

A Democratic Federalist, Independent Gazetteer, 26 November¹

The examination of the principle of liberty and civil polity is one of the most delightful exercises of the rational faculties of man. Hence the pleasure we feel in a candid, unimpassioned investigation of the grounds and probable consequences of the new frame of government submitted to the people by the Federal Convention. The various doubts, which the subject has created, will lead us to consider it the more by awakening our minds to that attention with which every freeman should examine the intended constitutions of his country.

Several zealous defenders of liberty in America, and some of them of the *first* reputation, have differed from the bulk of the nation in their speculative opinions on the best constitution for a legislative body. In Pennsylvania this question has formed *the line of division* between two parties, in each of which are to be found men of sound judgment and very general knowledge. As this diversity of opinion has not arisen from any peculiarity in our situation or circumstances, it must have been produced by the imperfections of our political researches and by the fallibility of the human mind, ever liable to unfavorable influence even from laudable and necessary passions. The sincere and zealous friend of liberty is naturally in love with a refined democracy, beautiful and perfect as a theory, and adapted to the government of the purest beings; and he views with jealousy, apprehension and dislike not only *real* deviations from democratic principles, but *the appearance* of aristocracy. Hence the idea of an *upper* house (a term erroneously adopted from the British constitution) has been disagreeable and even alarming to many, who were equally friends to perfect and real liberty and to an effective government. Among the various regulations and arrangements of the new Federal Constitution the *peculiar* ground on which the Senate is placed is on this account the most striking and perhaps estimable. A careful comparison of our *second* branch, as proposed by the Convention, with the upper house in the British constitution, will show, I hope, that there is something like a *middle ground* on which the wise and good of both opinions may meet and unite.

The ancestors of the upper house in England originally derived all their power from the feudal system. Possessed by lawless force of extensive domains, which, after a certain period, became hereditary in their families, they established a permanent power through the *military service* of their tenants, for upon those terms were all the lands of the kingdom once held of them. When the address and spirit of the people, exerted upon every proper occasion, obtained for them the interesting privileges of holding in their families also [291] the tenanted estates of the lords, and of alienating their tenancies to such as would perform the conditions on which they were held—when, by the extinction of the families of some of the barons, their tenants remained in possession of their lands—when by the increase of the property, the knowledge and the power of the tenants (or Commons of England) and from other favorable circumstances, the people of that country obtained a portion of that independence which Providence intended for them, such of their nobles as stood the shock, which fell from these circumstances on their order, were formed into a separate independent body. They claimed an absolute right to act in their proper persons, and not by representatives, in the formation of the laws. Being from their wealth, their hereditary power to legislate and judge, and their extraordinary learning in those times, perfectly independent of the rest of the nation, they have often been useful in checking the encroachments of the crown, and the precipitation and inadvertence of the people. In that country they have really held *the balance* between the king and the Commons. But though such a balance may be proper in a royal government, it does not appear necessary *merely in that view* in a genuine republic—which ought to be a government of laws. Yet there are striking and capital advantages resulting from a second, not an *upper* house, if they can be obtained without departing, in our practice, from the real principles of liberty. The arts and influence of popular and unworthy men; too hasty, careless, incautious and passionate proceedings; breaches of wholesome order and necessary form are evils we must wish to avoid, if to be effected without the hazard of greater. Let us examine how far the *peculiar* constitution of our federal Senate will give us the advantages of a second legislative branch without subjecting us to the dangers usually apprehended from such bodies, that the sincere friends of freedom and mankind in America, if there is no longer reason for their differing upon a point of speculation may harmonize and unite.

The federal Senate, from the nature of our governments, will not be hereditary; nor will they possess, like the British barons, a power originally usurped by lawless violence and supported by military tenants. They will not necessarily have even an influential property, for they will have a greater number of fellow citizens, as rich as themselves; and no qualification of wealth exists in the Constitution at present, nor can it be introduced without the consent of *three-fourths of the people of the Union*. It cannot be apprehended, that the people at large of these free commonwealths will consent to disqualify themselves for the senatorial office, which God and the Constitution have intended they should fill. The members of the [296] Senate should certainly be men of very general information, but through the goodness of Providence, numbers will be found in every state, equally well qualified in that respect to execute a trust for which two persons only will be necessary. Instead of their possessing all the knowledge of the state, an equal proportion will be found in some of the members of the House of Representatives, and even a greater share of it will often adorn persons in private walks of life. They will have no distinctions of rank, for the persons over whom a Senator might be weak enough to affect a superiority will be really equal to him and may in a short time change situations with him. The Senator will again become a private citizen and the citizen may become a Senator—may more—a president of the Senate or President of the Union. The upper house in England have an interest different and separate from the people and, whether in the execution of their office or not, are a distinct body of men, a superior order. Many little circumstances tend to favor and promote this spirit, and an independent distinction. If an ambassador is sent to their court by France or Spain, he is a nobleman of his own country, and a nobleman must be sent from England in return, which operates as a deprivation of the rights of every well-qualified commoner in the kingdom. This is a hardship, which cannot arise from our second branch, but exists in Britain not only in the case particularized, but in regard to many other employments of honor and profit. But a greater and more essential distinction between the upper house in England and our federal Senate yet remains. The members of the former claim and possess all their powers and honors in their *own right*, their *own hereditary right*, while the new Constitution renders our Senate merely a *representative* body without one distinction in favor of the birth, rank, wealth or power of the Senators or their fathers. There has arisen out of the particular nature of our affairs, a *peculiar* happiness in the formation of this body. The federal Senate are the *representatives of the sovereignties of their respective states*. A second branch, thus constituted, is a novelty in the history of the world. Instead of an hereditary upper house, the American Confederacy has created a body, the temporary representatives of their component sovereignties, dignified only by their being the immediate delegates and guardians of sovereign states selected from the body of the people for that purpose, and for no reasons, but their possessing the qualifications necessary for their station. We find then in this body, none of the evils of aristocracy apprehended by those who have drawn their reasonings from an erroneous comparison with the upper house of Britain, and all the benefits of a second branch, without hazarding the rights of the people in the smallest particular. As our federal Representatives [297] and state legislatures will be composed of men, who, the moment before their election, were a part of the people and who on the expiration of their term, will return to the same private situations, so the members of our federal Senate will be elected from out of the body of the people, without one qualification being made necessary, but mere citizenship, and at the expiration of their term will again be placed in private life. The Senate, therefore, will be as much a democratic body as the House of Representatives, with this advantage, that they will be elected by the state legislatures to whom, on account of their superior wisdom and virtue, the people at large will have previously committed the care of their affairs.

The plan of federal government proposed by the Convention has another merit of essential consequence to our national liberties. Under the old Confederation, the people at large had no voice in the election of their rulers. The collected wisdom of the state legislatures will hereafter be exercised in the choice of the Senate, but our federal Representatives will be chosen *by the votes of the people themselves*. The Electors of the President and Vice President of the Union may also, by laws of the separate states, be put on the same footing.

The separation of the judicial power from the legislative and executive has been justly deemed one of the most inestimable improvements in modern polity; yet no country has ever completely accomplished it in their actual practice. The British peers are criminal judges in cases of impeachment, and are a court of appeal in civil cases. The power of impeachment, vested in our federal Representatives, and the right to hear those cases, which is vested in the Senate, can produce no punishment in person or property, *even on conviction*. Their whole judicial power lies within a narrow compass. They can take no cognizance of a private citizen and can only declare any dangerous public officer no longer worthy to serve his country. To punish him for his crimes, in body or estate, is not within their constitutional powers. They must consign him to a jury and a court, with whom the deprivation of his office is to be no proof of guilt.

The size of the Senate has been considered by some, as an objection to that body. Should this appear of any importance it is fortunate that there are reasons to expect an addition to their number. The legislature of Virginia have taken measures preparatory to the erection of their western counties into a separate state, from which another good consequence will follow, that the free persons, which will remain within the Dominion of Virginia, will perhaps be nearly or quite as well represented in the Senate as Pennsylvania or Massachusetts. Should Vermont, at some future time, be also introduced into the Union, a further addition to the number of our Senators [298] will take place. If therefore there is any importance in the objection to the size of our federal Senate, or if any such objection prevails in the minds of the people, it is in a way of being removed.

The executive powers of the Union are separated in a higher degree from the legislative than in any government now existing in the world. As a check upon the President, the Senate may disapprove of the officers he appoints, but no person holding *any office* under the United States can be a member of the federal legislature. How differently are things circumstanced in the two houses in Britain where an officer of any kind, naval, military, civil or ecclesiastical, may hold a seat in either house.

This is a most enlightened time, but more especially so in regard to matters of government. The divine right of kings, the force of ecclesiastical obligations in civil affairs, and many other gross errors, under which our forefathers have lain in darker ages of the world, are now done away. The natural, indefeasible and unalienable rights of mankind form the more eligible ground on which we now stand.

The United States are in this respect *the favored of Heaven*.² The Magna Charta, Bill of Rights, and common law of England furnished in 1776 a great part of the materials out of which were formed our several state constitutions. All these were more or less recognized in the old Articles of Confederation.

On this solid basis is reared the fabric of our new federal government. These taken together form THE GREAT WHOLE OF THE AMERICAN CONSTITUTIONS, the faintest fabric of liberty that ever blessed mankind, immovably founded on a solid rock, whose mighty base is laid at the center of the earth.

¹ This item, headed: "Thoughts on the Federal Senate, &c." was reprinted in the *Freeman's Journal*, 5 December; Middletown, Conn., *Middlesex Gazette*, 31 December, and the *Maryland Journal*, 8 February 1788. For other Pennsylvania items defending the Senate, see "An American Citizen" II, 28 September; II A above, and "A Supplement to the Essay on Federal Sentiments," 23 October, MfncPa, 151.

It is possible that Trench Cose wrote "A Democratic Federalist." On the address page of a letter he wrote on 26 November, Cose stated: "The enclosed paper is also mine. I wish you would have it republished in New York, but do not mention the writer, as my attempt to conciliate our Constitutionals (the design of the paper) may be deemed uniting with them. You know I am of no party" (to David L. Franks, CC290-8).