

# PART 1: ENDING, AND BEGINNING

## I. Art. VII (Ratification)

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

❖ Art. VII

### Document 1:

**Articles of Confederation,  
Ratification  
(1 Mar. 1781)<sup>1</sup>**

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

.....

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July, in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

[Signatures of delegates from the original thirteen states omitted.]

### Document 2:

**Thomas Jefferson,  
Answers to Demeunier's First  
Queries (24 Jan. 1786)<sup>2</sup>**

It has been often said that the decisions of Congress are impotent, because the Confederation provides no compulsory power. But when two or more nations enter into a compact, it is not usual for them to say what shall be done to the party who infringes it. Decency forbids this. And it is as unnecessary as indecent, because the right of compulsion naturally results to the party injured, by the breach. When any one state in the American Union refuses obedience to the Confederation by which they have bound themselves, the rest have a natural right to compel them to obedience. Congress would probably exercise long patience before they would recur to force; but if the case ultimately required it, they would use that recurrence. Should this case ever arise, they will probably coerce by a naval force, as being more easy, less dangerous to liberty, and less likely to produce much bloodshed.

It has been said too that our governments both federal and particular want energy; that it is difficult to restrain both individuals and states from committing wrongs. This is true, and it is an inconvenience. On the other hand that energy which absolute governments derive from an armed force, which is the effect of the bayonet constantly held at the breast of every citizen, and which resembles very much the stillness of the grave, must be admitted also to have its inconveniences. We weigh the two together, and like best to submit to the former. Compare the number of wrongs committed with impunity by citizens among us, with those committed by the sovereigns in other countries, and the last will be found most numerous, most oppressive on the mind, and most degrading of the dignity of man.

## PART 1

**Document 3:**  
**Resolution of Congress**  
**(21 Feb. 1787)<sup>3</sup>**

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union.

**Document 4:**  
**George Washington to James**  
**Madison (31 Mar. 1787)<sup>4</sup>**

It gives me great pleasure to hear that there is a probability of a full representation of the States in Convention; but if the delegates come to it under fetters, the salutary ends proposed will in my opinion be greatly embarrassed and retarded, if not altogether defeated. I am anxious to know how this matter really is, as my wish is, that the Convention may adopt no temporizing expedient, but probe the defects of the Constitution to the bottom, and provide radical cures; whether they are agreed to or not; a conduct like this, will stamp wisdom and dignity on the proceedings, and be looked to as a luminary, which sooner or later will shed its influence.

**Document 5:**  
**Benjamin Franklin to**  
**the Federal Convention**  
**(17 Sept. 1787)<sup>5</sup>**

The engrossed Constitution being read,

Docr. Franklin rose with a speech in his hand, which he had reduced to writing for his own conveniency, and which Mr. Wilson read in the words following.

Mr. President

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain french lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with no body but myself, that's always in the right"—// *n'y a que moi qui a toujours raison.*"

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a

perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils

are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir,

2

## ENDING, AND BEGINNING

to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good—I have never whispered a syllable of them abroad—Within these walls they were born, and here they shall die—If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity. Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administered.

On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility—and to make manifest our unanimity, put his name to this instrument."

—He then moved that the Constitution be signed by the members and offered the following as a convenient form viz. "Done in Convention, by the unanimous consent of *the States* present the 17th. of Sepr. &c—In Witness whereof we have hereunto subscribed our names."

### **Document 6:** **Federal Convention,** **Resolution and Letter**

### **to the Continental Congress** **(17 Sept. 1787)<sup>6</sup>**

In Convention Monday September 17th.

1787 Present

The States of

New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their votes certified signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for

President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the

Convention Go: Washington Presidt.

W. Jackson Secretary

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[Letter to the President of Congress]

In Convention, September 17, 1787.

Sir,

3

## PART 1

We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most adviseable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union: but the impropriety of delegating such extensive trust to one body of men is evident—Hence results the necessity of a different organization.

It is obviously impracticable in the foederal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all—Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was encreased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution, which we now present, is the result

of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected; but each will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect,

We have the honor to be.

SIR,

Your Excellency's most

Obedient and humble Servants,

GEORGE WASHINGTON,

PRESIDENT. *By unanimous Order of  
the Convention.*

## Document 7: James McHenry, Anecdote (18—?)<sup>7</sup>

A lady asked Dr. Franklin Well Doctor what have we got a republic or a monarchy—A republic replied the Doctor if you can keep it.

**Document 8:**  
**Richard Henry Lee to George**  
**Mason (1 Oct. 1787)<sup>8</sup>**

I have waited until now to answer your favor of Sept. 18th from Philadelphia, that I might inform you how the Convention plan of Government was entertained by Congress. Your prediction of what would happen in Congress was exactly verified. It was with us, as with you, this or nothing; & this urged with a most extreme intemperance. The greatness of the powers

given, & the multitude of Places to be created, produces a coalition of Monarchy men, Military Men, Aristocrats, and Drones whose noise, imprudence & zeal exceeds all belief—Whilst the Commercial plunder of the South stimulates the rapacious Trader. In this state of things the Patriot voice is raised in vain for such changes and securities as Reason and Experience prove to be necessary against the encroachments of power upon the indispensable rights of human nature. Upon due consideration of the Constitution under which we now Act, some of us were clearly of opinion that the 13th article of the Confederation precluded us from giving an opinion concerning a plan subversive of the present system and eventually forming a New Confederacy of Nine instead of 13

4

**ENDING, AND BEGINNING**

States. The contrary doctrine was asserted with great violence in expectation of the strong majority with which they might send it forward under terms of much approbation. Having procured an opinion that Congress was qualified to consider, to amend, to approve or disapprove—the next game was to determine that tho a right to amend existed, it would be highly inexpedient to exercise that right; but merely to transmit it with respectful marks of approbation. In this state of things I availed myself of the Right to amend, & moved the Amendments copy of which I send herewith & called the ayes & nays to fix them on the journal. This greatly alarmed the Majority & vexed them extremely—for the plan is, to push the business on with great dispatch, & with as little opposition as possible: that it may be adopted before it has stood the test of Reflection & due examination. They found it most eligible at last to transmit it merely, without approving or disapproving; provided nothing but the transmission should appear on the Journal. This compromise was settled and they took the opportunity of inserting the word *Unanimously*, which applied only to simple transmission, hoping to have it mistaken for an Unanimous approbation of the thing. It states that Congress having Received the Constitution unanimously transmit it &c. It is certain that no Approbation was given. This constitution has a great many excellent Regulations in it and if it could be reasonably amended would be a fine System. As it is, I think 'tis past doubt, that if it should be established, either a tyranny will result from it, or it will be prevented by a Civil war. I am clearly of

opinion with you that it should be sent back with amendments Reasonable and Assent to it with held until such amendments are admitted. You are well acquainted with Thos. Stone & others of influence in Maryland—I think it will be a great point to get Maryld. & Virginia to join in the plan of Amendments & return it with them. If you are in correspondence with our Chancellor Pendleton it will be of much use to furnish him with the objections, and if he approves our plan, his opinion will have great weight with our Convention and I am told that his relation Judge Pendleton of South Carolina has decided weight in the State & that he is sensible & independent. How important will it be then to procure his union with our plan, which might probably be the case, if our Chancellor was to write largely and pressingly to him on the subject; that if possible it may be amended there also. It is certainly the most rash and violent proceeding in the world to cram thus suddenly into Men a business of such infinite Moment to the happiness of Millions.

.....

Suppose when the Assembly recommended a Convention to consider this new Constitution they were to use some words like these—It is earnestly recommended to the good people of Virginia to send their most wise & honest Men to this Convention that it may undergo the most intense consideration before a plan shall be without amendments adopted that admits of abuses being practised by which the best interests of this Country may be injured and Civil Liberty greatly endanger'd. This might perhaps give a decided Tone to the business.



**Document 9:**  
**Edmund Randolph to**  
**Speaker of Virginia House of**  
**Delegates (10 Oct. 1787)<sup>9</sup>**

It would have been a peculiar pleasure to me to have ascertained before I left Virginia, the temper and genius of my fellow citizens, considered relatively to a government, so substantially differing from the confederation as that which is now submitted. But this was, for many obvious reasons, impossible; and I was thereby deprived of what I thought the necessary guides.

I saw, however, that the confederation was tottering from its own weakness, and that the sitting of a convention was a signal of its total insufficiency. I was therefore ready to assent to a scheme of government, which was proposed,

and which went beyond the limits of the confederation, believing, that without being too extensive it would have preserved our tranquility, until that temper and that genius should be collected.

But when the plan which is now before the general assembly, was on its passage through the convention, I moved, that the State conventions should be at liberty to amend, and that a second general convention should be holden, to discuss the amendments, which should be suggested by them. This motion was in some measure justified by the manner in which the confederation was forwarded originally, by congress to the State legislatures, in many of which amendments were proposed, and those amendments were afterwards examined in congress. Such a motion was doubly expedient here, as the delegation of so much power was sought for. But it was negatived. I then expressed my unwillingness to sign. My reasons were the following:

5

**PART 1**

1. It is said in the resolutions which accompany the constitution, that it is to be submitted to a convention of delegates chosen in each State by the people thereof, for their assent and ratification. The meaning of these terms is allowed universally to be, that the convention must either adopt the constitution in the whole, or reject it in the whole, and is positively forbidden to amend, if therefore, I had signed, I should have felt myself bound to be silent as to amendments, and to endeavor to support the constitution without the correction of a letter. With this consequence before my eyes, and with a determination to attempt an amendment, I was taught by a regard for consistency not to sign.

2. My opinion always was, and still is, that every citizen of America, let the crisis be what it may, ought to have a full opportunity to propose, through his representatives, any amendment which in his apprehension, tends to the public welfare. By signing, I should have contradicted this sentiment.

3. A constitution ought to have the hearts of the people on its side. But if at a future day it should be burdensome after having been adopted in the whole, and they should insinuate that it was in some measure forced upon them, by being confined to the single alternative of taking or

rejecting it altogether, under my impressions, and with my opinions, I should not be able to justify myself had I signed.

4. I was always satisfied, as I have now experienced, that this great subject would be placed in new lights and attitudes by the criticism of the world, and that no man can assure himself how a constitution will work for a course of years, until at least he shall have heard the observations of the people at large. I also fear more from inaccuracies in a constitution, than from gross errors in any other composition; because our dearest interests are to be regulated by it; and power, if loosely given, especially where it will be interpreted with great latitude, may bring sorrow in its execution. Had I signed with these ideas, I should have virtually shut my ears against the information which I ardently desired.

5. I was afraid that if the constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government. But it will be asked, whether all these arguments, were not ... well weighed in convention. They were, sir, with great candor. Nay, when I called to mind the

respectability of those, with whom I was associated,

I almost lost confidence in these principles. On other occasions, I should cheerfully have yielded to a majority; on this the fate of thousands yet unborn, enjoined me not to yield until I was convinced.

Again, may I be asked, why the mode pointed out in the constitution for its amendment, may not be a sufficient security against its imperfections, without now arresting it in its progress? My answers are—1. That it is better to amend, while we have the constitution in our power, while the passions of designing men are not yet enlisted, and while a bare majority of the States may amend than to wait for the uncertain assent of three fourths of the States. 2. That a bad feature in government, becomes more and more fixed every day. 3. That frequent changes of a constitution, even if practicable, ought not to be wished, but avoided as much as possible. And 4. That in the present case, it may be questionable, whether, after the particular advantages of its operation shall be discerned, three fourths of the States can be induced to amend.

### Document 10: Luther Martin,

6

#### ENDING, AND BEGINNING

the *other* to be chose in a *more select manner*, as a *check* upon the *first*—It is in its very *introduction* declared to be a compact between the *people* of the United States *as individuals*, and it is to be *ratified* by the *people* at large in their capacity *as individuals*; all which it was said, would be quite right and proper, if there were *no State governments*, if *all the people* of this continent were in a *state of nature*, and we were forming one *national government for them as individuals*, and is nearly the same as was done in most of the *States*, when they formed their governments *over the people* who compose them.

Whereas it was urged, that the principles on which a *federal* government over *States* ought to be *constructed* and *ratified* are the *reverse*; that instead of the legislature consisting of *two branches*, *one* branch was sufficient, whether examined by the *dictates* of *reason*, or the

### Genuine Information (1788)<sup>10</sup>

It was urged, that the government we were forming was not in reality a *federal* but a *national* government, not founded on the principles of the *preservation*, but the *abolition* or *consolidation* of all *State governments*—

That we appeared *totally to have forgot* the business for which we were sent, and the situation of the country for which we were preparing our system—That we had not been sent to form a government over the *inhabitants* of America, considered as *individuals*, that as individuals they were all subject to their respective *State governments*, which governments would still remain, tho' the federal government should be dissolved—That the *system of government* we were *entrusted* to prepare, was a government over *these thirteen States*; but that in our proceedings, we adopted principles which would be right and proper, *only* on the supposition that there were *no State governments at all*, but that *all the inhabitants* of this *extensive continent* were in their *individual capacity*, *without government*, and in a *state of nature*—That accordingly the system proposes the legislature to consist of *two branches*, the *one* to be drawn from the *people at large*, immediately in their *individual capacity*;

*experience* of *ages*—That the representation instead of being drawn from the *people at large* as *individuals*, ought to be drawn from the *States* as *States* in their *sovereign* capacity—That in a *federal* government, the *parties* to the compact are not the *people* as *individuals*, but the *States* as *States*, and that it is by the *States* as *States* in their *sovereign* capacity, that the system of government ought to be *ratified*, and not by the *people* as *individuals*.

It was further said, that in a *federal* government over *States* *equally* free, sovereign, and independent, every *State* ought to have an equal share in *making* the *federal* *laws* or *regulations*; in *deciding* upon them, and in *carrying them into execution*, *neither* of which was the case in *this* system, but the *reverse*, the *States* not having an *equal voice* in the *legislature*, nor in the *appointment* of the *executive*, the *judges*, and the *other officers of government*: it was insisted, that in the *whole* system there was but *one federal* feature, the

appointment of the senators by the States in their sovereign capacity, that is by their legislatures, and the equality of suffrage in that branch; but it was said that *this feature* was only *federal in appearance*.

**Document 11:**  
**George Washington**  
**to Edmund Randolph**  
**(8 Jan. 1788)<sup>11</sup>**

The various passions and medium by which men are influenced are concomitants of fallibility—engrafted into our nature for the purposes of unerring wisdom; but had I entertained a latent hope (at the time you moved to have the Constitution submitted to a second Convention) that a more perfect form would be agreed to, in a word that any Constitution would be adopted under the impressions and instructions of the members, the publications, which have taken place since would have eradicated every form of it. ...

To my Judgment, it is more clear than ever, that an attempt to amend the Constitution which is submitted, would be productive of more heat and greater confusion than can well be conceived. There are some things in the new form, I will readily acknowledge, wch. never did, and I am

persuaded never will, obtain my *cordial* approbation; but I then did conceive, and do now most firmly believe, that, in the aggregate, it is the best Constitution that can be obtained at this Epoch, and that this, or a dissolution of the Union awaits our choice, and are the only alternatives before us. Thus believing, I had not, nor have I now any hesitation in deciding on which to lean.

I pray your forgiveness for the expression of these sentiments. In acknowledging the receipt of your Letter on this subject, it was hardly to be avoided, although I am well disposed to let the matter rest entirely on its own merits, and mens minds to their own workings.

**Document 12:**  
**Alexander Hamilton,**  
**Federalist, no. 22**  
**(14 Dec. 1787)<sup>12</sup>**

It has not a little contributed to the infirmities of the existing foederal system, that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several Legislatures; it has been exposed to frequent and

intricate questions concerning the validity of its powers; and has in some instances given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a State, it has been contended, that the same authority might repeal the law by which it was ratified. However gross a heresy it may be, to maintain that *a party* to a *compact* has a right to revoke that *compact*, the doctrine itself has had respectable advocates. The possibility of a question of this nature, proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American Empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure original fountain of all legitimate authority.

**Document 13:**  
**Samuel**  
**(10 Jan. 1788)<sup>13</sup>**

Again, I find in the last acts of the Constitution, that it is an open professed resolution, to break a solemn covenant, made by the several States, in the confederation of *the United States of America*. Which having named the States, in the 3d, article, says “the said States hereby severally enter into a firm league of friendship, with each other, for their common defence, &c.”—Then going on to describe this *firm league*, till it comes to the last Art. it concludes, “And the articles of this Confederation, shall be inviolably observed by every State; and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to, in Congress of the United States, and be after-wards



confirmed by the Legislatures of every State.” But this new Constitution, does not appear to be agreed to by Congress, neither is it a Confederation of the States; but professedly of the people, as in the very first words of it; and concludes, that the ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution, between the States so ratifying the same.” This is expressly repugnant to the Confederation, the sacred national covenant we are under; and to set up a schism in the nation. This is not proposed to be done by the same contracting parties. For that was a covenant of union between the States. This is to be by the people of the States, to throw off all their allegiance to the federal Constitution of the nation, and the covenant Constitutions of the several States; And if the

conventions in nine States will adopt it, then to separate, and set up this in violation of all covenant obligations, of the most solemn important kind and consequence.

**Document 14:**  
**James Madison,**  
**Federalist, no. 40**  
**(18 Jan. 1788)<sup>14</sup>**

The *second* point to be examined is, whether the Convention were authorised to frame and propose this mixed Constitution.

The powers of the Convention ought in strictness to be determined, by an inspection of the commissions given to the members by their

respective constituents. As all of these however had reference, either to the recommendation from the meeting at Annapolis in September, 1786, or to that from Congress in February, 1787, it will be sufficient to recur to these particular acts.

The act from Annapolis recommends the “appointment of commissioners to take into consideration, the situation of the United States, to devise *such further provisions* as shall appear to them necessary to render the Constitution of the Foederal Government *adequate to the exigencies of the Union*; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the Legislature of every State, will effectually provide for the same.”

The recommendatory act of Congress is in the words following: “Whereas there is provision in the articles of confederation and perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the Legislatures of the several States: And whereas experience hath evinced, that there are defects in the present confederation, as a mean to remedy which, several of the States, and *particularly the State of New-York*, by express instructions to their delegates in Congress, have suggested a Convention for the purposes expressed in the following resolution; and such Convention appearing to be the most probable mean of establishing in these States, a *firm national government*.

“Resolved, That in the opinion of Congress, it is expedient, that on the 2d Monday in May next, a Convention of delegates, who shall have been

8

ENDING, AND BEGINNING

appointed by the several States, be held at Philadelphia for the sole and express purpose of *revising the articles of confederation*, and reporting to Congress and the several Legislatures, such *alterations and provisions therein*, as shall, when agreed to in Congress, and confirmed by the States, render the Foederal Constitution *adequate to the exigencies of government and the preservation of the Union*.”

From these two acts it appears, 1st. that the object of the Convention was to establish in these States, a *firm national government*; 2d.

that this Government was to be such as would be *adequate to the exigencies of government and the preservation of the Union*; 3d. that these purposes were to be effected by *alterations and provisions in the articles of confederation*, as it is expressed in the act of Congress, or by *such further provisions as should appear necessary*, as it stands in the recommendatory act from Annapolis; 4th. that the alterations and provisions were to be reported to Congress, and to the States, in order to be agreed to by the former, and confirmed by the latter.

From a comparison and fair construction of these several modes of expression, is to be deduced

the authority, under which the Convention acted. They were to frame a *national government*, adequate to the *exigencies of government* and of the *Union*, and to reduce the articles of confederation into such form as to accomplish these purposes.

There are two rules of construction dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, to be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part; the means should be sacrificed to the end, rather than the end to the means.

Suppose then that the expressions defining the authority of the Convention, were irreconcilably at variance with each other; that a *national and adequate government* could not possibly, in the judgment of the Convention, be effected by *alterations* and *provisions* in the *articles of confederation*, which part of the definition ought to have been embraced, and which rejected? Which was the more important, which the less important part? Which the end, which the means? Let the most scrupulous expositors of delegated powers: Let the most inveterate objectors against those exercised by the Convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of

America, that the articles of confederation should be disregarded, and an adequate government be provided, and the Union preserved; or that an adequate government should be omitted, and the articles of confederation preserved. Let them declare, whether the preservation of these articles was the end for securing which a reform of the government was to be introduced as the means; or whether the establishment of a government, adequate to the national happiness, was the end at which these articles themselves originally aimed, and to which they ought, as insufficient means, to have been sacrificed.

But is it necessary to suppose that these expressions are absolutely irreconcilable to each other; that no *alterations* or *provisions* in the *articles of the confederation*, could possibly mould them into a national and adequate government; into such a government as has been proposed by the Convention?

No stress it is presumed will in this case be laid on the *title*, a change of that could never be deemed an exercise of ungranted power. *Alterations* in the body of the instrument, are expressly authorised. *New provisions* therein are also expressly authorised. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted that this power is infringed, so long as a part of the old articles remain? Those who maintain the affirmative, ought at least to mark the boundary between authorised and usurped innovations, between that degree of change, which lies within the compass of *alterations and further provisions*; and that which amounts to a *transmutation* of the government. Will it be said that the alterations ought not to have touched the substance of the confederation? The States would never have appointed a Convention with so much solemnity, nor described its objects with so much latitude, if some *substantial* reform had not been in contemplation. Will it be said that the *fundamental principles* of the confederation were not within the purview of the Convention, and ought not to have been varied? I ask what are these principles? do they require that in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. Do they require that the members of the government should derive their appointment from the Legislatures, not from the people of the State? One branch of the new government is to be appointed by these Legislatures; and under the confederation the delegates to Congress *may all* be appointed immediately by the people, and in two States<sup>1</sup> are actually so appointed. Do they require that the powers of the Government

## PART 1

should act on the States, and not immediately on individuals? In some instances, as has been shewn, the powers of the new Government will act on the States in their collective characters. In some instances also those of the existing

Government act immediately on individuals. In cases of capture, of piracy, of the post-office, of coins, weights and measures, of trade with the Indians, of claims under grants of land by different States, and above all, in the case of trials by Courts-martial in the army and navy, by which death may be inflicted without the

intervention of a jury, or even of a civil Magistrate; in all these cases the powers of the confederation operate immediately on the persons and interests of individual citizens. Do these fundamental principles require particularly, that no tax should be levied without the intermediate agency of the States! The confederation itself authorises a direct tax to a certain extent on the post-office. The power of coinage has been so construed by Congress, as to levy a tribute immediately from that source also. But premitting these instances, was it not an acknowledged object of the Convention, and the universal expectation of the people, that the regulation of trade should be submitted to the general government in such a form as would render it an immediate source of general revenue? Had not Congress repeatedly recommended this measure as not inconsistent with the fundamental principles of the confederation? Had not every State but one, had not New-York herself, so far complied with the plan of Congress, as to recognize the *principle* of the innovation? Do these principles in fine require that the powers of the general government should be limited, and that beyond this limit, the States should be left in possession of their sovereignty and independence? We have seen that in the new government as in the old, the general powers are limited, and that the States in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction.

The truth is, that the great principles of the Constitution proposed by the Convention, may be considered less as absolutely new, than as the expansion of principles which are found in the articles of Confederation. The misfortune under the latter system has been, that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged against it; and to require a degree of enlargement which gives to the new system, the aspect of an entire transformation of the old.

In one particular it is admitted that the Convention have departed from the tenor of their commission. Instead of reporting a plan requiring the

confirmation of the *Legislatures of all the States*, they have reported a plan which is to be confirmed by the *people*, and may be carried into effect by *nine States only*. It is worthy of remark, that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the Convention. The forbearance can only have

proceeded from an irresistible conviction of the absurdity of subjecting the fate of 12 States, to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a *majority* of 1-60th of the people of America, to a measure approved and called for by the voice of twelve States comprising 59-60ths of the people; an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this objection, therefore, has been in a manner waved by those who have criticised the powers of the Convention, I dismiss it without further observation.

The *third* point to be enquired into is, how far considerations of duty arising out of the case itself, could have supplied any defect of regular authority.

In the preceding enquiries, the powers of the Convention have been analysed and tried with the same rigour, and by the same rules, as if they had been real and final powers, for the establishment of a Constitution for the United States. We have seen, in what manner they have borne the trial, even on that supposition. It is time now to recollect, that the powers were merely advisory and recommendatory; that they were so meant by the States, and so understood by the Convention; and that the latter have accordingly planned and proposed a Constitution, which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the Convention.

Let us view the ground on which the Convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis which had led their country almost with one voice to make so singular and solemn an experiment, for correcting the errors of a system by which this crisis had been produced; that they were no less deeply and unanimously convinced, that such a reform as they have proposed, was absolutely necessary to effect the purposes of their appointment. It could not be unknown to them, that the hopes and expectations of the great body of citizens, throughout this great empire, were turned

## ENDING, AND BEGINNING

with the keenest anxiety, to the event of their deliberations. They had every reason to believe that the contrary sentiments agitated the minds and bosoms of every external and internal foe to the liberty and prosperity of the United States. They had seen in the origin and progress of the experiment, the alacrity with which the *proposition* made by a single State (Virginia) towards a partial amendment of the confederation, had been attended to and promoted. They had seen the *liberty assumed* by a *very few* deputies, from a *very few* States, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect, by twelve out of the thirteen States. They had seen in a variety of instances, assumptions by Congress, not only of recommendatory, but of operative powers, warranted in the public estimation, by occasions and objects infinitely less urgent than those by which their conduct was to be governed. They must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory, the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness;"<sup>2</sup> since it is impossible for the people spontaneously and universally, to move in concert towards their object; and it is therefore essential, that such changes be instituted by some *informal and unauthorised propositions*, made by some patriotic and respectable citizen or number of citizens. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness, that the States were first united against the danger with which they were threatened by their antient government; that Committees and Congresses, were formed for concentrating their efforts, and defending their rights; and that *Conventions* were *elected in the several States*, for establishing the constitutions under which they are now governed; nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were any where seen, except in those who wished to indulge under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and

proposed, was to be submitted to *the people themselves*, the disapprobation of this supreme authority would destroy it for ever; its approbation blot out all antecedent errors and irregularities. It might even have occurred to them, that where a disposition to cavil prevailed, their neglect to execute the degree of power vested in them, and still more their recommendation of any measure whatever not warranted by their

commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies.

Had the Convention under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable in their judgment of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay, and the hazard of events; let me ask the man, who can raise his mind to one elevated conception; who can awaken in his bosom, one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly, or if there be a man whose propensity to condemn, is susceptible of no controul, let me then ask what sentence he has in reserve for the twelve States, who *usurped the power* of sending deputies to the Convention, a body utterly unknown to their constitutions; for Congress, who recommended the appointment of this body, equally unknown to the confederation; and for the State of New-York in particular, who first urged and then complied with this authorised interposition.

But that the objectors may be disarmed of every pretext, it shall be granted for a moment, that the Convention were neither authorised by their commission, nor justified by circumstances, in proposing a Constitution for their country: Does it follow that the Constitution ought for that reason alone to be rejected? If according to the noble precept it be lawful to accept good advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is offered by our friends? The prudent enquiry in all cases, ought surely to be not so much *from*

whom the advice comes, as whether the advice be good.

The sum of what has been here advanced and proved, is that the charge against the Convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers, they were not only

warranted but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assumed, and that finally, if they had violated both their powers, and their obligations in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America. How far this

character is due to the Constitution, is the subject under investigation.

1. Connecticut and Rhode-island.
2. Declaration of Independence.

**Document 15:**  
**James Madison,**  
**Federalist, no. 43**  
**(23 Jan. 1788)<sup>15</sup>**

This article speaks for itself. The express authority of the people alone could give due validity to the Constitution. To have required the unanimous ratification of the thirteen States, would have subjected the essential interests of the whole to the caprice or corruption of a single member. It would have marked a want of foresight in the Convention, which our own experience would have rendered inexcusable.

Two questions of a very delicate nature present themselves on this occasion. 1. On what principle the confederation, which stands in the solemn form of a compact among the States, can be superceded without the unanimous consent of the parties to it? 2. What relation is to subsist between the nine or more States ratifying the Constitution, and the remaining few who do not become parties to it.

The first question is answered at once by recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed. Perhaps also an answer may be found without searching beyond the

## PART 1

principles of the compact itself. It has been heretofore noted among the defects of the Confederation, that in many of the States, it had received no higher sanction than a mere legislative ratification. The principle of reciprocity seems to require, that its obligation on the other States should be reduced to the same standard. A compact between independent sovereigns, founded on ordinary acts of legislative authority, can pretend to no higher validity than a league or treaty between the parties. It is an established doctrine on the subject of treaties, that all the articles are mutually conditions of each other; that a breach of any one article is a breach of the whole treaty; and that a breach committed by

either of the parties absolves the others; and authorises them, if they please, to pronounce the treaty violated and void. Should it unhappily be necessary to appeal to these delicate truths for a justification for dispensing with the consent of particular States to a dissolution of the federal pact, will not the complaining parties find it a difficult task to answer the MULTIPLIED and IMPORTANT infractions with which they may be confronted? The time has been when it was incumbent on us all to veil the ideas which this paragraph exhibits. The scene is now changed, and with it, the part which the same motives dictate.

The second question is not less delicate; and the flattering prospect of its being merely hypothetical, forbids an over-curious discussion of it. It is one of those cases which must be left to provide for itself. In general it may be observed, that although no political relation can subsist between the assenting and dissenting States, yet the moral relations will remain uncanceled. The claims of justice, both on one side and on the other, will be in force, and must be fulfilled; the rights of humanity must in all cases be duly and mutually respected; whilst considerations of a common interest, and above all the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to re-union, will, it is



hoped, not urge in vain MODERATION on one side, and PRUDENCE on the other.

**Document 16:**  
**Federal Farmer, no. 18**  
**(25 Jan. 1788)<sup>16</sup>**

The states all agreed about seven years ago, that the confederation should remain unaltered, unless every state should agree to alterations: but we now see it agreed by the convention, and

12

ENDING, AND BEGINNING

determined hereafter, whether nine states, under a new federal compact, can claim the benefits of any treaties made with a confederation of thirteen, under a distinct compact and form of existence—whether the new confederacy can recover debts due to the old confederacy, or the arrears of taxes due from the states excluded.

**Document 17:**  
**Thomas Jefferson to Alexander**  
**Donald (7 Feb. 1788)<sup>17</sup>**

I wish with all my soul that the nine first Conventions may accept the new Constitution, because this will secure to us the good it contains, which I think great and important. But I equally wish that the four latest conventions, whichever they be, may refuse to accede to it till a declaration of rights be annexed. This would probably command the offer of such a declaration, and thus give to the whole fabric, perhaps as much perfection as any one of that kind ever had. By a declaration of rights I mean one which shall stipulate freedom of religion, freedom of the press, freedom of commerce against monopolies, trial by juries in all cases, no suspensions of the habeas corpus, no standing armies. These are

president reminded Congress that this was the ninth ratification transmitted and laid before fetters against doing decline.  
evil which no honest  
government should

*New Jersey,*

Mr. Elmer, Ay. Mr.  
Dayton, Ay.

four states, that the old confederacy shall be destroyed, and a new one, of nine states, be erected, if nine only shall come in. Had we agreed, that a majority should alter the confederation, a majority's agreeing would have bound the rest: but now we must break the old league, unless all the states agree to alter, or not proceed with adopting the constitution. Whether the adoption by nine states will not produce a nearly equal and dangerous division of the people for and against the constitution—whether the circumstances of the country were such as to justify the hazarding a probability of such a situation, I shall not undertake to determine. I shall leave it to be

them; whereupon,—

On motion of Mr. Clarke, seconded by Mr. Edwards,—

*Ordered,* That the ratifications of the Constitution of the United States, transmitted to Congress, be referred to a committee to examine the same, and report an act to Congress for putting the said Constitution into operation, in pursuance of the resolutions of the late Federal Convention.

On the question to agree to this order, the yeas and nays being required by Mr. Yates:—

*New Hampshire,* Mr. Gilman, Ay.

Mr. Wingate, Ay. } Ay.

*Massachusetts,* Mr. Dane, Ay.

Mr. Otis, Ay. } Ay.

*Rhode Island,* Mr. Arnold,

Mr. Hazard, } *Excused.*

*Connecticut,* Mr. Huntington, Ay.

Mr. Edwards, Ay. } Ay.

*New York,* Mr. L'Hommedieu, Ay.

Mr. Yates, No. } *Divided.*

Mr. Clarke, Ay.

} Ay.

**Document 18:**  
**Act of Continental Congress**

*Pennsylvania*, Mr. Bingham, Ay. Mr.

**Putting  
Constitution into  
Effect (13 Sept.  
1788)<sup>18</sup>**

The ratification of New  
Hampshire, being the  
ninth  
*Virginia*,

*South Carolina*,  
Mr. Carrington, Ay. Mr.  
Brown, Ay. Mr. Huger,  
Ay.

Read, Ay. } Ay.

*Maryland*, Mr. Contee, Ay. Mr.  
Griffin, Ay.

Mr. Parker, Ay. Mr.  
Tucker, Ay.  
} Ay. } Ay.

in order, was received by Congress on the 2d of  
July, 1788. The following is an extract from the  
Journal of that day:—

*Georgia*, Mr. Few, Ay.

Mr. Baldwin, Ay. } Ay.

United States in Congress assembled.

So it passed in the affirmative.

Wednesday, *July 2*, 1788.

On the 14th of July, 1788, the committee  
reported an act for putting the Constitution into  
operation, which was debated until the 13th of  
September of the same year, when the following  
resolution was adopted:—

The state of New Hampshire having ratified this  
Constitution, transmitted to them by the act of  
the 28th of September last, and transmitted to  
Congress their ratification, and the same being  
read, the

PART 1

“Whereas the Convention assembled in  
Philadelphia, pursuant to the resolution of  
Congress of the 21st of February, 1787, did, on  
the 17th of September, in the same year, report  
to the United States in Congress assembled a  
Constitution for the people of the United States;  
whereupon Congress, on the 28th of the same  
September, did resolve, unanimously ‘That the  
said report, with the resolutions and letter  
accompanying the same, be transmitted to the  
several legislatures, in order to be submitted to a  
convention of delegates, chosen in each state by  
the people thereof, in conformity to the resolves  
of the Convention made and provided in that  
case;’ and whereas the Constitution so reported  
by the Convention, and by Congress transmitted  
to the several legislatures, has been ratified in  
the manner therein declared to be sufficient for  
the establishment of the same, and such  
ratifications, duly authenticated, have been  
received by Congress, and are filed in the office  
of the secretary; therefore,—

“*Resolved*, That the first Wednesday in January  
next be the day for appointing electors in the  
several states which, before the said day, shall  
have ratified the said Constitution; that the first  
Wednesday in February next be the day for the  
electors to assemble in their respective states,  
and vote for a President: and that the first  
Wednesday in March next be the time, and the  
present seat of Congress the place, for  
commencing proceedings under the said  
Constitution.”

The elections of the several states were held  
conformably to the above resolution. On  
Wednesday the 4th of March, 1789,  
proceedings commenced under the  
Constitution; and on the 30th of April, of the  
same year, George Washington, elected by the  
unanimous suffrage of the electors, was  
inaugurated as President of the United States.

**Document 19:**  
**Thomas Jefferson to James**  
**Madison (6 Sept. 1789)<sup>19</sup>**

I sit down to write to you without knowing by what occasion I shall send my letter. I do it because a subject comes into my head which I would wish to develop a little more than is practicable in the hurry of the moment of making up general dispatches.

The question Whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water. Yet it is a question of such consequences as not only to merit decision, but place also, among the fundamental principles of every government. The course of reflection in which we are immersed here on the elementary principles of society has presented this question to my mind; and that no such obligation can be so transmitted I think very capable of proof.—I set out on this ground, which I suppose to be self evident, “*that the earth belongs in usufruct to the living*”: that the dead have neither powers nor rights over it. The portion occupied by an individual ceases to be his when himself ceases to be, and reverts to the society. If the society has formed no rules for the appropriation of its lands in severality, it will be taken by the first occupants. These will generally be the wife and children of the decedent. If they have formed rules of appropriation, those rules may give it to the wife and children, or to some one of them, or to the legatee of the deceased. So they may give it to his creditor. But the child, the legatee, or

creditor takes it, not by any natural right, but by a law of the society of which they are members, and to which they are subject. Then no man can, by *natural right*, oblige the lands he occupied, or the persons who succeed him in that occupation, to the payment of debts contracted by him. For if he could, he might, during his own life, eat up the usufruct of the lands for several generations to come, and then the lands would belong to the dead, and not to the living, which would be the reverse of our principle.

What is true of every member of the society individually, is true of them all collectively, since the rights of the whole can be no more than the sum of the rights of the individuals.—To keep our ideas clear when applying them to a multitude, let us suppose a whole generation of men to be born on the same day, to attain mature age on the same day, and to die on the same day, leaving a succeeding generation in the moment of attaining their mature age all together. Let the ripe age be supposed of 21. years, and their period of life 34. years more, that being the average term given by the bills of mortality to persons who have already attained 21. years of age. Each successive generation would, in this way, come on, and go off the stage at a fixed moment, as individuals do now. Then I say the earth belongs to each of these generations, during its course, fully, and in their own right. The 2d. generation receives it clear of the debts and incumbrances of the 1st. the 3d. of the 2d. and so on. For if the 1st. could charge it with a debt, then the earth would belong to the dead and not the living generation. Then no generation can contract debts greater than may be paid during the

14

**ENDING, AND BEGINNING**

course of its own existence. At 21. years of age they may bind themselves and their lands for 34. years to come: at 22. for 33: at 23. for 32. and at 54. for one year only; because these are the terms of life which remain to them at those respective epochs.—But a material difference must be noted between the succession of an individual, and that of a whole generation. Individuals are parts only of a society, subject to the laws of the whole. These laws may appropriate the portion of land occupied by a decedent to his creditor rather than to any other, or to his child on condition he satisfies the creditor. But when a whole generation, that is, the whole society dies, as in the case we have

supposed, and another generation or society succeeds, this forms a whole, and there is no superior who can give their territory to a third society, who may have lent money to their predecessors beyond their faculties of paying.

What is true of a generation all arriving to self government on the same day, and dying all on the same day, is true of those in a constant course of decay and renewal, with this only difference. A generation coming in and going out entire, as in the first case, would have a right in the 1st. year of their self-dominion to contract a debt for 33. years, in the 10th. for 24. in the 20th. for 14. in the 30th. for 4. whereas generations, changing daily by daily deaths and births, have one constant term, beginning at the

date of their contract, and ending when a majority of those of full age at that date shall be dead. The length of that term may be estimated from the tables of mortality, corrected by the circumstances of climate, occupation &c. peculiar to the country of the contractors. Take, for instance, the table of M. de Buffon wherein he states 23,994 deaths, and the ages at which they happened. Suppose a society in which 23,994 persons are born every year, and live to the ages stated in this table. The conditions of that society will be as follows. 1st. It will consist constantly of 617,703. persons of all ages. 21y. Of those living at any one instant of time, one half will be dead in 24. years 8. months. 3dly. 1[8],675 will arrive every year at the age of 21. years complete. 41y. It will constantly have 348,417 persons of all ages above 21. years. 5ly. And the half of those of 21. years and upwards living at any one instant of time will be dead in 18. years 8. months, or say 19. years as the nearest integral number. Then 19. years is the term beyond which neither the representatives of a nation, nor even the whole nation itself assembled, can validly extend a debt.

To render this conclusion palpable by example, suppose that Louis XIV. and XV. had contracted debts in the name of the French nation to the amount of 10,000 milliards of livres, and that the whole had

been contracted in Genoa. The interest of this sum would be 500. milliards, which is said to be the whole rent roll or nett proceeds of the territory of France. Must the present generation of men have retired from the territory in which nature produced them, and ceded it to the Genoese creditors? No. They have the same rights over the soil on which they were produced, as the preceding generations had. They derive these rights not from their predecessors, but from nature. They then and their soil are by nature clear of the debts of their predecessors.

Again suppose Louis XV. and his cotemporary generation had said to the money-lenders of

Genoa, give us money that we may eat, drink, and be merry in our day; and on condition you will demand no interest till the end of 19. years you shall then for ever after receive an annual interest of 125/8 per cent. The money is lent on these conditions, is divided among the living, eaten, drank, and squandered. Would the present generation be obliged to apply the produce of the earth and of their labour to replace their dissipations? Not at all.

I suppose that the received opinion, that the public debts of one generation devolve on the next, has been suggested by our seeing habitually in private life that he who succeeds to lands is required to pay the debts of his ancestor or testator: without considering that this requisition is municipal only, not moral; flowing from the will of the society, which has found it convenient to appropriate lands, become vacant by the death of their occupant, on the condition of a payment of his debts: but that between society and society, or generation and generation, there is no municipal obligation, no umpire but the law of nature. We seem not to have perceived that, by the law of nature, one generation is to another as one independent nation to another.

The interest of the national debt of France being in fact but a two thousandth part of it's rent roll, the payment of it is practicable enough: and so becomes a question merely of honor, or of expediency. But with respect to future debts, would it not be wise and just for that nation to declare, in the constitution they are forming, that neither the legislature, nor the nation itself, can validly contract more debt than they may pay within their own age, or within the term of 19. years? And that all future contracts will be deemed void as to what shall remain unpaid at the end of 19. years from their date? This would put the lenders, and the borrowers also, on their guard. By reducing too the faculty of borrowing within it's natural limits, it would bridle the spirit of war, to which too free a course has been procured by the inattention of

## PART 1

money-lenders to this law of nature, that succeeding generations are not responsible for the preceding.

On similar ground it may be proved that no

society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please. But persons and

property make the sum of the objects of government. The constitution and the laws of their predecessors extinguished then in their natural course with those who gave them being. This could preserve that being till it ceased to be itself, and no longer. Every constitution then, and every law, naturally expires at the end of 19 years. If it be enforced longer, it is an act of force, and not of right.—It may be said that the succeeding generation exercising in fact the power of repeal, this leaves them as free as if the constitution or law has been expressly limited to 19 years only. In the first place, this objection admits the right, in proposing an equivalent. But the power of repeal is not an equivalent. It might be indeed if every form of government were so perfectly contrived that the will of the majority could always be obtained fairly and without impediment. But this is true of no form. The people cannot assemble themselves. Their representation is unequal and vicious. Various checks are opposed to every legislative proposition. Factions get possession of the public councils. Bribery corrupts them. Personal interests lead them astray from the general interests of their constituents: and other impediments arise so as to prove to every practical man that a law of limited duration is much more manageable than one which needs a repeal.

This principle that the earth belongs to the living, and not to the dead, is of very extensive application and consequences, in every country, and most especially in France. It enters into the resolution of the questions Whether the nation may change the descent of lands holden in tail? Whether they may change the appropriation of lands given antiently to the church, to hospitals, colleges, orders of chivalry, and otherwise in perpetuity? Whether they may abolish the charges and privileges attached on lands, including the whole catalogue ecclesiastical and feudal? It goes to hereditary offices, authorities and jurisdictions; to hereditary orders, distinctions and appellations; to perpetual monopolies in commerce, the arts and sciences; with a long train of et ceteras: and it renders the question of reimbursement a question of generosity and not of right. In all these cases, the legislature of the day could authorize such

appropriations and establishments for their own time, but no longer; and the present holders, even where they, or their ancestors, have purchased, are in the case of bonâ fide purchasers of what the seller had no right to convey.

Turn this subject in your mind, my dear Sir, and particularly as to the power of contracting debts; and develope it with that perspicuity and cogent logic so peculiarly yours. Your station in the councils of our country gives you an opportunity of producing it to public consideration, of forcing it into discussion. At first blush it may be rallied, as a theoretical speculation: but examination will prove it to be solid and salutary. It would furnish matter for a fine preamble to our first law for appropriating the public revenue; and it will exclude at the threshold of our new government the contagious and ruinous errors of this quarter of the globe, which have armed despots with means, not sanctioned by nature, for binding in chains their fellow men. We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay. I should be pleased to see this second obstacle held out by us also in the first instance. No nation can make a declaration against the validity of long contracted debts so disinterestedly as we, since we do not owe a shilling which may not be paid with ease, principal and interest, within the time of our own lives.—Establish the principle also in the new law to be passed for protecting copyrights and new inventions, by securing the exclusive right for 19. instead of 14. years. Besides familiarising us to this term, it will be an instance the more of our taking reason for our guide, instead of English precedent, the habit of which fetters us with all the political heresies of a nation equally remarkable for it's early excitement from some errors, and long slumbering under others.

#### Document 20:

**James Madison to Thomas Jefferson (4 Feb. 1790)<sup>20</sup>**

Your favor of the 9th. of Jany. inclosing one of Sepr. last did not get to hand till a few days ago. The idea which the latter evolves is a great one, and suggests many interesting reflections to legislators; particularly when contracting and providing for public debts. Whether it can be received in the extent your reasonings give it, is a question which I



## ENDING, AND BEGINNING

ought to turn more in my thoughts than I have yet been able to do, before I should be justified in making up a full opinion on it. My first thoughts though coinciding with many of yours, lead me to view the doctrine as not in *all* respects compatible with the course of human affairs. I will endeavor to sketch the grounds of my skepticism.

“As the earth belongs to the living, not to the dead, a living generation can bind itself only: In every society the will of the majority binds the whole: According to the laws of mortality, a majority of those ripe at any moment for the exercise of their will do not live beyond nineteen years: To that term then is limited the validity of every act of the Society: Nor within that limitation, can any declaration of the public will be valid which is not *express*.”

This I understand to be the outline of the argument.

The Acts of a political Society may be divided into three classes.

1. The fundamental Constitution of the Government.
2. Laws involving stipulations which render them irrevocable at the will of the Legislature
3. Laws involving no such irrevocable quality.

However applicable in Theory the doctrine may be to a Constitution, in [*sic*] seems liable in practice to some very powerful objections. Would not a Government so often revised become too mutable to retain those prejudices in its favor which antiquity inspires, and which are perhaps a salutary aid to the most rational Government in the most enlightened age? Would not such a periodical revision engender pernicious factions that might not otherwise come into existence? Would not, in fine, a Government depending for its existence beyond a fixed date, on some positive and authentic intervention of the Society itself, be too subject to the casualty and consequences of an actual interregnum?

In the 2d. class, exceptions at least to the doctrine seem to be requisite both in Theory and practice.

If the earth be the gift of nature to the living their title can extend to the earth in its natural State

only. The *improvements* made by the dead form a charge against the living who take the benefit of them. This charge can no otherwise be satisfied than by executing the will of the dead accompanying the improvements.

Debts may be incurred for purposes which interest the unborn, as well as the living: such are debts for repelling a conquest, the evils of which descend through many generations. Debts may even be incurred principally for the benefit of posterity: such perhaps is the present debt of the U. States, which far exceeds any burdens which the present generation could well apprehend for itself. The term of 19 years might not be sufficient for discharging the debts in either of these cases.

There seems then to be a foundation in the nature of things, in the relation which one generation bears to another, for the *descent* of obligations from one to another. Equity requires it. Mutual good is promoted by it. All that is indispensable in adjusting the account between the dead & the living is to see that the debits against the latter do not exceed the advances made by the former. Few of the incumbrances entailed on Nations would bear a liquidation even on this principle.

The objections to the doctrine as applied to the 3d. class of acts may perhaps be merely practical. But in that view they appear to be of great force.

Unless such laws should be kept in force by new acts regularly anticipating the end of the term, all the rights depending on positive laws, that is, most of the rights of property would become absolutely defunct; and the most violent struggles be generated between those interested in reviving and those interested in new-modelling the former State of property. Nor would events of this kind be improbable. The obstacles to the passage of laws which render a power to repeal inferior to an opportunity of rejecting, as a security agst. oppression, would here render an opportunity of rejecting, an insecure provision agst. anarchy. Add, that the possibility of an event so hazardous to the rights of property could not fail to depreciate its value; that the approach of the crisis would increase this effect; that the frequent return of periods superseding all the obligations depending on antecedent laws & usages, must by weak[en]ing the reverence for those obligations, co operate with motives to licentiousness already too powerful; and that the uncertainty incident to such a state of things would on one side

discourage the steady exertions of industry produced by permanent laws, and on the other, give a disproportionate advantage to the more, over the less, sagacious and interprising part of the Society.

I find no relief from these consequences, but in

17

appears. It seems less impracticable to remedy, by wise plans of Government, the dangerous operation of this doctrine, than to find a remedy for the difficulties inseparable from the other.

May it not be questioned whether it be possible to exclude wholly the idea of tacit assent, without subverting the foundation of civil Society? On what principle does the voice of the majority bind the minority? It does not result I conceive from the law of nature, but from compact founded on expediency. A greater proportion might be required by the fundamental constitution of a Society, if it were judged eligible. Prior then to the establishment of this principle, *unanimity* was necessary; and strict Theory at all times presupposes the assent of every member to the establishment of the rule itself. If this assent can not be given tacitly, or be not implied where no positive evidence forbids, persons born in Society would not on attaining ripe age be bound by acts of the Majority; and either a *unanimous* repetition of every law would be necessary on the accession of new members, or an express assent must be obtained from these to the rule by which the voice of the Majority is made the voice of the whole.

If the observations I have hazarded be not misapplied, it follows that a limitation of the validity of national acts to the computed life of a nation, is in some instances not required by Theory, and in others cannot be accommodated to practice. The observations are not meant however to impeach either the utility of the principle in some particular cases; or the general importance of it in the eye of the philosophical Legislator. On the contrary it would give me singular pleasure to see it first announced in the proceedings of the U. States, and always kept in their view, as a salutary curb on the living generation from imposing unjust or unnecessary burdens on their successors. But this is a pleasure which I have little hope of enjoying. The spirit of philosophical legislation has never reached some parts of the Union, and

the received doctrine that a tacit assent may be given to established Constitutions and laws, and that this assent may be inferred, where no positive dissent

## PART 1

is by no means the fashion here, either within or without Congress. The evils suffered & feared from weakness in Government, and licentiousness in the people, have turned the attention more towards the means of strengthening the former, than of narrowing its extent in the minds of the latter. Besides this, it is so much easier to espy the little difficulties immediately incident to every great plan, than to comprehend its general and remote benefits, that our hemisphere must be still more enlightened before many of the sublime truths which are seen thro' the medium of Philosophy, become visible to the naked eye of the ordinary Politician.

### Document 21:

**McCulloch v. Maryland,  
4 Wheat. 316 (1819)<sup>21</sup>**

Marshall, Ch. J., delivered the opinion of the court.— In the case now to be determined, the defendant, a sovereign state, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that state. The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps, of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the supreme court of the United States has the constitution of our country devolved this important duty.

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In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign; and must be exercised in subordination to the States, who alone possess supreme dominion.

It would be difficult to sustain this proposition. The Convention which framed the constitution

was indeed elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might "be submitted to a Convention of Delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification." This mode of proceeding was adopted; and by the Convention, by Congress, and by the State Legislatures, the instrument was submitted to the people. They acted upon it in the only manner

18

## ENDING, AND BEGINNING

in which they can act safely, effectively, and wisely, on such a subject, by assembling in Convention. It is true, they assembled in their several States—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.

From these Conventions the constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in the name of the people; and is declared to be ordained, "in order to form a more perfect union, establish justice, ensure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity." The assent of the States, in their sovereign capacity, is implied in calling a Convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negated, by the State governments. The constitution, when thus adopted, was of complete obligation, and bound the State sovereignties.

It has been said, that the people had already surrendered all their powers to the State sovereignties, and had nothing more to give. But, surely, the question whether they may resume and modify the powers granted to government does not remain to be settled in this country. Much more might the legitimacy of the general

government be doubted, had it been created by the States. The powers delegated to the State sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves. To the formation of a league, such as was the confederation, the State sovereignties were certainly competent. But when, "in order to form a more perfect union," it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all.

The government of the Union, then, (whatever may be the influence of this fact on the case,) is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist.

## 5 Wheat. 419 (1820)<sup>22</sup>

Mr. Chief Justice Marshall delivered the opinion of the Court. This was an ejectment brought by the plaintiff in the Circuit Court of the United States, for the District of Kentucky, to recover a lot of ground lying in Bardstown.

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Before we determine on the construction of the Constitution in relation to a question of this description, it is necessary to inquire whether the provisions of that instrument apply to any acts of the State legislatures which were of the date with that which it is now proposed to consider.

This act was passed in the session of 1788. Did the Constitution of the United States then operate upon it?

In September, 1787, after completing the great work in which they had been engaged, the Convention resolved that the Constitution should be laid before the Congress of the United States, to be submitted by that body to Conventions of the several States, to be convened by their respective legislatures; and expressed the opinion, that as soon as it should be ratified by the Conventions of nine States, Congress should fix a day on which electors should be appointed by the States, a day on which the electors should assemble to vote for President and Vice President, "and the time and place for commencing proceedings under this Constitution."

The Conventions of nine States having adopted the Constitution, Congress, in September or October, 1788, passed a resolution in conformity with the

19

### PART 1

opinions expressed by the Convention, and appointed the first Wednesday in March of the ensuing year as the day, and the then seat of Congress as the place, "for commencing proceedings under the Constitution."

Both Governments could not be understood to exist at the same time. The new Government did not commence until the old Government expired. It is apparent that the Government did not commence on the Constitution being ratified by the ninth State; for these ratifications were to be reported to Congress, whose continuing existence was recognised by the Convention, and who were requested to continue to exercise their powers for the purpose of bringing the new government into operation. In fact, Congress did continue to act as a government until it dissolved on the first of November, by the successive disappearance of its members. It existed potentially until the 2d of March, the day preceding that on which the members of the new Congress were directed to assemble.

The resolution of the Convention might originally have suggested a doubt, whether the Government could be in operation for every purpose before the choice of a President; but this doubt has been long solved, and were it otherwise, its discussion would be useless, since it is apparent that its operation did not

commence before the first Wednesday in March, 1789, before which time Virginia had passed the act which is alleged to violate the Constitution.

### **Document 23: James Monroe, Views of the President of the United States on the Subject of Internal Improvements (4 May 1822)<sup>23</sup>**

The Constitution of the United States was formed by a convention of delegates from the several States, who met in Philadelphia, duly authorized for the purpose, and it was ratified by a convention in each State which was especially called to consider and decide on the same. In this progress the State governments were never suspended in their functions. On the contrary, they took the lead in it. Conscious of their incompetency to secure to the Union the blessings of the Revolution, they promoted the diminution of their own powers and the enlargement of those of the General Government

in the way in which they might be most adequate and efficient. It is believed that no other example can be found of a Government exerting its influence to lessen its own powers, of a policy so

enlightened, of a patriotism so pure and disinterested. The credit, however, is more especially due to the people of each State, in obedience to whose will and under whose control the State governments acted.

The Constitution of the United States, being ratified by the people of the several States, became of necessity to the extent of its powers the paramount authority of the Union. On sound principles it can be viewed in no other light. The people, the highest authority known to our system, from whom all our institutions spring and on whom they depend, formed it. Had the people of the several States thought proper to incorporate themselves into one community, under one government, they might have done it. They had the power, and there was nothing then nor is there anything now, should they be so disposed, to prevent it. They wisely stopped, however, at a certain point, extending the incorporation to that point, making the National Government thus far a consolidated Government, and preserving the State governments without that limit perfectly sovereign and independent of the National Government. Had the people of the several States incorporated themselves into one community, they must have remained such, their

Constitution becoming then, like the constitution of the several States, incapable of change until altered by the will of the majority. In the institution of a State government by the citizens of a State a compact is formed to which all and every citizen are equal parties. They are also the sole parties and may amend it at pleasure. In the institution of the Government of the United States by the citizens of every State a compact was formed between the whole American people which has the same force and partakes of all the qualities to the extent of its powers as a compact between the citizens of a State in the formation of their own constitution. It can not be altered except by those who formed it or in the mode prescribed by the parties to the compact itself.

This Constitution was adopted for the purpose of remedying all defects of the Confederation, and in this it has succeeded beyond any calculation that could have been formed of any human institution. By binding the States together the Constitution performs the great office of the Confederation; but it is in that sense only that it has any of the properties of that compact, and in that it is more effectual to the purpose, as it holds them together by a much stronger bond; and in all other respects in which the Confederation failed the Constitution has been

## 20

### ENDING, AND BEGINNING

blessed with complete success. The Confederation was a compact between separate and independent States, the execution of whose articles in the powers which operated internally depended on the State governments. But the great office of the Constitution, by incorporating the people of the several States to the extent of its powers into one community and enabling it to act directly on the people, was to annul the powers of the State governments to that extent, except in cases where they were concurrent, and to preclude their agency in giving effect to those of the General Government. The Government of the United States relies on its own means for the execution of its powers, as the State governments do for the execution of theirs, both governments having a common origin or sovereign, the people—the State governments the people of each State, the National Government the people of every State—and being amenable to the power which created it. It is by executing its functions as a Government thus originating and thus acting that the Constitution of the United States holds the

States together and performs the office of a league. It is owing to the nature of its powers and the high source from whence they are derived—the people—that it performs that office better than the Confederation or any league which ever existed, being a compact which the State governments did not form, to which they are not parties, and which executes its own powers independently of them.

There were two separate and independent governments established over our Union, one for local purposes over each State by the people of the State, the other for national purposes over all the States by the people of the United States. The whole power of the people, on the representative principle, is divided between them. The State governments are independent of each other, and to the extent of their powers are complete sovereignties. The National Government begins where the State governments terminate, except in some instances where there is a concurrent jurisdiction between them. This Government is also, according to the extent of its powers, a complete sovereignty. I speak here, as



repeatedly mentioned before, altogether of representative sovereignties, for the real sovereignty is in the people alone.

The history of the world affords no such example of two separate and independent governments established over the same people, nor can it exist except in governments founded on the sovereignty of the people. In monarchies and other governments not representative there can be no such division of power. The government is inherent in the possessor; it is his, and can not be taken from him without a

revolution. In such governments alliances and leagues alone are practicable. But with us individuals count for nothing in the offices which they hold; that is, they have no right to them. They hold them as representatives, by appointment from the people, in whom the sovereignty is exclusively vested. It is impossible to speak too highly of this system taken in its twofold character and in all its great principles of two governments, completely distinct from and independent of each other, each constitutional, founded by and acting directly on the people, each competent to all its purposes, administering all the blessings for which it was instituted, without even the most remote danger of exercising any of its powers in a way to oppress the people. A system capable of expansion over a vast territory not only without weakening either government, but enjoying the peculiar advantage of adding thereby new strength and vigor to the faculties of both; possessing also this additional advantage, that while the several States enjoy all the rights reserved to them of separate and independent governments, and each is secured by the nature of the Federal Government, which acts directly

on the people, against the failure of the others to bear their equal share of the public burdens, and thereby enjoys in a more perfect degree all the advantages of a league, it holds them together by a bond altogether different and much stronger than the late Confederation or any league that was ever known before—a bond beyond their control, and which can not even be amended except in the mode prescribed by it. So great an effort in favor of human happiness was never made before; but it became those who made it. Established in the new hemisphere, descended from the same ancestors, speaking the same language, having the same religion and universal toleration, born equal and educated in the same principles of free government, made independent by a common struggle and menaced by the same dangers, ties existed between them which never applied before to separate communities. They had every motive to bind them together which could operate on the interests and affections of a generous, enlightened, and virtuous people, and it affords inexpressible consolation to find that these motives had their merited influence.

In thus tracing our institutions to their origin and pursuing them in their progress and modifications down to the adoption of this Constitution two important facts have been disclosed, on which it may not be improper in this stage to make a few observations. The first is that in wresting the power, or what is called the sovereignty, from the Crown it passed directly to the people. The second, that it passed directly to the people of each colony and not to the people of all the colonies in the aggregate; to thirteen distinct communities and not to one. To

## PART 1

these two facts, each contributing its equal proportion, I am inclined to think that we are in an eminent degree indebted for the success of our Revolution. By passing to the people it vested in a community every individual of which had equal rights and a common interest. There was no family dethroned among us, no banished pretender in a foreign country looking back to his connections and adherents here in the hope of a recall; no order of nobility whose hereditary rights in the Government had been violated; no hierarchy which had been degraded and oppressed. There was but one order, that of the people, by whom everything was gained by the change. I mention it also as a circumstance

of peculiar felicity that the great body of the people had been born and educated under these equal and original institutions. Their habits, their principles, and their prejudices were therefore all on the side of the Revolution and of free republican government.

Had distinct orders existed, our fortune might and probably would have been different. It would scarcely have been possible to have united so completely the whole force of the country against a common enemy. A contest would probably have arisen in the outset between the orders for the control. Had the aristocracy prevailed, the people would have been heartless. Had the people prevailed, the nobility would probably have left the country, or, remaining behind,

internal divisions would have taken place in every State and a civil war broken out more destructive even than the foreign, which might have defeated the whole movement. Ancient and modern history is replete with examples proceeding from conflicts between distinct orders, of revolutions attempted which proved abortive, of republics which have terminated in despotism. It is owing to the simplicity of the elements of which our system is composed that the attraction of all the parts has been to a common center, that every change has tended to cement the union, and, in short, that we have been blessed with such glorious and happy success.

**Document 24:**  
**James Madison,**  
**Outline**  
**(Sept. 1829)<sup>24</sup>**

The compound Govt of the U. S. is without a model, and to be explained by itself, not by similitudes or analogies. The terms Union, Federal, National not to be applied to it without the qualifications peculiar to the system. The English Govt is in a great measure

sui generis, and the terms Monarchy used by those who look at the executive head only, and Commonwealth, by those looking at the representative member chiefly, are inapplicable in a strict sense.

A fundamental error lies in supposing the State Governments to be the parties to the Constitutional compact from which the Govt. of the U. S. results.

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The real parties to the constl. compact of the U. S. are the *States*—that is, the people thereof

respectively in their sovereign character, and they *alone*, so declared in the Resolutions of 98, and so explained in the Report of 99. In these Resolutions as originally proposed, the word *alone*, wch. guarded agst. error on this point, was struck out, [see printed debates of 98] and led to misconceptions & misreasonings concerning the true character of the pol: system, and to the idea that it was a compact between the Govts. of the States and the Govt. of the U. S. an idea promoted by the familiar one applied to Govts. independent of the people, particularly the British, of [?] a compact between the monarch & his subjects, pledging protection on one side & allegiance on the other.

The plain fact of the case is that the Constitution of the U. S. was created by the people composing the respective States, who alone had the right; that they organized the Govt. into Legis. Ex. & Judiciary. depts. delegating thereto certain portions of power to be exercised over the whole, and reserving the other portions to themselves respectively. As these distinct portions of power were to be exercised by the General Govt. & by the State Govts; by each within limited spheres; and as of course controversies concerning the boundaries of their power wd. happen, it was provided that they should be decided by the Supreme Court of the U. S. so constituted as to be as impartial as it could be made by the mode of appointment & responsibility for the Judges.

Is there then no remedy for usurpations in which the Supreme Ct. of the U. S. concur? Yes: constitutional remedies such as have been found effectual; particularly in the case of alien & sedition laws, and such as will in all cases be effectual, whilst the responsibility of the Genl. Govt to its constituents continues:—Remonstrances & instructions—recurring elections & impeachments; amendt. of Const. as provided by itself & exemplified in the 11th article limiting the suability of the States.

These are resources of the States agst. the Genl. Govt.: resulting from the relations of the States to that Govt.: whilst no corresponding controul exists in the relations of the Genl. to the individual Govts. all of whose functionaries are independent of the United States in their appt.

and responsibility.

Finally should all the constitutional remedies fail, and the usurpations of the Genl. Govt. become so intolerable as absolutely to forbid a longer passive obedience & nonresistance, a resort to the original rights of the parties becomes justifiable; and redress may be sought by

shaking off the yoke, as of right, might be done by part of an individual State in a like case; or even by a single citizen, could he effect it, if deprived of rights absolutely essential to his safety & happiness. In the defect of their ability to resist, the individual citizen may seek relief in expatriation or voluntary exile<sup>1</sup> a resort not within the reach of large portions of the community.

In all the views that may be taken of questions between the State Govts. & the Genl. Govt. the awful consequences of a final rupture & dissolution of the Union shd. never for a moment be lost sight of. Such a prospect must be deprecated, must be shuddered at by every friend to his country, to liberty, to the happiness of man. For, in the event of a dissolution of the Union, an impossibility of ever renewing it is brought home to every mind by the difficulties encountered in establishing it. The propensity of all communities to divide when not pressed into a unity by external danger, is a truth well understood. *There is no instance of a people inhabiting even a small island, if remote from foreign danger, and sometimes in spite of that pressure, who are not divided into alien, rival, hostile tribes.* The happy Union of these States is a wonder; their Constn. a miracle; their example the hope of Liberty throughout the world. Woe to the ambition that would meditate the destruction of either!

1 See letter to N. P. Trist; and see also the distinction between an expatriating individual withdrawing only his person and moveable effects, and the withdrawal of a State mutilating the domain of the Union. [Madison's note.]

**Document 25:**  
**Abraham Lincoln,**  
**First Inaugural Address**  
**(4 Mar. 1861)<sup>25</sup>**

Fellow citizens of the United States:

In compliance with a custom as old as the

government itself, I appear before you to address you briefly, and to take, in your presence, the oath prescribed by the Constitution of the United States, to be taken by the President "before he enters on the execution of his office."

I do not consider it necessary, at present, for me to discuss those matters of administration about which there is no special anxiety, or excitement.

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I take the official oath to-day, with no mental reservations, and with no purpose to construe the Constitution or laws, by any hypercritical rules. And while I do not choose now to specify particular acts of Congress as proper to be enforced, I do suggest, that it will be much safer for all, both in official and private stations, to conform to, and abide by, all those acts which stand unrepealed, than to violate any of them, trusting to find impunity in having them held to be unconstitutional.

It is seventy-two years since the first inauguration of a President under our national Constitution. During that period fifteen different and greatly distinguished citizens, have, in succession, administered the executive branch of the government. They have conducted it through many perils; and, generally, with great success. Yet, with all this scope for precedent, I now enter upon the same task for the brief constitutional term of four years, under great and peculiar difficulty. A disruption of the Federal Union heretofore only menaced, is now formidably attempted.

I hold, that in contemplation of universal law, and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper, ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our national Constitution, and the Union will endure

forever — it being impossible to destroy it, except by some action not provided for in the instrument itself

Again, if the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade, by less than all the parties

who made it? One party to a contract may violate it — break it, so to speak; but does it not require all to lawfully rescind it?

Descending from these general principles, we find the proposition that, in legal contemplation, the Union is perpetual, confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution, was “to form a more perfect union.”

But if destruction of the Union, by one, or by a part only, of the States, be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.

It follows from these views that no State, upon its own mere motion, can lawfully get out of the Union, — that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances.

I therefore consider that, in view of the Constitution and the laws, the Union is unbroken; and, to the extent of my ability, I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part; and I shall perform it, so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or, in some authoritative manner, direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it will constitutionally defend, and maintain itself.

.....

That there are persons in one section, or another who seek to destroy the Union at all events, and are glad

of any pretext to do it, I will neither affirm or deny; but if there be such, I need address no word to them. To those, however, who really love the Union, may I not speak?

Before entering upon so grave a matter as the destruction of our national fabric, with all its benefits, its memories, and its hopes, would it not be wise to ascertain precisely why we do it? Will you hazard so desperate a step, while there is any possibility that any portion of the ills you fly from, have no real existence? Will you, while the certain ills you fly to, are greater than all the real ones you fly from? Will you risk the commission of so fearful a mistake?

All profess to be content in the Union, if all constitutional rights can be maintained. Is it true, then, that any right, plainly written in the Constitution, has been denied? I think not. Happily the human mind is so constituted, that no party can reach to the audacity of doing this. Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. If, by the mere force of numbers, a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution — certainly would, if such right were a vital one. But such is not our case. All the vital rights of minorities, and of individuals, are so plainly assured to them, by affirmations and negations, guaranties and prohibitions in the Constitution, that controversies never arise concerning them. But no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length contain express provisions for all possible questions. Shall fugitives from labor be surrendered by national or by State authority? The Constitution does not expressly say. May Congress prohibit slavery in the territories? The Constitution does not expressly say. Must Congress protect slavery in the territories? The Constitution does not expressly say.

From questions of this class spring all our constitutional controversies, and we divide upon them into majorities and minorities. If the minority will not acquiesce, the majority must, or the government must cease. There is no other alternative; for continuing the government, is acquiescence on one side or the other. If a minority, in such case, will secede rather than acquiesce, they make a precedent which, in turn, will divide and ruin them; for a minority of their own will secede from them, whenever a majority refuses to be controlled by such

## ENDING, AND BEGINNING

minority. For instance, why may not any portion of a new confederacy, a year or two hence, arbitrarily secede again, precisely as portions of the present Union now claim to secede from it. All who cherish disunion sentiments, are now being educated to the exact temper of doing this. Is there such perfect identity of interests among the States to compose a new Union, as to produce harmony only, and prevent renewed secession?

Plainly, the central idea of secession, is the essence of anarchy. A majority, held in restraint by constitutional checks, and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it, does of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority as a permanent arrangement, is wholly inadmissible; so that rejecting the majority principle, anarchy, or despotism in some form, is all that is left.

I do not forget the position assumed by some, that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding in any case upon the parties to a suit, as to the object of that suit, while they are also entitled to very high respect and consideration, in all parallel cases, by all other departments of the government. And while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be over ruled, and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time the candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased, to be their own rulers, having, to that extent, practically resigned their government, into the hands of that eminent tribunal. Nor is there, in this view, any assault upon the court, or the judges. It is a duty, from which they may not shrink, to decide cases properly brought before them; and it is no fault of theirs, if others seek to turn their decisions to political purposes.

One section of our country believes slavery is right, and ought to be extended, while the other believes it is wrong, and ought not to be extended. This is the only substantial dispute. The fugitive slave clause of the Constitution, and the law for the suppression of the foreign slave trade, are each as well enforced, perhaps, as any law can ever be in a community

where the moral sense of the people imperfectly supports the law itself. The great body of the people abide by the dry legal obligation in both cases, and a few break over in each. This, I think, cannot be perfectly cured; and it would be worse in both cases after the separation of the sections, than before. The foreign slave trade, now imperfectly suppressed, would be ultimately revived without restriction, in one section; while fugitive slaves, now only partially surrendered, would not be surrendered at all, by the other.

Physically speaking, we cannot separate. We cannot, remove our respective sections from each other, nor build an impassable wall between them. A husband and wife may be divorced, and go out of the presence, and beyond the reach of each other; but the different parts of our country cannot do this. They cannot but remain face to face; and intercourse, either amicable or hostile, must continue between them, Is it possible then to make that intercourse more advantageous or more satisfactory, after separation than before? Can aliens make treaties easier than friends can make laws? Can treaties be more faithfully enforced between aliens, than laws can among friends? Suppose you go to war, you cannot fight always; and when, after much loss on both sides, and no gain on either, you cease fighting, the identical old questions, as to terms of intercourse, are again upon you.

This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember, or overthrow it. I can not be ignorant of the fact that many worthy, and patriotic citizens are desirous of having the national constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself; and I should, under existing



circumstances, favor, rather than oppose, a fair opportunity being afforded the people to act upon it.

.....

The Chief Magistrate derives all his authority from the people, and they have conferred none

upon him to fix terms for the separation of the States. The people themselves can do this also if they choose; but the executive, as such, has nothing to do with it. His duty is to administer the present government, as it came to his hands, and to transmit it, unimpaired by him, to his successor.

25

## PART 1

Why should there not be a patient confidence in the ultimate justice of the people? Is there any better, or equal hope, in the world? In our present differences, is either party without faith of being in the right? If the Almighty Ruler of nations, with his eternal truth and justice, be on your side of the North, or on yours of the South, that truth, and that justice, will surely prevail, by the judgment of this great tribunal, the American people.

By the frame of the government under which we live, this same people have wisely given their public servants but little power for mischief; and have, with equal wisdom, provided for the return of that little to their own hands at very short intervals.

While the people retain their virtue, and vigilance, no administration, by any extreme of wickedness or folly, can very seriously injure the government, in the short space of four years.

My countrymen, one and all, think calmly and well, upon this whole subject. Nothing valuable can be lost by taking time. If there be an object to hurry any of you, in hot haste, to a step which you would never take deliberately, that object will be frustrated by taking time; but no good object can be frustrated by it. Such of you as are now dissatisfied, still have the old Constitution unimpaired, and, on the sensitive

## II. Preamble

point, the laws of your own framing under it; while the new administration will have no immediate power, if it would, to change either. If it were admitted that you who are dissatisfied, hold the right side in the dispute, there still is no single good reason for precipitate action. Intelligence, patriotism, Christianity, and a firm reliance on Him, who has never yet forsaken this favored land, are still competent to adjust, in the best way, all our present difficulty.

In your hands, my dissatisfied fellow countrymen, and not in mine, is the momentous issue of civil war. The government will not assail you. You can have no conflict, without being yourselves the aggressors. You have no oath registered in Heaven to destroy the government, while I shall have the most solemn one to "preserve, protect and defend" it.

I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battle-field, and patriot grave, to every living heart and hearthstone, all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

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

**Document 26:**  
**John Locke,**  
**Second Treatise,**  
**§§ 4–8, 13–15, 54, 119–22, 131, 163**  
**(1689)<sup>26</sup>**

4. To understand Political Power right, and derive it from its Original, we must consider what State all Men are naturally in, and that is, a *State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the

26

ENDING, AND BEGINNING

confer on him by an evident and clear appointment an undoubted Right to Dominion and Sovereignty.

5. This *equality* of Men by Nature, the Judicious *Hooker* looks upon as so evident in it self, and beyond all question, that he makes it the Foundation of that Obligation to mutual Love amongst Men, on which he Builds the Duties they owe one another, and from whence he derives the great Maxims of *Justice* and *Charity*. His words are;

*The like natural inducement, hath brought Men to know that it is no less their Duty, to Love others than themselves, for seeing those things which are equal, must needs all have one measure; If I cannot but wish to receive good, even as much at every Man's hands, as any Man can wish unto his own Soul, how should I look to have any part of my desire herein satisfied, unless my self be careful to satisfy the like desire, which is undoubtedly in other Men, being of one and the same nature? to have any thing offered them repugnant to this desire, must needs in all respects grieve them as much as me, so that if I do harm, I must look to suffer, there being no reason that others should shew greater measure of love to me, than they have by me, shewed unto them: my desire therefore to be lov'd of my equals in nature, as much as possible may be, imposeth upon me a natural Duty of bearing to themward, fully the like affection; From which relation of equality between our selves and them, that are as our*

bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.

A *State* also of *Equality*, wherein all the Power and Jurisdiction is reciprocal, no one having more than another: there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection, unless the Lord and Master of them all, should by any manifest Declaration of his Will set one above another, and

*selves, what several Rules and Canons, natural reason hath drawn for direction of Life, no Man is ignorant.* Eccl. Pol. Lib. 1.

6. But though this be a *State of Liberty*, yet it is *not a State of Licence*, though Man in that State have an uncontrollable Liberty, to dispose of his Person or Possessions, yet he has not Liberty to destroy himself, or so much as any Creature in his Possession, but where some nobler use, than its bare Preservation calls for it. The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of Creatures are for ours. Every one as he is *bound to preserve himself*, and not to quit his

Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, *to preserve the rest of Mankind*, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, Liberty, Health, Limb or Goods of another.

7. And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and *Preservation of all Mankind*, the *Execution* of the Law of Nature is in that State, put into every Mans hands, whereby everyone has a right to punish the transgressors of that Law to such a Degree, as may hinder its Violation. For the *Law of Nature* would, as all other Laws that concern Men in this World, be in vain, if there were no body that in the State of Nature, had a *Power to Execute* that Law, and thereby preserve the innocent and restrain offenders, and if any one in the State of Nature may punish another, for any evil he has done, every one may do so. For in that *State of perfect Equality*, where naturally there is no superiority or jurisdiction of one, over another, what any may do in Prosecution of that Law, every one must needs have a Right to do.

8. And thus in the State of Nature, *one Man comes by a Power over another*; but yet no Absolute or Arbitrary Power, to use a Criminal when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own Will, but only to

retribute to him, so far as calm reason and conscience dictates, what is proportionate to his Transgression, which is so much as may serve for *Reparation* and *Restraint*. For these two are the only reasons, why one Man may lawfully do harm to another, which is that we call *punishment*. In transgressing the Law of Nature, the Offender declares himself to live by another Rule, than that of *reason* and common Equity, which is that measure God has set to the actions of Men, for their mutual security: and so he becomes dangerous to Mankind, the tie, which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole Species, and the Peace and Safety of it, provided for by the Law of Nature, every man upon this score, by the Right he hath to preserve Mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one, who hath transgressed that Law, as may make him repent the doing of it, and thereby deter him, and by his Example others, from doing the like mischief. And in this case, and upon this ground, every *Man hath a Right to punish the Offender, and be Executioner of the Law of Nature*.

27

## PART 1

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13. To this strange Doctrine, viz. That *in the State of Nature, every one has the Executive Power* of the Law of Nature, I doubt not but it will be objected, That it is unreasonable for Men to be Judges in their own Cases, that Self-love will make Men partial to themselves and their Friends. And on the other side, that Ill Nature, Passion and Revenge will carry them too far in punishing others. And hence nothing but Confusion and Disorder will follow, and that therefore God hath certainly appointed Government to restrain the partiality and violence of Men. I easily grant, that *Civil Government* is the proper Remedy for the Inconveniences of the State of Nature, which must certainly be Great, where Men may be Judges in their own Case, since 'tis easily to be imagined, that he who was so unjust as to do his Brother an Injury, will scarce be so just as to condemn himself for it: But I shall desire those who make this Objection, to remember that *Absolute Monarchs* are but Men, and if Government is to be the Remedy of those Evils,

which necessarily follow from Mens being Judges in their own Cases, and the State of Nature is therefore not to be endured, I desire to know what kind of Government that is, and how much better it is than the State of Nature, where one Man commanding a multitude, has the Liberty to be Judge in his own Case, and may do to all his Subjects whatever he pleases, without the least liberty to any one to question or controule those who Execute his Pleasure? And in whatsoever he doth, whether led by Reason, Mistake or Passion, must be submitted to? Much better it is in the State of Nature wherein Men are not bound to submit to the unjust will of another: And if he that judges, judges amiss in his own, or any other Case, he is answerable for it to the rest of Mankind.

14. 'Tis often asked as a mighty Objection, *Where are, or ever were, there any Men in such a State of Nature?* To which it may suffice as an answer at present; That since all *Princes* and Rulers of *Independent* Governments all through the World, are in a State of Nature, 'tis plain the World never was, nor ever will be, without Numbers of Men in that State. I have named all Governors of *Independent* Communities,

whether they are, or are not, in League with others: For 'tis not every Compact that puts an end to the State of Nature between Men, but only this one of agreeing together mutually to enter into one Community, and make one Body Politick; other Promises and Compacts, Men may make one with another, and yet still be in the State of Nature. The Promises and Bargains for Truck, &c. between the two Men in the Desert Island, mentioned by

*Garcilasso De la vega*, in his History of *Peru*, or between a *Swiss* and an *Indian*, in the Woods of *America*, are binding to them, though they are perfectly in a State of Nature, in reference to one another. For Truth and keeping of Faith belongs to Men, as Men, and not as Members of Society.

15. To those that say, There were never any Men in the State of Nature; I will not only oppose the Authority of the Judicious *Hooker*, *Eccl. Pol. Lib. I. Sect. 10.* where he says, *The Laws which have been hitherto mentioned, i.e. the Laws of Nature, do bind Men, although they have never any settled fellowship, never any Solemn Agreement amongst themselves what to do or not to do, but for as much as we are not by our selves sufficient to furnish our selves with competent store of things, needful for such a Life, as our Nature doth desire, a Life, fit for the Dignity of Man; therefore to supply those Defects and Imperfections which are in us, as living singly and solely by our selves, we are naturally induced to seek Communion and Fellowship with others, this was the Cause of Mens uniting themselves, at first in Politick Societies.* But I moreover affirm, That all Men are naturally in that State, and remain so, till by their

own Consents they make themselves Members of some Politick Society; And I doubt not in the Sequel of this Discourse, to make it very clear.

.....

54. Though I have said above, Chap. II, *That all Men by Nature are equal*, I cannot be supposed to understand all sorts of *Equality*: *Age* or *Virtue* may give Men a just Precedency: *Excellency of Parts* and *Merit* may place others above the Common Level: *Birth* may subject some, and *Alliance* or *Benefits* others, to pay an Observance to those to whom Nature, Gratitude or other Respects may have made it due; and yet all this consists with the *Equality*, which all Men are in, in respect of Jurisdiction or Dominion one over another, which was the *Equality* I there spoke of, as proper to the Business in hand, being that *equal Right* that every Man hath, to his *Natural Freedom*, without being subjected to the Will or Authority of any other Man.

.....

119. Every Man being, as has been shewed, *naturally free*, and nothing being able to put him into subjection to any Earthly Power, but only his own Consent; it is to be considered, what shall be understood to be a *sufficient Declaration* of a Mans Consent, to make him subject to the Laws of any Government. There is a common distinction of an express and a tacit consent, which will concern our present Case. No

## ENDING, AND BEGINNING

body doubts but an *express Consent*, of any Man, entering into any Society, makes him a perfect Member of that Society, a Subject of that Government. The difficulty is, what ought to be look'd upon as a *tacit Consent*, and how far it binds, *i.e.*

how far any one shall be looked on to have consented, and thereby submitted to any Government, where he has made no Expressions of it at all. And to this I say, that every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his *tacit Consent*, and is as far forth obliged to Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this his Possession be of Land, to him and his Heirs for

ever, or a Lodging only for a Week; or whether it be barely travelling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government.

120. To understand this the better, it is fit to consider, that every Man, when he, at first, incorporates himself into any Commonwealth, he, by his uniting himself thereunto, annexed also, and submits to the Community those Possessions, which he has, or shall acquire, that do not already belong to any other Government. For it would be a direct Contradiction, for any one, to enter into Society with others for the securing and regulating of Property: And yet to suppose his Land, whose Property is to be regulated by the Laws of the Society, should be exempt from the Jurisdiction of that Government,

to which he himself the Proprietor of the Land, is a Subject. By the same Act therefore, whereby any one unites his person, which was before free, to any Commonwealth; by the same he unites his Possessions, which were before free, to it also; and they become, both of them, Person and Possession, subject to the Government and Dominion of that Commonwealth, as long as it hath a being. *Whoever* therefore, from thenceforth, by Inheritance, Purchase, Permission, or otherways *enjoys any part of the Land*, so annex to, and under the Government of *that Commonwealth*, *must take it with the Condition* it is under; that is, *of submitting to the Government of the Commonwealth*, under whose Jurisdiction it is, as far forth, as any Subject of it.

121. But since the Government has a direct Jurisdiction only over the Land, and reaches the Possessor of it, (before he has actually incorporated himself in the Society) only as he dwells upon, and enjoys that: *The Obligation* any one is under, by Virtue of such Enjoyment, *to submit to the Government, begins and ends with the Enjoyment*; so that whenever the Owner, who has given nothing but such a *tacit*

*Consent* to the Government, will, by Donation, Sale, or otherwise, quit the said Possession, he is at liberty to go and incorporate himself into any other Commonwealth, or to agree with others to begin a new one, *in vacuis locis*, in any part of the World, they can find free and unpossessed: Whereas he, that has once, by actual Agreement, and any *express* Declaration, given his *Consent* to be of any Commonweal, is perpetually and indispensably obliged to be and remain unalterably a Subject to it, and can never be again in the liberty of the state of Nature; unless by any Calamity, the Government, he was under, comes to be dissolved; or else by some publick Act cuts him off from being any longer a Member of it.

122. But submitting to the Laws of any Country, living quietly, and enjoying Priviledges and

Protection under them, *makes not a Man a Member of that Society*: This is only a local Protection and Homage due to, and from all those, who, not being in a state of War, come within the Territories belonging to any Government, to all parts whereof the force of its Law extends. But this no more *makes a Man a Member of that Society*, a perpetual Subject of that Commonwealth, than it would make a Man a Subject to another in whose Family he found it convenient to abide for some time; though, whilst he continued in it, he were obliged to comply with the Laws, and submit to the Government he found there. And thus we see, that *Foreigners*, by living all their Lives under another Government, and enjoying the Priviledges and Protection of it, though they are bound, even in Conscience, to submit to its Administration, as far forth as any Denison; yet do not thereby come to be *Subjects or Members of that Commonwealth*. Nothing can make any Man so, but his actually entering into it by positive Engagement, and express Promise and Compact. This is that, which I think, concerning the beginning of Political Societies, and that *Consent which makes any one a Member* of any Commonwealth.

.....

131. But though Men when they enter into Society, give up the Equality, Liberty, and Executive Power they had in the State of Nature, into the hands of the Society, to be so far disposed of by the Legislative, as the good of the Society shall require; yet it being only with an intention in every one the better to preserve himself his Liberty and Property; (For no rational Creature can be supposed to change his condition with an intention to be worse) the power of the Society, or *Legislative* constituted by them, *can never be suppos'd to extend farther than the common good*; but is obliged to secure every ones Property by providing

## PART 1

against those three defects above-mentioned, that made the State of Nature so unsafe and uneasie. And so whoever has the Legislative or Supream Power of any Common-wealth, is bound to govern by establish'd *standing Laws*, promulgated and known to the People, and not by Extemporary Decrees; by *indifferent* and upright *Judges*, who are to decide Controversies

by those Laws; And to imploy the force of the Community at home, *only in the Execution of such Laws*, or abroad to prevent or redress Foreign Injuries, and secure the Community from Inroads and Invasion. And all this to be directed to no other *end*, but the *Peace, Safety, and publick good* of the People.

.....



163. And therefore they have a very wrong Notion of Government, who say, that the People have *incroach'd upon the Prerogative*, when they have got any part of it to be defined by positive Laws. For in so doing, they have not pulled from the Prince any thing, that of right belong'd to him, but only declared, that that Power which they indefinitely left in his, or his Ancestors, hands, to be exercised for their good, was not a thing, which they intended him, when he used it otherwise. For the end of government being the good of the Community, whatsoever alterations are made in it, tending to that end, cannot be an *incroachment* upon any body: since no body in Government can have a right tending to any other end. And those only are *incroachments* which prejudice or hinder the publick good. Those who say otherwise, speak as if the Prince had a distinct and separate Interest from the good of the Community, and was not made for it, the Root and Source, from which spring almost all those Evils, and Disorders, which happen in Kingly Governments. And indeed if that be so, the People under his Government are not a Society of Rational Creatures entred into a Community for their mutual good; they are not such as have set Rulers over themselves, to guard, and promote that good; but are to be looked on as an Herd of inferiour Creatures, under the Dominion of a Master, who keeps them, and works them for his own Pleasure or Profit. If men were so void of Reason, and brutish, as to enter into Society upon such Terms, *Prerogative* might indeed be, what some Men would have it, an Arbitrary Power to do things hurtful to the People.

**Document 27:**  
**David Hume,**  
**Of the Original Contract**  
**(1752)<sup>27</sup>**

When we consider how nearly equal all men are in their bodily force, and even in their mental powers and faculties, till cultivated by education,

we must necessarily allow that nothing but their own consent could at first associate them together and subject them to any authority. The people, if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty and received laws from their equal and companion. The conditions upon which they were willing to submit were either expressed or were so clear and obvious that it might well be esteemed superfluous to express them. If this, then, be meant by the *original contract*, it cannot be denied that all government is, at first, founded on a contract and that the most ancient rude combinations of mankind were formed chiefly by that principle. In vain are we asked in what records this charter of our liberties is registered. It was not written on parchment, nor yet on leaves or barks of trees. It preceded the use of writing and all the other civilized arts of life. But we trace it plainly in the nature of man and in the equality, or something approaching equality, which we find in all the individuals of that species. The force which now prevails, and which is founded on fleets and armies, is plainly political and derived from authority, the effect of established government. A man's natural force consists only in the vigor of his limbs and the firmness of his courage, which could never subject multitudes to the command of one. Nothing but their own consent and their sense of the advantages resulting from peace and order could have had that influence.

Yet even this consent was long very imperfect and could not be the basis of a regular administration. The chieftain, who had probably acquired his influence during the continuance of war, ruled more by persuasion than command; and till he could employ force to reduce the refractory and disobedient, the society could scarcely be said to have attained a state of civil government. No compact or agreement, it is evident, was expressly formed for general submission, an idea far beyond the comprehension of savages. Each exertion of authority in the chieftain must have been particular and called

forth by the present exigencies of the case. The sensible utility resulting from his interposition made these exertions become daily more frequent; and their frequency gradually

produced a habitual and, if you please to call it so, a voluntary and therefore precarious acquiescence in the people.

But philosophers who have embraced a party—if

that be not a contradiction in terms—are not content with these concessions. They assert not only that government in its earliest infancy arose from consent, or rather the voluntary acquiescence of the people, but also that, even at present, when it has attained its full maturity, it rests on no other foundation. They affirm that all men are still born equal and owe allegiance to no prince or government unless bound by the obligation and sanction of a *promise*. And as no man, without some equivalent, would forego the advantages of his native liberty and subject himself to the will of another, this promise is always understood to be conditional and imposes on him no obligation, unless he meet with justice and protection from his sovereign. These advantages the sovereign promises him in return; and if he fail in the execution, he has broken on his part the articles of engagement, and has thereby freed his subject from all obligations to allegiance. Such, according to these philosophers, is the foundation of authority in every government, and such the right of resistance possessed by every subject.

But would these reasoners look abroad into the world, they would meet with nothing that in the least corresponds to their ideas or can warrant so refined and philosophical a system. On the contrary, we find everywhere princes who claim their subjects as their property and assert their independent right of sovereignty from conquest or succession. We find also everywhere subjects who acknowledge this right in their prince and suppose themselves born under obligations of obedience to a certain sovereign, as much as under the ties of reverence and duty to certain parents. These connections are always conceived to be equally independent of our consent, in Persia and China, in France and Spain, and even in Holland and England, wherever the doctrines above mentioned have not been carefully inculcated. Obedience or subjection becomes so familiar that most men never make any inquiry about its origin or cause, more than about the principle of gravity, resistance, or the most universal laws of nature. Or if curiosity ever move them, as soon as they learn that they themselves and their ancestors have, for several ages, or from time immemorial, been subject to such a form of government or such a family, they immediately acquiesce and acknowledge their obligation to allegiance. Were you to preach, in most

parts of the world, that political connections are founded altogether on voluntary consent or a mutual promise, the magistrate would soon imprison you as seditious for loosening the ties of obedience, if your friends did not before shut

you up as delirious for advancing such absurdities. It is strange that an act of the mind which every individual is supposed to have formed, and after he came to the use of reason too—otherwise it could have no authority—that this act, I say, should be so much unknown to all of them that over the face of the whole earth there scarcely remain any traces or memory of it.

But the contract on which government is founded is said to be the *original contract*, and consequently may be supposed too old to fall under the knowledge of the present generation. If the agreement by which savage men first associated and conjoined their force be here meant, this is acknowledged to be real; but being so ancient and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say anything to the purpose, we must assert that every particular government which is lawful and which imposes any duty of allegiance on the subject was at first founded on consent and a voluntary compact. But besides that this supposes the consent of the fathers to bind the children, even to the most remote generations—which republican writers will never allow—besides this, I say, it is not justified by history or experience in any age or country of the world.

Almost all the governments which exist at present, or of which there remains any record in story, have been founded originally either on usurpation or conquest or both, without any pretense of a fair consent or voluntary subjection of the people. When an artful and bold man is placed at the head of an army or faction, it is often easy for him, by employing sometimes violence, sometimes false pretenses, to establish his dominion over a people a hundred times more numerous than his partisans. He allows no such open communication that his enemies can know with certainty their number or force. He gives them no leisure to assemble together in a body to oppose him. Even all those who are the instruments of his usurpation may wish his fall, but their ignorance of each other's intention keeps them in awe and is the sole cause of his security. By such arts as these many governments have been established, and this is all the *original contract* which they have to boast of.

The face of the earth is continually changing by the increase of small kingdoms into great empires, by the dissolution of great empires into smaller kingdoms, by the planting of colonies, by

## PART 1

Is there anything discoverable in all these events but force and violence? Where is the mutual agreement or voluntary association so much talked of?

Even the smoothest way by which a nation may receive a foreign master, by marriage or a will, is not extremely honorable for the people, but supposes them to be disposed of like a dowry or a legacy, according to the pleasure or interest of their rulers.

But where no force interposes and election takes place, what is this election so highly vaunted? It is either the combination of a few great men who decide for the whole and will allow of no opposition or it is the fury of a multitude that follow a seditious ringleader who is not known, perhaps, to a dozen among them and who owes his advancement merely to his own impudence or to the momentary caprice of his fellows.

Are these disorderly elections, which are rare too, of such mighty authority as to be the only lawful foundation of all government and allegiance?

In reality there is not a more terrible event than a total dissolution of government, which gives liberty to the multitude and makes the determination or choice of a new establishment depend upon a number which nearly approaches to that of the body of the people. For it never comes entirely to the whole body of them. Every wise man, then, wishes to see at the head of a powerful and obedient army a general who may speedily seize the prize and give to the people a master which they are so unfit to choose for themselves—so little correspondent is fact and reality to those philosophical notions.

Let not the establishment at the Revolution deceive us or make us so much in love with a philosophical origin to government as to imagine all others monstrous and irregular. Even that event was far from corresponding to these refined ideas. It was only the succession, and that only in the regal part of the government, which was then changed. And it was only the majority of seven hundred who determined that change for near ten millions. I doubt not, indeed,

but the bulk of those ten millions acquiesced willingly in the determination. But was the matter left in the least to their choice? Was it not justly supposed to be from that moment decided and every man punished who refused to submit to the new sovereign? How otherwise could the matter have ever been brought to any issue or conclusion?

.....

It is in vain to say that all governments are or should be at first founded on popular consent as much as the necessity of human affairs will admit. This favors entirely my pretension. I maintain that human affairs will never admit of this consent, seldom of the appearance of it; but that conquest or usurpation—that is, in plain terms, force—by dissolving the ancient governments, is the origin of almost all the new ones which were ever established in the world. And that in the few cases where consent may seem to have taken place, it was commonly so irregular, so confined, or so much intermixed either with fraud or violence that it cannot have any great authority.

My intention here is not to exclude the consent of the people from being one just foundation of government. Where it has place, it is surely the best and most sacred of any. I only contend that it has very seldom had place in any degree, and never almost in its full extent, and that, therefore, some other foundation of government must also be admitted.

Were all men possessed of so inflexible a regard to justice that of themselves they would totally abstain from the properties of others, they had forever remained in a state of absolute liberty, without subjection to any magistrate or political society. But this is a state of perfection of which human nature is justly deemed incapable. Again, were all men possessed of so perfect an understanding as always to know their own interests, no form of government had ever been submitted to but what was established on consent and was fully canvassed by every member of the society. But this state of perfection is likewise much superior to human nature. Reason, history, and experience show us that all political societies have had an origin much less accurate and regular; and were one to choose a period of time when the people's consent was the least regarded in public

transactions, it would be precisely on the establishment of a new government. In a settled constitution their inclinations are often consulted, but during the fury of revolutions, conquests, and public convulsions, military force or political craft usually decides the controversy.

When a new government is established, by whatever means, the people are commonly dissatisfied with it and pay obedience more from

fear and necessity than from any idea of allegiance or of moral obligation. The prince is watchful and jealous, and must carefully guard against every beginning or appearance of insurrection. Time, by degrees, removes all these difficulties and accustoms the nation to regard as their lawful or native princes that family which at first they considered as usurpers or

## 32

### ENDING, AND BEGINNING

foreign conquerors. In order to found this opinion, they have no recourse to any notion of voluntary consent or promise which, they know, never was in this case either expected or demanded. The original establishment was formed by violence and submitted to from necessity. The subsequent administration is also supported by power and acquiesced in by the people, not as a matter of choice but of obligation. They imagine not that their consent gives their prince a title. But they willingly consent because they think that, from long possession, he has acquired a title independent of their choice or inclination.

Should it be said that, by living under the dominion of a prince which one might leave, every individual has given a *tacit* consent to his authority and promised him obedience, it may be answered that such an implied consent can only have place where a man imagines that the matter depends on his choice. But where he thinks—as all mankind do who are born under established governments—that by his birth he owes allegiance to a certain prince or certain form of government, it would be absurd to infer a consent or choice which he expressly in this case renounces and disclaims.

.....

Did one generation of men go off the stage at once and another succeed, as is the case with silkworms and butterflies, the new race, if they had sense enough to choose their government, which surely is never the case with men, might voluntarily and by general consent establish their own form of civil polity without any regard to the laws or precedents which prevailed among their ancestors. But as human society is in perpetual flux, one man every hour going out of the world, another coming into it, it is necessary in order to preserve stability in

government that the new brood should conform themselves to the established constitution and nearly follow the path which their fathers, treading in the footsteps of theirs, had marked out to them. Some innovations must necessarily have place in every human institution; and it is happy where the enlightened genius of the age give these a direction to the side of reason, liberty, and justice. But violent innovations no individual is entitled to make. They are even dangerous to be attempted by the legislature. More ill than good is ever to be expected from them. And if history affords examples to the contrary, they are not to be drawn into precedent and are only to be regarded as proofs that the science of politics affords few rules which will not admit of some exception and which may not sometimes be controlled by fortune and accident. The violent innovations in the reign of Henry VIII proceeded

from an imperious monarch seconded by the appearance of legislative authority; those in the reign of Charles I were derived from faction and fanaticism; and both of them have proved happy in the issue. But even the former were long the source of many disorders, and still more dangers; and if the measures of allegiance were to be taken from the latter, a total anarchy must have place in human society and a final period at once be put to every government.

### Document 28:

**James Otis,  
The Rights of the British  
Colonies Asserted and  
Proved  
(1764)<sup>28</sup>**

Let no Man think I am about to commence advocate for *despotism*, because I affirm that government is founded on the necessity of our

natures; and that an original supreme Sovereign, absolute, and uncontrollable, *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people.

.....

But let the *origin* of government be placed where it may, the *end* of it is manifestly the good of *the whole*. *Salus populi suprema lex esto*, is of the law of nature, and part of that grand charter given the human race, (tho' too many of them are afraid to assert it,) by the only monarch in the universe, who has a clear and indisputable right to *absolute* power; because he is the *only* One who is *omniscient* as well as *omnipotent*.

33

be obtained without the union and assistance of many. Hence 'tis clear that men cannot live apart or independent of each other: In solitude men would perish; and yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge, makes all men seek one; tho' few find him in the *sovereign power*, of their respective states or any where else in *subordination* to it.

Government is founded *immediately* on the necessities of human nature, and *ultimately* on the will of God, the author of nature; who has not left it to men in general to choose, whether they will be members of society or not, but at the hazard of their senses if not of their lives. Yet it is left to every man as he comes of age to chuse *what society* he will continue to belong to. Nay if one has a mind to turn *Hermit*, and after he has been born, nursed, and brought up in the arms of society, and acquired the habits and passions of social life, is willing to run the risque of starving alone, which is generally most unavoidable in a state of hermitage, who shall hinder him? I know of no human law, founded on the law of *nature*, to restrain him from separating himself from the species, if he can find it in his heart to leave them; unless it should be said, it is against the great law of *self-preservation*: But of this every man will think himself *his own judge*.

.....

The form of government is by *nature* and by *right*

.....

The *end* of government being the *good* of mankind, points out its great duties: It is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property. There is no one act which a government can have a *right* to make, that does not tend to the advancement of the security, tranquility and prosperity of the people. If life, liberty and property could be enjoyed in as great perfection in *solitude*, as in *society*, there would be no need of government. But the experience of ages has proved that such is the nature of man, a weak, imperfect being; that the valuable ends of live cannot

## PART 1

so far left to the *individuals* of each society, that they may alter it from a simple democracy or government of all over all, to any other form they please. Such alteration may and ought to be made by express compact: But how seldom this right has been asserted, history will abundantly show. For once that it has been fairly settled by compact; *fraud force or accident* have determined it an hundred times. As the people have gained upon tyrants, these have been obliged to relax, *only* till a fairer opportunity has put it in their power to encroach again.

But if every prince since *Nimrod* had been a tyrant, it would not prove a *right* to tyrannize. There can be no prescription old enough to supersede the law of nature, and the grant of God almighty; who has given to all men a natural right to be *free*, and they have it ordinarily in their power to make themselves so, if they please.

Government having been proved to be necessary by the law of nature, it makes no difference in the thing

to call it from a certain period, *civil*. This term can only relate to form, to additions to, or deviations from, the substance of government: This being founded in nature, the super-structures and the whole administration should be conformed to the law of universal reason. A supreme legislative and supreme executive power, must be placed *somewhere* in every common-wealth: Where there is no other positive provision or compact to the contract, those powers remain in the *whole body of the people*. It is also evident there can be but *one* best way of depositing those powers;



but what that way is, mankind have been disputing in peace and in war more than five thousand years. If we could suppose the individuals of a community met to deliberate, whether it were best to keep those powers in *their own* hands, or dispose of them in *trust*, the following questions would occur—Whether those two great powers of *Legislation* and *Execution* should remain united? If so, whether in the hands of the many, or jointly or severally in the hands of a few, or jointly in some one individual? If both those powers are retained in the hands of the many, where nature seems to have placed them originally, the government is a simple *democracy*, or a government of all over all. This can be administered, only by establishing it as a first principle, that the votes of the majority shall be taken as the voice of the whole. If those powers are lodged in the hands of a few, the government is an *Aristocracy* or *Oligarchy*. Here too the first principles of a practicable administration is that the majority rules the whole. If those great powers are both lodged in the hands of one man, the government is a *simple Monarchy*, commonly, though falsely

called *absolute*, if by that term is meant a right to do as one pleases.— *Sic volo, sic jubeo, stet pro ratione voluntas*, belongs not of right to any mortal man.

The same law of nature and of reason is equally obligatory on a *democracy*, an *aristocracy*, and a *monarchy*: Whenever the administrators, in any of those forms, deviate from truth, justice and equity, they verge towards tyranny, and are to be opposed; and if they prove incorrigible, they will be *deposed* by the people, if the people are not rendered too abject. Deposing the administrators of a *simple democracy* may sound oddly, but it is done every day, and in almost every vote. A.B. & C. for example, make a *democracy*. Today A & B are for so vile a measure as a standing army. Tomorrow B & C vote it out. This is as really deposing the former administrators, as setting up and making a new king is deposing the old one. *Democracy* in the one case, and *monarchy* in the other, still remain; all that is done is to change the administration.

## ENDING, AND BEGINNING

The first principle and great end of government being to provide for the best good of all the people, this can be done only by a supreme legislative and executive ultimately in the people, or whole community, where God has placed it; but the inconveniencies, not to say impossibility, attending the consultations and operations of a large body of people have made it necessary to transfer the power of the whole to a *few*: This necessity gave rise to deputation, proxy or a right of representation.

### Document 29:

**William Blackstone,  
Commentaries on the Laws of  
England 1:119–23, 157, 243–44  
(1765)<sup>29</sup>**

Now the rights of persons that are commanded to be observed by the municipal law are of two sorts; first, such as are due *from* every citizen, which are usually called civil *duties*; and, secondly, such as belong *to*

him, which is the more popular acceptance of *rights* or *jura*. Both may indeed be comprized in this latter division; for, as all social duties are of a relative nature, at the same time that they are due *from* one man, or set of men, they must also be due *to* another. But I apprehend it will be more clear and easy, to consider many of them as duties required from, rather than as rights belonging to, particular persons. Thus, for instance, allegiance is usually, and therefore most easily, considered as the duty of the people, and protection as the duty of the magistrate; and yet they are, reciprocally, the rights as well as duties of each other. Allegiance is the right of the magistrate, and protection the right of the people.

Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us: artificial are such as created and devised by human laws for the purposes of society and government; which are called corporations or bodies politic.

The rights of persons considered in their natural capacities are also of two sorts, absolute, and relative. Absolute, which are such as appertain and belong to particular men, merely as individuals or single persons: relative, which are incident to them as members of society, and

standing in various relations to each other. The first, that is, absolute rights, will be the subject of the present chapter.

By the absolute *rights* of individuals we mean those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is intitled to enjoy whether out of society or in it. But with regard to the absolute *duties*, which man is bound to perform considered as a mere individual, it is not to be expected that any human municipal laws should at all explain or enforce them. For the end and intent of such laws being only to regulate the behaviour of mankind, as they are members of society, and stand in various relations to each other, they have consequently no business or concern with any but social or relative duties. Let a man therefore be ever so abandoned in his principles, or vitious in his practice, provided he keeps his wickedness to himself, and does not offend against the rules of public decency, he is out of the reach of human laws. But if he makes his vices public, though they be such as seem principally to affect himself, (as drunkenness, or the like) they then become, by the bad example they set, of pernicious effects to society; and therefore it is then the business of human laws to correct them. Here the circumstance of publication is what alters the nature of the case. *Public* sobriety is a relative duty, and therefore enjoined by our laws: *private* sobriety is an absolute duty, which, whether it be performed or not, human tribunals can never know; and

therefore they can never enforce it by any civil sanction. But, with respect to *rights*, the case is different. Human laws define and enforce as well those rights which belong to a man considered as an individual, as those which belong to him considered as related to others.

For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved in peace without that mutual assistance and intercourse, which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals. Such rights as are social and *relative* result from, and are posterior to, the formation of states and societies: so that to maintain and regulate these, is clearly a subsequent consideration. And therefore the principal view of human laws is, or ought always to be, to explain, protect, and enforce such rights as are absolute, which in themselves are few and simple; and, then, such rights as are relative, which arising from a variety of connexions, will be far more numerous and more complicated. These will take up a greater space in any code of laws, and hence may appear to be more attended to, though in reality they are not, than the rights of the former kind. Let us

## PART 1

therefore proceed to examine how far all laws ought, and how far the laws of England actually do, take notice of these absolute rights, and provide for their lasting security.

The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature: being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endued him with the faculty of free-will. But every man, when he enters into society, gives up a part of his natural liberty, as the price of so valuable a purchase;

and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws, which the community has thought proper to establish. And this species of legal obedience and conformity is infinitely more desirable, than that wild and savage liberty which is sacrificed to obtain it. For no man, that considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleases; the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals in any of the enjoyments of life. Political therefore, or civil, liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the publick. Hence we may collect that the law, which restrains a man from doing mischief to his fellow citizens, though it diminishes the natural, increases the civil liberty of mankind: but every wanton and

causeless restraint of the will of the subject, whether practiced by a monarch, a nobility, or a popular assembly, is a degree of tyranny. Nay, that even laws themselves, whether made with or without our consent, if they regulate and constrain our conduct in matters of mere indifference, without any good end in view, are laws destructive of liberty: whereas if any public advantage can arise from observing such precepts, the control of our private inclinations, in one or two particular points, will conduce to preserve our general freedom in others of more importance; by supporting that state, of society, which alone can secure our independence. Thus the statute of king Edward IV, which forbade the fine gentlemen of those times (under the degree of a lord) to wear pikes upon their shoes or boots of more than two inches in length, was a law that savoured of oppression; because, however ridiculous the fashion then in use might appear, the restraining

it by pecuniary penalties could serve no purpose of common utility. But the statute of king Charles II, which prescribes a thing seemingly as indifferent; viz. a dress for the dead, who are all ordered to be buried in woollen; is a law consistent with public liberty, for it encourages the staple trade, on which in great measure depends the universal good of the nation. So that laws, when prudently framed, are by no means subversive but rather introductive of liberty; for (as Mr Locke has well observed) where there is no law, there is no freedom. But then, on the other hand, that constitution or frame of government, that system of laws, is alone calculated to maintain civil liberty, which leaves the subject entire master of his own conduct, except in those points wherein the public good requires some direction or restraint.

The idea and practice of this political or civil liberty flourish in their highest vigour in these

kingdoms, where it falls little short of perfection, and can only be lost or destroyed by the folly or demerits of its owner: the legislature, and of course the laws of England, being peculiarly adapted to the preservation of this inestimable blessing even in the meanest subject. Very different from the modern constitutions of other states, on the continent of Europe, and from the genius of the imperial law; which in general are calculated to vest an arbitrary and despotic power of controlling the actions of the subject in the prince, or in a few grandees. And this spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman.

The absolute rights of every Englishman (which, taken in a political and extensive sense, are usually called their liberties) as they are founded on nature and reason, so they are coeval with our form of government; though subject at times to fluctuate and change: their establishment (excellent as it is) being still human. At some times we have seen them depressed by overbearing and tyrannical princes; at others so luxuriant as even to tend to anarchy, a worse state than tyranny itself, as any government is better than none at all. But the vigour of our free constitution has always delivered the nation from these embarrassments, and, as soon as the convulsions consequent on the struggle have been over, the ballance of our rights and liberties has settled to its proper level; and their fundamental articles have been from time to time asserted in parliament, as often as they were thought to be in danger.

.....

## ENDING, AND BEGINNING

It must be owned that Mr Locke, and other theoretical writers, have held, that "there remains still inherent in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them: for when such trust is abused, it is thereby forfeited, and devolves to those who gave it." But however just this conclusion may be in theory, we cannot adopt it, nor argue from it, under any dispensation of government at present actually existing. For this devolution of power, to the people at large, includes in it a

dissolution of the whole form of government established by that people, reduces all the members to their original state of equality, and by annihilating the sovereign power repeals all positive laws whatsoever before enacted. No human laws will therefore suppose a case, which at once must destroy all law, and compel men to build afresh upon a new foundation; nor will they make provision for so desperate an event, as must render all legal provisions ineffectual. So long therefore as the English constitution lasts, we may venture to affirm, that the power of parliament is absolute and without control.

.....

After what has been premised in this chapter, I shall not (I trust) be considered as an advocate for arbitrary power, when I lay it down as a principle, that in the exertion of lawful prerogative, the king is and ought to be absolute; that is, so far absolute, that there is no legal authority that can either delay or resist him. He may reject what bills, may make what treaties, may coin what money, may create what peers, may pardon what offences he pleases: unless where the constitution hath expressly, or by evident consequence, laid down some exception or boundary; declaring, that thus far the prerogative shall go and no farther. For otherwise the power of the crown would indeed be but a name and a shadow, insufficient for the ends of government, if, where it's jurisdiction is clearly established and allowed, any man or body of men were permitted to disobey it, in the ordinary course of law: I say, in the *ordinary* course of law; for I do not now speak of those *extraordinary* recourses to first principles, which are necessary when the contracts of society are in danger of dissolution, and the law proves too weak a defence against the violence of fraud or oppression. And yet the want of attending to this obvious distinction has occasioned these doctrines, of absolute power in the prince and of national resistance by the people, to be much misunderstood and perverted by the advocates for slavery on the one hand, and the demagogues of faction on the other. The former, observing the absolute sovereignty and transcendent dominion of

the crown laid down (as it certainly is) most strongly and emphatically in our lawbooks, as well as our homilies, have denied that any case can be excepted from so general and positive a rule; forgetting how impossible it is, in any practical system of laws, to point out beforehand those eccentric remedies, which the sudden emergence of national distress may dictate, and which that alone can justify. On the other hand, over-zealous republicans, feeling the absurdity of unlimited passive obedience, have fancifully (or sometimes factiously) gone over to the other extreme: and, because resistance is justifiable

to the person of the prince when the being of the state is endangered, and the public voice proclaims such resistance necessary, they have therefore allowed to every individual the right of determining this expedience, and of employing private force to resist even private oppression. A doctrine productive of anarchy, and (in consequence) equally fatal to civil liberty as tyranny itself. For civil liberty, rightly understood, consists in protecting the rights of individuals by the united force of society: society cannot be maintained, and of course can exert no protection, without obedience to some sovereign power: and obedience is an empty name, if every individual has a right to decide how far he himself shall obey.

**Document 30:**  
**Alexander Hamilton,**  
**The Farmer Refuted**  
**(23 Feb. 1775)<sup>30</sup>**

I shall, for the present, pass over to that part of your pamphlet, in which you endeavour to establish the supremacy of the British Parliament over America. After a proper eclaircissement of this point, I shall draw such inferences, as will sap the foundation of every thing you have offered.

The first thing that presents itself is a wish, that “I had, explicitly, declared to the public my ideas of the *natural rights* of mankind. Man, in a state of nature (you say) may be considered, as perfectly free from all restraints of *law* and *government*, and, then, the weak must submit to the strong.”

I shall, henceforth, begin to make some allowance for that enmity, you have discovered to the *natural rights* of mankind. For, though ignorance of them in this enlightened age cannot be admitted, as a sufficient excuse for you; yet, it ought, in some measure, to

**PART 1**

perusal, Grotius, Puffendorf, Locke, Montesquieu, and Burlemaqui. I might mention other excellent writers on this subject; but if you attend, diligently, to these, you will not require any others.

extenuate your guilt. If you will follow my advice, there still may be hopes of your reformation. Apply yourself, without delay, to the study of the law of nature. I would recommend to your

There is so strong a similitude between your political principles and those maintained by Mr. Hobb[e]s, that, in judging from them, a person might very easily *mistake* you for a disciple of his. His opinion was, exactly, coincident with yours, relative to man in a state of nature. He held, as you do, that he was, then, perfectly free from all restraint of *law* and *government*. Moral obligation, according to him, is derived from the introduction of civil society; and there is no virtue, but what is purely artificial, the mere contrivance of politicians, for the maintenance of social intercourse. But the reason he run into this absurd and impious doctrine, was, that he disbelieved the existence of an intelligent superintending principle, who is the governor, and will be the final judge of the universe.

As you, sometimes, swear *by him that made you*, I conclude, your sentiment does not correspond with his, in that which is the basis of the doctrine, you both agree in; and this makes it impossible to imagine whence this congruity between you arises. To grant, that there is a supreme intelligence, who rules the world, and has established laws to regulate the actions of his creatures; and, still, to assert, that man, in a state of nature, may be considered as perfectly free from all restraints of *law* and *government*, appear to a common understanding, altogether irreconcilable.

Good and wise men, in all ages, have embraced a very dissimilar theory. They have supposed, that the deity, from the relations, we stand in, to himself and to each other, has constituted an eternal and immutable law, which is, indispensibly, obligatory upon all mankind, prior to any human institution whatever.

This is what is called the law of nature, "which, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity, if contrary to this; and such of them as are valid, derive all their authority, mediately, or immediately, from this original." Blackstone.

Upon this law, depend the natural rights of mankind, the supreme being gave existence to man, together with the means of preserving and beatifying that existence. He endowed him with rational faculties, by the help of which, to discern

and pursue such things, as were consistent with his duty and interest, and invested him with an inviolable right to personal liberty, and personal safety.

Hence, in a state of nature, no man had any *moral* power to deprive another of his life, limbs, property or liberty; nor the least authority to command, or exact obedience from him; except that which arose from the ties of consanguinity.

Hence also, the origin of all civil government, justly established, must be a voluntary compact, between the rulers and the ruled; and must be liable to such limitations, as are necessary for the security of the *absolute rights* of the latter; for what original title can any man or set of men have, to govern others, except their own consent? To usurp dominion over a people, in their own despite, or to grasp at a more extensive power than they are willing to entrust, is to violate that law of nature, which gives every man a right to his personal liberty; and can, therefore, confer no obligation to obedience.

"The principal aim of society is to protect individuals, in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved, in peace, without that mutual assistance, and intercourse, which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws, is to maintain and regulate these *absolute rights* of individuals." Blackstone.

If we examine the pretensions of parliament, by this criterion, which is evidently, a good one, we shall, presently detect their injustice. First, they are subversive of our natural liberty, because an authority is assumed over us, which we by no means assent to. And secondly, they divest us of that moral security, for our lives and properties, which we are intitled to, and which it is the primary end of society to bestow. For such security can never exist, while we have no part in making the laws, that are to bind us; and while it may be the interest of our uncontrolled legislators to oppress us as much as possible.

To deny these principles will be not less absurd, than to deny the plainest axioms: I shall not, therefore, attempt any further illustration of them.



.....

Had the rest of America passively looked on, while a sister colony was subjugated, the same fate would gradually have overtaken all. The safety of the whole depends upon the mutual protection of every part. If the sword of oppression be permitted to lop off one limb without opposition, reiterated strokes will soon dismember the whole body. Hence it was the duty and interest of all the colonies to succour and support the one which was suffering. It is sometimes sagaciously urged, that we ought to commiserate the distresses of the people of Massachusetts; but not intermeddle in their affairs, so far, as perhaps to bring ourselves into like circumstances with them. This might be good reasoning, if our neutrality would not be more dangerous, than our participation: But I am unable to conceive how the colonies in general would have any security against oppression, if they were once to content themselves, with barely *pitying* each other, while parliament was prosecuting and enforcing its demands. Unless they continually protect and assist each other, they must all inevitably fall a prey to their enemies.

Extraordinary emergencies, require extraordinary expedients. The best mode of opposition was that in which there might be an union of councils. This was necessary to ascertain the boundaries of our rights; and to give weight and dignity to our measures, both in Britain and America. A Congress was accordingly proposed, and universally agreed to.

You, Sir, triumph in the supposed *illegality* of this body; but, granting your supposition were true, it would be a matter of no real importance. When the first principles of civil society are violated, and the rights of a whole people are invaded, the common forms of municipal law are not to be regarded. Men may then betake themselves to the law of nature; and, if they but conform their actions, to that standard, all cavils against them, betray either ignorance or dishonesty. There are some events in society, to which human laws cannot extend; but when applied to them lose all their force and efficacy. In short, when human laws contradict or discountenance the means, which are necessary to preserve the essential rights of any society, they defeat the proper end of all laws, and so become null and void.

**Document 31:**  
**Vermont Constitution of 1777,**  
**Preamble<sup>31</sup>**

Whereas, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.

**Document 32:**  
**Massachusetts Constitution,**  
**Preamble**  
**(2 Mar. 1780)<sup>32</sup>**

The end of the institution, maintenance and administration of government, is to secure the existence of the body-politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body-politic is formed by a voluntary association of individuals: It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence

## PART 1

or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of Civil Government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, DO agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

**Document 33:**  
**Articles of Confederation,**  
**Greeting and Arts. 1–3**  
**(1 Mar. 1781)<sup>33</sup>**

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

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

Article I. The Stile of this confederacy shall be “The United States of America.”

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

Article III. The said states hereby severally enter

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

**Document 34:**  
**Vermont Constitution of 1786,**  
**Preamble<sup>34</sup>**

Therefore it is absolutely necessary, for the welfare and safety of the inhabitants of this State, that it should be henceforth a free and independent State, and that a just, permanent, and proper form of government should exist in it, derived from and founded on the authority of the people only, agreeable to the direction of the honourable American Congress.

We the Representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government—confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society; and being fully convinced, that it is our indispensable duty to establish such original principles of government as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever; do, by virtue of authority vested in us by our constituents, ordain, declare and establish the following Declaration of Rights, and Frame of Government, to be the Constitution of this Commonwealth, and to remain in force therein forever unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall, by the same authority of the people, fairly delegated, as this Frame of Government directs, be amended or

improved, for the more effectual obtaining and securing the great end and design of all

government, herein before mentioned.

40

ENDING, AND BEGINNING

**Document 35:**  
**John Jay to George**  
**Washington (7 Jan. 1787)<sup>35</sup>**

A convention is in Contemplation, and I am glad to find your name among those of its intended members.

To me the policy of *such* a Convention appears questionable. Their authority is to be derived from Acts of the State Legislatures. Are the State Legislatures authorized, either by Themselves or others, to alter constitutions[?] I think not. They who hold commissions, can by virtue of them neither retrench nor Extend the Powers conveyed by them.

Perhaps it is intended that this Convention shall not ordain, but only recommend. If so, there is Danger that their Recommendations will produce endless Discussion, and perhaps Jealousies and party Heats.

Would it not be better for Congress plainly and in strong Terms to declare that the present federal Government is inadequate to the purposes for which it was instituted. That they forbear to point out its particular Defects or to ask for an Extension of any particular powers, lest improper Jealousies should thence arise; but that in their opinion it would be expedient for the people of the States without Delay to appoint State Conventions (in the way they chuse the general assemblies) with the sole and express power of appointing Deputies to a general Convention who or the majority of whom should take into Consideration the Articles of Confederation, and make such Alterations, amendments and additions Thereto, as to them should appear necessary and proper and which being by them ordained and published should

have the same force and Obligation which all or any of the present Articles now have.

No alteration in the Government should I think be made, nor if attempted will easily take place, unless deduceable from the only Source of just authority, *The People*.

**Document 36:**  
**Records of the Federal**  
**Convention (May–Sept. 1787)<sup>36</sup>**

[1:20; *Madison*, 29 May]

Resolutions proposed by Mr Randolph in Convention.

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely. "common defence, security of liberty and general welfare."

[1:30; *Journal*, 30 May]

It was then moved by Mr Randolph and seconded by Mr. G Morris to substitute the following resolution in the place of the first resolution

Resolved that an union of the States, merely foederal, will not accomplish the objects proposed by the articles of confederation, namely "common defence, security of liberty, and general welfare.

It was moved by Mr Butler seconded by Mr Randolph to postpone the consideration of the said resolution in order to take up the following resolution submitted by Mr Randolph namely

Resolved that a national government ought to be established consisting of a supreme legislative,

judiciary and executive.

[1:242; *Madison, 15 June*]

The propositions from N. Jersey moved by Mr. Patterson were in the words following.

1. Resd. that the articles of Confederation ought to be so revised, corrected & enlarged, as to

render the federal Constitution adequate to the exigences of Government, & the preservation of the Union.

[4:37; *Committee of Detail, IV*]

In the draught of a fundamental constitution, two things deserve attention:

41

## PART 1

ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.

### Article I.

The stile of this Government shall be, "The United States of America."

### II.

The Government shall consist of supreme legislative, executive and judicial powers.

[2:590; *Committee of Style, 12 Sept.*]

We, the People of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

**Document 37:**  
**James Wilson,**  
**Pennsylvania Ratifying**  
**Convention (4, 11 Dec. 1787)<sup>37</sup>**

It has not been, nor, I presume, will it be denied, that somewhere there is, and of necessity must be, a supreme, absolute and uncontrollable authority. This, I believe, may justly be termed the sovereign power; for from that gentleman's (Mr. Findley) account of the matter, it cannot be sovereign, unless it is supreme; for, says he, a subordinate sovereignty is no sovereignty at all. I had the honor of observing, that if the question was asked, where the supreme power resided, different answers would be given by different writers. I mentioned that Blackstone will tell you,

1. To insert essential principles only; lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated to times and events: and

2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states.

1. A preamble seems proper. Not for the purpose of designating the ends of government and human polities—This display of theory, howsoever proper in the first formation of state governments, is unfit here; since we are not working on the natural rights of men not yet gathered into society, but upon those rights, modified by society, and interwoven with what we call the rights of states—Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles—This may be done more solemnly at the close of the draught, as in the confederation—But the object of our preamble ought to be briefly to declare, that the present foederal government is insufficient to the general happiness; that the conviction of this fact gave birth to this convention; and that the only effectual mode which they can devise, for curing this insufficiency, is the establishment of a supreme legislative executive and judiciary—Let it be next declared, that the following are the constitution and fundamentals of government for the United States—

[2:565; *Committee of Style, 10 Sept.*]

We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South-Carolina, and Georgia, do

that in Britain it is lodged in the British parliament; and I believe there is no writer on this subject on the other side of the Atlantic, but supposes it to be vested in that body. I stated further, that if the question was asked, some politician, who had not considered the subject with sufficient accuracy, where the supreme power resided in our governments, would answer, that it was vested in the State constitutions. This opinion approaches near the truth, but does not reach it; for the truth is, that the supreme, absolute and uncontrollable authority, *remains* with the people. I mentioned also, that the practical recognition of this truth was reserved for the honor of this country. I recollect no constitution founded on this principle: but we have witnessed the

improvement, and enjoy the happiness, of seeing it carried into practice. The great and penetrating mind of Locke seems to be the only one that pointed towards even the theory of this great truth.

When I made the observation, that some politicians would say the supreme power was lodged in our State constitutions, I did not suspect that the honorable gentleman from Westmoreland (Mr. Findley) was included in that description; but I find myself disappointed; for I imagined his opposition would arise from another consideration. His position is, that the supreme power resides in the States, as governments; and mine is, that it *resides* in the

## 42

### ENDING, AND BEGINNING

PEOPLE, as the fountain of government; that the people have not—that the people mean not—and that the people ought not, to part with it to any government whatsoever. In their hands it remains secure. They can delegate it in such proportions, to such bodies, on such terms, and under such limitations, as they think proper. I agree with the members in opposition, that there cannot be two sovereign powers on the same subject.

I consider the people of the United States as forming one great community, and I consider the people of the different States as forming communities again on a lesser scale. From this great division of the people into distinct communities it will be found necessary that different proportions of legislative powers should be given to the governments, according to the nature, number and magnitude of their objects.

Unless the people are considered in these two views, we shall never be able to understand the principle on which this system was constructed. I view the States as made *for* the people as well as *by* them, and not the people as made for the States. The people, therefore, have a right, whilst enjoying the undeniable powers of society, to form either a general government, or state governments, in what manner they please; or to accommodate them to one another, and by this means preserve them all. This, I say, is the inherent and unalienable right of the people, and as an illustration of it, I beg to read a few words from the Declaration of Independence, made by the representatives of the United States, and recognized by the whole Union.—

“We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, *governments* are instituted among men, *deriving their just powers from the consent of the governed*; that whenever any form of government becomes destructive of these ends, it is the RIGHT of the people to alter or to abolish it, and institute a new government, laying its foundation on such principles, and organizing its powers in such forms, as to them shall seem most likely to effect their safety and happiness.”

This is the broad basis on which our independence was placed. On the same certain and solid foundation this system is erected.

.....

This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people. They express in their name and their authority, “*We the People do ordain and establish*,” &c., from their ratification, and their ratification alone it is to take its constitutional authenticity; without that it is no more than *tabula rasa*.

I know very well all the common-place rant of State sovereignties, and that government is founded in original compact. If that position was examined, it will be found not to accede very well with the true principle of free government. It does not suit the language or genius of the system before us. I think it does not accord with experience, so far as I have been able to obtain



information from history.

The greatest part of governments have been founded on conquest; perhaps a few early ones may have had their origin in paternal authority. Sometimes a family united, and that family afterwards extended itself into a community. But the greatest governments which have appeared on the face of the globe have been founded in conquest. The great empires of Assyria, Persia, Macedonia and Rome, were all of this kind. I know well that in Great Britain, since the revolution, it has become a principle that the constitution is founded in contract; but the form and time of that contract no writer has yet attempted to discover. It was, however, recognized at the time of the revolution, therefore is politically true. But we should act very imprudently to consider our liberties as placed on such foundation.

If we go a little further on this subject, I think we see that the doctrine of original compact cannot be supported consistently with the best

principles of government. If we admit it, we exclude the idea of amendment; because a contract once entered into between the governor and governed becomes obligatory, and cannot be altered but by the mutual consent of both parties. The citizens of United America, I presume, do not wish to stand on that footing, with those to whom, from convenience, they please to delegate the exercise of the general powers necessary for sustaining and preserving the Union. They wish a principle established, by the operation of which the legislatures may feel the direct authority of the people. The people possessing that authority, will continue to exercise it by amending and improving their own work. This constitution may be found to have defects in it; amendments hence may become necessary; but the idea of a government founded on contract, destroys the means of improvement. We hear it every time the gentlemen are up, "Shall we violate the confederation, which directs every alteration that is thought necessary to

43

## PART 1

(1788)<sup>38</sup>

be established by the State legislatures only?" Sir, those gentlemen must ascend to a higher source; the people fetter themselves by no contract. If your State legislatures have cramped themselves by compact, it was done without the authority of the people, who alone possess the supreme power.

I have already shown, that this system is not a compact or contract; the system itself tells you what it is; it is an ordinance and establishment of the people. I think that the force of the introduction to the work, must by this time have been felt. It is not an unmeaning flourish. The expressions declare, in a practical manner, the principle of this constitution. It is ordained and established by the people themselves; and we, who give our votes for it, are merely the proxies of our constituents. We sign it as their attorneys, and as to ourselves, we agree to it as individuals.

### **Document 38:** **A Native of Virginia,** **Observations upon the Proposed** **Plan of Federal Government**

The introduction, like a preamble to a law, is the Key of the Constitution. Whenever federal power is exercised, contrary to the spirit breathed by this introduction, it will be unconstitutionally exercised, and ought to be resisted by the people.

### **Document 39:** **James Madison,** **Federalist, no. 37** **(11 Jan. 1788)<sup>39</sup>**

... many allowances ought to be made for the difficulties inherent in the very nature of the undertaking referred to the Convention.

The novelty of the undertaking immediately strikes us. It has been shewn in the course of these papers, that the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it, the superstructure resting upon it. It has been

shewn, that the other confederacies which could be consulted as precedents, have been viciated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the Convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experience may unfold them.

Among the difficulties encountered by the Convention, a very important one must have lain, in combining the requisite stability and energy in Government, with the inviolable attention due to liberty, and to the Republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public: Yet, that it could not be easily accomplished, will be denied by no one, who is unwilling to betray his ignorance of the subject. Energy in Government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good Government. Stability in Government, is essential to national character, and to the advantages annexed to it, as well as

to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation, is not more an evil in itself, than it is odious to the people; and it may be pronounced with assurance, that the people of this country, enlightened as they are, with regard to the nature, and interested, as the great body of them are, in the effects of good Government, will never be satisfied, till some remedy be applied to the vicissitudes and uncertainties, which characterize the State administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. The genius of Republican liberty, seems to demand on one side, not only that all power should be derived from the people; but, that those entrusted with it should be kept in dependence on the people, by a short duration of their appointments; and, that, even during this short period, the trust should be placed not in a few, but in a number of hands. Stability, on the contrary, requires, that the hands, in which power is lodged, should continue for a length of time, the same. A frequent change of men will result from a frequent return of electors, and a frequent change of measures, from a frequent change of men: whilst energy in Government requires not only a certain duration of

#### 44

### ENDING, AND BEGINNING

power, but the execution of it by a single hand. How far the Convention may have succeeded in this part of their work, will better appear on a more accurate view of it. From the cursory view, here taken, it must clearly appear to have been an arduous part.

Not less arduous must have been the task of marking the proper line of partition, between the authority of the general, and that of the State Governments. Every man will be sensible of this difficulty, in proportion, as he has been accustomed to contemplate and discriminate objects, extensive and complicated in their nature. The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical Philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such delicate shades, and minute gradations, that their boundaries have eluded the most subtle investigations, and remain a pregnant

source of ingenious disquisition and controversy. The boundaries between the great kingdoms of nature, and still more, between the various provinces, and lesser portions, into which they are subdivided, afford another illustration of the same important truth. The most sagacious and laborious naturalists have never yet succeeded, in tracing with certainty, the line which separates the district of vegetable life from the neighboring region of unorganized matter, or which marks the termination of the former and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters, by which the objects in each of these great departments of nature, have been arranged and assorted. When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself, as from the organ by which it is contemplated; we must perceive the necessity of moderating still farther our expectations and hopes from the efforts of human sagacity.

Experience has instructed us that no skill in the science of Government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the Legislative, Executive and Judiciary; or even the privileges and powers of the different Legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science. The experience of ages, with the continued and combined labors of the most enlightened Legislators and jurists, have been equally unsuccessful in delineating the several objects and limits of different codes of laws and different tribunals of justice. The precise extent of the common law, the statute law, the maritime law, the ecclesiastical law, the law of corporations and other local laws and customs, remain still to be clearly and finally established in Great-Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world. The jurisdiction of her several courts, general and local, of law, of equity, of admiralty, &c. is not less a source of frequent and intricate discussions, sufficiently denoting the indeterminate limits by which they are respectively circumscribed. All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other, adds a fresh embarrassment. The use of words is to express ideas. Perspicuity therefore requires not only that the ideas should be

distinctly formed, but that they should be expressed by words distinctly and exclusively appropriated to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence, it must happen, that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity and novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful, by the cloudy medium through which it is communicated. Here then are three sources of vague and incorrect definitions; indistinctness of the object, imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The Convention, in delineating the boundary between the Federal and State jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned, may be added the interfering pretensions of the larger and smaller States. We cannot err in supposing that the former would contend for a participation in the Government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It

## PART 1

sacrifice theoretical propriety to the force of extraneous considerations.

is extremely probable also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties, to give such a turn to the organization of the Government, and to the distribution of its powers, as would encrease the importance of the branches, in forming which they had respectively obtained the greatest share of influence. There are features in the Constitution which warrant each of these suppositions; and as far as either of them is well founded, it shews that the Convention must have been compelled to

Nor could it have been the large and small States only which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. As every State may be divided into different districts, and its citizens into different classes, which give birth to contending interests and local jealousies; so the different parts of the United States are distinguished from each other, by a variety of circumstances, which produce a like effect on a

larger scale. And although this variety of interests, for reasons sufficiently explained in a former paper, may have a salutary influence on the administration of the Government when formed; yet every one must be sensible of the contrary influence which must have been experienced in the task of forming it.

Would it be wonderful if under the pressure of all these difficulties, the Convention should have been forced into some deviations from that artificial structure and regular symmetry, which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination? The real wonder is, that so many difficulties should have been surmounted; and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance, without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it, a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution. We had occasion in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands, for reforming the baneful and notorious vices of their Constitution. The history of almost all the great councils and consultations, held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective

interests, is a history of factions, contentions, and disappointments; and may be classed among the most dark and degrading pictures which display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying them to the particular instance before us, we are necessarily led to two important conclusions. The first is, that the Convention must have enjoyed in a very singular degree, an exemption

from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is, that all the deputations composing the Convention, were either satisfactorily accommodated by the final act; or were induced to accede to it, by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by a despair of seeing this necessity diminished by delays or by new experiments.

**Document 40:**  
**Brutus, no. 12**  
**(7–14 Feb. 1788)<sup>40</sup>**

To discover the spirit of the constitution, it is of the first importance to attend to the principal ends and designs it has in view. These are expressed in the preamble, in the following words, viz. “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution,” &c. If the end of the government is to be learned from these words, which are clearly designed to declare it, it is obvious it has in view every object which is embraced by any government. The preservation of internal peace—the due administration of justice—and to provide for the defence of the community, seems to include all the objects of government; but if they do not, they are certainly comprehended in the words, “to provide for the general welfare.” If it be further considered, that this constitution, if it is ratified, will not be a compact entered into by states, in their corporate capacities, but an agreement of the people of the United States, as one great body politic, no doubt can remain, but that the great end of the constitution, if

it is to be collected from the preamble, in which its end is declared, is to constitute a government which is to extend to every case for which any government is instituted, whether external or

internal. The courts, therefore, will establish this as a principle in expounding the constitution, and will give every part of it such an explanation, as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and

national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts.

Such a rule of exposition is not only consistent with the general spirit of the preamble, but it will stand confirmed by considering more minutely the different clauses of it.

The first object declared to be in view is, "To form a perfect union." It is to be observed, it is not an union of states or bodies corporate; had this been the case the existence of the state governments, might have been secured. But it is a union of the people of the United States considered as one body, who are to ratify this constitution, if it is adopted. Now to make a union of this kind perfect, it is necessary to abolish all inferior governments, and to give the general one complete legislative, executive and judicial powers to every purpose. The courts therefore will establish it as a rule in explaining the constitution to give it such a construction as will best tend to perfect the union or take from the state governments every power of either making or executing laws. The second object is "to establish justice." This must include not only the idea of instituting the rule of justice, or of making laws which shall be the measure or rule of right, but also of providing for the application of this rule or of administering justice under it. And under this the courts will in their decisions extend the power of the government to all cases they possibly can, or otherwise they will be restricted in doing what appears to be the intent of the constitution they should do, to wit, pass laws and provide for the execution of them, for the general distribution of justice between man and man. Another end declared is "to insure domestic tranquility." This comprehends a provision against all private breaches of the peace, as well as against all public commotions or general insurrections; and to attain the object of this clause fully, the government must exercise the power of passing laws on these subjects, as well as of appointing magistrates with authority to execute them. And the courts will adopt these ideas in their expositions. I might proceed to the other clause, in the preamble, and it would appear by a consideration of all of them separately, as it does by taking them

together, that if the spirit of this system is to be known from its declared end and design in the preamble, its spirit is to subvert and abolish all

the powers of the state government, and to embrace every object to which any government extends.

As it sets out in the preamble with this declared intention, so it proceeds in the different parts with the same idea. Any person, who will peruse the 8th section with attention, in which most of the powers are enumerated, will perceive that they either expressly or by implication extend to almost every thing about which any legislative power can be employed. But if this equitable mode of construction is applied to this part of the constitution; nothing can stand before it.

This will certainly give the first clause in that article a construction which I confess I think the most natural and grammatical one, to authorise the Congress to do any thing which in their judgment will tend to provide for the general welfare, and this amounts to the same thing as general and unlimited powers of legislation in all cases.

This same manner of explaining the constitution, will fix a meaning, and a very important one too, to the 12th [18th] clause of the same section, which authorises the Congress to make all laws which shall be proper and necessary for carrying into effect the foregoing powers, &c. A voluminous writer in favor of this system, has taken great pains to convince the public, that this clause means nothing: for that the same powers expressed in this, are implied in other parts of the constitution. Perhaps it is so, but still this will undoubtedly be an excellent auxiliary to assist the courts to discover the spirit and reason of the constitution, and when applied to any and every of the other clauses granting power, will operate powerfully in extracting the spirit from them.

I might instance a number of clauses in the constitution, which, if explained in an *equitable* manner, would extend the powers of the government to every case, and reduce the state legislatures to nothing; but, I should draw out my remarks to an undue length, and I presume enough has been said to shew, that the courts have sufficient ground in the exercise of this power, to determine, that the legislature have no bounds set to them by this constitution, by any supposed right the legislatures of the respective states may have, to regulate any of their local concerns.

**Document 41:**  
**Alexander Hamilton,**  
**Federalist, no. 84**  
**(28 May 1788)<sup>41</sup>**

Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations. "We the people of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this constitution for the United States of America." Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

**Document 42:**  
**Patrick Henry,**  
**Virginia Ratifying Convention**  
**(4 June 1788)<sup>42</sup>**

And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, *We, the people*? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, *We, the people*, instead of, *We, the states*? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the

**PART 1**

people of all the states. I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them—a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. Even from

that illustrious man who saved us by his valor, I would have a reason for his conduct: that liberty which he has given us by his valor, tells me to ask this reason; and sure I am, were he here, he would give us that reason. But there are other gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take those steps, so dangerous in my conception. Disorders have arisen in other parts of America; but here, sir, no dangers, no insurrection or tumult have happened; every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference of opinion has gone to a degree of inflammatory resentment in different parts of the country, which has been occasioned by this perilous innovation. The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

**Document 43:**  
**James Madison,**  
**Public Opinion**  
**(19 Dec. 1791)<sup>43</sup>**



Public opinion sets bounds to every government, and is the real sovereign in every free one.

As there are cases where the public opinion must be obeyed by the government; so there are cases, where not being fixed, it may be influenced by the government. This distinction, if kept in view, would prevent or decide many

debates on the respect due from the government to the sentiments of the people.

In proportion as government is influenced by opinion, it must be so, by whatever influences opinion. This decides the question concerning a *Constitutional Declaration of Rights*, which requires an influence on government, by becoming a part of the public opinion.

48

## ENDING, AND BEGINNING

The larger a country, the less easy for its real opinion to be ascertained, and the less difficult to be counterfeited; when ascertained or presumed, the more respectable it is in the eyes of individuals. This is favorable to the authority of government. For the same reason, the more extensive a country, the more insignificant is each individual in his own eyes. This may be unfavorable to liberty.

Whatever facilitates a general intercourse of sentiments, as good roads, domestic commerce, a free press, and particularly a *circulation of newspapers through the entire body of the people, and Representatives going from, and returning among every part of them*, is equivalent to a contraction of territorial limits, and is favorable to liberty, where these may be too extensive.

### **Document 44:** **Martin v. Hunter's Lessee,** **1 Wheat. 304 (1816)<sup>44</sup>**

March 20th, 1816. Story, J., delivered the opinion of the court.—This is a writ of error from the court of appeals of Virginia, founded upon the refusal of that court to obey the mandate of this court, requiring the judgment rendered in this very cause, at February term 1813, to be carried into due execution. The following is the judgment of the court of appeals rendered on the mandate: “The court is unanimously of opinion, that the appellate power of the supreme court of the United States does not extend to this court, under a sound construction of the constitution of the United States; that so much of the 25th section of the act of congress to

establish the judicial courts of the United States, as extends the appellate jurisdiction of the supreme court to this court, is not in pursuance of the constitution of the United States; that the writ of error, in this cause, was improvidently allowed, under the authority of that act; that the proceedings thereon in the supreme court were *coram non judice*, in relation to this court, and that obedience to its mandate be declined by the court.”

The questions involved in this judgment are of great importance and delicacy. Perhaps, it is not too much to affirm, that, upon their right decision, rest some of the most solid principles which have hitherto been supposed to sustain and protect the constitution itself. The great respectability, too, of the court whose decisions we are called upon to review, and the entire deference which we entertain for the

learning and ability of that court, add much to the difficulty of the task which has so unwelcomely fallen upon us. It is, however, a source of consolation, that we have had the assistance of most able and learned arguments to aid our inquiries; and that the opinion which is now to be pronounced has been weighed with every solicitude to come to a correct result, and matured after solemn deliberation.

Before proceeding to the principal questions, it may not be unfit to dispose of some preliminary considerations which have grown out of the arguments at the bar.

The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by “the People of the United States.” There can be no doubt, that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers

according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be, that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend upon their own constitutions; and the people of every state had the right to modify and restrain them, according to their own views of policy or principle. On the other hand, it is perfectly clear, that the sovereign powers vested in the state

governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. These deductions do not rest upon general reasoning, plain and obvious as they seem to be. They have been positively recognised by one of the articles in amendment of the constitution, which declares, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The government, then, of the United States can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary

49

## PART 1

implication. On the other hand, this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms; and where a power is expressly given, in general terms, it is not to be restrained to particular cases, unless that construction grow out of the context, expressly, or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.

The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen, that this would be perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen, what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications, which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself. Hence, its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of

its powers, as its own wisdom, and the public interests, should require.

With these principles in view, principles in respect to which no difference of opinion ought to be indulged, let us now proceed to the interpretation of the constitution, so far as regards the great points in controversy.

## Document 45:

**Joseph Story,  
Commentaries on the Constitution,  
1:§§ 459, 462–63, 469–70, 471–76,  
482–86, 489, 493–97, 500–01, 506  
(1833)<sup>45</sup>**

§ 459. The importance of examining the preamble, for the purpose of expounding the language of a statute, has been long felt, and universally conceded in all juridical discussions. It is an admitted maxim in the ordinary course of the administration of justice, that the preamble of a statute is a key to open the mind of

the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished by the provisions of the statute.

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§ 462. And, here, we must guard ourselves

against an error, which is too often allowed to creep into the discussions upon this subject. The preamble never can be resorted to, to enlarge the powers confided to the general government, or any of its departments. It cannot confer any power *per se*; it can never amount, by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power, when otherwise withdrawn from the constitution. Its true office is to expound the nature, and extent, and application of the powers actually conferred by the constitution, and not substantively to create them. ...

§ 463. We have already had occasion, in considering the nature of the constitution, to dwell upon the terms, in which the preamble is conceived, and the proper conclusion deducible from it. It is an act of the people, and not of the states in their political capacities. It is an ordinance or establishment of government and not a compact, though originating in consent; and it binds as a fundamental law promulgated by the sovereign authority, and not as a compact or treaty entered into and *in fieri*, between each and all the citizens of the United States, as distinct parties. The language is, "We, the *people*

of the United States," not, We, the *states*," do *ordain* and *establish*;" not, do *contract* and enter into a *treaty* with each other; "this *constitution* for the United States of America," not this *treaty* between the several states. And it is, therefore, an unwarrantable assumption, not to call it a most extravagant stretch of interpretation, wholly at variance with the language, to substitute other words and other senses for the words and senses incorporated, in this solemn manner, into the substance of the instrument itself. We have the strongest assurances, that this preamble was not adopted as a mere formulary; but as a solemn promulgation of a fundamental fact, vital to the character and operations of the government. The obvious object was to substitute a government of the people, for a confederacy of states; a constitution for a compact.

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§ 469. The constitution, then, was adopted first "to form a more perfect union." Why this was desirable has been in some measure anticipated in considering the defects of the confederation. When the

## 50

### ENDING, AND BEGINNING

constitution, however, was before the people for ratification, suggestions were frequently made by those, who were opposed to it, that the country was too extensive for a single national government, and ought to be broken up into several distinct confederacies, or sovereignties; and some even went so far, as to doubt, whether it were not, on the whole, best, that each state should retain a separate, independent, and sovereign political existence. Those, who contemplated several confederacies, speculated upon a dismemberment into three great confederacies, one of the northern, another of the middle, and a third of the southern states. The greater probability, certainly, then was of a separation into two confederacies; the one composed of the northern and middle states, and the other of the southern. The reasoning of the Federalist on this subject seems absolutely irresistible. The progress of the population in the western territory, since that period, has materially changed the basis of all that reasoning. There could scarcely now, upon any dismemberment, exist, with a view to local interests, political associations, or public safety, less than three

confederacies, and most probably four. And it is more than probable, that the line of division would be traced out by geographical boundaries, which would separate the slave-holding from the non-slave holding states. Such a distinction in government is so fraught with causes of irritation and alarm, that no honest patriot could contemplate it without many painful and distressing fears.

§ 470. But the material consideration, which should be kept steadily in view, is, that under such circumstances a national government, clothed with powers at least equally extensive with those given by the constitution, would be indispensable for the preservation of each separate confederacy. Nay, it cannot be doubted, that much larger powers, and much heavier expenditures would be necessary. No nation could long maintain its public liberties, surrounded by powerful and vigilant neighbours, unless it possessed a government clothed with powers of great efficiency, prompt to act, and able to repel every invasion of its rights. Nor would it afford the slightest security, that all the confederacies were composed of a people descended from the same ancestors, speaking

the same language, professing the same religion, attached to the same principles of government, and possessing similar manners, habits, and customs. If it be true, that these circumstances would not be sufficient to hold them in a bond of peace and union, when forming one government, acting for the interests, and as the representatives of the rights of the whole; how could a better fate be expected, when the interests and the representation were separate; and ambition, and local interests, and feelings, and peculiarities of climate, and products,

and institutions, and imaginary or real aggressions and grievances, and the rivalries of commerce, and the jealousies of dominion, should spread themselves over the distinct councils, which would regulate their concerns by independent legislation? The experience of the whole world is against any reliance for security and peace between neighbouring nations, under such circumstances. ...

§ 471. The same reasoning would apply with augmented force to the case of a dismemberment, when each state should by itself constitute a nation. The very inequalities in the size, the revenues, the population, the products, the interests, and even in the institutions and laws of each, would occasion a perpetual petty warfare of legislation, of border aggressions and violations, and of political and personal animosities, which, first or last, would terminate in the subjugation of the weaker to the arms of the stronger. In our further observations on this subject, it is not proposed to distinguish the case of several confederacies from that of a complete separation of all the states; as in a

general sense the remarks apply with irresistible, if not with uniform, force to each.

§ 472. Does, then, the extent of our territory form any solid objection against forming "this more perfect union?" This question, so far as respects the original territory included within the boundaries of the United States by treaty of peace of 1783, seems almost settled by the experience of the last forty years. It is no longer a matter of conjecture, how far the government is capable (all other things being equal) of being practically applied to the whole of that territory. The distance between the utmost limits of our present population, and the diversity of interests among the whole, seem to have presented no obstacles under the beneficent administration of the general government, to the most perfect harmony and general advancement of all. Perhaps it has been demonstrated, (so far as our limited experience goes,) that the increased facilities of intercourse, the uniformity of regulations and laws, the common protection, the mutual sacrifices of local interests, when incompatible with that of all, and the pride and confidence in a government, in which all are represented, and all are equal in rights and privileges; perhaps, we say, it has been demonstrated, that these effects of the Union have promoted, in a higher degree, the prosperity of every state, than could have been attained by any single state, standing alone, in the freest exercise of all its intelligence, its resources, and its institutions, without any check or obstruction during the same period. The great change, which has been made in our internal condition, as well as in our territorial power, by the

acquisition of Louisiana and Florida, have, indeed, given rise to many serious reflections, whether such an expansion of our empire may not hereafter endanger the original system. But time alone can solve this question; and to time it is the part of wisdom and patriotism to leave it.

§ 473. When, however, the constitution was before the people for adoption, objections, as has been already suggested, were strenuously urged against a general government, founded upon the then extent of our territory. And the authority of Montesquieu was relied on in support of the objections. It is not a little surprising, that Montesquieu should have been

## PART 1

relied on for this purpose. He obviously had in view, when he recommends a moderate extent of territory, as best suited to a republic, small states, whose dimensions were far less than the limits of one half of those in the Union; so that upon strictly following out his suggestions, the latter ought to have been divided. But he suggests the appropriate remedy of a confederate republic, (the very form adopted in the constitution,) as the proper means of at once securing safety and liberty with extensive territory. The truth is, that what size is safe for a nation, with a view to the protection of its rights and liberties, is a question, which admits of no universal solution. Much depends upon its local position, its neighbours, its resources, the facilities of invasion, and of repelling invasion,

the general state of the world, the means and weapons of warfare, the interests of other nations in preserving or destroying it, and other circumstances, which scarcely admit of enumeration. How far a republican government can, in a confederated form, be extended, and be at once efficient abroad and at home, can ensure general happiness to its own citizens, and perpetuate the principles of liberty, and preserve the substance of justice, is a great problem in the theory of government, which America is now endeavouring to unfold, and which, by the blessing of God, we must all earnestly hope, that she may successfully demonstrate.

§ 474. In the mean time, the following considerations may serve to cheer our hopes, and dispel our fears. First, (1.) that extent of territory is not incompatible with a just spirit of patriotism; (2.) nor with a general representation of all the interests and population within it; (3.) nor with a due regard to the peculiar local advantages or disadvantages of any part; (4.) nor with a rapid and convenient circulation of information useful to all, whether they are rulers or people. On the other hand, it has some advantages of a very important nature. (1.) It can afford greater protection against foreign enemies. (2.) It can give a wider range to enterprize and commerce. (3.) It can

secure more thoroughly national independence to all the great interests of society, agriculture, commerce, manufactures, literature, learning, religion. (4.) It can more readily disarm and tranquillize domestic factions in a single state. (5.) It can administer justice more completely and perfectly. (6.) It can command larger revenues for public objects without oppression or heavy taxation. (7.) It can economise more in all its internal arrangements, whenever necessary. In short, as has been said, with equal truth and force: "One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of policy. It can harmonize, assimilate, and protect the several parts and

members, and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interests of the whole, and the particular interests of the parts, as connected with that of the whole. It can apply the revenues of the whole to the defence of any particular part, and that more easily and expeditiously, than state governments or separate confederacies can possibly do, for want of concert, and unity of system." Upon some of these topics, we may enlarge hereafter.

§ 475. The union of these states, "the more perfect union" is, then, and must for ever be invaluable to all, in respect both to foreign and domestic concerns. It will prevent some of the causes of war, that scourge of the human race, by enabling the general government, not only to negotiate suitable treaties for the protection of the rights and interests of all, but by compelling a general obedience to them, and a general respect for the obligations of the law of nations. It is notorious, that even under the confederation, the obligations of treaty stipulations, were openly violated, or silently disregarded; and the peace of the whole confederacy was at the mercy of the majority of any single state. If the states were separated, they would, or might, form separate and independent treaties with different nations, according to their peculiar interests. These treaties would, or might, involve jealousies and rivalries at home, as well as abroad, and introduce conflicts between nations struggling for a monopoly of the trade with each state. Retaliatory or evasive stipulations would be made, to counteract the injurious system of a neighbouring or distant state, and thus the scene be again acted over with renewed violence, which succeeded the peace of 1783, when the common interests were forgotten in the general struggle for superiority. It would manifestly be the interest of foreign nations to promote these animosities and jealousies, that, in the general weakness, the states might seek their protection by an undue sacrifice of their interests, or fall an easy prey to their arms.

## ENDING, AND BEGINNING

§ 476. The dangers, too, to all the states, in case of division, from foreign wars and invasion, must be imminent, independent of those from the neighbourhood of the colonies and dependencies of other governments on this continent. Their very weakness would invite

aggression. The ambition of the European governments, to obtain a mastery of power in colonies and distant possessions, would be perpetually involving them in embarrassing negotiations or conflicts, however peaceable might be their own conduct, and however inoffensive their own pursuits, and objects. America, as of old, would become the theatre of

warlike operations, in which she had no interests; and with a view to their own security, the states would be compelled to fall back into a general colonial submission, or sink into dependencies of such of the great European powers, as might be most favourable to their interests, or most commanding over their resources.

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§ 482. But not to dwell farther on these important inducements “to form a more perfect union,” let us pass to the next object, which is to “establish justice.” This must for ever be one of the great ends of every wise government; and even in arbitrary governments it must, to a great extent, be practised, at least in respect to private persons, as the only security against rebellion, private vengeance, and popular cruelty. But in a free government it lies at the very basis of all its institutions. Without justice being freely, fully, and impartially administered, neither our persons, nor our rights, nor our property, can be protected. And if these, or either of them, are regulated by no certain laws, and are subject to no certain principles, and are held by no certain tenure, and are redressed, when violated, by no certain remedies, society fails of all its value; and men may as well return to a state of savage and barbarous independence. No one can doubt, therefore, that the establishment of justice must be one main object of all our state governments. Why, then, may it be asked, should it form so prominent a motive in the establishment of the national government?

§ 483. This is now proposed to be shown in a concise manner. In the administration of justice, foreign nations, and foreign individuals, as well as citizens, have a deep stake; but the former have not always as complete means of redress as the latter; for it may be presumed, that the state laws will always provide adequate tribunals to redress the grievances and sustain the rights of their own citizens. But this would be a very imperfect view of the subject. Citizens of contiguous states have a very deep interest in the administration of justice in each state;

and even those, which are most distant, but belonging to the same confederacy, cannot but be affected by every inequality in the provisions, or the actual operations of the laws of each other. While every state remains at full liberty to legislate upon the subject of rights, preferences, contracts, and remedies, as it may please, it is

scarcely to be expected, that they will all concur in the same general system of policy. The natural tendency of every government is to favour its own citizens; and unjust preferences, not only in the administration of justice, but in the very structure of the laws, may reasonably be expected to arise. Popular prejudices, or passions, supposed or real injuries, the predominance of home pursuits and feelings over the comprehensive views of a liberal jurisprudence, will readily achieve the most mischievous projects for this purpose. And these, again, by a natural reaction, will introduce correspondent regulations, and retaliatory measures in other states.

§ 483 [*sic*]. Now, exactly what this course of reasoning has led us to presume as probable, has been demonstrated by experience to be true in respect to our own confederacy during the short period of its existence, and under circumstances well calculated to induce each state to sacrifice many of its own objects for the general good. Nay, even when we were colonies, dependent upon the authority of the mother country, these inequalities were observable in the local legislation of several of the states, and produced heart-burnings and discontents, which were not easily appeased.

§ 484. First, in respect to foreign nations. After the confederacy was formed, and we had assumed the general rights of war as a sovereign belligerent nation, authority to make captures, and to bring in ships and cargoes for adjudication naturally flowed from the proper exercise of these rights by the law of nations. The states respectively retained the power of appointing prize tribunals, to take cognizance of these matters in the first instance; and thus thirteen distinct jurisdictions were established, which acted entirely independent of each other. It is true, that the articles of confederation had delegated to the general government the authority of establishing courts for receiving and determining, finally, appeals in all cases of captures. Congress accordingly instituted proper appellate tribunals, to which the state courts were subordinate, and, upon constitutional principles, were bound to yield obedience. But it is notorious, that the decisions of the appellate tribunals were disregarded, and treated as mere nullities, for no power to enforce them was lodged in congress. They operated, therefore, merely by moral influence and requisition, and, as such, soon sunk into



## PART 1

insignificance. Neutral individuals, as well as neutral nations, were left wholly without any adequate redress for the most inexcusable injustice, and the confederacy subjected to imminent hazards. And until the constitution of the United States was established, no remedy was ever effectually administered. Treaties, too, were formed by congress with various nations; and above all, the treaty of peace of 1783, which gave complete stability to our independence against Great Britain. These treaties were, by the theory of the confederation, absolutely obligatory upon all the states. Yet their provisions were notoriously violated both by state legislation and state judicial tribunals. The non-fulfilment of the stipulations of the British treaty on our part more than once threatened to involve the whole country again in war. And the provision in that treaty for the payment of British debts was practically disregarded in many, if not in all, the state courts. These debts never were enforced, until the constitution gave them a direct and adequate sanction, independently of state legislation and state courts.

§ 485. Besides the debts due to foreigners, and the obligations to pay the same, the public debt of the United States was left utterly unprovided for; and the officers and soldiers of the revolution, who had achieved our independence, were, as we have had occasion to notice, suffered to languish in want, and their just demands evaded, or passed by with indifference. No efficient system to pay the public creditors was ever carried into operation, until the constitution was adopted; and, notwithstanding the increase of the public debt, occasioned by intermediate wars, it is now on the very eve of a total extinguishment.

§ 486. These evils, whatever might be their magnitude, did not create so universal a distress, or so much private discontent, as others of a more domestic nature, which were subversive of the first principles of justice. Independent of the unjustifiable preferences, which were fostered in favour of citizens of the state over those belonging to other states, which were not few nor slight, there were certain calamities inflicted by the common course of legislation in most of the states, which went to the prostration of all public faith and all private credit. Laws were constantly made by the state legislatures violating, with more or less degrees of aggravation, the sacredness of private

contracts. Laws compelling the receipt of a depreciated and depreciating paper currency in payment of debts were generally, if not universally, prevalent. Laws authorizing the payment of debts by instalments, at periods differing entirely from the original terms of the contract; laws suspending, for a limited or uncertain period, the

remedies to recover debts in the ordinary course of legal proceedings; laws authorizing the delivery of any sort of property, however unproductive or undesirable, in payment of debts upon an arbitrary or friendly appraisement; laws shutting up the courts for certain periods and under certain circumstances, were not infrequent upon the statute books of many of the states now composing the Union. In the rear of all these came the systems of general insolvent laws, some of which were of a permanent nature, and others again were adopted upon the spur of the occasion, like a sort of gaol delivery under the Lords' acts in England, which had so few guards against frauds of every kind by the debtor, that in practice they amounted to an absolute discharge from any debt, without any thing more than a nominal dividend; and sometimes even this vain mockery was dispensed with. In short, by the operations of paper currency, tender laws, installment laws, suspension laws, appraisement laws, and insolvent laws, contrived with all the dexterous ingenuity of men oppressed by debt, and popular by the very extent of private embarrassments, the states were almost universally plunged into a ruinous poverty, distrust, debility, and indifference to justice. The local tribunals were bound to obey the legislative will; and in the few instances, in which it was resisted, the independence of the judges was sacrificed to the temper of the times. It is well known, that Shays's rebellion in Massachusetts took its origin from this source. The object was to prostrate the regular administration of justice by a system of terror, which should prevent the recovery of debts and taxes.

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§ 489. The next clause in the preamble is "to ensure domestic tranquillity." The illustrations appropriate to this head have been in a great measure anticipated in our previous observations. The security of the states against foreign influence, domestic dissensions, commercial rivalries, legislative retaliations, territorial disputes, and the petty irritations of a border warfare for privileges, exemptions, and smuggling, have been already noticed. The very

habits of intercourse, to which the states were accustomed with each other during their colonial state, would, as has been justly remarked, give a keener edge to every discontent excited by any inequalities, preferences, or exclusions, growing out of the public policy of any of them. These, however, are not the only evils. In small

communities domestic factions may well be expected to arise, which, when honest, may lead to the most pernicious public measures; and when corrupt, to domestic insurrections, and even to an overthrow of the government. The dangers to a republican government

## ENDING, AND BEGINNING

from this source have been dwelt upon by the advocates of arbitrary government with much exultation; and it must be confessed, that the history of free governments has furnished but too many examples to apologize for, though not to justify their arguments, drawn not only against the forms of republican government, but against the principles of civil liberty.

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§ 493. One of the ordinary results of disunion among neighbouring states is the necessity of creating and keeping up standing armies, and other institutions unfavourable to liberty. The immediate dangers from sudden inroads and invasions, and the perpetual jealousies and discords incident to their local position, compel them to resort to the establishment of armed forces, either disproportionate to their means, or inadequate for their defence. Either alternative is fraught with public mischiefs. If they do not possess an adequate military force to repel invasion, they have no security against aggression and insult. If they possess an adequate military force, there is much reason to dread, that it may, in the hands of aspiring or corrupt men, become the means of their subjugation. There is no other refuge in such cases, but to seek an alliance always unequal, and to be obtained only by important concessions to some powerful nation, or to form a confederacy with other states, and thus to secure the cooperation and the terror of numbers. Nothing has so strong a tendency to suppress hostile enterprises, as the consciousness, that they will not be easily successful. Nothing is so sure to produce moderation, as the consciousness, that resistance will steadily maintain the dictates of justice. Summary, nay, even arbitrary authority, must be granted, where the safety of a state cannot await the slow measures of ordinary legislation to protect it. That government is, therefore, most safe in its liberties, as well as in its domestic peace, whose numbers constitute a

preventive guard against all internal, as well as external attacks.

§ 494. We now proceed to the next clause in the preamble, to “provide for the common defence.” And many of the considerations already stated apply with still greater force under this head. One of the surest means of preserving peace is said to be, by being always prepared for war. But a still more sure means is the power to repel, with effect, every aggression. That power can scarcely be attained without a wide extent of population, and at least a moderate extent of territory. A country, which is large in its limits, even if thinly peopled, is not easily subdued. Its variety of soil and climate, its natural and artificial defences, nay, its very poverty and scantiness of

supplies, make it difficult to gain, or to secure a permanent conquest. It is far easier to overrun, than to subdue it. Armies must be divided, distant posts must be maintained, and channels of supplies kept constantly open. But where the territory is not only large, but populous, permanent conquest can rarely occur, unless (which is not our case) there are very powerful neighbours on every side, having a common interest to assist each other, and to subjugate their enemy. It is far otherwise, where there are many rival and independent states, having no common union of government or interests. They are half subdued by their own dissensions, jealousies, and resentments before the conflict is begun. They are easily made to act a part in the destruction of each other, or easily fall a prey for want of proper concert and energy of operations.

§ 495. Besides;—The resources of a confederacy must be far greater than those of any single state belonging to it, both for peace and war. It can command a wider range of revenue, of military power, of naval armaments, and of productive industry. It is more independent in its employments, in its capacities, and in its influences. In the present state of the world, a few great powers possess the command of commerce, both on land and at sea. In war, they trample upon the rights of neutrals who are

feeble; for their weakness furnishes an excuse both for servility and disdain. In peace, they control the pursuits of the rest of the world, and force their trade into every channel by the activity of their enterprise, their extensive navigation, and their flourishing manufactures. They little regard the complaints of those, who are sub[di]vided into petty states with varying interests; and use them only as instruments to annoy or check the enterprise of each other. Such states are not formidable in peace or in war. To secure their rights and maintain their independence they must become a confederated nation, and speak with the force of numbers, as well as the eloquence of truth. The navy or army, which could be maintained by any

single state in the Union, would be scarcely formidable to any second rate power in Europe. It would be a grievous public burthen, and exhaust the whole resources of the state. But a navy or army for all the purposes of home defence, or protection upon the ocean, is within the compass of the resources of the general government, without any severe exaction. And with the growing strength of the Union must be at once more safe for us, and more formidable to foreign nations. The means, therefore, to provide for the common defence are ample; and they can only be rendered inert and inadequate by a division among the states, and a want of unity of operations.

## PART 1

§ 496. We pass, in the next place, to the clause to "promote the general welfare." And it may be asked, as the state governments are formed for the same purpose by the people, why should this be set forth, as a peculiar or prominent object of the constitution of the United States? To such an inquiry two general answers may be given. The states, separately, would not possess the means. If they did possess the means, they would not possess the power to carry the appropriate measures into operation.

§ 497. First, in respect to means. It is obvious, that from the local position and size of several of the states, they must for ever possess but a moderate revenue, not more than what is indispensable for their own wants, and, in the strictest sense, for domestic improvements. In relation to others more favourably situated for commerce and navigation, the revenues from taxation may be larger; but the main reliance must be placed upon the taxation by way of imposts upon importations. Now, it is obvious, from the remarks already made, that no permanent revenue can be raised from this source, when the states are separated. The evasions of the laws, which will constantly take place from the rivalries, and various interests of the neighbouring states; the facilities afforded by the numerous harbours, rivers, and bays, which indent and intersect our coasts; the strong interest of foreigners to promote smuggling; the want of uniformity in the duties laid by the different states; the means of intercourse along the internal territorial boundaries of the

commercial states; these, and many other causes, would inevitably lead to a very feeble administration of any local revenue system, and would make its returns moderate and unsatisfactory. What could New-York do with a single sea-port, surrounded on each side by jealous maritime neighbours with numerous ports? What could Massachusetts, or Connecticut do with the intermediate territory of Rhode-Island, running into the heart of the states by water communications admirably adapted for the security of illicit trade? What could Maryland or Virginia do with the broad Chesapeake between them with its thousand landing places? What could Pennsylvania oppose to the keen resentments, or the facile policy of her weaker neighbour, Delaware? What could any single state on the Mississippi do to force a steady trade for itself with adequate protecting duties? In short, turn to whichever part of the continent we may, the difficulties of maintaining an adequate system of revenue would be insurmountable, and the expenses of collecting it enormous. After some few struggles for uniformity, and co-operation for mutual support, each state would sink back into listless indifference or gloomy despondency; and rely, principally, upon direct taxation for its ordinary supplies. The experience of the few years succeeding the peace of

1783 fully justifies the worst apprehensions on this head.

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§ 500. But if the means were completely within the power of the several states, it is obvious,

that the jurisdiction would be wanting to carry into effect any great or comprehensive plan for the welfare of the whole. The idea of a permanent and zealous co-operation of thirteen (and now of twenty-four) distinct governments in any scheme for the common welfare, is of itself a visionary notion. In the first place, laying aside all local jealousies and accidental jars, there is no plan for the benefit of the whole, which would not bear unequally upon some particular parts. Is it a regulation of commerce or mutual intercourse, which is proposed? Who does not see, that the agricultural, the manufacturing, and the navigating states, may have a real or supposed difference of interest in its adoption. If a system of regulations, on the other hand, is prepared by a general government, the inequalities of one part may, and ordinarily will, under the guidance of wise councils, correct and meliorate those of another. The necessity of a sacrifice of one for the benefit of all may not, and probably will not, be felt at the moment by the state called upon to make it. But in a general government, representing the interests of all, the sacrifice, though first opposed, will, in the end, be found adequately recompensed by other substantial good. Agriculture, commerce, manufactures, may, each in turn, be compelled to yield

something of their peculiar benefits, and yet, on the whole, be still each a gainer by the general system. The very power of thus redressing the evils, felt by each in its intercourse with foreign nations, by prohibitory regulations, or countervailing duties, may secure permanent privileges of an incalculable value. And the fact has been, as theoretical reasoning would lead us to suppose. The navigation and commerce, the agriculture and manufactures of all the states, have received an advancement in every direction by the union, which has far exceeded the most sanguine expectation of its warmest friends.

§ 501. But the fact alone of an unlimited intercourse, without duty or restriction, between all the states, is of itself a blessing of almost inconceivable value. It makes it an object with each permanently to look to the interests of all, and to withdraw its operations from the narrow sphere of its own exclusive territory. Without entering here into the inquiry, how far the general government possesses the power to make, or aid the making of roads, canals, and other general improvements, which will properly arise in our future discussions, it is clear, that if there were

## 56

### ENDING, AND BEGINNING

no general government, the interest of each state to undertake, or to promote in its own legislation any such project, would be far less strong, than it now is; since there would be no certainty, as to the value or duration of such improvements, looking beyond the boundaries of the state. The consciousness, that the union of the states is permanent, and will not be broken up by rivalries, or conflicts of policy, that caprice, or resentment, will not divert any state from its proper duties, as a member of the Union, will give a solid character to all improvements. Independent of the exercise of any authority by the general government for this purpose, it was justly foreseen, that roads would be every where shortened and kept in better

order; accommodations for travellers would be multiplied and meliorated; an interior navigation

on our eastern side would be opened throughout the whole extent of our coast; and, by canals and improvements in river navigation, a boundless field opened to enterprise and emigration, to commerce and products, through the interior states, to the farthest limits of our western territories.

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§ 506. The last clause in the preamble is to "secure the blessings of liberty to ourselves and our posterity." And surely no object could be more worthy of the wisdom and ambition of the best men in any age.







## ENDNOTES FOR PART 1

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- <sup>3</sup> **The Founders' Constitution**, Vol. 4, Art. 7, Doc. 1: *Doc.ary History of the Constitution of the United States of America, 1786–1870*, 4:78. 5 vols. Washington, D.C.: Department of State, 1901–05.
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- <sup>5</sup> **The Founders' Constitution**, Vol. 4, Art. 7, Doc. 3: Farrand, Max, ed. *The Records of the Federal Convention of 1787*, 2:641–43. Rev. ed. 4 vols. New Haven and London: Yale University Press, 1937.
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- <sup>12</sup> **The Founders' Constitution**, Vol. 1, Chap. 5 (Deficiencies of the Confederation), Doc. 23: Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist*, 135–41, 143–46. Edited by Jacob E. Cooke. Middletown, Conn.: Wesleyan University Press, 1961. <sup>13</sup> **The Founders' Constitution**, Vol. 4, Art. 7, Doc. 9: Storing, Herbert J., ed. *The Complete Anti-Federalist*, 4.14.9. 7 vols. Chicago: University of Chicago Press, 1981.
- <sup>14</sup> **The Founders' Constitution**, Vol. 1, Chap. 6 (Convention), Doc. 20: Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist*, 258–67. Edited by Jacob E. Cooke. Middletown, Conn.: Wesleyan University Press, 1961.
- <sup>15</sup> **The Founders' Constitution**, Vol. 4, Art. 7, Doc. 10: Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist*, 296–98. Edited by Jacob E. Cooke. Middletown, Conn.: Wesleyan University Press, 1961.
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- <sup>20</sup> **The Founders' Constitution**, Vol. 1, Chap. 2 (Popular Basis of Political Authority), Doc. 24: *The Papers of James Madison*, 13:18–21. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962–77 (vols. 1–10); Charlottesville: University Press of Virginia, 1977– (vols. 11–).
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- <sup>22</sup> **The Founders' Constitution**, Vol. 4, Art. 7, Doc. 16.
- <sup>23</sup> **The Founders' Constitution**, Vol. 2, Preamble, Doc. 20: Richardson, James D., comp. *A Compilation of the Messages and Papers of the Presidents, 1789–1897*, 2:147–49. 10 vols. Washington, D.C.: Government Printing Office, 1896–99.
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- <sup>25</sup> <http://www.ushistory.org/Doc.s/lincoln1.htm>

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<sup>29</sup> **The Founders' Constitution**, Vol. 2, Preamble, Doc. 2: Blackstone, William. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765–1769*. Chicago: University of Chicago Press, 1979.

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<sup>43</sup> **The Founders' Constitution**, Vol. 1, Chap. 2 (Popular Basis of Political Authority), Doc. 26: *The Papers of James Madison*, 14:170. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962–77 (vols. 1–10); Charlottesville: University Press of Virginia, 1977– (vols. 11–).

<sup>44</sup> **The Founders' Constitution**, Vol. 2, Preamble, Doc. 18.

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