



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 3: The Founding Era – Separation of Powers

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John Adams, Thoughts on Government (1776)¹

If Thomas Paine's "Common Sense" was among the most influential pamphlets of the revolutionary era in calling for American independence, John Adams's "Thoughts on Government" was among the most influential in charting the path by which the Americans could constitute their own governments. Richard Henry Lee, among others, thought Adams's pamphlet showed "the business of framing government not to be so difficult a thing as most people imagine."² It was possible after all to invent a government from scratch. His "Thoughts" did so by applying classical political theories of "mixed government" to the American situation, arguing that Americans should have a republican government but one that made space for a natural aristocracy. Although a strong advocate for three branches of government, his plan called for the lower house to appoint the others. His plan was followed by many of the revolutionary era state constitutions.

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We ought to consider what is the end of government, before we determine which is the best form. Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow, that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best.

All sober inquirers after truth, ancient and modern, pagan and Christian, have declared that the happiness of man, as well as his dignity, consists in virtue. . . .

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. . . . [T]here is no good government but what is republican. That the only valuable part of the British constitution is so; because the very definition of a republic is "an empire of laws, and not of men." That, as a republic is the best form of governments, so that particular arrangement of the powers of society, or, in other words, that form of government which is best contrived to secure an impartial and exact execution of the laws, is the best of republics.

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As good government is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step, then, is to depute power from the many to a few of the most wise and good. . . .

The principal difficulty lies, and the greatest care should be employed, in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this assembly to do strict justice at all times, it should be an equal representation, or, in other words, equal interests among the people should have equal interests in it. Great care should be taken to effect this, and to prevent unfair, partial, and corrupt elections. Such regulations, however, may be better made in times of greater tranquility than the present; and they will spring up themselves naturally, when all the powers of government come to be in the hands of the people's friends. At present, it will be safest to proceed in all established modes, to which the people have been familiarized by habit.

¹ From *The Works of John Adams*, ed. Charles Francis Adams, vol. 4 (Boston: Little, Brown, 1851), 193–200.

² Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: Norton, 1972), 131.



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. . . . I think a people cannot be long free, nor ever happy, whose government is in one assembly.

My reasons for this opinion are as follow: –

1. A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudices, and consequently productive of hasty results and absurd judgments. . . .

2. A single assembly is apt to be avaricious, and in times will not scruple to exempt itself from burdens

3. A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. . . .

4. A representative assembly, although extremely well qualified, and absolutely necessary, as a branch of the legislative, is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch.

5. A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws.

6. Because a single assembly, possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.

But shall the whole power of legislation rest in one assembly? Most of the foregoing reasons apply equally to prove that the legislative power ought to be more complex; to which we may add, that if the legislative power is wholly in one assembly, and the executive in another, or in a single person, these two powers will oppose and encroach upon each other, until the contest shall end in war, and the whole power, legislative and executive, be usurped by the strongest.

The judicial power, in such case, could not mediate, or hold the balance between the two contending powers, because the legislative would undermine it. And this shows the necessity, too, of giving the executive power a negative upon the legislative, otherwise this will be continually encroaching upon that.

To control these dangers, let a distinct assembly be constituted, as a mediator between the two extreme branches of the legislature, that which represents the people, and that which is vested with the executive power.

Let the representative assembly then elect by ballot, from among themselves or their constituents, or both, a distinct assembly, which, for the sake of perspicuity, we will call a council. . . .

These two bodies, thus constituted, and made integral parts of the legislature, let them unite, and by joint ballot choose a governor, who, after being stripped of most of those badges of domination, called prerogatives, should have a free and independent exercise of his judgment, and be made also an integral part of the legislature. . . . If he is annually elective, as he ought to be, he will always have so much reverence and affection for the people, their representatives and counselors, that, although you give him an independent exercise of his judgment, he will seldom use it in opposition to the two houses. . . .

. . . . And these and all other elections . . . should be annual, there not being in the whole circle of the sciences a maxim more infallible than this, “where annual elections end, there slavery begins.”

. . . . This will teach them the great political virtues of humility, patience, and moderation, without which every man in power becomes a ravenous beast of prey.

This mode of constituting the great offices of state will answer very well for the present; but if by experiment it should be found inconvenient, the legislature may, at its leisure, devise other methods of creating them, by elections of the people at large . . . or it may change the term for which they shall be chosen to seven years, or three years, or for life, or make any other alterations which the society shall find productive. . . .

A rotation of all offices . . . has many advocates It would be attended, no doubt, with many advantages; and if the society has a sufficient number of suitable characters to supply the great number of vacancies which would be made by such a rotation, I can see no objection to it. . . .

. . . . [T]he judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should be always men of learning and experience. . . . Their minds should not be



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distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior. . . . For misbehavior, the grand inquest of the colony, the house of representatives, should impeach them. . . .

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Laws for the liberal education of youth, especially of the lower class of people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant.

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If the colonies should assume governments separately, they should be left entirely to their own choice of forms; and if a continental constitution should be formed, it should be a congress, containing a fair and adequate representation of the colonies, and its authority should sacredly be confined to these cases, namely, war, trade, disputes between colony and colony, the post-office, and the unappropriated lands of the crown, as they used to be called.

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