it is necessary to unite, and provide for our *common defence and general welfare*. For this question being once decided in the affirmative, leaves no room to controvert the propriety of constituting a power over the whole United States, adequate to these general purposes.

The states, by granting such power, do not throw it out of their own hands—they only throw, each its proportion, into a common stock—they merely combine the powers of the several states into one point, where they *must* be collected, before they *can* be exerted. But the powers are still in their own hands; and cannot be alienated, till they create a body independent of themselves, with a force at their command, superior to the whole yeomanry of the country.

6. It is said there is no provision made in the new constitution against a standing army in time of peace. Why do not people object that no provision is made against the introduction of a body of Turkish Janizaries; or against making the Alcoran the rule of faith and practice, instead of the Bible? The answer to such objections is simply this—*no such provision is necessary*. The people in this country cannot forget their apprehensions from a British standing army, quartered in America; and they turn their fears and jealousies against themselves. Why do not the people of most of the states apprehend danger from standing armies from their own legislatures? Pennsylvania and North Carolina, I believe, are the only states that have provided against this danger at all events. Other states have declared that “no standing armies shall be kept up without the consent of the legislature.” But this leaves the power entirely in the hands of the legislature. Many of the states however have made *no provision* against this evil. What hazards these states suffer! Why does not a man pass a law in his family, that no armed soldier shall be quartered in his house by his consent? The reason is very plain: no man will suffer his liberty to be abridged, or endangered—his disposition and his power are uniformly opposed to any infringement of his rights. In the same manner, the principles and habits, as well as the power of the Americans are directly opposed to standing armies; and there is as little necessity to guard against them by positive constitutions, as to prohibit the establishment of the Mahometan religion. But the constitution provides for our safety; and while it gives Congress power to raise armies, it declares that no appropriation of money to their support shall be for a longer term than two years.

Congress likewise are to have power to provide for organizing, arming and disciplining the militia, but have no other command of them, except when in actual service. Nor are they at liberty to call out the militia at pleasure—but only, to execute the laws of the union, suppress insurrections, and repel invasions. For these purposes, government must always be armed with a military force, if the occasion should require it; otherwise laws are nugatory, and life and property insecure.

7. Some persons have ventured to publish an intimation, that by the proposed constitution, the trial by jury is abolished in all *civil cases*. Others very modestly insinuate, that it is in *some cases* only. The fact is, that trial by jury is not affected in *any case*, by the constitution; except in cases of impeachment, which are to be tried by the senate. None but persons in office in or under Congress can be impeached; and even after a judgment upon an impeachment, the offender is liable to a prosecution, before a common jury, in a regular course of law. The insinuation therefore that trials by jury are to be abolished, is groundless, and beyond conception, wicked. It must be wicked, because the circulation of a barefaced falsehood, respecting a privilege, dear to freemen, can proceed only from a depraved heart and the worst intentions.

8. It is also intimated as a probable event, that the federal courts will absorb the judiciaries of the federal states. This is a mere suspicion, without the least foundation. The jurisdiction of the federal states is very accurately defined and easily understood. It extends to the cases mentioned in the constitution, and to the execution of the laws of Congress, respecting commerce, revenue, and other general concerns.

With respect to other civil and criminal actions, the powers and jurisdiction of the several judiciaries of each state, remain unimpaired. Nor is there anything novel in allowing appeals to the supreme court. Actions are mostly to be tried in the state where the crimes are committed— But appeals are allowed under our present confederation, and no person complains; nay, were there no appeal, every man would have reason to complain, especially when a final judgement, in an inferior court, should affect property to a large amount. But why is an objection raised against an appellate jurisdiction in the supreme court, respecting *fact* as well as *law*? Is it less safe to have the opinions of two juries than of one? I suspect many people will think this is no defect in the constitution. But perhaps it will destroy a material requisite of a good jury, viz. their vicinity to the cause of action. I have no doubt, that when causes were tried, in periods prior to the Christian æra, before twelve men, seated upon twelve stones, arranged in a circular form, under a huge oak, there was great propriety in submitting causes to men *in the vicinity*. The difficulty of collecting evidence, in those rude times, rendered it necessary that juries should judge mostly from their own knowledge of facts or from information obtained out of court. But in these polished ages, when juries depend almost wholly on the testimony of witnesses; and when a complication of interests, introduced by commerce and other causes, renders it almost impossible to collect men, in the vicinity of the parties, who are wholly disinterested, it is no disadvantage to have a cause tried by a jury of strangers. Indeed the latter is generally the most eligible.

But the truth is, the creation of all inferior courts is in the power of Congress; and the constitution provides that Congress may make such exceptions from the right of appeals as they shall judge proper. When these courts are erected, their jurisdictions will be ascertained, and in small actions, Congress will doubtless direct that a sentence in a subordinate court shall, to a certain amount, be definite and final. All objections therefore to the judicial powers of the federal courts appear to me as trifling as any of the preceding.

9. But, say the enemies of slavery, negroes may be imported for twenty-one years. This exception is addressed to the quakers; and a very pitiful exception it is.

The truth is, Congress cannot prohibit the importation of slaves during that period; but the laws against the importation into particular states, stand unrepealed. An immediate abolition of slavery would bring ruin upon the whites, and misery upon the blacks, in the southern states. The constitution has therefore wisely left each state to pursue its own measures, with respect to this article of legislation, during the period of twenty-one years.³

Such are the principal objections that have yet been made by the enemies of the new constitution. They are mostly frivolous, or founded on false constructions, and a misrepresentation of the true state of facts. They are evidently designed to raise groundless jealousies in the minds of well meaning people, who have little leisure and opportunity to examine into the principles of government. But a little time and reflection will enable most people to detect such mischievous intentions; and the spirit and firmness which have distinguished the conduct of the Americans, during the conflict for independence, will eventually triumph over the enemies of union, and bury them in disgrace or oblivion.

But I cannot quit this subject without attempting to correct some of the erroneous opinions respecting *freedom and tyranny*, and the principles by which they are supported. Many people seem to entertain an idea, that liberty consists in *a power to act without any control*. This is more liberty than even the savages enjoy. But in civil society, political liberty consists in *acting conformably to a sense of a majority of the society*. In a free government every man binds himself to obey the *public voice*, or the opinions of a majority; and the *whole society* engages to *protect each individual*. In such a government a man is *free* and safe. But reverse the case; suppose every man to act without control or fear of punishment—every man would be free, but no man would be sure of his freedom one moment. Each would have the power of taking his neighbor's life, liberty, or property; and no man would command more than his own strength to repel the invasion. The case is the same with states. If the states should not unite into one compact society, every state may trespass upon its neighbor, and the injured state has no means of redress but its own military force.

The present situation of our American states is very little better than a state of nature—Our boasted state sovereignties are so far from securing our liberty and property, that they, every moment, expose us to the loss of both. That state which commands the heaviest purse and longest sword, may at any moment, lay its weaker neighbor under tribute; and there is no superior power now existing, that can regularly oppose the invasion or redress the injury. From such liberty, O Lord, deliver us!

But what is tyranny? Or how can a free people be deprived of their liberties? Tyranny is the exercise of some power over a man, which is not warranted by law, or necessary for the public safety. A people can never be deprived of their liberties, while they retain in their own hands, a

power sufficient to any other power in the state. This position leads me directly to enquire, in what consists the power of a nation or of an order of men?

In some nations, legislators have derived much of their power from the influence of religion, or from that implicit belief which an ignorant and superstitious people entertain of the gods, and their interposition in every transaction of life. The Roman senate sometimes availed themselves of this engine to carry their decrees and maintain their authority. This was particularly the case, under the aristocracy which succeeded the abolition of the monarchy. The augurs and priests were taken wholly from patrician families.* They constituted a distinct order of men—had power to negative any law of the people, by declaring that it was passed during the taking of the auspices.† This influence derived from the authority of opinion, was less perceptible, but as tyrannical as a military force. The same influence constitutes, at this day, a principal support of federal governments on the Eastern continent, and perhaps in South America. But in North America, by a singular concurrence of circumstances, the possibility of establishing this influence, as a pillar of government, is totally precluded.

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 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 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 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 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.

Let us then consider the *New Federal Constitution*, as it really is, an *improvement* on the *best* constitutions that the world ever saw. In the house of representatives, the people of America have an equal voice and suffrage. The choice of men is placed in the freemen or electors at large; and the frequency of elections, and the responsibility of the members, will render them sufficiently dependent on their constituents. The senate will be composed of older men; and while their regular dismissal from office, once in six years, will preserve their dependence on their constituents, the duration of their existence will give firmness to their decisions, and temper the factions which must necessarily prevail in the other branch. The president of the United States is elective, and what is a capital improvement on the best governments, the mode of chusing him

excludes the danger of faction and corruption. As the supreme executive, he is invested with power to enforce the laws of the union and give energy to the federal government.

The constitution defines the powers of Congress; and every power not expressly delegated to that body, remains in the several state-legislatures. The sovereignty and the republican form of government of each state is guaranteed by the constitution; and the bounds of jurisdiction between the federal and respective state governments, are marked with precision. In theory, it has all the energy and freedom of the British and Roman governments, without their defects. In short, the privileges of freemen are interwoven into the feelings and habits of the Americans; *liberty* stands on the immovable basis of a general distribution of property and diffusion of knowledge; but the Americans must cease to contend, to fear, and to hate, before they can realize the benefits of independence and government, or enjoy the blessings, which heaven has lavished, in rich profusion, upon this western world.

[1.] See *The Federalist*, No. 1, for a similar sentiment.

[*] A division of the legislature has been adopted in the new constitution of every state except Pennsylvania and Georgia.

[*] I cannot help remarking the singular jealousy of the constitution of Pennsylvania, which requires that a bill shall be published for the consideration of the people, before it is enacted into a law, except in extraordinary cases. This annihilates the legislature, and reduces it to an advisory body. It almost wholly supersedes the uses of *representation*, the most excellent improvement in modern governments. Besides the absurdity of constituting a legislature, without supreme power, such a system will keep the state perpetually embroiled. It carries the spirit of discussion into all quarters, without the means of reconciling the opinions of men, who are not assembled to hear each others' arguments. They debate with themselves—form their own opinions, without the reasons which influence others, and without the means of information. Thus the warmth of different opinions, which, in other states, dies in the legislature, is diffused through the state of Pennsylvania, and becomes personal and permanent. The seeds of dissension are sown in the constitution, and no state, except Rhode Island, is so distracted by factions.

[*] In the decline of the republic, bribery or military force obtained this office for persons who had not attained this age—Augustus was chosen at the age of twenty; or rather obtained it with his sword.

[*] I say the senate was *elective*—but this must be understood with some exceptions; or rather qualifications. The constitution of the Roman senate has been a subject of enquiry, with the first men in modern ages. Lord Chesterfield requested the opinion of the learned Vertot, upon the manner of chusing senators in Rome; and it was a subject of discussion between Lord Harvey and Dr. Middleton. The most probable account of the manner of forming the senate, and filling up vacancies, which I have collected from the best writers on this subject, is here abridged for the consideration of the reader.

Romulus chose one hundred persons, from the principal families in Rome, to form a council or senate; and reserved to himself the right of nominating their successors; that is of filling vacancies. “Mais comme Romulus avoit lui même choisi les premiers senateurs il se reserva le droit de nommer a son gré, leurs successeurs.”—Mably, sur les Romains. Other well informed historians intimate that Romulus retained the right of nominating the president only. After the union of the Sabines with the Romans, Romulus added another hundred members to the senate, but by *consent of the people*. Tarquin, the *ancient*, added another hundred; but historians are silent as to the manner.

On the destruction of Alba by Hostilius, some of the principal Alban families were added to the senate, by *consent of the senate and people*.

After the demolition of the monarchy, Appius Claudius was admitted into the senate by *order of the people*.

Cicero testifies that, from the extinction of the monarchy, all the members of the senate were admitted by *command of the people*.

It is observable that the first creation of the senators was the act of the monarch; and the first patrician families claimed the sole right of admission into the senate. “Les familles qui descendoient des deux cent senateurs que Romulus avoit créés,—se crurent seules en droit d’entrer dans le senat.”—Mably.

This right however was not granted in its utmost extent; for many of the senators in the Roman commonwealth, were taken from plebian families. For sixty years before the institution of the *ensorship*, which was A. U. C. 311, we are not informed how vacancies in the senate were supplied. The most probable method was this; to enrol, in the list of senators, the different magistrates; viz., the consuls, prætors, the two quæstors of patrician families, the five tribunes (afterwards ten) and the two ædiles of plebian families: The office of quæstor gave an immediate admission into the senate. The tribunes were admitted two years after their creation. This enrollment seems to have been a matter of course; and likewise their confirmation by the people in their comitia or assemblies.

On extraordinary occasions, when the vacancies of the senate were numerous, the consuls used to nominate some of the most respectable of the equestrian order to be chosen by the people.

On the institution of the censorship, the censors were invested with full powers to inspect the manners of the citizens,—enrol them in their proper ranks according to their property,—make out lists of the senators and leave out the names of such as had rendered themselves unworthy of their dignity by any scandalous vices. This power they several times exercised; but the disgraced senators had an appeal to the people.

After the senate had lost half its members in the war with Hannibal, the dictator, M. Fabius Buteo, filled up the number with the magistrates, with those who had been honored with a civic crown, or others who were respectable for age and character. One hundred and seventy new members were added at once, with *the approbation of the people*. The vacancies occasioned by Sylla's proscriptions amounted to three hundred, which were supplied by persons nominated by Sylla and *chosen by the people*.

Before the time of the Gracchi, the number of senators did not exceed three hundred. But in Sylla's time, so far as we can collect from direct testimonies, it amounted to about five hundred. The age necessary to qualify for a seat in the senate is not exactly ascertained; but several circumstances prove it to have been about thirty years.

See Vertot, Mably, and Middleton on this subject.

In the last ages of Roman splendor, the property requisite to qualify a person for a senator, was settled by Augustus at eight hundred sestertia—more than six thousand pounds sterling.

[*] It is a capital defect of most of the state-constitutions, that the senators, like the representatives, are chosen in particular districts. They are thus inspired with local views, and however wrong it may be to entertain them, yet such is the constitution of human nature, that men are almost involuntarily attached to the interest of the district which has reposed confidence in their abilities and integrity. Some partiality therefore for constituents is always expectable. To destroy it as much as possible, a political constitution should remove the grounds of local attachment. Connecticut and Maryland have wisely destroyed this attachment in their senates, by ordaining that the members shall be chosen in the *state at large*. The senators hold their seats by the suffrages of the state, *not of a district*; hence they have no particular number of men to fear or to oblige.—They represent *the state*; hence that union and firmness which the senates of those states have manifested on the most trying occasions, and by which they have prevented the most rash and iniquitous measures.

It may be objected, that when the election of senators is vested in the people, they must choose men in their own neighborhood, or else those with whom they are unacquainted. With respect to representatives, this objection does not lie; for they are chosen in small districts; and as to senators, there is, in every state, a small number of men, whose reputation for abilities, integrity and good conduct will lead the people to a very just choice. Old experienced statesmen should compose the senate; and people are generally, in this free country, acquainted with their characters. Were it possible, as it is in small states, it would be an improvement in the doctrine of representation, to give every freeman the right of voting for every member of the legislature, and the privilege of choosing the men in any part of the state. This would totally exclude bribery and undue influence; for no man can bribe a state; and it would almost annihilate partial views in legislation. But in large states it may be impracticable.

[*] It is said by some, that no property should be required as a qualification for an elector. I shall not enter into a discussion of the subject; but remark that in most free governments, some property has been thought requisite, to prevent corruption and secure government from the influence of an unprincipled multitude.

In ancient Rome none but the free citizens had the right of a suffrage in the *comitia* or legislative assemblies. But in Sylla's time the Italian cities demanded the rights of the Roman citizens; alledging that they furnished two-thirds of the armies, in all their wars, and yet were despised as foreigners. Vell. Paterc. lib. 2. cap. 15. This produced the *Marsic* or *social* war, which lasted two years, and caried off 300,000 men. Ibm. It was conducted and concluded by Pompey, father of Pompey the Great, with his lieutenants Sylla and Marius. But most of the cities eventually obtained *the freedom of Rome*; and were of course entitled to the rights of suffrage in the comitia. "Paulatim deinde recipiendo in civitatem, qui arma aut non ceperant aut deposuerant maturiùs, vires refectæ sunt." Vell. Paterc. 2. 16.

But Rome had cause to deplore this event, for however reasonable it might appear to admit the allies to a participation of the rights of citizens, yet the concession destroyed all freedom of election. It enabled an ambitious demagogue to engage and bring into the assemblies, whole towns of people, slaves and foreigners;—and everything was decided by faction and violence. This Montesquieu numbers among the causes of the decline of the Roman greatness. *De la grandeur des Romains*, c. 9.

Representation would have, in some measure, prevented the consequences; but the admission of every man to a suffrage will ever open the door to corruption. In such a state as Connecticut, where there is no conflux of foreigners, no introduction of seamen, servants, &c., and scarcely an hundred persons in the state who are not natives, and very few whose education and connexions do not attach them to the government; at the same time few men have property to furnish the means of corruption, very little danger could spring from admitting every man of age and discretion to the privilege of voting for rulers. But in the large towns of America there is more danger. A master of a vessel may put votes in the hands of his crew, for the purpose of carrying an election for a party. Such things have actually taken place in America. Besides, the middle states are receiving emigrations of poor people, who are not at once judges of the characters of men, and who cannot be safely trusted with the choice of legislators.

[2.] See Madison to Washington, 16 April 1787.

[*] The clause may at first appear ambiguous. It may be uncertain whether we should read and understand it thus—"The Congress shall have power to lay and collect taxes, duties, imposts and excises *in order to pay the debts*," &c. or whether the meaning is—"The Congress shall have power to lay and collect taxes, duties, imposts and excises, and *shall have power to pay the debts*," &c. On considering the construction of the clause, and comparing it with the preamble, the last sense seems to be improbable and absurd. But it is not very material; for no powers are vested in Congress but what are included under the general expressions, of *providing for the*

common defence and general welfare of the United States. Any powers not promotive of these purposes, will be unconstitutional;—consequently any appropriations of money to any other purpose will expose the Congress to the resentment of the states, and the members to impeachment and loss of their seats.

[3.] See Storing, “Slavery and the Moral Foundations of the American Republic,” in Robert Horowitz, ed., *The Moral Foundations of the American Republic* (Charlottesville: University Press of Virginia, 1977).

[*] “Quod nemo plebeius auspicia haberet, ideoque decemviros connubium diremisit, ne incerta prole auspicia turbarentur.” Tit. Liv. lib. 4. cap. 6.

[†] Auguriis certe sacerdotisque augurum tantus honos accessit, ut nihil belli domique postea, nisi auspicato, gereretur: concilia populi, exercitus vocati, summa rerum, ubi aves non admisissent, dirimerentur. Liv. lib. I. cap. 37.

[*] Essay on the Roman government.⁴

[†] Livy, 2. 33.

[‡] Livy, 3. 54.

[§] Livy, 3. 33.

[?] Livy, 4. 6.

[#] Livy, 6. 35. 42. “Ne quis plus quingenta jugera agri possideret.”

[*] 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.

[*] 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.

[*] Essay on the Roman government.⁴

[4.] Walter Moyle, *A Select Collection of Tracts . . . Containing, I. An Essay Upon the Roman Government . . .* (Glasgow, 1750).

NOTES