

Antifederalist No. 51

Do Checks and Balances Really Secure the Rights of the People?

This satire is from a pamphlet of "Aristocrotis," *The Government of Nature Delineated; Or An Exact Picture of the New Federal Constitution* (Carlisle, PA, 1788).

The present is an active period. Europe is in a ferment breaking their constitutions; America is in a similar state, making a constitution. For this valuable purpose a convention was appointed, consisting of such as excelled in wisdom and knowledge, who met in Philadelphia last May. For my own part, I was so smitten with the character of the members, that I had assented to their production, while it was yet in embryo. And I make no doubt but every good republican did so too. But how great was my surprise, when it appeared with such a venerable train of names annexed to its tail, to find some of the people under different signatures -- such as Centinel, Old Whig, Brutus, etc. -- daring to oppose it, and that too with barefaced arguments, obstinate reason and stubborn truth. This is certainly a piece of the most extravagant impudence to presume to contradict the collected wisdom of the United States; or to suppose a body, who engrossed the whole wisdom of the continent, was capable of erring. I expected the superior character of the convention would have secured it from profane sallies of a plebeian's pen; and its inherent infallibility debarred the interference of impertinent reason or truth. It was too great an act of condescension to permit the people, by their state conventions, "to assent and ratify," what the grand convention prescribed to them; but to inquire into its principles, or investigate its properties, was a presumption too daring to escape resentment. Such licentious conduct practiced by the people, is a striking proof of our feeble governments, and calls aloud for the pruning knife, i.e., the establishment of some proper plan of discipline. This the convention, in the depth of their united wisdom hath prescribed, which when established, will certainly put a stop to the growing evil. A consciousness of this, is, no doubt, the cause which stimulates the people to oppose it with so much vehemence. They deprecate the idea of being confined within their proper sphere; they cannot endure the thought of being obliged to mind their own business, and leave the affairs of government to those whom nature hath destined to rule. I say nature, for it is a fundamental principle, as clear as an axiom, that nature hath placed proper degrees and subordinations amongst mankind and ordained a few⁽¹⁾ to rule, and many to obey. I am not obliged to prove this principle because it would be madness in the extreme to attempt to prove a self-evident truth.

But with all due submission to the infallible wisdom of the grand convention, let me presume to examine whether they have not, in the new plan of government, inviolably adhered to this supreme principle. . . .

In article first, section first, of the new plan, it is declared that "all legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate" -- very right, quite agreeable to nature "and House of Representatives" -- not quite so right. This is a

palpable compliance with the humors and corrupt practices of the times. But what follows in section 2 is still worse: "The House of Representatives shall be composed of members chosen every second year by the people of the several states." This is a most dangerous power, and must soon produce fatal and pernicious consequences, were it not circumscribed and poised by proper checks and balances. But in this is displayed the unparalleled sagacity of the August convention: that when such bulwarks of prejudice surrounded the evil, so as to render it both difficult and dangerous to attack it by assault and storm, they have invested and barricaded it so closely as will certainly deprive it of its baneful influence and prevent its usual encroachments. They have likewise stationed their miners and sappers so judiciously, that they will certainly, in process of time, entirely reduce and demolish this obnoxious practice of popular election. There is a small thrust given to it in the body of the conveyance itself. The term of holding elections is every two years; this is much better than the detestable mode of annual elections, so fatal to energy. However, if nothing more than this were done, it would still remain an insupportable inconvenience. But in section 4 it is provided that congress by law may alter and make such regulations with respect to the times, places, and manner of holding elections, as to them seemeth fit and proper. This is certainly a very salutary provision, most excellently adapted to counterbalance the great and apparently dangerous concessions made to the plebeians in the first and second sections. With such a prudent restriction as this they are quite harmless: no evil can arise from them if congress have only the sagacity and fortitude to avail themselves of the power they possess by this section. For when the stated term (for which the primary members was elected) is nigh expired, congress may appoint [the] next election to be held in one place in each state; and so as not to give the rabble needless disgust, they may appoint the most central place for that purpose. They can never be at a loss for an ostensible reason to vary and shift from place to place until they may fix it at any extremity of the state it suits. This will be the business of the senate, to observe the particular places in each state, where their influence is most extensive, and where the inhabitants are most obsequious to the will of their superiors, and there appoint the elections to be held. By this means, such members will be returned to the house of representatives (as it is called) as the president and senate shall be pleased to recommend; and they no doubt will recommend such gentlemen only as are distinguished by some peculiar federal feature -- so that unanimity and concord will shine conspicuous through every branch of government. This section is ingeniously calculated, and must have been intended by the convention, to exterminate electioneering entirely. For by putting the time of election in the hands of congress they have thereby given them a power to perpetuate themselves when they shall find it safe and convenient to make the experiment. For though a preceding clause says, "that representatives shall be chosen for two years, and senators for six years," yet this clause being subsequent annuls the former, and puts it in the power of congress, (when some favorable juncture intervenes) to alter the time to four and twelve years. This cannot be deemed an unconstitutional stretch of power, for the constitution in express terms puts the time of holding elections in their power, and certainly they are the proper judges when to exert that power. Thus by doubling the period from time to time, its extent will soon be rendered coeval with the life of man. And it is but a very short and easy transition from this to hereditary succession, which is most agreeable to the institutions of nature, who in all her works, hath ordained the descendant of every species of beings to succeed its immediate progenitor, in the same actions, ends and order.

The indefatigable laborious ass never aspires to the honors, nor assumes the employment of the sprightly warlike steed, nor does he ever pretend that it is his right to succeed him in all his

offices and dignities, because he bears some resemblance to the defunct in his figure and nature. The llama, though useful enough for the purposes for which he was intended by nature, is every way incompetent to perform the offices of the elephant; nor does he ever pretend to usurp his elevated station. Every species of beings, animate and inanimate, seem fully satisfied with the station assigned them by nature. But perverse, obstinate man, he alone spurns at her institutions, and inverts her order.⁽²⁾ He alone repines at his situation, and endeavors to usurp the station of his superiors. But this digression has led me from the subject in hand. . . .

The next object that presents itself is the power which the new constitution gives to congress to regulate the manner of elections. The common practice of voting at present is by ballot. By this mode it is impossible for a gentleman to know how he is served by his dependent, who may be possessed of a vote. Therefore this mode must be speedily altered for that viva voce, which will secure to a rich man all the votes of his numerous dependents and friends and their dependents. By this means he may command any office in the gift of the people, which he pleases to set up for. This will answer a good end while electioneering exists; and will likewise contribute something towards its destruction. A government founded agreeable to nature must be entirely independent; that is, it must be beyond the reach of annoyance or control from every power on earth, Now in order to render it thus, several things are necessary.

1st. The means of their own support must be within the immediate reach of the rulers. For this purpose they must possess the sole power of taxation. As this is a principal article, it ought, in all things to have preeminence; and therefore the convention has placed it in front. "The congress shall have power to lay and collect taxes, duties, imposts and excises," so that they shall never be at a loss for money while there is a shilling on the continent, for their power to procure it is as extensive as their desires; and so it ought, because they can never desire any thing but is good and salutary. For there is no doubt but the convention will transfer their infallibility to the new congress, and so secure them from doing evil. This power of taxation will answer many valuable purposes, besides the support of government. In the first place, in the course of its operation, it will annihilate the relies of the several state legislators. For every tax which they may lay, will be deemed by congress an infringement upon the federal constitution, which constitution and the laws of congress being paramount to all other authority, will of consequence nullify every inferior law which the several states may think proper to enact, particularly such as relate to taxes; so that they being deprived of the means of existence, their pretended sovereignties will gradually wither away.

2dly. It will create and diffuse a spirit of industry among the people. They will then be obliged to labor for money to pay their taxes. There will be no trifling from time to time, as is done now. The new government will have energy sufficient to compel immediate payment.

3dly. This will make the people attend to their own business, and not be dabbling in politics -- things they are entirely ignorant of; nor is it proper they should understand. But it is very probable that the exercise of this power may be opposed by the refractory plebeians, who (such is the perverseness of their natures) often refuse to comply with what is manifestly for their advantage. But to prevent all inconvenience from this quarter the congress have power to raise and support armies. This is the second thing necessary to render government independent. The creatures who compose these armies are a species of animals, wholly at the disposal of

government; what others call their natural rights they resign into the hands of their superiors -- even the right of self-preservation (so precious to all other beings) they entirely surrender, and put their very lives in the power of their masters. Having no rights of their own to care for, they become naturally jealous and envious of those possessed by others. They are therefore proper instruments in the hands of government to divest the people of their usurped rights. But the capital business of these armies will be to assist the collectors of taxes, imposts, and excise, in raising the revenue; and this they will perform with the greatest alacrity, as it is by this they are supported; but for this they would be in a great measure useless; and without this they could not exist.

From these remarks, I think it is evident, that the grand convention hath dexterously provided for the removal of every thing that hath ever operated as a restraint upon government in any place or age of the world. But perhaps some weak heads may think that the constitution itself will be a check upon the new congress. But this I deny, for the convention has so happily worded themselves, that every part of this constitution either bears double meaning, or no meaning at all; and if any concessions are made to the people in one place, it is effectually canceled in another -- so that in fact this constitution is much better and gives more scope to the rulers than they durst safely take if there was no constitution at all. For then the people might contend that the power was inherent in them, and that they had made some implied reserves in the original grant. But now they cannot, for every thing is expressly given away to government in this plan. Perhaps some people may think that power which the house of representatives possesses, of impeaching the officers of government, will be a restraint upon them. But this entirely vanishes, when it is considered that the senate hath the principal say in appointing these officers, and that they are the sole judges of all impeachments. Now it would be absurd to suppose that they would remove their own servants for performing their secret orders. . . . For the interest of rulers and the ruled will then be two distinct things. The mode of electing the president is another excellent regulation, most wisely calculated to render him the obsequious machine of congress. He is to be chosen by electors appointed in such manner as the state legislators shall direct. But then the highest in votes cannot be president, without he has the majority of all the electors; and if none have this majority, then the congress is to choose the president out of the five highest on the return. By this means the congress will always have the making of the president after the first election. So that if the reigning president pleases his masters, he need be under no apprehensions of being turned out for any severities used to the people, for though the congress may not have influence enough to procure him the majority of the votes of the electoral college, yet they will always be able to prevent any other from having such a majority; and to have him returned among the five highest, so that they may have the appointing of him themselves. All these wise regulations, prove to a demonstration, that the grand convention was infallible. The congress having thus disentangled themselves from all popular checks and choices, and being supported by a well disciplined army and active militia, will certainly command dread and respect abroad, obedience and submission at home. They will then look down with awful dignity and tremendous majesty from the pinnacle of glory to which fortune has raised them upon the insignificant creatures, their subjects, whom they have reduced to that state of vassalage and servile submission, for which they were primarily destined by nature. America will then be great amongst the nations⁽³⁾ and princess amongst the provinces. Her fleets will cover the deserts of the ocean and convert it into a popular city; and her invincible armies overturn the thrones of princes. The glory of Britain⁽⁴⁾ shall fall like lightning before her puissant arm; when she ariseth

to shake the nations, and take vengeance on all who dare oppose her. O! thou most venerable and August congress! with what astonishing ideas my mind is ravished! when I contemplate thy rising grandeur, and anticipate thy future glory! Happy thy servants! happy thy vassals! and happy thy slaves, which fit under the shade of thy omnipotent authority, and behold the glory of thy majesty! for such a state who would not part with ideal blessings of liberty? who would not cheerfully resign the nominal advantages of freedom? the dazzling splendor of Assyrian, Persian, Macedonian and Roman greatness will then be totally eclipsed by the radiant blaze of this glorious western luminary! These beautiful expressions, aristocracy, and oligarchy, upon which the popular odium hath fixed derision and contempt, will then resume their natural emphasis; their genuine signification will be perfectly understood, and no more perverted or abused.

ARISTOCROTIS

1. If any person is so stupidly dull as not to discern who these few are, I would refer such to nature herself for information. Let them observe her ways and be wise. Let them mark those men whom she hath endued with the necessary qualifications of authority; such as the dictatorial air, the magisterial voice, the imperious tone, the haughty countenance, the lofty look, the majestic mien. Let them consider those whom she hath taught to command with authority, but comply with disgust; to be fond of sway, but impatient of control; to consider themselves as Gods, and all the rest of mankind as two legged brutes. Now it is evident that the possessors of these divine qualities must have been ordained by nature to dominion and empire; for it would be blasphemy against her supreme highness to suppose that she confers her gifts in vain. Fortune hath also distinguished those upon whom nature hath imprinted the lineaments of authority. She hath heaped her favors and lavished her gifts upon those very persons whom nature delighteth to honor. Indeed, instinct hath taught those men that authority is their natural right, and therefore they grasp at it with an eagerness bordering on rapacity.

2. This is only to be understood of the inferior class of mankind. The superior order have aspiring feelings given them by nature, such as ambition, emulation, etc., which makes it their duty to persevere in the pursuit of gratifying these refined passions.

3. That is, if we may credit the prognostications with which our federal news-papers and pamphlets daily teem.

4. Britain once the supreme ruler of this country, but her authority was rejected. Not, as a great many believe, because her claims were tyrannical and oppressive, but because her dominion excluded those from monopolizing the government into their own hands, whom nature had qualified to rule. It is certainly no more than the natural right of rulers "to bind their subjects, in all cases whatsoever." This power is perfectly synonymous with that clause in the constitution which invests congress with power to make all laws which shall be "necessary and proper for carrying into execution the foregoing powers and all other powers," etc., and that which says "the constitution, laws, and treaties of congress shall be the supreme law of the land; any thing in the constitutions or laws of any of the states to the contrary notwithstanding." But nothing less would satisfy Britain, than a power to bind the natural rulers as well as subjects.