A 90 Day Study of the United States Constitution and Federalist Papers

April 20, 2010 – August 24, 2010

Essays by CONSTITUTING AMERICA

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And Guest Constitutional Scholars

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Archive for the 'Article I of the United States Constitution' Category

April 21, 2010 Article I of the U.S. Constitution – Janine Turner

Thursday, April 22nd, 2010

Howdy from Texas! What a great first day of blogging. How exciting to be having a national conversation about the reading of the U.S. Constitution. Don't forget to read it with your kids at the dinner table, in the car, before bedtime! Perhaps they will then want to enter our, "We the People 9.17 Contest" for kids.

I want to thank David Bobb for being our first Guest Blogger. We have the link to his site at the Kirby Center on our site and they offer a fabulous five hour seminar about the Constitution that is broken down into 45 minute segments.

I get such a thrill when I read the Constitution. Our forefathers had such vision and such wisdom! The Preamble is masterful and within it lies thoughts to ponder. Some relevant phrases today are: "promote the general welfare." It does not say "specific welfare of every individual." We are given liberty to pursue our welfare as we wish.

This leads to the second relevant phrase: "secure the Blessings of Liberty to ourselves and our Posterity." Well, let's see.. the word Blessings is in there. Blessings are not from "government" but from God. We then have the word, "Liberty." How does one define Liberty? I looked up the word, "Liberty." Here are two of the definitions: "immunity from arbitrary exercise of authority: political independence." Another definition is: "freedom of choice"; "liberty of opinion"; "liberty of worship.." If we are to take an inventory of our immunity form arbitrary exercise of authority and/or political independence today, then I think it is safe to say that these liberties are being infringed upon. How about freedom of opinion? It would certainly appear that the negative labeling of the Tea Party is an attempt to stifle freedom of opinion. How about freedom of worship? What about the child in Massachusetts who was taken out of class and sent to the psychiatrist because the child drew a picture of the cross of Jesus? Thus, in the Preamble, alone, I see many aspects that are both relevant and endangered.

Article I Section 8 drew my fascination. Our founding fathers intended for the two Senators from each state to be chosen by the State Legislature. The Senate was to be the State's house and the House of Representatives the People's House. This was changed, as we read today, by the XVII Amendment in

1913 – during the Progressive era. This was not our forefather's intention. One has to ask would the healthcare bill have passed today if the Senate was operating within it's original intent – the Senate representing the States? Somehow, I do not think so.˜

The other clause that captured my attention was in Article 1 Section 8 Clause 8: "to promote the Progress of Science and useful Arts, by securing for Limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." I think that this security of ownership gave people the desire and passion to spread their wings and fly. This clause gave Americans the burst of inventions and creativity that made America great. Promoting progress and giving the Inventors exclusive rights – in other words- giving the people their Liberty and keeping government out of their affairs – led to the fulfillment of human genius. Big government, the kind we face today, stifles the spirit of democratic ingenuity and deflates desire.

The list goes on and the study is broad. Yet, I am so grateful to have this opportunity to be reading, blogging, thinking about the U.S. Constitution with you all. I thank you for your participation. I look forward to hearing from you tomorrow and spread the word!

Blessings,

Janine Turner

Posted in Article I of the United States Constitution, Constitutional Essays by Janine | Edit | 10 Comments »

April 21, 2010 Article I of the U.S. Constitution – Cathy Gillespie

Thursday, April 22nd, 2010

What a fantastic conversation we have going on the first day of the 90 in 90 Blog! It is fascinating to scroll through the comments, and see how knowledgable you all are!

We have received several emails from teachers who are assigning participation in the reading and blogging as either course requirements or extra credit! We welcome students, children, parents, and families. And we remind all young people grades K-12 to enter our We The People 9.17 contest! We need your entertaining short films, PSA's, cool songs, thoughtful essays, and younger kids, we look forward to your poems and holiday cards!

Thank you especially for making the effort to answer each other's questions! Many of you have made suggestions for improving the Constituting America website and blog. We take your ideas seriously, and appreciate you taking the time to share them.

It is late, and I have been driving all day on a quick trip up north and back, but I wanted to share a few thoughts before we turn our attention to Article II in the morning!

It is no accident that the United States Constitution begins with the words, "We the People." It is also no accident that Article I sets out the structure and legislative powers of the U.S. Congress. The U.S.

Congress, and especially the U.S. House, are the governmental bodies closest to the American people. By beginning with the words "We the People," and placing the Congress in Article I, our United States Constitution leads with the most important element of our government – us, the people.

I worked as a staff person in Congress for many years, and my former boss, Congressman Joe Barton, was fond of pointing out that the U.S. House of Representatives is the body of government closest to the people. While Elections every two years may cause Members of Congress and their staffs to feel they are perpetually engaged in a never-ending campaign, the two year term of office keeps U.S. House members accountable to the people who elect them. And if they stray too far from the will of their constituents, the voters have a frequent opportunity to express their displeasure. It is the beauty of the system described in Article I that allows the people a mechanism to express their approval or disapproval in a timely way. The system only works, though, when "we the people" are educated, engaged, and motivated to exercise our rights, especially our right to vote.

I am looking forward to our journey through the U.S. Constitution and the Federalist Papers together! I am already learning a great deal from the blogs posted over the past two days. Please spread the word on Facebook, Twitter, and forward our website link via email. We want to create as large a national dialogue as possible about our founding principles! Thank you again for your participation. See you tomorrow!

Blessings,

Cathy Gillespie

Posted in Article I of the United States Constitution, Constitutional Essays by Cathy | Edit | 5 Comments »

April 21, 2010 – Article I of the U.S. Constitution – Guest Blogger: David Bobb, Director and Lecturer in Political Science | Allan P. Kirby, Jr. Center for Constitutional Studies and Citizenship | Hillsdale College

Wednesday, April 21st, 2010

"He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance."

This complaint, however current it might sound, was lodged not against any occupant of the White House. Rather, American revolutionaries made this claim against King George III in the Declaration of Independence.

Imbued with the "Spirit of '76," and given voice by a young Thomas Jefferson, early Americans also indicted the British King in the Declaration "for suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever."

The Crown had assumed all legislative, executive, *and* judicial powers, the colonists claimed. Thus they declared that the "prince" (King George III) had become a "tyrant." And a tyrant "is unfit to be the ruler of a free people."

To understand Article I of the Constitution—and the entirety of the "supreme law of the land"—you have to understand the argument of the Declaration of Independence. The Declaration indicts the King for aggrandizing his power at the expense of the people. It also acts as a blueprint for limited government by making the bold claim that our rights come not from any government but instead from the Creator.

The Constitution, then, gives structure to our liberties—and to limited government. Article I of the Constitution is the foundation of this structure. Made up of ten sections, Article I is the longest of the Constitution's seven articles. Its length should not confuse us, however, for its meaning is clear if we read it carefully.

Article I, Section 1 says that the law-making authority in the national government resides in Congress. Not in the Crown, and not directly with the people. We the people should not vote directly on every issue, the Founding Fathers held. That strictly democratic form of government can too easily lead to tyranny. Instead, we the people will elect representatives. This is republican rule, and conduces more to liberty than any other form of government.

The national legislature is bicameral, with a House of Representatives elected directly by the people, and a Senate originally composed of members elected by the state legislatures. The Seventeenth Amendment, adopted as part of Progressive reforms in the early 20th century, required direct election of senators, a significant departure from the Founders' Constitution. Each state, the original Constitution specified, gets two senators (this is the only part of the Constitution today that cannot be amended).

Article I, Section 8 gives an enumeration, or list, of the powers of Congress. When compared to the anemic Articles of Confederation, which even denied Congress the power to tax, the enumerated powers were quite expansive. Compared to the scope and scale of congressional authority today, the enumerated powers seem quaint, kind of like a powdered wig or tri-cornered hat.

"That's all we get to do? That's it?" One can almost hear the response of many members of Congress today if they were to read Article I, Section 8 of the Constitution. Asked to cite the constitutional justification for the recent health care bill, for example, one member of Congress said he doesn't "worry about the Constitution on this." Another member, the chairman of the House Judiciary Committee, claimed that the legislation was authorized by the "good and welfare clause" (he was probably thinking of the General Welfare Clause of Article I, Section 8, Clause 1) Still others have cited the Interstate Commerce Clause (I.8.3), while a number have cited the Necessary and Proper Clause (I.8.18).

I hope that we can discuss and debate the constitutional status of the health care law as part of this blog. Whether you're a Republican or Democrat, for or against the law, it seems that we should all agree that for a bill to legitimately become law it has to be grounded in the Constitution. Otherwise Article I doesn't mean what it says, and the foundation of our liberties is left shaky and unsure.

It's lately been said that politicians should prepare for elections by abiding by one simple rule, "It's the economy, stupid." The economy is important, to be sure, but I hope that in our national debate, today we can remember most of all that "It's the Constitution." We'd be stupid not to.

Posted in Article I of the United States Constitution, Constitutional Scholar Essays | Edit | 138 Comments »

Archive for the 'Article II of the United States Constitution' Category

April 22, 2010 – Article II U.S. Constitution – Janine Turner

Friday, April 23rd, 2010

Howdy from Texas! Thanks for joining todays reading of Article II of the U.S. Constitution! I read it with my daughter in the car today.. well, she read it to me because I was driving! Isn't it all fascinating? I LOVE studying the brilliance of our forefathers. I bet they are rather pleased that we are taking an interest and instilling a passion in our children and/or loved ones regarding the Constitution. Please remember to read it to your kids or share it with a friend or loved one! Perhaps your child or a child you know will want to enter our "We the People 9.17 Contest." Entries are due July 4th, 2010.

I want to thank Andrew Langer for his wonderful blog today! I learned so much. It is awesome to have such Constitutional knowledge shared with us, isn't it?

I was intrigued with Article II Section I, "I do solemnly swear (or affirm) that I will faithfully execute the Office of the President of the United States, and will to the best of my Ability preserve, protect and defend the Constitution of the United States." What first struck me is that it states, "preserve, protect and defend the Constitution of the United States." It doesn't state, "change, disregard, or go-around" the Constitution of the United States.

I was also most intrigued with the fact that it does not state, "I will preserve, protect and defend the PEOPLE of the United States." As I pondered upon this I came to the realization that if we have no basis, no thesis, no principle, no foundation for our country, if we have no government of checks and balances, a government that is accountable to the people, then how can the government help the people. Without the Constitution, without a roadmap, we have cannot preserve, protect and defend the people of the United States. Thus, if we lose the Constitution, we lose our country, we lose the people.

I conclude with my final observation about Article II, which is that if the President is to, "preserve, protect and defend the Constitution of the United States" then I should, "preserve, protect and defend the Constitution of the United States." I must hold it dear and near to my heart. I must read it, absorb it, understand it, treasure it, value it, live it. And most importantly, because we are a Republic, because we are a people who rule through our elected officials, then it is my duty to thoroughly "vet" the candidate for whom I am voting. I must make sure that the candidate, with all his/her heart and all his/her might, in all sincerity will, "preserve, protect and defend the Constitution of the United States."

So, goodnight. I am looking forward to tomorrow! Article III. Check out my behind the scenes video pod casts. They are on our Facebook. They are also going to be on our website soon.

God Bless,

Janine Turner

Posted in Article II of the United States Constitution, Constitutional Essays by Janine | Edit | 3 Comments »

April 22, 2010 – Article II of the U.S. Constitution – Cathy Gillespie

Friday, April 23rd, 2010

A big thank you to Andrew Langer for his thoughtful post today!

As I read Article II, I am struck by the incredible wisdom and foresight of the founders. While the electoral college is true to the Republic form of government they envisioned, it is more necessary today than ever. With massive population centers concentrated in a few large states, if it were not for the electoral college, states such as New Mexico, or New Hampshire, would simply be "fly over" territory in today's Presidential campaigns. The electoral college system ensures that individuals running for President in our country visit many diverse areas and states, and that a wider group of American citizens have an opportunity to affect the Presidential campaigns, and election outcome.

Section 2 is timely as well, as we may soon be seeing more Supreme Court nominations. It is interesting to note the punctuation in this phrase: "he shall nominate, and by and with the advice and consent of the Senate shall appoint…." It is soley the President's prerogative who he nominates, but the Senate is empowered to give "advice and consent," on the actual appointment. "Advice and consent" of the Senate for the President's Supreme Court nominees is a rare convergence of the three branches of government, and differing philosophies have prevailed over the years as to what standards the Senate should utilize in determining their "advice and consent." Should the Senate evaluate the President's Supreme Court nominees on their judicial experience, intellect and temperment alone, or should the nominee's ideology and judicial point of view be taken into account? The Constitution provides no definition of what criteria the Senate should utilize in their "advice and consent" duty, and different standards have been applied over the years. It does seem that in recent confirmation battles, ideology has been a more predominant factor in the process.

As we watch the next Supreme Court nominee's confirmation, whenever it occurs, we should remember that we are watching our founders' vision in action.

Thank you to everyone who has shared such thoughtful and insightful comments. Please spread the word about "90 in 90″ through Facebook, Twitter, and email! We want to grow our national conversational blog!

See you tomorrow for Article 3!!

Blessings!

Cathy Gillespie

Posted in Article II of the United States Constitution, Constitutional Essays by Cathy | Edit | 1 Comment »

April 22, 2010 – Article II of the U.S. Constitution – Guest Blogger: Andrew Langer, President of the Institute for Liberty

Thursday, April 22nd, 2010

While much attention has been focused on Congress and Article One's legislative powers, the Constitution provides for three branches of government and Article Two of the U.S. Constitution outlines powers for the executive branch i.e., the office of the President and those who serve under him. In addition to enumerations of the powers to nominate appointees (with the advice and consent of Congress), the power to make treaties (which have to be ratified by the Senate), and his executive or enforcement authority Article 2 also discusses the wholly unique system of electing a president, known as the electoral college.

In this particular post, we will focus on two aspects of Article Two: the enforcement of laws passed by Congress, as well as the issue of the Electoral College.

As is clear through the structure of the Constitution itself, power flows from the people to the government via the legal structure called the Constitution. In its opening statement, Article 2 reaffirms this concept, making it clear that power "vests" in an "executive" branch of government—meaning that it administers, oversees, and "executes" what is the legislative "will" of the people.

Because the system is one of checks, balances, and diffusion of power (the founders were skeptical of concentrated government power), powers enumerated to the federal executive are undercut by powers enumerated to Congress under Article 1 (and vice-versa). The President is Commander-in-Chief of the military under Article 1, but it is only Congress that can declare war. On the other hand, while Congress passes laws, Article Two vests with the Executive Branch the requirement that those laws are "faithfully executed". In the modern executive branch many of these tasks are carried out under what is called "administrative law" via the federal regulatory state.

Issues have arisen when the agencies carrying out the execution of Congressional laws appear to exceed their statutory mandate and often challenges arise charging that an agency has effectively undermined Congress' power to make the law. While there may be an inevitable tension between the executive and the legislative branch in terms of the scope of their power, Article Two contemplates that the Executive branch engage in enforcement and execution of laws with little to no lawmaking like behavior occurring.

Critics charge that as Congress grows more unwilling to take proper care in writing laws that are clear and limited in scope, they have invited the Executive Branch to assume far more authority in the interpretation and execution of those laws leading to a greatly convoluted regulatory state. However as the writers of the Constitution make clear the powers of the executive are to be checked by those of the

other two branches such that a significant deviation from the Constitution could be subject to challenge in Court or by Congress through its powers to tax and appropriate etc.

Now let us turn to the electoral college.

When envisioning the Republic, the founders recognized that competing interests would require that the demands of a majority group be weighed against the impact of those demands against the rights of minority groups (political or otherwise). Thus, we are not a pure democracy, but a representative republic—and, the American Electoral College was born out of those notion.

One of the challenges to the Republic, the founders knew, would be the inherent conflict between the interests of rural Americans and those who lived in cities. Different things are important to people living in farming communities than to those who live within urban centers—there are different public policy priorities, at the very least, and possibly different sets of values and societal mores. But in a pure democracy, regions with the highest populations would drive the public policy agenda, potentially sacrificing the interests of those in rural or desolate regions on the altar of the regions with the most people.

The founders didn't want the selection of the President to be by "urban center fiat", so they devised a mechanism to level the playing field. It is akin to how the World Series is played: it isn't decided in one single game, or which team scored the most runs in a series of different games. It is broken down into a "best of seven" contest, leveling the playing field by allowing each time numerous chances to score incremental victories.

As initially envisioned, each state gets a number of votes equal to the sum of the number of House members plus the number of Senators. That way, even the states with the smallest population have a minimum of three votes, and are thus equalized. Moreover, when combined, the electoral votes of these smaller or less populous states could challenge or overcome the electoral votes of larger and more populated ones. Thus, the common interests of more rural states could be effectively aggregated, and their rights protected.

Unlike many other systems which rely on simple majorities our system ensures that the President actually presides over "united" states and has a built in constituency that is broad and enduring. The end result is the President of our nation ultimately chosen by the electoral college far more broadly represents the interests of the nation as a whole.

Posted in Article II of the United States Constitution, Constitutional Scholar Essays | Edit | 73 Comments »

Archive for the 'Article III of the United States Constitution' Category

April 23, 2010 – Article III U.S. Constitution – Janine Turner

Saturday, April 24th, 2010

Howdy from Texas. I thank you for joining us on our day 3 of the "90 in 90 = 180 History Holds the Key to the Future." Juliette read Article III to me in the car today and I found it to be just fascinating how it all fits together like pieces of a puzzle. I hope you are reading the Constitution with your children and/or family or friend and spreading the word about our contest for kids the "We the People 9.17 Contest." Entries are due July 4th!

It is exciting that you are participating in our national conversational blog/reading. The blog entries are stimulating and though provoking and I thank you for your time and dedication. I also thank Lawrence Spiwak for his perceptive and provoking essay!

I am in awe in regard to how the checks and balances continue to unfold. The Republic of the United States continues to offer the people their voice through their elected representatives even with the Supreme Court Justices. The people in essence nominate and confirm through the President and Senate that we elect. Check. The people may impeach a Supreme Court Justice through the President and Senate whom we elect. Check.

Thus, the relevancy today is to be very careful whom we elect and to know our representative's thoughts and opinions about the Constitution. The Supreme Court's job is to uphold the Constitution yet we know in modern society there are differing views about the relevancy of the Constitution and it is continuously under attack, even if subtly.

The other aspect of today's relevancy that fascinates me is in regard to the Constitution's diligence in making sure that tyranny could not raise it's ugly head. The checks and balances came full circle today in reading Article III and in reading Lawrence Spiwak's essay. Once again it is the mastery of the checks and balances that motivate marvel.

The Legislative Branch legislates potential laws of the land, written indirectly through the people who elected the representatives. Check. The President executes the bill by signing it, fulfilled by the people who elected him. Check. And the Supreme Court, who is indirectly chosen by the people through their elected President and Senate, evaluates the law to make sure it does not violate the Constitution and/or the rights of the citizens or states. Check. The Legislative bill is empowered or disempowered by the President who may execute it or veto it. Check by President. Yet, Congress may override the President by voting the bill into fruition by 2/3 of the vote. Check by Congress. The Supreme Court may hold the new law to the light of Constitution and may either render it valid or invalid. Check by the Supreme Court.

And all the while, the people are ruling through their representative Republic. The people, by voting, have the ultimate check. Vetting and voting seem to be the pivotal words gleaned from Article I, II and III. We need to check out our candidates thoroughly. Mysteries do not serve the process well. But, men are not angels and thus, we have the Constitution to keep us honest.

Brilliant.

See you tomorrow!!!! Articles 4-7.

Have a great night. Check!

Janine Turner

P.S. I hope this makes sense. I am exhausted and can barely hold my eyes open!

Posted in Article III of the United States Constitution, Constitutional Essays by Janine | Edit | 12 Comments »

April 23, 2010 – Article III of the U.S. Constitution – Cathy Gillespie

Saturday, April 24th, 2010

What an exciting first week we have had! Articles I, II, and III of the United States Constitution, with some outstanding guest bloggers: David Bobb, Andrew Langer and Lawrence Spiwak.

A big thank you today to Lawrence Spiwak for his thoughts on Article III. Mr. Spiwak clearly explained the delicate system of checks and balances working in concert with a strong and independent judiciary. I loved Mr. Spiwak's point that the best mechanism for change in the judicial branch is to let the electoral process play out. That is the best mechanism for change in any branch of the government, but it first requires informed, educated, engaged, and enthusiastic citizens, citizens who know the United States Constituion and our country's founding principles!

When reading Article III, I was struck by its brevity, as compared with Articles I and II, and how much latitude Congress was given in establishing the Court system – another example of checks and balances at work.

I was also very interested in the Alexander Hamilton quote Bill posted from Federalist 78, so I looked it up and thought it worth posting in its entirety:

"Whoever attentively considers the different departments of power must perceive, that in a government which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgement; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

"Neither Force nor Will, but merely judgement." I had never thought of the differing powers of the three branches in those terms before, but it is true – the executive and legislative branch have many more enforcement mechanisms and sheer power and will at their disposal, than the judicial branch.

Thank you for joining us this week as we explored the three branches of government in Articles I, II, and III of the Constitution. The Assignment for the weekend is to read Articles IV, V, VI, and VII and

be ready to blog on them, on Monday! Tuesday we will blog on the Amendments, and Wednesday we will blog on the the first Federalist Paper.

Have a Blessed weekend!

See you on Monday!!

Cathy Gillespie

Posted in Article III of the United States Constitution, Constitutional Essays by Cathy | Edit | 3 Comments »

April 23, 2010 – Article III of the U.S. Constitution – Guest Blogger: Lawrence J. Spiwak, President of the Phoenix Center for Advanced Legal and Economic Public Policy Studies

Friday, April 23rd, 2010

Article III of the Constitution provides the parameters for the third and coequal branch of the federal government: the Federal Judiciary. Today's posting will focus on the importance of judicial independence as contemplated by the framers.

In Article III Section 1, the Constitution sets up the Supreme Court and "inferior" courts (i.e. Federal district courts and federal appeals courts), and provides that federal judges shall "hold their offices for good behavior" (i.e., life terms). Article III Section 2 then defines what type of disputes fall within the Federal Judiciary's jurisdiction. (Article III Section 3 also sets forth the specific provisions for trying a case of treason, but discussion of this specialized topic is better left to a dedicated post.)

The Founding Fathers understood that a strong and independent judiciary was an integral part of the brilliant system of "checks and balances" they developed: the Legislative Branch would pass a bill; the Executive Branch (i.e., the President) would sign the bill into law, and then the Judicial Branch would evaluate whether the law passed Constitutional muster. If the courts found that a particular piece of legislation failed this test, then the Legislative Branch remains free to take another bite at the apple, and so the virtuous cycle of our Constitutional Democracy continues.

Perhaps one of the most often asked questions by non-lawyers about the Judicial Branch is why are members of the Federal Judiciary appointed for life (the aforementioned "good behavior" language mentioned above), while members of Legislative and Executive Branches have Constitutionally defined terms of office? The answer is straightforward: the Founding Fathers clearly understood that the judiciary must be impartial, dispassionate and, most importantly, free from political pressures that face the Executive and Legislative Branches. By not having to constantly fear political reprisal, judges may administer the law fairly without regard to public reaction.

But what if a member of the Judiciary is guilty of malfeasance? Certainly, for conduct unbecoming the office (malpractice, corruption, etc.), the Constitution provides for an impeachment process.

But what if you just don't like a judge's approach to a case? Stated another way, you are convinced that the judge has engaged in some sort of "judicial activism" whereby the judge has "made" law rather than "interpreted" the law. Is this ground for impeachment? While technically the Constitution's definition of impeachable offenses might be considered broad enough to cover "egregious" judicial activism on the part of a judge, a more considered view is that the elected branches exercise restraint in their use of this tool perhaps for no other reason than that "judicial activism" often lies in the eyes of the beholder. (See, for example, President Obama's recent public chastisement of the Supreme Court for its Opinion in *Citizen's United* before the full Congress at this year's State of the Union Address.)

Instead, the appropriate mechanism for change in the Judicial Branch is to let the electoral process play out (which, by definition, reflects the will of the people) and allow these elected officials to appoint and confirm new judges as vacancies open. As former Chief Justice William Rehnquist recognized before he died:

In this way, our Constitution has struck a balance between judicial independence and accountability, giving individual judges secure tenure but making the federal Judiciary subject ultimately to the popular will because judges are appointed and confirmed by elected officials. It is not a perfect system—vacancies do not occur on regular schedules, and judges do not always decide cases the way their appointers might have anticipated. But for over 200 years it has served our democracy well and ensured a commitment to the rule of law.

In sum, although our legal system may not be perfect, our Founding Fathers set forth a legal framework that remarkably still holds up nearly 225 years later. To this end, I leave you with a small prayer by Chief Justice Rehnquist:

Let us hope that the Supreme Court and all of our courts will continue to command sufficient public respect to enable them to survive basic attacks on the judicial independence that has made our judicial system a model for much of the world.

Wise words indeed.

Lawrence J. Spiwak is president of the Phoenix Center for Advanced Legal and Economic Public Policy Studies (www.phoenix-center.org), a non-profit research organization based in Washington, DC. He is a member in good standing in the bars of New York, Massachusetts and the District of Columbia. The views expressed in this article do not represent the views of the Phoenix Center, its Adjunct Follows, or any if its individual Editorial Advisory Board Members.

Archive for the 'Articles IV – VII of the United States Constitution' Category

April 26, 2010 – Articles IV – VII – Cathy Gillespie

Tuesday, April 27th, 2010

Thank you for reading and blogging with us today in our 90 in 90 = History Holds the Key to the Future Program! Tomorrow is Day 5, and will be our last day on the United States Constitution before we embark upon the Federalist Papers. Please join us in blogging on the Amendments tomorrow. If you have been quietly reading along, we want to hear from you! And please continue to forward our website www.constitutingamerica.org to your friends, and post on Facebook, Tweet, mention on LinkedIn – help us spread the word!

A big thank you also to Professor Knipprath for your insightful comments on Articles IV – VII. I hate to admit that I am one of those people you speak of in your first sentence, for whom Articles IV – VII were terra incognita! Yet, these are some of the most important Articles in the Constitution: the amendment process arguably one of the most important of all.

With a 2/3 vote required in both houses of Congress, or 2/3 of state legislatures required to call for a constitional convention to propose an amendment, and then 3/4 of the State Legislatures required to ratify, or 3/4 of the states ratify in conventions, I marvel that the Constitution has been successfully amended as many times as it has. Our founders brilliantly put mechanisms in place to ensure that the Constitution be difficult, but not impossible to amend.

I noticed in the blog comments today many ideas as to what our next Constitutional amendments should be. These efforts may take many years. Various members of Congress have been working for decades to pass a Balanced Budget Amendment , for example. But thanks to the founders' wisdom and vision, when the next Constitutional Amendment is passed, we will be assured it has been thoroughly vetted, rigorously debated, and that a super majority of the Congress and States (and therefore a majority of Americans), will agree it is necessary.

Thank you again for your participation, and contributions to our understanding of the United States Constitution. Keep spreading the word!!

See you in the morning!

Cathy Gillespie

Posted in Articles IV - VII of the United States Constitution, Constitutional Essays by Cathy | Edit | 2 Comments »

April 26, 2010 – Articles IV-VII – Janine Turner

Monday, April 26th, 2010

Howdy from Texas. What another great day of national conversation about our United States Constitution. I thank you for joining us and I hope you read Articles IV-VII with your children and/or friend or loved one!!
Don't forget to tell your children or children you know about our We the People 9.17 Contest! Entries due July 4th. Scholarships, travel, prizes!!

I thank Joerg Knipprath for his most detailed description of Articles IV-VII. What a blessing it is to have so many wonderful Constitutional Scholars grace us with their dedication and knowledge.

What I found fascinating about today's reading has not actually been mentioned. It is in Articles VI and VII. In Article VI it states:

"The Senators and Representatives before mentioned and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public trust under the United States."

First of all it states that EVERY government officer is bound by oath or affirmation to "support" the Constitution. Another intriguing aspect is the part about how "no religious test shall ever be required as a Qualification to any Office or public trust under the United States." This seems logical due to the fact that not only was the religious persecution from overseas still fresh in their minds, but also because free enterprise does not grow when stifled by laws of religion.
However, Article VII states:

'..done in Convention by the Unanimous Consent of the states present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and eight seven…'

It is very obvious with the usage of the words, "Year of our Lord," that our forefathers were not afraid to mention
God in their thesis, documents and/or governmental realm. They were brilliant men and they knew that every word of the Constitution would be analyzed in the future, down to the last comma. They also wrote the Constitution to be an everlasting document that was to be eternally preserved, protected and defended.

Thus, no love, or lack, of God could prohibit one from serving in government but that did not mean one was prohibited from referencing his or her God in governmental affairs. There appears to be no mention of separation of church and state.

This is reiterated in a slightly different way in the first amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…"

But we will discuss this one tomorrow.

I am also intrigued about how much our forefathers were concerned about treason.

Did anyone watch the History Channel's, "America: The Story of Us" last night?" It was wonderful. The recounting of the revolutionary era reminds one that our forefathers were most sensitive to the tyrannical aspects of government intruding into citizens' lives and as they recounted our "revolutionary" war tactics it reminds one that if we had, "played by the rules," then we would have never won the war.

Thoughts to ponder…

More tomorrow. Blessings,
Janine Turner
April 26, 2010

Posted in Articles IV - VII of the United States Constitution, Constitutional Essays by Janine | Edit | 8 Comments »

April 26, 2010 – Articles IV – VII of the U.S. Constitution – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, April 26th, 2010

Articles IV through VII of the Constitution are, even for many educated Americans, terra incognita. People may know about the first three articles, important as they are in defining the separation of powers at the national level among the three branches and in drawing basic divisions between the national government and the states. Despite their brevity, these often-overlooked articles play significant roles.

When the Constitution was adopted, the framers hoped, as the Preamble declares, to form a "more perfect Union." They recognized (in part out of political calculation) that a union already existed under the Articles of Confederation. They wanted to tweak the system enough to place it on a sounder political and economic footing. Part of their plan was to give more independence to a revamped United States government, as the first three Articles demonstrate. But, given the size of the republic and the dispersion of its population, the national government was expected to remain a comparatively restrained political player. While the suspicion over "consolidation" was often in the open, the enumeration of formally limited powers and the practice of a part-time Congress were evidence of the expected state of affairs.

Quite naturally, then, much was left to the constitutional domain and the political discretion of the states. Inter-state collaboration and cooperation were practical necessities. Half of Article IV deals with that fact of political life. The "full faith and credit" clause of Section 1 and the "privileges and immunities," "extradition," and (now superseded) "fugitive slave" clauses of Section 2 are testaments to the Framers' concerns about potential interstate frictions that might undermine union. All but the last were also in the Articles of Confederation, and the same continue to be significant today.

One area of potential constitutional conflict in the future is whether or not a state that does not recognize same-sex marriage is constitutionally obligated to give full faith and credit to a same-sex marriage granted in another state. Currently, the federal Defense of Marriage Act protects non-recognition of a same-sex marriage granted in another state. But that law itself may be unconstitutional under Article IV. It's a close case, though there is some judicial precedent for the position that a state need not recognize an act of a sister state that is repugnant to its own public policy.

The other half of Article IV deals with obligations of the federal government to the states. In little more than 100 words, Section 3 sets forth Congress's powers to create new states and to dispose of territory and property of the United States. That section was the source of critical federal policies during the great

westward push under Manifest Destiny through which unorganized territory became organized and, eventually, advanced to statehood.

Section 4 obligates the United States to guarantee to each state a republican form of government, to protect each state against invasion, and to render assistance against domestic violence if asked. The state of Arizona may well ask whether the federal government has breached that second obligation in failing to protect the border against armed marauders, thereby necessitating the state to take stronger actions against illegal aliens. The last part of Section 4 is one explanation for why the federal military response to Hurricane Katrina was so "late." The federal government was constitutionally obligated to wait for a request from the governor for assistance, a request slow in coming.

Article V may be the most important part of the Constitution, as it provides the formal means of amendment. This was an area of laborious compromise and reflects a combination of experience with the Articles of Confederation and the various state constitutions, and the development of American constitutional theories of popular sovereignty that broke with English constitutionalism.

There are two methods of proposing amendments and two methods for ratification. The method used for all amendments to the Constitution, though not for the drafting of the Constitution itself, is to have a vote by 2/3 of each house of Congress. Though the matter is constitutionally not free from doubt, by long-accepted practice, the president's signature is not needed. Many framers feared, however, that the Congress would not advance amendments that might curtail federal power. Hence an alternative permits 2/3 of the states to petition Congress for a convention to propose amendments. Though this method has not been used, some proposals have come close. There are almost the needed number of states for a balanced-budget amendment, a matter that is taking on added urgency in view of trillion dollar deficits.

If an amendment is proposed, 3/4 of the states must approve, either by legislatures (a "republican" principle) or state conventions (a "quasi-democratic" principle), as Congress directs. All but the amendment to repeal prohibition have gone the legislative route. These supermajority requirements were a compromise between the English constitutional theory (also used in early state constitutions) that allowed constitutional change by simple majority vote of the legislature and the unanimity requirement for constitutional change under the Articles of Confederation. The Constitution, the Framers concluded, must be amendable, but not so freely as to promote instability. Note, though, that the Constitution does not have the "democratic" option of amendment by petition or vote of the people directly, as many states have.

Article VI contains a pillar of our federal structure, the "supremacy clause." That clause makes the federal Constitution, treaties, and statutes superior to conflicting state laws. The clause is an enhanced version of a blander clause in the Articles of Confederation. It enshrines a principle central to the revised structure of the Constitution, that of a sovereign United States independent of, and—within its delegated functions—superior to, the states. From a political perspective, it is not an overstatement to say that, for better or worse, this is the most significant provision in the development of the current (im)balance that exists between the national government and the states.

Equally important, Article VI expressly binds the state courts to abide by the federal supreme law when there exists a conflict with state law. That provision recognizes that, since the Supreme Court is the only constitutionally required federal tribunal, state courts might operate as inferior federal courts. It also

creates a judicial “branch” that straddles the divide between federal sovereignty and state sovereignty more than the political branches do.

Article VII provides for the process of ratification. There are many fascinating historical undercurrents at work in the Article. First, it encapsulates the revolutionary nature of the process that led to the Constitution. It must be recalled that the Articles of Confederation required that the Congress approve any amendment, which then also had to be approved by the legislature of each state. Also, the charge from the Confederation Congress to the Convention was “for the sole and express purpose” of reporting to Congress and the states proposed revisions that still had to be approved by Congress and the states, all in conformance with the existing structure.

The Framers, however, created a completely new structure to replace the Articles. In Article VII, they made it sufficient for initial ratification that only nine states approve. In the resolution to send a courtesy copy to the Confederation Congress, the Philadelphia Convention very pointedly required approval by the states but not the Congress. Moreover, the approval was to be by conventions in the states, not by the legislatures.

The non-unanimity requirement is significant because the Framers faced a practical problem. Rhode Island was so opposed to the project that they had not even sent delegates. They were, therefore, hardly likely to approve. Rhode Island’s non-attendance, by the way, is one reason why the Committee of Style changed the Preamble of the Constitution from “We, the people of [then listed the states]” to “We, the people of the United States.” Moreover, the Articles had taken four years to approve. The concern was that unanimous approval would encourage a similar delay. Delay works against constitutional change, as the supporters of the Equal Rights Amendment found out in the 1970s. The Framers gambled that adoption by nine states would create its own momentum for adoption by the other four. The gamble worked, but it turned out to be a close-run thing.

The requirement for conventions was both practical, in that the anti-Constitution forces were more likely entrenched among the political interests in the state legislatures than among more broadly selected conventions. Conventions also reflected better the emerging American political theory that, while legislatures made ordinary laws, constitutions were expressions of shared fundamental political values that went to the very purpose of government. Constitutions, then, were social contracts resting on more direct exercise of popular sovereignty. They were, in the words of George Washington, “explicit and authentic acts” of the people. Since the entire population of a state could not be brought together to deliberate and vote on the Constitution, a convention selected for that purpose from the people of the state was the next best alternative.

A final oddity in Article VII is that the signatories made a rather sterile declaration of witness. In the Articles of Confederation, the signatories declared that they fully ratify and confirm everything said therein and pledged their constituents’ support. In the Constitution, the signatories merely attest that the “States present” (i.e., no Rhode Island) unanimously approved the Convention’s actions. A number of delegates had left the convention because they personally disapproved of the result, as did some of those who remained to sign. In this manner of attesting, there was no personal commitment of support that could prove politically problematic back home. It is like being a witness to a will signing. The witnesses merely attest that the process, such as having the testator sign the document after declaring it to be his will, was completed properly. The witnesses are not declaring their support for the substance of the will.

Therefore, if the testator disinherits his family and gives everything to his golf buddies, the witnesses are not morally implicated.

In the end, it was somewhat of a political miracle that the Constitution was adopted at all. It is not a perfect document, and, had the people then been able to see the political reality in which it operates today, they might well have preferred something else. But it endures for many as a symbol of what should be, not only what is—the idea of the Constitution as much as its function.

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An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. He has also spoken on business law and contemporary constitutional issues before professional and community forums.

Posted in Articles IV - VII of the United States Constitution, Constitutional Scholar Essays | Edit | 47 Comments »

Archive for 'the Amendments to the United States Constitution' Category

April 27, 2010 – The Amendments to the United States Constitution – Janine Turner

Tuesday, April 27th, 2010

Howdy from Texas. Day 5 of the Constitution! As my daughter, Juliette said, "Technically it's day 6 but the first day was like a "xii" in a book." I thank you for joining us today. I am having a WONDERFUL time and I am just rather thrilled to have this opportunity to study the United States Constitution with "y'all" – as we say in Texas. I hope you are reading the daily readings with your children and/or loved one! Please tell your children about our, "We the People 9.17 Contest." Scholarships, prizes, travel!!!

I want to thank Michael Krauss for his superb essay today on the Constitutional Amendments! I am glad Michael focused on the First Amendment because I am absolutely intrigued with it and I believe it is incredibly relevant today.

I have been writing on the First Amendment quite a bit lately. As I explained in my daily video podcast today, (I do one every day), I have always thought of the First Amendment as "freedom of speech." Of course, this is one of our most treasured rights. However, I am also starting to recognize the First Amendment as, "freedom of religion." The beginning of the First Amendment is well known and has been parlayed into the (misconstrued) American mantra of "separation of church and state." It is as follows, "Congress shall make no law respecting an establishment of religion.." However, the six words that follow are rarely discussed and little known,

"or prohibiting the free exercise thereof.."

"Or prohibiting the free exercise thereof.." Amazing. With these six words, the First Amendment states that it is our right as Americans to express our religion. Both of these statements stemmed from the religious persecution in Europe. Our European ancestors were forced to abide by a mandated religion and were not allowed to freely express their personal religious beliefs.

Thus, this amendment is brilliant and paid for by the blood, sweat and tears of our ancestors. No law may stipulate that an American citizen must follow a certain religion. Great. But also, no American may be denied his/her right to exercise his/her religion – anywhere. The First Amendment does not state, "You may express your religion – but only in certain places."

I believe that these six words, "or prohibit the free exercise thereof" need to be promulgated across America. They need to become the new American mantra. Our forefathers did not deny God, the Divine Providence, or our Creator a place in government then – nor should He be denied that place now.

Blessings,

Janine Turner

4.27.10

Posted in Constitutional Essays by Janine, The Amendments to the United States Constitution | 16 Comments »

April 27, 2010 – the Amendments to the United States Constitution – Cathy Gillespie

Tuesday, April 27th, 2010
Great discussion today – loved seeing some new names blogging! Remember to invite your friends to join the conversation – and share this with your children! Encourage them to enter our We The People 9.17 Contest – sign up online ASAP – entries due July 4! Tell high school students we especially need

short films, PSA's and we are asking middle schoolers and high schoolers to compose cool songs! Students can enter in teams of two for the songs, short films and PSA's. Sign up today!

Tackling the Bill of Rights, and the Amendments in one day was a big job! As I read through the Amendments, I wondered about the efforts and battles that must have gone into the passage of each. Reading through the Amendments is like a quick reading of the history of our country. The Amendments reflect the times and current events in the eras in which they were passed. We can be proud as Americans that MOST of the Amendments reflect the founding fathers' principles. (see today's and yesterday's blog for lively discussion on some such as the 16th and 17th which many feel do not!)

All of the Amendments have fascinating stories that accompany their passage. We all know of the stories and have seen photos of the women's suffrage movement, for example. That battle spanned 50 years before Congress approved the 19th Amendment in 1919 and 3/4 of the States ratified it in 1920. But there is an interesting back story to the passage of the 19th Amendment that I love. In August of 1920 Tennessee was the final state needed to achieve ratification of the 19th Amendment. The vote in the Tennessee Legislature came down to a young State Representative, Harry Burn, who represented a district bitterly divided on the issue, and who was facing re-election that fall. Representative Burn had voted previously with the Anti-Amendment forces. The vote was tied 48-48, and Harry was expected to vote with those opposing the Amendment again. But Harry carried a letter from his mother in his breast pocket, admonishing him "Don't forget to be a good boy," and vote for the Amendment. Harry surprised everyone by voting yes, and thus on August 18, 1920 Tennessee became the 36th State to ratify the 19th Amendment, and one young 24 year old man empowered millions of women in our country with his brave vote.

Earlier today Rich asked an interesting question about how the 17th Amendment came to be passed, so I pulled two books off my shelf that I recommend to anyone who is interested in the stories and history of the Amendments, the Bill of Rights, and the Constitution:

Seth Lipsky's The Citizen's Constitution: An Annotated Guide (2009) and the Heritage Foundation's Guide to the Constitution, edited by Ed Meese, Mathew Spalding and David Forte (2005).

Upon reading about the 17th Amendment's history in both of the above sources, I found it was passed in reaction to many State legislatures which were deadlocked on the issue of choosing a U.S. Senator, thus leaving their states without representation in the U.S. Senate. The 17th Amendment was passed in the name of enhancing Democracy, yet many feel it has been detrimental to protecting States' rights, expanding the federal government's reach.

To me, the most important Amendments to our Constitution were the 13th, 14th and 15th Amendments,

which abolished slavery, established citizenship for former slaves, and prohibited restrictions on the right to vote based on color, race or previous condition of servitude. President Lincoln received pressure from those who thought the 13th Amendment should be ratified only by the Northern States, in order to get it done quickly. But Lincoln favored 3/4 ratification of the 13th Amendment by all the States, so the Amendment's legitimacy could not be challenged. He also believed the ratification process in the Southern States was important to Reconstruction and healing. Regarding the 14th Amendment, Seth Lipsky writes, "Were the Amendments musical compositions, the fourteenth would be the grand symphony in four movements, full of exciting themes, varied movements, and clashing symbols…." Indeed the 14th did much more than overturn the Dred Scott decision and extend citizenship to former slaves, it contains the State Action, Privileges or Immunities, Due Process and Equal Protection Clauses, as well as Section Two, Apportionment of Representatives. The 15th Amendment, the last of the Amendments dealing with Reconstruction, prohibited voting discrimination for former slaves, and any voting discrimination based on race and color. These three Amendments set the stage for the healing of our country.

It is another testament to the beauty of our Constitution that the Amendments read like a short hand version of the history of the United States. It is all there, from the the 11th Amendment stemming from States being held accountable for their Revolutionary War Debts, to the 27th Amendment restricting congressional pay raises from taking effect until after an election. Interestingly the 27th Amendment was first proposed in 1789 and finally ratifed in 1992!

What will our next Amendment be? Let us pray it will reflect the founding fathers' principles as so many of our great Amendments have. The only thing that is certain, though is that fascinating stories and struggles will accompany its passage, and it will add to the historical narrative of our country which is embodied in the United States Constitution.

Posted in Constitutional Essays by Cathy, The Amendments to the United States Constitution | 7 Comments »

April 27, 2010 – the Amendments to the United States Constitution – Michael Krauss, Professor of Law, George Mason University School of Law

Tuesday, April 27th, 2010

The very first part of the First Amendment to our Constitution reads as follows: "Congress shall make no law respecting an establishment of religion…" What does this text (commonly known as the Establishment Clause) mean? Does it mean the same thing today as it did when it was enacted?

Today's post will focus on this topic.

The first ten Amendments to the United States Constitution were adopted because many of the Founders feared that the new federal government they were setting up would become tyrannical. Other Founders did not share that fear, because the federal government was to have only enumerated powers and not general powers to do anything it deemed to be in the general welfare. [Today many in Congress seem to believe that the federal government has just this plenary power – perhaps this is a tribute to the prescience of the "anti-Federalists" who insisted on inserting these amendments.] As regards the establishment clause, it is clear that at the very least it was meant to prevent the federal government from creating a new Church, on the model of the Church of England – let's call it the "Church of the United States." The fear was that this church would be "established" and funded with taxpayer dollars throughout the land. The creation of a compulsory, or even a subsidized, American church was precisely the kind of British model that the founders all wished to avoid, and so James Madison (who was one of those who felt there was no real risk of federal expansion anyway) was quite content to accede to the requests of his more nervous colleagues and write this prohibition into the Constitution. No federal church was established, of course, but the same people who adopted the Establishment Clause also created a national day of prayer, named Chaplains for the military academies and allocated moneys for the evangelization of Indian tribes. A few (notably Thomas Jefferson) wrote that government should be totally divorced from any religious actions, but even Jefferson as President allocated money to pay for priests and churches on Indian reservations, if the Indians so requested. Again, support for religion in general, without preference for any specific sect, was the order of the day.

But if an established federal church was to be prohibited by the clause, it is clear that established state churches were not to be touched (one early version of the clause also affected the states, but it was quickly abandoned). All the New England states (from Connecticut north), and all the Southern States (from Maryland south) had established churches at the time the First Amendment was adopted – different Protestant denominations in each state. Jews and Catholics suffered under various legal disabilities in different states until all were removed in the mid-nineteenth century. The states were quite clearly to be free to continue in this path – recall that the Clause states only that "CONGRESS shall make no laws…" After the Civil War, other amendments were adopted to ensure that the new American citizens (the freed slaves and their descendants) would have full citizenship rights in every state, and one of these Amendments, the Fourteenth Amendment (about which someone else will be blogging) was interpreted by the Supreme Court as incorporating most (likely all) of the limitations of the first ten Amendments against all the states. As the "incorporation" doctrine became entrenched, the case law concerning the Establishment Clause increased.

This case law slowly veered Establishment Clause jurisprudence away from non-preferentialism and

toward antipathy to religion. In the 1879 Reynolds case (in which a Mormon unsuccessfully claimed a religious right to practice polygamy), the Supreme Court opined (though it did not have to decide this question to resolve the case at hand) that Jefferson's declared view (that the federal government should not even acknowledge religious activity) was the authoritative meaning of the Establishment Clause. American legal history was replete with examples to the contrary (not only most Founders' declarations, the national prayer day, the chaplaincies and the Indian missions, but also the declaration of Christmas as a national holiday and the mentions of God on our money and on our Supreme Court building). In 1947, the Everson case allowed states to pay for school busses for all students (even those who frequented religious schools) but signaled that governments' recognition of citizens' religious choices could go little further. Since then cases have denied the right of public school boards to have ecumenical invocations before solemn events. Last week a federal judge struck down National Prayer Day – though this had been an institution since the time of the Founding!

In God We Trust is a maxim many of us hold dear. Most of our Presidents finish their speeches by asking God to bless our people. Our Supreme Court itself is adorned with multiple sculptures depicting the Ten Commandments, and the Justices begin each and every session with the intonement, “”God save the United States and this honorable court.” Will these reminders of the ultimate authority of the values upon which America was built be one day banned? The answer to these questions and more ultimately will be resolved by the Supreme Court's interpretation of the U.S. Constitution and the Bill of Rights.

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Posted in 2010 Federalist Paper Forum Essays by Guest Constitutional Scholars, 2010 Federalist Paper Forum Project | No Comments »

Archive for the 'Federalist No. 01' Category

April 28, 2010 – Federalist No. 1 – Cathy Gillespie

Thursday, April 29th, 2010

We made it to the Federalist Papers! I hope you are as excited as I am to dive into these fascinating op-eds – the media and PR campaign for the Constitution! I am travelling today – (Howdy from Texas!) And typing in the dark, in a hotel room in Austin, trying not to wake my daughter. So, please forgive the brevity of tonight's post.

Federalist 1 is striking to me in that Alexander Hamilton's view of the gravity of the crossroads America was at, is clear to him in a way that is rare for someone in the midst of current events of their time. Looking back, with a 222 year perspective on the situation, it is easy to agree that had the States failed to ratify the new Constitution, it would most certainly have been a loss for mankind. But for Hamilton to have the vision to see that, at the starting gate of the United States' journey into the world, reveals him to be a visionary of the highest magnitude.

This quote near the beginning of Federalist #1 sums up the precipice the United States was teetering on:

"It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; **and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind."**

Hamilton's support of civil political discourse also resonated with me:

"Were there not even these inducements to moderation, **nothing could be more ill-judged than that intolerant spirit which has, at all times, characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution**.

And yet, however just these sentiments will be allowed to be, **we have already sufficient indications that it will happen in this as in all former cases of great national discussion**. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and the bitterness of their invectives."

This is the nature of man, and we can see that not much has changed in 222 years! But Hamilton is right about the ineffectiveness of angry discourse. Both ends of the politcal spectrum were guilty of this in Hamilton's era, just as some on both sides still utilize these tactics today. It is so refreshing and much more educational when political discussions can be had without anger and personal attacks.

I look forward to the coming 84 days. I am embarking upon this journey with fresh eyes, having never read the Federalist from cover to cover, despite having a degree in Political Science! To think back to the days before the internet, Twitter, or Facebook, before 24 hour cable news, before radio, when communication by the spoken and written word (on real paper) was the only means of spreading a message, it is enthralling to read these papers and witness an 18th Century PR campaign, and to be able to look deeper into some of the founding fathers' thoughts, values, principles and world views, as they set about to shape our Nation.

Good night!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 01 | Edit | 7 Comments »

April 28, 2010 – Federalist No. 1 – Janine Turner

Wednesday, April 28th, 2010

Howdy from Texas. Speaking of Texas, be sure to watch tonight's behind the scene Video Podcast! I filmed it at my ranch with Juliette. It's fun.

So today is our first day of the Federalist! Federalist Paper #1 by the brilliant Alexander Hamilton! I wrote about his mother, Rachel Lavien Fawcett in my book, "Holding Her Head High." Historians have not been very kind to her, but read my version. It is from a woman's point of view. There is no doubt that she planted the seeds of greatness, determination and an entrepreneurial spirit in Alexander's character.

I want to thank Horace Cooper for writing our wonderful essay today! Thanks, Horace. I love the quote from Benjamin Franklin when asked by a woman, "What have you given us?" and Benjamin replied, "A Republic, if you can keep it."

This is our challenge today. We must step forward and stand up for our founding principles and demand that our Republic be vital and strong and that our Constitution be protected preserved and defended. The best way for us to do this is with a basis of knowledge about our country's thesis. How lucky we are that it is so well documented in copious documents and books – the Declaration of Independence, the United States Constitution and The Federalist being the foundation. (We will have to continue our scholastic adventure – the same forum with different documents and books!)

I hope you read today's reading of the Federalist with your children and/or loved one and don't forget to sign your children up for our contests! The high school students get a trip to Philadelphia, an appearance on Governor Huckabee's show and $2000.00 scholarships – and we have cool categories such as: best short film, best hip song, best PSA and best essay about how the Constitution is relevant today! Spread the word. Entries due July 4th!

Speaking of relevant today, we are going to be amazed at the relevancy of the Federalist papers. For those who think the Constitution is antiquated and obsolete, I dare them to read the Federalist papers with us!!

The first thing that I love is that Alexander Hamilton, James Madison and John Jay came together for the good of the country. They did not agree on many things, and later became quite divided, but they united to accomplish the magnificent miracle of the Constitution and "The Federalist." They saw the bigger picture and were able to forfeit their egos to better their country – and they had vision! They had vision and wisdom and determination and a sense of service. Great qualities that I dare say all of you have who are participating in our National Conversational/Blog Reading!

Another thing that I love is that they wrote it under the name of Publius after Publius Valerius, a founder of the Roman Republic. A Republic. They knew that they all had reputations that proceeded them for better or worse and they did not want the objectivity of their thesis to be tainted by preconceived notions. Smart. These men were very smart and they truly loved the United States of America.

This is what it's going to take to awaken, educate and propel Americans to undertake the journey of Constituting America – a love for the United States of America and all she embodies – nobility, greatness of character, philanthropic communities with a genius for creativity and a gut for survival. We have a Republic and God save the ones who try to strip American's of our inherent rights, rights that exist in the Declaration of Independence and the United States Constitution and embody Americans today. God bless America.

And God bless our forefathers who sacrificed so much for their posterity – all of the great men and women who have fought throughout our history to maintain our dignity, freedom and inalienable rights.

Blessings and goodnight!

Tomorrow it's Federalist Paper #2!

Janine Turner
April 28, 2010

Posted in Constitutional Essays by Janine, Federalist No. 01 | Edit | 6 Comments »

April 28, 2010 – Federalist No. 1, General Introduction, For the Independent Journal (Hamilton) – Guest Blogger: Horace Cooper, Legal Commentator and Director of the Institute for Liberty's Center for Law and Regulation

Wednesday, April 28th, 2010

The Federalist Papers were written from 1787 to 1788 by Alexander Hamilton, James Madison and John Jay. They were published in several New York State newspapers to persuade New York voters to ratify the proposed constitution that had been crafted at the Philadelphia Convention in 1787. Numbering 85, the essays outlined the ways the new federal government would operate and why this type of government was the best choice for the United States of America. Each of the essays were signed "**PUBLIUS**" and they remain today as an excellent reference for anyone who wants to understand the United States Constitution.

Hamilton opens Federalist #1 with an introduction of the present state of affairs in the then existing United States of America and his plan to explain over a series of Papers why the new federal government created by the U.S. Constitution was necessary. Premised in his argument is a fundamental foundation upon which our system of government is based — self-government or rule by the consent of the governed. From its inception our Constitution's validity was tied to the notion that formal acceptance and ratification by the people and the state legislatures was necessary in order to be legitimate. Our Constitution was neither self-enacting nor imposed from a ruler.

At the time of the writing of Federalist #1 the United States of America is governed by the *Articles of Confederation.* Drafted by the Second Continental Congress in 1776, the *Articles of Confederation* had been submitted to the states for ratification in November of 1777.

As outlined by the Continental Congress, the federal government by 1787 had the authority to make war, negotiate diplomatic agreements and treaties, and acquire and oversee new territories that had not yet become full-fledged states.

However, by the time of the Philadelphia Convention that year many of the inadequacies of the Articles of Confederation were obvious. The government created by the Articles was incapable of providing the authority and power needed to be a fully functioning authority. Instead of a division of authority among three separate branches, the federal government exercised all of its authority through a unicameral legislature called the Congress of Confederation. Ironically, such a concentration of power masked the overall weakness of the federal government.

In order to change or amend the Articles, it required unanimous approval of the states. This standard made making any changes or reforms nearly impossible. The federal government had no power to tax and as such could not meet even its most basic financial responsibilities. A threshold requirement that nine of 13 states approve major laws passed by the Congress limited the ability of Congress to act on any but the most uncontroversial matters. In addition, it is significant that the Articles provided no authority for Congress to resolve conflicts between the states or to set up countrywide rules to encourage merchants and commerce.

Hamilton along with many other of our Founders recognized that if the United States was ever to become an economic powerhouse capable of defending itself from enemies without and within it was essential that the changes proposed in the Constitution were adopted. You see it was not simply dumb luck that we have this national charter. Now more than 200 years later we Americans share in the legacy created by these men and women who had such foresight and wisdom.

The Philadelphia Convention convened in May of 1787 and did not finish until September. When the convention finished Delegate Benjamin Franklin was approached by a woman. She asked Mr. Franklin, "What have you given us? A monarchy or a republic?" He famously replied, "A republic…if you can keep it." Therein lies our task as citizens today.

Horace Cooper is a Legal Commentator and Director of the Institute for Liberty's Center for Law and Regulation

Posted in Constitutional Scholar Essays, Federalist No. 01 | Edit | 47 Comments »

Archive for the 'Federalist No. 02' Category

April 29, 2010 – Federalist No. 2 – Cathy Gillespie

Friday, April 30th, 2010

Some great discussion going on! Love the give and take. I am learning so much from everyone's analysis and comments, so I thought tonight I would highlight some of the quotes from Federalist No. 2, and from the posts and blog comments which especially resonate with me.

My good friend, Marc Lampkin, did an excellent job as Guest Blogger today. We especially appreciate Marc coming back on in the afternoon to further expound on John Jay – he provided some enlightening background information.

Have you all been watching Janine's Daily Podcasts on the website? I highly recommend you check them out each day for the lighter side of Constituting America. Yesterday she gave us a tour of her ranch and longhorns (don't you love their names?), and today we got to see where she does her best work – her car! Janine and I have an ongoing battle of who has the most miles on their car. Mine is currently at 130,405 and I believe Janine may be beating me by about 10,000 miles. As moms, it seems we spend the majority of our day driving or sitting in parking lots waiting. Amazing how much you can get done in a parking lot!

As for Federalist No. 2, I had several favorite passages:

"Nothing is more certain than the indispensable necessity of government, and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights in order to vest it with requisite powers."

As Shannon pointed out, the people cede power to the government. And similar to the point Janine made in her post, when we are not educated and informed, when we are lax, or not paying attention, we are making the decision to cede even more of our individual rights and liberties.

The other quote that caught my eye, and was highlighted earlier today by Susan, was:

"Admit, for so is the fact, that this plan is only RECOMMENDED, not imposed, yet let it be remembered that it is neither recommended to BLIND approbation, nor to BLIND reprobation; but to

that sedate and candid consideration which the magnitude and importance of the subject demand, and which it certainly ought to receive."

Again, the theme is an educated, engaged and thoughtful electorate. Issues of great magnitude deserve thorough consideration. When we ground ourselves in the U.S. Constitution and the principles upon which this country was founded, we have a road map to guide us through the maze of public policy proposals that can easily lead down roads that will ultimately take our country in the wrong direction.

A big thank you to all of you who are blogging! We invite our silent partners to find your voice and let us hear from you!

And a final big thank you to our founder and co-chair, Janine Turner! Janine had the idea for Constituting America over a year ago, promptly registered the domain name, and got to work organizing! It is her vision that has brought us the 90 in 90 = 180: History Holds the Key to the Future program. Janine is an inspiration to me, as she continually puts God, her daughter, and her country first in her life. It is an honor to serve with her in this effort.

Good night!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 02 | Edit | 5 Comments »

April 29, 2010 – Federalist No. 2 – Janine Turner

Thursday, April 29th, 2010

Howdy from Texas! I thank you for joining us today! I am thoroughly enjoying this process and I am learning so much from the readings, our exceptional scholar's essays and from all of you who are blogging. I want to say how appreciative I am that Marc S. Lampkin joined us today as our "guest scholar" and I thank him for his wonderful interpretation and explanation of Federalist Paper #2 by John Jay. Thanks Marc!

There are many aspects in our readings of the United States Constitution and "The Federalist" that are relevant today. However, as I was juggling many pertinent points from Federalist Paper #2, suddenly a more general observation manifested.

Our forefathers were intent on explaining the Constitution to the people of the United States. They wanted the Republic to understand what was in the "bill," and they undertook great pains and efforts to make sure that happened – 85 different Opinion Editorials published in newspapers and spearheaded by Alexander Hamilton.

Not only did they go to great pains to explain the contents of the Constitution, which was only seven pages, they knew that the American public would demand to know what was in it before they ratified it. This brings about two conclusions:

1. The American people of the 18th century wanted to know what their government was doing, felt very much involved in the process, and were passionate about the direction of their country
2. Publius and the signatories of the United States Constitution felt obligated to explain it to them, and did so in great detail and they could – as they had written it and they understood it.

A very different atmosphere exists today. Both the American people and the United States government are to blame for the obscurity in which we wander. The bloated bills and ignorance of their intentions are the fault of both the governor and the governed. We, as collective countrymen and women, grew discordant and lax in the affairs of the state, and like a child pushing the boundaries with their parents, the United States government got away with what they could. It's human nature. Men are not angels – hence, the Constitution.

But times have changed. Our country's woes are like trying times for the soul. Difficult times are God's way of shaping our character – making us into the people He wants us to be – a light, a leader. Now Americans are waking up and realizing that we must once again demand to understand. What is really in the bill and what is really the direction of our country? We are realizing that we must vet, vote and find our voice. In our blood is the ancestry of righteousness.

We must stress to our elective officials that we will accept nothing less than clarity. In Federalist Paper #62 James Madison zeros in on this point:

It will be of little avail to the people, that
the laws are made by men of their own choice,
if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before
they are promulgated, or undergo such incessant changes, that no man who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known or less fixed.

The title of John Jay's Federalist Paper No. 2, "Concerning Dangers from Foreign Force and Influence," is applicable today as well. If we do not gain control of the economy we are going to be like Greece and times of economic stress are ripe for tyranny.
If we do not gain control of our spending and deficit then we are a sitting duck for the hunters who wait in the night – "Dangers From Foreign Force and Influence." As Benjamin Franklin said, "Think, when you run into debt, you give to another power over your Liberty."

John Jay's ends this paper, from over two hundred years ago, with a Shakespearean quote, it echoes eerily across our current environment. It is a battle cry and ominous warning of something we do not want to ever shout, "FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS"

As the present necessity of unity prevails, we the people will gather with the mission of preserving our great country and we will be spurred by our patriotism and launched by our learning.

God Bless,

Janine Turner
April 29, 2010

Posted in Constitutional Essays by Janine, Federalist No. 02 | Edit | 6 Comments »

April 29, 2010 – Federalist No. 2 – Concerning Dangers from Foreign Force and Influence, for the Independent Journal (Jay) – Guest Blogger: Marc S. Lampkin, partner at Quinn Gillespie and Associates LLC and graduate of Boston College Law School

Thursday, April 29th, 2010

Federalist Paper #2 was written by future Federalist party chieftain John Jay to address what many founders felt was a critical deficiency regarding the then existing government authorized by the Articles of Confederation. The deficiency was the major vulnerability the young nation faced because it lacked sufficient national authority to defend itself or to enforce its laws.

Reflecting his view that the public "choose" the new central government contemplated in the Constitution rather than simply acquiesce in it, Jay presents his arguments in terms of the "self interest" of the readers. "It is well worthy of consideration therefore, whether it would conduce more to the interest of the people of America that they should, to all general purposes, be one nation, under one federal government, or that they should divide themselves into separate confederacies, and give to the head of each the same kind of powers which they are advised to place in one national government."

John Jay was the oldest contributor to the Federalist Papers at age 41. Jay, a staunch abolitionist who would go on to become governor of New York and successfully ban slavery statewide, also had served as President of the Continental Congress and was a principal negotiator of the Treaty of Paris. After the U.S. Constitution was ratified, he would become the first Chief Justice of the United States Supreme Court.

At the time of the writing of Federalist #2, it had only been a few years since the Revolutionary War had ended. Although the Americans had just successfully defeated one of the most powerful military forces on the planet when it successfully won its independence against England, barely five years later the capacity to carry off a similar feat was dramatically undermined by the operation of the Articles of Confederation. In addition, compounding matters there was increasing sentiment among the political class that instead of presenting a "united" front as part of a United States of America, the states should actively consider whether even the loose association authorized by the Articles was either useful or worthwhile.

John Jay vigorously argues that not only should the states remain united; they should adopt the proposed Constitution's federal style of government. It was Jay's view that the crisis of the Revolutionary War had led to the hasty creation of the Articles of Confederation and even as its defects became apparent, those deficiencies were not great enough to prevent America from prevailing in the war.

Now that the war was over, the problems of the Articles had been so severe that the Philadelphia Convention had been convened to attempt to ameliorate its difficulties. Of course the result of the

convention was an entirely new compact being drafted. The central theme of this compact is that it contains a Federal Government with specific authority and power to carry out its limited but important duties in a way that the Federal Government authorized under the Articles of Confederation could not.

John Jay presents two basic premises that are basis for his argument: it is a fundamental responsibility of government that it has the necessary power to regulate conflict and administer the laws it has lawfully enacted. Secondly, in order for any grant of authority to be legitimate it must be consensual — that is the people must grant the government the powers.

While Jay recognized that any of the government powers exercised ultimately came from the people, the issue was which of these powers should be reserved for citizens and which were usefully granted to the government. The test for Jay was whether a particular grant of authority best protected the safety and interests of the American populace. However, this problem was made more difficult when the question of whether the Americans should unite under one national government or instead become separate states.

To Jay the answer was a strong union. He believed that for all intents and purposes, the confederation of states were already a union. He argued that the geographical make up of the nation including its topography and "navigable waters" created natural boundaries that encouraged commonality. Additionally the faith, language, principles and customs of the people who dwelled in this land which were overwhelmingly similar also argued for a strong union.

"This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties."

Since the land, people and language made it naturally more efficient to remain together then Jay believed that it was essential that the government they were subject to had the authority and power to carry out its duties in a way that the Articles of Confederation had never allowed. "It has until lately been a received and uncontradicted opinion that the prosperity of the people of America depended on their continuing firmly united, and the wishes, prayers, and efforts of our best and wisest citizens have been constantly directed to that object." It was John Jay's considered view that the adoption of the Constitution in the long term would prove beneficial to all Americans both in a time of military conflict and in times of peace.

Marc S. Lampkin, partner at Quinn Gillespie and Associates LLC is a graduate of Boston College Law School

Posted in Constitutional Scholar Essays, Federalist No. 02 | Edit | 37 Comments »

Archive for the 'Federalist No. 03' Category

April 30, 2010 – Federalist No. 3 – Cathy Gillespie

Saturday, May 1st, 2010

Howdy from Texas! I am still here in the Lone Star State for a few more days. Tonight Janine and I were honored to be invited to a wonderful gathering hosted by our friends Don Hodges and David Thompson and many new and old friends in Dallas to fill them in on Constituting America and how they can be involved. We are gratified by the enthusiasm those in attendance have for learning and spreading the word about the U.S. Constitution, and hope to see our Dallas friends joining us on the 90 in 90 = 180: History Holds the Key to the Future Blog!

Today's reading, Federalist 3, begins to address the benefits of the new government proposed by the U.S. Constitution, vs. a government of independent, sovereign states, as some at the time advocated. It is interesting that one of the first justifications for the Constitution expounded upon by John Jay was the safety and security of the homeland, still a primary concern today.

Jay's statement that "one good national government affords vastly more security against dangers of that sort than can be derived from any other quarter," is certainly true. A government that is perceived as strong will be less vulnerable to attack than one that is divided and weak.

Chuck invoked Ronald Reagan today, and President Reagan was on my mind as I read Federalist No. 3 as well. In a compelling National Security speech on March 23, 1983, Reagan said:

The defense policy of the United States is based on a simple premise: The United States does not start fights. We will never be an aggressor. We maintain our strength in order to deter and defend against aggression – to preserve freedom and peace.

Just as a body's strength is dependent on its skeletal system, our country's strength is dependent on its Constitutional backbone.

Our founding fathers knew they lived in a world that posed threats, and they knew the best way to keep the peace was a strong, unified country. Two hundred twenty-two years later, our world still poses threats, and the stronger and more unified the United States is perceived, the safer we will be.

Have a great weekend everyone!

See you Monday for Federalist No. 4

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 03 | 9 Comments »

April 30, 2010 – Federalist Paper No. 3 – Janine Turner

Friday, April 30th, 2010

Howdy from Texas. I thank you for joining us today and I thank today's guest scholar, William B. Allen, for his words of wisdom about Federalist Paper #3. Thanks William!

What I continue to find fascinating is how the Federalist Papers are consistently relevant today. John Jay's Federalist Paper #3 is one that really motivates contemplation. Publius speaks about how the unity of the country, the states, is the best way to combat an enemy or foreign intrigues. Unity, a house united, is definitely more advantageous than a house divided. Objectivity trumps subjectivity.

Yet, if the states are to acquiesce their rights and inclinations to defend themselves, then it is the duty of the Federal government to adequately protect the states. The father must protect his children. The Federal government needs to pay heed.

John Jay provides examples of how domestic disputes amongst small countries in Europe often lead to major battles – battles that then enveloped several nations for many years. We have certainly seen this repeat itself subsequently and most recently in the 20th century yielding morbid and tragic devastation.

During our country's infancy, unity amongst the states was paramount for a strong and unilateral defense.
However, ironically, the same principle applies today. With the current situation in Arizona, we should remain first and foremost unified in dealing with the crisis at hand. Brother against brother, state against state, breeds contempt and failure.

It is prophetically proposed by our founding fathers that a unified action yields the best result for the nation.
Let us remember that unity will reign victorious and gather wisdom to deal with all obstacles.

We are the United States of America.

God Bless,

Janine Turner
April 30, 2010

P.S. Don't forget to check out our "We the People 9.17 Contest" for kids, my daily Video Podcasts and the archive of the daily essays written by Cathy and me and our daily guest scholar!

Posted in Constitutional Essays by Janine, Federalist No. 03 | 6 Comments »

April 30, 2010 – Federalist No. 3 – The Same Subject Continued: Concerning Dangers From Foreign Force and Influence (Jay) – Guest Blogger: William B. Allen, Professor of Political Philosophy at Michigan State University

Friday, April 30th, 2010

Essay # 3 investigates the causes of war. Publius seems to raise the question, not merely from curiosity but rather because it's important to be prepared to prevail in war and also to place one's state in the position to avoid war. The *Federalist Papers* seem to adopt this perspective in its approach to foreign policy inquiring not how to adopt an active posture for engaging in war but rather how to make war as little likely as possible. The argument is laid out by the end of the third essay, and then stated outright in

the fourth essay, where he says of the American people, "Wisely therefore do they consider Union and a good national Government as necessary to put and keep them in such a situation as instead of inviting war will tend to repress and discourage it." This deterrence theory is based on a number of factors deriving from human nature, and it therefore forces us to ask whether Publius generally understands the causes of war. Again, in the third essay we see a claim that the pace of America highly depends upon observance of the laws of nature towards all foreign powers, a thing more perfectly accomplished in proportion as we have one national government rather than thirteen or some other number of states. We expect, therefore, to close with an argument from efficiency, less chance, greater consistency, and greater stability in foreign relations.

Surprisingly, Publius does not do that in the third essay. He instead states the following: "When once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed." He argues not from efficiency but from the character and talents of the officeholders. The first reason for increased national security is clearly that one obtain the best statesmen. The question of safety calls for intelligence and consistency.

It is wise to avoid war, and Publius illustrates this by arguing that "Hence, it will result that the administration, the political councils and the judicial decisions of the national Government will be more wise, systematical, and judicious, than those of the individual States, and consequently more satisfactory with respect to other nations, as well as more safe with respect to us." The chief means to avoid war is good order at home, and it includes satisfying other nations.

A third reason for a foreign policy of justice and consistency is that the national government will avoid tempting other nations to offend the United States because a United States that is well organized will be successful and prosperous, and that is what will bring peace. It will dispose other nations to cultivate our friendship as well as yielding strength. This will attract other nations into peaceful association, and this is what makes it possible to avoid war.

W. B. Allen

Michigan State University

Professor William B. Allen is emeritus dean and professor of Political Philosophy at Michigan State University.

Posted in Constitutional Scholar Essays, Federalist No. 03 | 39 Comments »

Archive for the 'Federalist No. 04' Category

May 3, 2010 – Federalist No. 4 – Cathy Gillespie

Tuesday, May 4th, 2010

Hello from Virginia! I made it back from Texas in the wee hours of the morning, thanks to some thunderstorms and unexpected equipment on the runway at Reagan National Airport!

To all who have been posting – Thank you!! We invite all our visitors to add their comments! We love the sense of community, and are learning so much from each of you. If you have a question, please ask it, and if we can't answer it, hopefully some of our blog participants can!

Federalist #4 elaborates upon a phrase stated in the preamble to the Constitution: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, **provide for the common defense**, 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.**

I'm reminded of a quote of a famous Texan from the 1970′s and 1980″s, Eddie Chiles, who said all he wanted the federal government to do was defend the shores, deliver the mail, and leave him alone! It is no accident that Eddie Chiles started his quote with "defend the shores," and that so many of the first Federalist Papers touch on this theme of defending our country. It is one of the powers enumerated in the Constitution that the federal government is best equipped to perform.

The other quote that caught my eye was the last phrase: "……how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves." As citizens of the United States, the more common ground we can find with each other, the better. And the more educated our citizens are about the founding principles of our country, the easier it will be for us to find common ground.

Good night!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 04 | 7 Comments »

May 3, 2010 – Federalist No. 4 – Janine Turner

Tuesday, May 4th, 2010

Howdy from Texas! Welcome to our third week of "90 in 90 – History Holds the Key to the Future." I can't believe it is the third week. I thank you for joining us and for all of your thought provoking blogs!! I thank William B. Allen for his wonderful, insightful essays. How lucky we are to have his participation. Thanks William!

This is such an important collaboration! Spread the word about our national conversation and don't forget to do the readings of the day with your children and/or loved ones! Also, don't forget to encourage your children to join our We the People 9.17 Contest. Scholarships, Travel, Public Appearances!!

My interpretation of John Jay's Federalist Paper No. 4 is unity provides strength and strength provides a strategic defense. A strong defense promotes peace, respect and profitable commerce. If a foreign country senses weakness or internal strife then it will be more likely to strike.

The wolf waits for a sheep to separates from the herd before it attacks, attacking only when the sheep is defenseless and without aid.

Relevant today? I say yes. Are we, as patriots, adequately united for the common good? Are we strong economically? Are we strong militarily? Are our representatives ready to face our adversaries with competence and preparedness? Are we truly united as brothers and sister, counties, regions, states? Are we so myopic in our domestic mire that we have lost sight of the wolf? On the wave of the wind wails the wolf. Do we hear it? Are we listening?

God Bless,

Janine Turner
5.3.10

Posted in Constitutional Essays by Janine, Federalist No. 04 | 2 Comments »

May 3, 2010 – Federalist No. 4 – The Same Subject Continued: Concerning Dangers from Foreign Force and Influence, for the Independent Journal (Jay) – Guest Blogger: William B. Allen, emeritus dean and professor of Political Philosophy at Michigan State University

Saturday, May 1st, 2010

Having established the "utility" of the Union for avoiding foreign wars, Publius proceeds to reinforce the argument in essay number four. In the second paragraph he acknowledged the claim that the United States should avoid inviting hostilities, insults, from other nations. But the third paragraph shows how difficult that might be. It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it, nay that absolute monarchs will often make war when their nations are to get nothing by it but for purposes and objects merely personal… These and a variety of motives, which affect only the mind of the Sovereign often lead him to engage in wars not sanctified by justice, or the voice and interests of his people. What this suggests is that many of the wars that arise will do so because people having the power to make war or to a void war yield to temptations that we find perfectly ordinary in human nature. People see opportunities and try to take advantage of them.

We should question the causes of war and the premise that if we knew the causes it would be easier to avoid war. In this point, though, it seems that the very resource we relied upon in the beginning == namely, the people with the power to decide — is also one of the chief causes of war. People in office who yield to temptation happen to be one of the chief causes of war, and Publius reminds us of this.

This is not an aberration. All we need do is to expect leaders to be human to expect these causes to operate. That is not the exclusive cause of war. Publius is clear about this, but it is the most difficult to deal with. And in that respect we ask once again is the Union better at dealing with the causes of war? will the Union make it less likely that notional office holders yield to personal illusions that carry their nation into war? The significance of this is that with the national union our personal illusions come

packed wait a far greater punch In spite of that, Publius argues that, yes, in spite of greater fire power, the greater temptations, the greater illusions, the answer is yes. How?

Publius does not claim to alter human nature one bit. He suggests, though, that we need to pay as close attention to the effect of the new government upon the governed as upon those who govern. There is a deterrence theory in essay four that suggests the response: "Wisely, therefore, do they consider union and a good national government as necessary to put and them in *in such a situation* as, instead of *inviting* war, will tend to repress and discourage it." Then he repeats the argument from essay three, namely, that a Union will foster the involvement of the "experience of the ablest men" in the entire nation in guiding the nation. But he adds a caveat that was not in essay number three, namely, that "it can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each." That is a new argument, an argument that a government for the union can in fact create homogeneity where diversity existed previously: *e pluribus unum*.

Professor William B. Allen is emeritus dean and professor of Political Philosophy at Michigan State University.

Posted in Constitutional Scholar Essays, Federalist No. 04 | 28 Comments »

Archive for the 'Federalist No. 05' Category

May 4, 2010 – Federalist No. 5 – Janine Turner

Tuesday, May 4th, 2010

Howdy from Texas. What a great conversation today. I have to tell you guys, or y'all, I am really learning from not only our guest scholars, but from you who blog. Today was a most thought provoking dialogue. I thank you for joining us and for spreading the word about our "90 in 90." A great civic discussion, based on the founding principles of our country, is just what our country needs.

I thank Horace Cooper for his wonderful essay today. Thanks Horace!

I related to what Tricia said in her blog today regarding the fact that a union gives us the ability to disagree yet to unite in times of trouble. An analogy would be a family. Families may bicker but – watch out – because they will defend each other when one is confronted or in danger.

In relation to the founding era and Federalist No. 5, there was still so much to be imagined, discovered and resolved. There was an abundance of mystery in America. This is one of the brilliant aspects of Publius – they had such foresight, almost prophetic. They knew there were differences amongst the peoples of America, with a vast portion of America yet to be discovered and claimed, but they also new

that it was better to be *with each other* rather than *against one another;* to be governed by a unified vision.

As our two hundred thirty -four years have evolved, it has become apparent that our differences did drive stakes into our passions but they did not dismember us. If we had not found stability as a burgeoning union then we would never have been able to survive the challenges that were to be wrought by the civil war and the great depression.. to name a few.

So what is the relevancy of Federalist No. 5 today? It is in defining the boundaries between the federal government and the states in the twenty first century. It is in the understanding of how much power our founding fathers really intended the federal government to have. It is in the reckoning and reconciling of the autonomy the states were intended to have and should have today. The answers to these questions are complex, especially because it is inordinately hard to rein back leniencies that have already been dispersed. Once one foot is in the door, it is very hard to close it again. Has the federal government planted its boots upon our thresholds too boldly?

I dare say many of us would answer yes. I dare say many of us agree with Arizona in regard to the fact that she has the right to make her own laws, yet look at how her autonomy is disrupting the union. Is this not exactly what Publius was predicting? However, today, is the fault with the state or with the Federal government who failed to protect her and her people? Or is it the state's right to defend herself? Is this not addressed in the Constitution in Article I Section 8.16? I, personally, would like to hear some thoughts from our scholars as to what exactly Article 1 Section 8.16 means in relation to Arizona.

It is only in the educating of America about the United States Constitution that these questions may be answered. Knowledge is power. We cannot appreciate what has been taken away if we have never known what was rightfully ours in the first place.

The monarchies of Europe didn't want their "people" educated. An educated people meant that they would be able to see the truths. These truths are self-evident: If we don't utilize our educated voice someone else will speak for us. And all of our rights will be lost.

God bless,

Oh, we have fixed it so all of the comments will be in the same place.. so please comment in the main essay's comment box (the guest scholar of the day's essay) from now on..)

Janine Turner
5.4.10

Posted in Constitutional Essays by Janine, Federalist No. 05 | Comments Off

May 4, 2010 – Federalist No. 5 – Cathy Gillespie

Tuesday, May 4th, 2010

A big thank you to Horace Cooper for serving as our Guest Blogger for Federalist No. 5. Excellent analysis from Horace, and great discussion! Thank you to everyone for participating! I would like to share a few of the lines and thoughts from today's post and blog comments that particulary resonated with me.

As many pointed out today, the Founding Fathers were visionary in their ability to look down the road and see what the future had in store for the United States. They had this ability because they were keen students of history, political philosophy, and human nature. David said it well, "Clearly, our Founders were men of letters who understood the precedents of their age."

As Susan H. pointed out, history does repeat itself. Our founders understood that fact much better than we do today. These days we tend to believe we are immune to the cycles that every civilization has experienced throughout the ages. If our forefathers were with us today, they would certainly be able to predict our future better than we can ourselves!

Carolyn pointed out Horace's last line, which I loved: "The very large swath of land and significant population of America potentially were the greatest strength of the nation in unity but could be its greatest weakness in disunity." I felt that summed up Federalist #5 perfectly!

I am continuing to learn much from you all! Thank you for taking the time to share your thoughts. Please invite others to join us!

Looking forward to Federalist No. 6!

Cathy Gillespie

PS – We are working to consolidate all blog comments onto the Daily Guest Bloggers page, and Janine and I will be posting our daily essasy on the Guest Blogger's Post as "Comments" as well as the usual standalone posts. Please post all your blog comments on the Guest Bloggers Page so its easy to see all the great comments in one place! Thank you!

Posted in Constitutional Essays by Cathy, Federalist No. 05 | Comments Off

May 4, 2010 – Federalist No. 5 Concerning Dangers From Foreign Force and Influence (continued) Guest Blogger: Horace Cooper, Legal Commentator and Director of the Institute for Liberty's Center for Law and Regulation

Tuesday, May 4th, 2010

John Jay continues explaining the need for a United States of America as opposed to either an association of 13 separate and individual states or a collection of three or four nation states. Jay explains his view that there were significant arguments in favor of a union, specifically by arguing that the recent experience with England and Scotland offer good examples of the benefits.

"QUEEN ANNE, in her letter of the 1st July, 1706, to the Scotch Parliament, makes some observations on the importance of the Union then forming between England and Scotland, which merit our attention."

Taking up an example that may have been familiar in the eyes of his readers was a useful means for Jay to use to help voters understand the issues that were at stake. The situation facing Scotland and England provided an excellent rationale for the states to reconsider the developing position among some that a confederation or a breakup into separate states would be useful in the long term.

Jay concludes: "We may profit by their experience without paying the price which it cost them. Although it seems obvious to common sense that the people of such an island should be but one nation, yet we find that they were for ages divided into three, and that those three were almost constantly embroiled in quarrels and wars with one another. Notwithstanding their true interest with respect to the continental nations was really the same, yet by the arts and policy and practices of those nations, their mutual jealousies were perpetually kept inflamed, and for a long series of years they were far more inconvenient and troublesome than they were useful and assisting to each other."

Moreover, the problem was not simply that 13 separate nations were never going to cooperate. Jay argued that even if the States were to divide themselves into as many as three separate nations, they would still face problems that would ultimately jeopardize the well-being of the entire people. "Should the people of America divide themselves into three or four nations, would not the same thing happen? Would not similar jealousies arise, and be in like manner cherished? Instead of their being "joined in affection" and free from all apprehension of different interests," envy and jealousy would soon extinguish confidence and affection, and the partial interests of each confederacy, instead of the general interests of all America, would be the only objects of their policy and pursuits. Hence, like most other bordering nations, they would always be either involved in disputes and war, or live in the constant apprehension of them."

In fact, it was Jay's considered view that by their very nature there would be differences between the various nations now comprising the original 13 states; and that this would lead to disputes. Perhaps you could imagine one nation having more commerce, another more population, still yet another possessing larger navy. Whatever the differences might be – they could not be avoided because the nature of things would be that different influences would occur in each of the separate states — they ultimately would lead to conflicts or fear of conflict. If you increased the number of nation states from three to 10, you likely would only increase the risks of conflict threefold or more because success or failure by one nation would cause her sister nation to take notice and feel some obligation to adjust in response.

"Whenever, and from whatever causes, it might happen, and happen it would, that any one of these nations or confederacies should rise on the scale of political importance much above the degree of her neighbors, that moment would those neighbors behold her with envy and with fear. Both those passions would lead them to countenance, if not to promote, whatever might promise to diminish her importance; and would also restrain them from measures calculated to advance or even to secure her prosperity. Much time would not be necessary to enable her to discern these unfriendly dispositions. She would soon begin, not only to lose confidence in her neighbors, but also to feel a disposition equally unfavorable to them."

Jay recognizes that having one nation would eliminate all of those peculiar instances at least in terms of their perception to other countries and greatly attenuate the potential for envy or fear to develop internally. Because as Jay recognized, nation states naturally are attentive to the concerns and changes

that occur in other countries and tend to evaluate them in terms of whether these changes either advance or retard their own perceived interests it is useful to minimize them wherever possible.

"Distrust naturally creates distrust, and by nothing is good-will and kind conduct more speedily changed than by invidious jealousies and uncandid imputations, whether expressed or implied." Jay concludes by pointing out that the very distance between the states and Western Europe made it more likely that any conflicts that would cause government leaders to take sides would occur here in the Americas and not with "distant nations."

The very large swath of land and significant population of America potentially were the greatest strength of the nation in unity but could be its greatest weakness in disunity.

Horace Cooper is a Legal Commentator and Director of the Institute for Liberty's Center for Law and Regulation

Posted in Constitutional Scholar Essays, Federalist No. 05 | 23 Comments »

Archive for the 'Federalist No. 06' Category

May 5, 2010 – Federalist No. 6 – Cathy Gillespie

Wednesday, May 5th, 2010

Hi everyone – thank you to Professor Allen for your enlightening essay! And thank you to everyone for your comments today.

I love the realism of Alexander Hamilton: "men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages."

We are fortunate our founding fathers were well read students of history, philosophy and political systems. They understood that we, as humans, are imperfect, and that civilizations through the ages have fallen victim to the character flaws of their leaders and citizens, time and time again. The Constitution they proposed, with its delicate checks and balances, was designed to take man's nature into account.

My favorite line from this essay was "Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?"

Over 200 years later, we, and the rest of the world, are still "remote from the happy empire of perfect wisdom and perfect virtue"-a state humans will most likely never attain. As we consider how we deal

with Iran and other terrorist nations, we should remember Alexander Hamilton's words, and not assume we can simply talk things out. These nations have not had the benefit of freedom. Oppression breads violence, and reinforces man's darker side.

The United States of America, though, is one of the greatest humanitarian and charitable nations on the planet. How is that possible, given the nature of man as described by Hamilton? Our founders – we the people – designed a government based on Godly principles, ceding only enough power to the government to keep man's darker side in check, but allowing the freedom necessary for our better qualities to flourish, and be brought to bear upon the problems facing our Nation and the world.

Cathy Gillespie

PS – We are working to consolidate all blog comments onto the Daily Guest Bloggers page, and Janine and I will be posting our daily essasy on the Guest Blogger's Post as "Comments" as well as the usual standalone posts. Please post all your blog comments on the Guest Bloggers Page so its easy to see all the great comments in one place! Thank you!

Posted in Constitutional Essays by Cathy, Federalist No. 06 | No Comments »

May 5, 2010 – Federalist No. 6 – Janine Turner

Wednesday, May 5th, 2010

Howdy from Texas! I thank y'all for joining us! Federalist No. 6 is yet another fascinating reading. Yes? I want to thank our Constitutional scholar, W.B. Allen, for breaking down Federalist Paper No. 6 with such superb detail.
Thanks Mr. Allen!

The complexity of this particular paper is mesmerizing.
I am enthralled by the examples of former empires, the rise and fall of these republics, and the reasons why. The relevancies in today's reading are many but the warnings are simple and the question singular. How to we keep the United States of America from failing? The warnings from history provide wisdom. The republics of Sparta, Athens, Rome and Carthage were ruined by wars and greed, Holland was overwhelmed in debt and taxes and England and France were beleaguered by antipathy toward one another.

It is interesting to reflect upon the fact that one of the reasons Alexander Hamilton, John Jay and James Madison could make such brilliant observations is because of their superb education. Alexander Hamilton should be an inspiration to many who believe that one has to be born into wealth to receive such an education. I wrote about Alexander Hamilton's mother in my book, "Holding Her Head High." Alexander was raised by his single mother, who by example, taught him at an early age the art of business and the spirit of tenacity. Yet, he was very poor. When his mother died he was in desperate need of a new pair of shoes. He may have had no shoes but he had spirit, determination and true grit.

Are these not qualities that Americans hold "Near and Dear" – spirit, determination and true grit. These American characteristics were why we won the Revolutionary war and these are the qualities that keep

America great today. We are a country, a republic, where one may dare to dream. We are a country where, according to our Constitution, no one may receive titles of Nobility. We are a country where a boy born in a single room log cabin becomes President, where men raised by single mother's become President, to name a few examples. We are a country where vision, perseverance and willingness to work hard can nurture the seeds of talent, in any man or woman, to fruition. In this respect we are all equal. In this respect we must hold "Near and Dear" our free enterprise, which yields the vast fruits of commerce, industry and personal ingenuity keeping America vibrant, solvent and safe.

God Bless,

Janine Turner
5.5.10

P.S. If you want to blog about this piece please do so on the main blog on our guest scholar of today's essay. We want to keep all comments there to promote a better flow of conversation. ☺

Posted in Constitutional Essays by Janine, Federalist No. 06 | No Comments »

May 5, 2010 – Federalist No. 6 – Concerning Dangers from Dissensions Between the States, for the Indpendent Journal (Hamilton) – Guest Blogger: W. B. Allen, Dean and Professor Emeritus, Michigan State University

Wednesday, May 5th, 2010

Federalist #6

Essay number five closed with recognition that what is decisive in human communities is the political distinction, the political identity. That settles the question of what is "near and dear." That distinction lies at the root of warfare. It follows accordingly that one lessens the chance of war by setting thins up so that people will call the same things "near and dear." This means, at a minimum of course, that when people seek to resolve their most important questions they will all expect the authoritative answer to come from the same source. They will all appeal to the same Solomon.

None of this means that Publius envisions a human landscape from which all war has been eliminated. He described controlling war within the precise political environment of the United States by means of constructing a political identity for these people called Americans. This is made clear in essay number six, in which Publius speaks explicitly against utopian speculation.

Men, he argues, are ambitious, vindictive, and rapacious. They are so because they differ regarding the things that are near and dear to them. One reacts to those things which are not one's own more under the influence of those passions of ambition, vindictiveness, or rapaciousness than with in respect to what is one's own. The founding seeks to insulate this characteristic in human beings by teaching some set of human beings to hold the same things "near and dear."

Note, too, that the statement about human character does not add the familiar phrase, "by nature." It is not necessary to conclude that human nature is evil in order to see that certain evil (fallenness) is

attached to human nature. There is another view that human nature itself is evil, that is sometimes falsely attributed to Publius. This very negative portrait of constitutionalism makes it appear that the whole purpose of the constitution is to prevent Americans from doing all the evil they can to one another.

The first essays in The Federalist Papers convey exactly the opposite picture: it is admitted that evil is possible; it is admitted that government is necessary; it is admitted that people do violence; it is admitted that there are causes of war rooted in human nature; but there is still the positive endeavor, which is the real driving force of this founding, and that is the endeavor to build a nation of one people who call the same things near and dear.

This emerges clearly in the third paragraph of essay number six:

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society: Of this description are the love of power or the desire of pre-eminence and dominion – the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed, though an equally operative influence, within their spheres: Such are the rivalships and competitions of commerce between commercial nations. And there are others not less numerous than either of the former, which take their origin intirely [sic] in private passions: in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members.

These separate categories that Publius has listed all relate to one another, but the most important thing about them is that they are distinct, separate. The love of power, to take an example, is different from the private passions. The rivalries and competitions of commerce also differ from private passions. In a manner of speaking, these factors may not be passions at all, they may be perfectly rational. If by passions, we mean what is not rational, then we cannot call all these things "passions." That means that the causes of war are not necessarily irrational.

To imagine that wars come about only because of failures of reason is probably one of the greatest mistakes. Some wars are thoroughly rational. Above all, ina case wehre people palce themselves ina situation to invite war. Let's remember essays three and four: "the nation must place itself in such a situation that it will not invite war." It will invite friendly intercourse, not war; which is why prosperity is a precondition for peace rather than a consequence of peace.

Having made that distinction, and having distinguished the private passions from other conceivable causes of war, we now note that the private passions are not less interesting because they are arational. For they bear upon the question of public opinion, and the preceding discussion turns almost entirely upon the question of public opinion.

In paragraph seven of essay six Publius again discussed the general clauses and examples of wars, now focused on the United States. He remarked that great national events sometimes are produced by petty personal matters, and he described Daniel Shays of Massachusetts as a desperate debtor. Then he added that it is much to be doubted whether there had bee a rebellion had Shays not been a desperate debtor. Thus, Publius wonders out loud whether the brief civil war was caused because a desperate person was carried away or because a person of enormous capacity for leadership was desperate. Accordingly,

private passion must be taken into account no less than rational opportunities. If Shays with his talent had not been made desperate, he had not organized thousands of debtors and farmers.

In the next two paragraph Publius set up a measure of the distance what he called visionary or designing men, on the hand, and the hardheaded realists of political life on the other hand:

The genius of republics (say they) is pacific; the spirit of commerce has a tendency to soften the manners of men and to extinguish those inflammable humours which have so often kindled into wars. Commercial republics, like ours, will never e disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.

What a lovely, visionary portrait of the modern dispensation! But Publius rejects it, no matter how close it comes to the view that prosperity is a precondition for peace. Publius says that it is not enough to form a republic and to practice commerce. In fact, he responds to both issues, when he wonders whether "it is not the true interest of all nations, whether republics or not, to cultivate the same benevolent and philosophic spirit." Commerce may well soften manners, but it equally well provides new occasions for jealousies, new occasions for conflict. In short, Publius rejects the new and modern principles of the enlightenment, that greater human understanding will eliminate causes for war.

Publius's argument is particular to the political organization of the untied States. Our discussion emerged from considering domestic violence. Publius examined commerce among the states, but noted that the commerce would not disappear because of Union. The only difference is a difference in practice or habitude. The various states (New York, New Jersey, Connecticut, say) would experience the same necessities. But under the Union they would all turn to the same source for help when problems arise. They would call the same thing near and dear by turning to a single Solomon. IT is the act of agreeing upon a single Solomon that predisposes men to be more peaceful with one another, more like brothers than enemies.

W. B. Allen

Dean and Professor of Emeritus

Michigan State University

Posted in Constitutional Scholar Essays, Federalist No. 06 | 27 Comments »

Archive for the 'Federalist No. 07' Category

May 6, 2010 – Federalist No. 7 – Janine Turner

Thursday, May 6th, 2010

Howdy from Texas. I thank you for joining us today! I, also thank Professor W.B. Allen for his essay. As I was reading his essay today I realized how grateful I am that he has graced us with his wisdom and

that he, and our other guest scholars, have so deftly interpreted the meaning of the Federalist Papers. Isn't it wonderful?

I hope you are checking out the Daily Behind the Scenes Videos that I am filming, editing and uploading every night! They are on the website – it's the box on top of the "90 in 90 = 180" box – the top, center of the home page. I am wearing a red dress. I am really enjoying filming this every night and writing the daily essays, but I am getting no sleep!!!

Cathy, my co-chair, has written such inspirational essays. Thanks Cathy. You are a true American Patriot – as are all of you who are joining us! Please spread the word about our "90 in 90" and our "We the People 9.17 Contest" for kids!!

Today's reading continues to focus on union and the danger we would face from Europe if we did not unite.

Strength in numbers and unity through diversity is a true American-ism.

One of the greatest miracles is that America won the Revolutionary War, but also, and no less importantly, that America survived her infancy and was directed by brilliant forefathers who were touched by Divine Providence. The United States Constitution was a miracle as well.

There are a couple of Alexander Hamilton's phrases that caught my attention today:

The spirit of enterprise which characterizes the commercial part of America, has left no occasion of displaying itself unimproved.

"The spirit of enterprise.." this is the heart and soul of Americans. We were hard working survivors with an independent streak that gave us the courage to cross the oceans to live in an inconceivable wildernesses and the adventurousness to cross the plains in covered wagons to endure an untamed land. Americans were of a fearless stock driven by an unbridled spirit.

And we still are.

This is why Samuel Adam's words still ring true to the American soul – a soul that was built upon generations of mavericks:

The redistributing of wealth and pooling of property are despotic and unconstitutional.

Americans thrive on the spirit of free enterprise and the freedom to pursue it.

The government must not cripple America's genius.

God Bless,

Janine Turner

5.6.10

P.S. If you would like to respond to this essay please go back to the guest scholar of the day's blog. We may converse together as one there… ☺

Posted in Constitutional Essays by Janine, Federalist No. 07 | Comments Off

May 6, 2010 – Federalist No. 7 – Cathy Gillespie

Thursday, May 6th, 2010

Welcome to Federalist No. 7 – 90 in 90 = 180: History Holds the Key to the Future!!!!

Are you all watching Janine's Behind the Scenes Videos? http://gallery.me.com/janineturner62#gallery Tonight she gives a shout out to the Constitutional Scholar Guest Bloggers!

Please check these videos out for the lighter side of Constituting America! You will be glad you did!

In Federalist Paper No. 7 Alexander Hamilton explores possible causes of tension, disagreement and outright warfare between states if joined as a loose confederation instead of through the proposed U.S. Constitution.

Territorial disputes, trade disagreements, apportionment of the public debt of the United States, "laws in violation of private contracts, as they amount to aggressions on the rights of those states whose citizens are injured by them," and differing alliances between various states and foreign nations, are all listed as divisive factors which could prove destructive without a central arbitrating force.

The fact that even **with** the ratification of the United States Constitution our country could not avoid civil war, validates Hamilton's concerns that without the Constitution, the natural tensions between states would eventually erupt. Thanks to the founders' wisdom and vision, even with civil war, the United States Constitution lit the path for the healing and reconstruction of our Nation.

It is hard to imagine what the United States might have looked like if the Constitution were not adopted, but the founding fathers envisioned a future similar to Europe, and they knew they did not want to emulate the European countries. "From the view they have exhibited of this part of the subject, this conclusion is to be drawn that America, if not connected at all, or only by the feeble tie of a simple league, offensive and defensive, would, by the operation of such jarring alliances, **be gradually**

entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all."

Our current leaders would be wise to assess if it is any more attractive today to emulate Europe than it was over 200 years ago. As we chart the course for the next two hundred years, we must choose if we embrace the U.S. Constitution and the founding principles of our country, including "The spirit of enterprise, which characterizes the commercial part of America." This "unbridled spirit" as Alexander Hamilton referred to it, is part of what has made the United States a great nation. Will we bridle our spirit of enterprise and drift from the Constitution and our founding principles? And what will our Nation look like in 200 years if we do? Our founding fathers could most certainly predict the outcome, and if we read these papers carefully, we can too.

Cathy Gillespie

PS – We are working to consolidate all blog comments onto the Daily Guest Bloggers page, and Janine and I will be posting our daily essasy on the Guest Blogger's Post as "Comments" as well as the usual standalone posts. Please post all your blog comments on the Guest Bloggers Page so its easy to see all the great comments in one place! Thank you!

Posted in Constitutional Essays by Cathy, Federalist No. 07 | Comments Off

May 6, 2010 – Federalist No. 7 – The Same Subject Continued: Concerning Dangers from Dissensions Between the States, for the Indpendent Journal (Hamilton) – Guest Blogger: W. B. Allen, Dean and Professor Emeritus, Michigan State University

Thursday, May 6th, 2010

Federalist # 7

Publius in the seventh essay of The Federalist Papers focuses entirely on examples of the kinds of disputes that could, in the event of disunion, reduce the United States into a replica of the European wars that had long colored that continent.

The examples cover territorial disputes, commercial disputes, debt settlement disputes, state laws violating contractual obligations, and alliances with foreign powers. In each of these examples Publius adopts the probable reasoning of prudent statesmen, not predicating intrinsic hostilities among the states but rather arguing from the operations of interest and the resentments of injuries real or perceived.

His point is simple and clear: without a trusted judge either to settle such disputes or to obviate them altogether through uniform rules where appropriate, there would be no ready instrumentality of resolution. Sometimes the disputes would be regulated through negotiation. But at other times, as occurs elsewhere, they would eventuate in conflicts that remain unresolved save through war. Publius's point is not that war among the states is a likely prospect, but rather that the habits of independence and self-reliance would eventuality develop into hardened positions that would not admit of easy resolution.

The arguments developed especially in essays two through six, therefore, receive their concrete political application in a consideration of the actual circumstances of the states and the effects of their contiguity. What ought to be matters of domestic difference resolved through the rule of law would become matters of international conflict, for which there is no agency or instrument of resolution apart from the contest of force. He concluded:

The probability of incompatible alliances between the different states, or confederacies, and different foreign nations, and the effects of this situation upon the peace of the whole, have been sufficiently unfolded in some preceding papers. From the view they have exhibited of this part of the subject, this conclusion is to be drawn, that America, if not connected at all, or only by the feeble tie of a simple league, offensive and defensive, would, by the operation of such jarring alliances, be gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of the all. Divide et impera must be the motto of every nation that either hates or fears us.

The force of the argument is immediately discernible in the eventualities o the War for the Union of the 1860s, in which not only the differences among the states produced eventual warfare, but the prospective intervention of foreign powers was seriously bruited and nearly obtained. Stated plainly, the Union was created for the sake of the rights of self-government described in Federalist one but also to grant Americans space to grow in peace.

W. B. Allen

Dean and Professor Emeritus

Michigan State University

Archive for the 'Federalist No. 08' Category

May 7, 2010 – Federalist No. 8 – Cathy Gillespie

Friday, May 7th, 2010

Thank you all for another week of wonderful insights!

Please encourage the children in your life to sign up online for our We The People 9.17 Contest! We are looking for entries especially in the short film and PSA categories for high school! Middle school and high school students can also enter a cool song or an essay, and the elementary school kids are invited to submit a poem or holiday card. Prizes include $2,000 for the winning high school entries and gift cards and other prizes for the younger kids. More information, including rules and signup form, is available at www.constitutingamerica.org

A recurring theme on these posts and blogs has been our amazement at the foresight, vision and wisdom of our founding fathers. There are times in reading their words that certain sentences seem to leap off the page with relevancy for today. We find this long term vision and wisdom amazing because the

elected officials of our generation deal mainly in the here and now. We are an immediate gratification society, and the majority of today's leaders respond accordingly.

Wouldn't it be refreshing to hear our current policy debates discussed in the terms we find in these Federalist Papers, with the spirit of civility and long term vision of our founders? What will the new health care bill mean to us 200 years from now? What impact will the various immigration reform proposals have far into the future? Wouldn't it be interesting for some of our members of Congress to write a series of articles similar to the Federalist Papers, addressing the consequential issues facing our country today?

What words from our generation of leaders will resonate 200 years from now? I can't answer that question, but I do hope and pray that 200 years from now, United States citizens will still be reading and studying the Constitution and the Federalist Papers, and will still be amazed at the foresight and wisdom of our founders.

Have a great weekend, and wishing you all a wonderful Mother's Day!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 08 | No Comments »

May 7, 2010 – Federalist No. 8 – Janine Turner

Friday, May 7th, 2010

Today was yet another stimulating reading. Your blog comments have been thought provoking as well. I thank you and I, also, once again, thank Professor W.B. Allen for his astute interpretation. After reading both Federalist Paper No. 8 and Professor Allen's essay here is what I have gleaned:

With the birth of the Republic of the United States came the birth of a new type of republic. Republics in the past all eventually lent themselves to the art of war, instead of the art of commerce and free enterprise, as its focus. Our new republic would be monitored and governed by the people instead of military figures.

This was truly an enlightened and inspired experiment.
Yet, safety would have to be secured in order to offer the opportunity of these pursuits and the art of war delineated. If the people did not feel safe, and if war were to spring from internal hostilities, then the focus would shift away from the remarkable aspects of American ingenuity to the colossal attentions war and/or petty skirmishes demanded.

To quote Alexander Hamilton:
"Even the ardent love of liberty will, after a time, give way to its dictates.."

"To be more safe, they, at length, become willing to run the risk of being less free…"

If war were to become the dictate then the executive branch would broaden and the legislative branch, the people's branch, weaken.

"They would, at the same time, be obliged to strengthen the executive arm of government; in doing which, their constituents would acquire a progressive direction towards monarchy. It is of the nature of war to increase the executive, at the expense of the legislative authority."

War was thus incompatible with the new industriousness of the American people:

"The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with the condition of a nation of soldiers, which was the true condition of the people of those republics."

Once again our forefathers had the wisdom and wherewithal to prophesy the necessities for a free people to flourish – freedom from dictators, tyranny, war, conquests and internal squirmishes.

Which begs the next big undertaking: replacing the dictator with the wisdom of the people. If the government were to heed upon the whims of the people then how does one educate and inspire the people? The checks and balances of the Constitution were thus both a check against the leaders and the people – a republic instead of a democracy.

In this respect how have Americans fared? I would say on the broad scale, remarkably. I believe our forefathers would be mesmerized with the scope of growth, scientifically, industriously and humanitarianly. They would be in a state of awe. The experiment of liberty and union, though bruised along the way, has remained vital.

Yet, a new generation and movement are upon us. Our founding fathers, I believe, would be a bit wary regarding the modern day wisdom of the people. There was such a hunger for education and inspiration in the blossoming days of the United States because the repression of such liberties had left a formidable and everlasting impression.

Today, do we take for granted the freedoms that have made our country great? I believe that the lack of voting would be a disappointment to our forefathers, as would the seeming unawareness of the founding principles of our country.

If we, as citizens, and our children, do not understand the dignified rights and principles we have then we, and our children, will not know when they are subtly taken away from us. The success of the progressive movement is a prime example.

Thus, the reading and comprehension of the United States Constitution and the Federalist Papers are paramount. I, personally, feel blessed to be having this dialogue with our daily scholars, Cathy and all of you who blog. I thank you for your involvement. Spread the word! Let us all be educated citizens with a knowledge rooted in the thesis of our country so that we may then step forward, voice our opinions and make a difference as informed citizens.

God Bless!!

Janine Turner
5.7.10

Posted in Constitutional Essays by Janine, Federalist No. 08 | No Comments »

May 7, 2010 – Federalist No. 8 – The Consequences of Hostilities Between the States, From the New York Packet (Hamilton) – Guest Blogger: W. B. Allen, Dean and Professor Emeritus, Michigan State University

Friday, May 7th, 2010

Federalist #8

The eighth essay presents a hypothetical case of a dis-United States. But it is the general argument that has been built that is germane to understanding the argument. Publius is aware of a "new politics" that has come to be, but Publius is no less aware that it will not produce perfect wisdom and virtue. That creates the moral and practical dilemma of defending the creation of a powerful government, one capable of "harmonizing and assimilating" diverse peoples and interests, while recognizing simultaneously that the government will not make people virtuous and wise. We wonder how to justify doing so, because we wonder whether there is any guarantee of a government's goodness apart from the virtue and wisdom of its people.

The answers to all these questions, it seems to me, are conditioned on a single premise, namely that one refer to the consequences of the government and not its operations. Now, the chief consequence is peace where war would otherwise prevail. It is true that governments that are energetic – powerful governments – affect the characters of the people they govern. That is a necessary condition of energetic government, a fact that Publius makes clear. We may admit two facts, then – namely, that people will not be made virtuous and wise and, further, that government will nonetheless be driven by public opinion.

Publius calls it an idle theory or "utopian speculation" to imagine removing human weaknesses, but we still question, not whether theories of humans transformed into angels are correct but, rather, the reason for confiding all authority in society into the hands of imperfect human beings and ignoring all the other claims to rule that have existed in human history. There have been claims based on age; claims based on strength; claims based on reason, on wisdom, on piety. Why must we reject all those to place the entire society into the hands of what may be the foolish and the vicious, as Publius has done?

From this perspective even the principle of descent in a monarchy may seem intelligent. For, though from time to time an occasional stupid bastard will be born king, most of the time men get fairly decent, well-bred people (which in the absence of better guarantees is at least something to rely upon) and thus may hope for stability if not good government. The alternative seems to be to submit to rule by people that are not going to be improved by government and that might not govern well. Publius reserves the response to this dilemma to later essays discussing the operations of government. Still, he has raised the stakes very high in this argument, showing that, while the government will not itself make people virtuous and wise, it is nevertheless wise and virtuous to construct such a government.

The eighth essay allows Publius to demonstrate the propriety of such an undertaking in the hypothetical context of an America disunited. For, though no one knows how the experiment will work in the end, it is still possibly to speak at length about the opportunities afforded by modern principles (as he anticipates the elegant ninth essay!). He draws a firm distinction, noting that "the industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce are incompatible with the condition of a nation of soldiers…" Thus, the Americans will not have the old fashioned virtues, based on the martial spirit in small republics of ancient times.

But that observation serves only to augment the question, how does Publius deal with the problem of rendering a people suitable to rule in this new and modern context without guaranteeing their wisdom and virtue? That such reflections introduce the eventual and ultimate response to the question of domestic violence is of great significance. Essays nine and ten deliver the conclusion. But the end of the introduction in the eighth essay firmly establishes that what we desire to now is precisely how turning power over to the people (defending popular government, self-government) produces the promised prosperity and peace without changing human nature. One might almost think it to mean that human nature is no mean thing to begin with!

W. B. Allen

Dean and Professor Emeritus

Michigan State University

Archive for the 'Federalist No. 09' Category

May 10, 2010 – Federalist No. 9 – Cathy Gillespie

Monday, May 10th, 2010

Thank you Professor Knipprath for yet another enlightening essay!

In Federalist 1, A General Introduction, Hamilton asserted that a wrong decision on this "important question" of whether or not to ratify the United States Constitution, would "deserve to be considered as the general misfortune of mankind."

Federalist 9 reminds us of the grand experiment that America was and is. History was littered with failed Republics. Another failure could forever doom future attempts at governing within the framework of a Republic. Success, however, could inspire similar governments around the world, liberating mankind. The stakes were high, and the founders recognized their place in history.

This was America's chance to prove that a Republican form of government could work – that political science had progressed, and refinements had been made including, as Hamilton lists:

"The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the

representation of the people in the legislature by deputies of their own election," *and "the ENLARGEMENT of the ORBIT within which such systems are to revolve."*

I love how Hamilton takes on the arguments of his opposition, and further quotes, paraphrases, and explores Montesquieu to make his points, ending with an explanation of the importance of the State governments within the framework of the proposed Constitution, and their "exclusive and very important portions of sovereign power."

Thomas Jefferson called the Federalist, "The best commentary on the principles of government, which ever was written." Federalist 9 certainly lives up to this high praise.

Looking forward to Federalist 10!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 09 | No Comments »

May 10, 2010 – Federalist No. 9 – Janine Turner

Monday, May 10th, 2010

Howdy from Texas. I want to thank you for joining us today and I thank Professor Knippratch for his most insightful essay today!!! Thank you, Professor Knippratch.

I am in the middle of tornados whirling through

our ranch so I have to make this brief. I am once again amazed and inspired by the intellectual tenacity of our forefathers. It is my hope, through our foundation, that we may encourage our youth to read, read, read.

History truly is the key to our future.

My favorite passage of Federalist No. 9 is:

The regular distribution of power into distinct

departments; the introduction of legislative balances

and checks; the institution of courts composed of

judges, holding their offices during good behaviour;

the representation of the people in the legislature, by

deputies of their own election; these are either

wholly new discoveries, or have made their principle

progress towards perfection in modern times

"..or have made their principle progress towards perfection in modern times."

This line captures my attention. Through out history many empires and republics had been formed but became lost in the mire of war, conquests or tyranny, as mentioned in earlier essays. Now, according to Alexander Hamilton, The United States Constitution, by analyzing the annals of history and recalculating and reinventing the basis of former Republics, offered "progress towards perfection in modern times."

Our forefathers, guided by the hand of Divine Providence, etched onto the new sphere of political science a masterpiece, a stroke of genius that would be embraced and cherished by Americans and emulated throughout the world – even today.

How sad it is that we Americans have such little time to devote to the revolutionary and relevant thesis of our country; that we have forgotten to cherish such a gem. We, as a modern society, have forsaken our great founding principles, as a kitten is forsaken on the side of the road.

It is Cathy's and my goal to reach out to the schools across America and by this September 17th have 20 minute DVDs (or downloads) available of the winners of our contest – hip, cool and contemporary – discussing the United States Constitution in all her glory.

Then when a 7th grader gets in your car, he or she won't say, "What's the Constitution?"

And we, as parents, as adults, as citizens, through our "90 in 90 = 180," will be re-stimulated, re-educated and fortified to take on whoever wants to challenge, defy or ridicule the validity of the United States Constitution. We will be ready to teach our children, our families, or our friends about the "perfection of modern times."

God Bless,

Janine Turner

May 10, 2010

Posted in Constitutional Essays by Janine, Federalist No. 09 | 10 Comments »

May 10, 2010 – Federalist No. 9 – The Union as a Safeguard Against Domestic Faction and Insurrection, for the Indpendent Journal (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Sunday, May 9th, 2010

Federalist Papers 9 and 10, though written by two different authors (Hamilton and Madison, respectively), both address the benefits from large "confederate republics" for internal peace and political stability. Of the two, Federalist 9 is the less momentous, but it raises a number of points that apply as well to other papers that follow.

First, there is the matter of defining terms. Throughout the Federalist, the writers define terms that often are used rather flexibly by others, including "republic" and, here, "Confederate Republic." Hamilton in Federalist 9 wants to let his readers know precisely what distinctions he is drawing. Hamilton defines a confederate republic as a "convention by which several smaller states agree to become members of a larger one." While that distinguished such a polity from a monarchy or an aristocratic republic (Rome and Venice), the definition leaves plenty of interpretive room to accommodate different types of confederacies, a discretion Hamilton and the others use to their advantage.

Second, Hamilton responds to the Antifederalist charge of "consolidation," a frequently-used disparagement at the time that invoked images of a distant, tyrannical, and out-of-touch centralized government and of destruction of state-level authority. (Were they onto something?) Such consolidated government was said to be the opposite of a confederacy. The proposed constitution, Hamilton responds, does not abolish the states, but, rather, makes them a constituent part of the national sovereignty (an issue explored in more detail in future papers) and leaves with them certain exclusive and very important aspects of sovereign power (again, to be examined further in subsequent papers).

Hamilton's approach accomplishes a couple of important goals and reveals a strategy followed over and over by the writers. For one thing, he ties the new Constitution to the old Articles. That creates the illusion of constancy, important for gaining political acceptance of the new plan. Placing the government under the Constitution ("strong" federalism) on the same continuum as that under the Articles ("weak" federalism) makes the difference between the two just a matter of degree—and an advantageous degree, at that—rather than of kind. This illusion is also important for blurring the revolutionary origins of the Constitution in a process that ignored the constitutional framework under the Articles. For another, emphasizing the confederal nature of the new structure supported the rhetorical coup of the pro-Constitution advocates styling themselves "Federalists," a much more anodyne and sympathetic term than "Nationalists" or "Consolidationists." That also, conveniently for the Federalists, deprived the Constitution's opponents of the moniker most suited to them and left them tagged with the politically unenviable designation of just being "anti" something, and anti "federalism," at that.

Third, Hamilton helps himself generously to quotations from the Baron de Montesqueiu. The latter's main work of interest to the Framers, The Spirit of Laws, was cited frequently to support their positions, though not always in the "spirit" in which Montesquieu intended. Unlike the Federalist, Montesquieu saw a rarified interpretation of the English constitutional monarchy as ideal.

More important than the references to Montesqueiu as such is the high level of discourse they represent. Note also Hamilton's reference to the Lycian confederacy. Discussing political philosophy and comparative constitutional systems is a common device in the Federalist, with frequent citations to other systems, ancient and modern. While these citations and the authors' interpretations often were editorialized to prove a point (the Federalist was persuasive advocacy, not dispassionate analysis), the casual use of them meant that the authors and the audience had a common frame of reference.

The level of discourse evidenced by the Federalist is remarkable. Granted that the writings may not have targeted the day laborer, the audience was nevertheless a wide segment of society. After all, these papers were not just notes on an internal debate. They were disseminated to a rather literate American public well beyond the participants in the New York and Virginia ratifying conventions. There was a broad level of understanding of the classic "liberal arts" among the middle and upper classes that made such discourse possible. True, Hamilton attended King's College (Columbia University), but would the typical graduate of Columbia today be as well-grounded in Western civilization and thought (in contrast to identity group "victims studies") as Hamilton and his audience? Is one likely to hear such discourse in the halls of Congress or in the media today? If not, does that say anything about our fitness for republican government?

That brings up a theme to be discussed further in connection with Federalist 10, the idea of "republicanism." Republicanism animated Americans' self-identity. Start with the name of just the writers of the Federalist, "Publius." The man of the "people" (not of "states" or "interests"). It comes from Publius Valerius Publicola, a legendary statesman and general of the Roman Republic's founding. Why write under a pseudonym? There was a legal reason in the history of the English law of publications of criminal libel, but by 1787 it was just a fashion—but one carefully selected. Opponents of the Constitution, too, chose their names with care, and the same person might change names to fit the occasion. Thus, in 1793, in defending President Washington's Neutrality Proclamation, Hamilton wrote under the pseudonym "Pacificus" (the "peaceful one"). Most of their pseudonyms, from Publius to Cato to Agricola to Brutus to Cincinnatus, were taken from Roman Republican history. The Framers—and Americans generally—were fascinated, nay, obsessed, with the Roman Republic. They saw themselves as heirs to the Roman tradition of classical republican virtue, in their civically-involved citizenry, the militia basis for political participation, the need for inculcation of shared political values, and (for some, e.g., Jefferson and Patrick Henry) the repository of civic virtue in a broad class of yeoman farmers and artisans.

But, as Hamilton shows, the Framers were also keenly aware of the fragility of many republics. Hamilton sees the means of saving the American republic through its size and through the use of a representative system. Madison picks up that theme in Federalist 10.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. He has also spoken on business law and contemporary constitutional issues before professional and community forums. Read more from Professor Knipprath at: http://www.tokenconservative.com/ .

Archive for the 'Federalist No. 10' Category

May 11, 2010 – Federalist No. 10 – Janine Turner

Tuesday, May 11th, 2010

Brilliant. Brilliant. Brilliant. Mesmerizing. I agree with Professor Knipprath words, "Federalist No. 10 is a masterpiece of political theory and insight into human psychology. Almost every sentence is worth studying."

Well said, Professor Knipprath and your essay today is quite brilliant, too, and thought provoking, as well. I thank you for your devotion to "Constituting America" and for all of your esteemed guidance.

I thank all of you who have blogged with us today and for your stimulating dialogue.

There is so much wonder, scope, knowledge, perspective and vision in this paper that I do not even know where to begin. I do believe I may have to meditate upon it before I can give it the respect it deserves.

What am I learning is the difference between a democracy and a republic and through these papers, and this paper in particular, I am getting a clear vision about why we are a republic. Passions, individual perspectives and political factions breathe life into liberty but they must be channeled and curbed. The answers to this challenge lie in our representative form of government.

To quote James Madison:

"Liberty is to faction, what air is to fire, an aliment, without which it instantly expires"

I am sharpening my insights regarding Republican virtues. These virtues deserve to be studied in school and taught in the home. We, as citizens, would be wise to delve into the psyche of the Revolutionary patriots, imbue their sense of virtue and wear their armor of valor. Ah, to breath the air they breathed, to feel the electricity they felt – the enlightment, the courage, the inspiration, the determination.

Knowledge is power. How fabulous that we are on this journey, this path of understanding – for if we do not know what we have, we will not know what is being taken away. Spread the word. Let's get as many Americans to join us as we discover the thesis of our great land – to preserve it we must observe it.

God Bless,

Janine Turner
May 11, 2010

Posted in Constitutional Essays by Janine, Federalist No. 10 | No Comments »

May 11, 2010 – Federalist No. 10 – Cathy Gillespie

Tuesday, May 11th, 2010

It's been exciting to see so many blog participants today! A big thank you to those who are with us every day, and an enthusiastic welcome to some of our newer folks! Each of you brings a unique and valuable perspective to these pieces. The larger the group we hear from, the more complete and "whole" our understanding becomes!

I was fascinated by the descriptions of factions in human nature, with faction defined as a group, majority or minority, united by a common passion or interest "adversed to the rights of other citizens, or to the permanent and aggregate interests of the community." Knowing we can't control the cause of these factions, the founders set out to control the effects.

Madison argues that a republic is more effective than a democracy in controlling the effects of factions. I would bet that most citizens today cannot explain the difference between a republic and a democracy. Federalist No. 10 not only explains the difference, but outlines the reasons why a Republic is more effective than a Democracy in representing the broad interests of the community and Nation.

I loved this sentence: "A rage for paper money, for an abolition of debts, for an equal distribution of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it."

Madison saw "an equal distribution of property" as "improper and wicked." There is a moral case to be made for allowing the spirit of free enterprise to reign in our society. Men possess different abilities, and their "diverse faculties" produce different classes of property owners. A republic balances the interests of these different classes.

Finally, towards the end of Federalist No. 10, a sentence that made me smile: "In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success **the vicious arts by which elections are too often carried**." It is interesting to see that over 200 years ago, they still had problems with "dirty tricks," in campaigns!

Thank you again to everyone for your insights today!!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 10 | 3 Comments »

May 11, 2010 – Federalist No. 10 – The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection, From the New York Packet (Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, May 10th, 2010

Federalist 10 is a masterpiece of political theory and insight into human psychology. Almost every sentence is worth studying. The central theme, "republicanism," carries over from its predecessor. At the core of classic republicanism, going back to the ancient Greek and Roman writers, lies "virtue." Aristotle, Polybius, and Cicero, among others, saw an essential connection between personal (private) virtue and civic (public) virtue. This was, for most Americans, especially those drawn from Calvinist stock, one of those self-evident truths. An interesting statement of the preconditions for virtue is in the great Northwest Ordinance of 1787: "Religion, morality, and knowledge, being necessary to good government and the happiness [in the Greek sense of personal flourishing as a human being] of mankind, schools and the means of education shall forever be encouraged.," sentiments expressed almost identically by George Washington in his remarkable farewell address.

Writers on ideal republican systems that emphasized virtue were not faced with the task of constituting an actual working government. One of the asserted practical defects of republics and, worse, democracies, has been their political turbulence. Ever since Plato, Western political theory has emphasized the very practical need that government first and foremost ensure political stability. To that end, every political system must have a symbol or ideal around which to rally, something or someone that can bridge the inevitable tensions that arise among competing personal interests. In the English constitution, that symbol was the crown, and American writers in the 1780s worried about what the absence of a king might mean for the long-term stability of the United States. The political and economic turmoil that was endemic in many of the states was less than reassuring. In the United States, that common ideal was the promotion of republican virtue. Today, some would say, it is the Constitution.

The self-interested part of human nature was called the spirit of party or, more commonly, "faction." Its effect is to undermine republican virtue, which demands sacrifice of the self or the group for the benefit of the whole. Faction is the anti-matter of classic republicanism The history of the early American republic, including Jefferson's inauguration speech in 1801, almost wholly revolves around coming to terms with the reality of faction in a system that claimed to rest on republican virtue. Today, politicians still often appeal to bi- or non-partisanship as a republican value and libel their critics' opposition as un-American selfishness. Truth be told, people love partisanship and engage in full-throated defense of their interests, and politicians quickly change their tune when their own oxen are gored.

Madison shrewdly exploits that. He writes that there are two ways to deal with faction: Address its causes or its effects. The first is impossible, as it would necessitate addressing the root cause of faction, fallen human nature. That is totalitarian, in that it requires remaking human nature by equalizing personal talents and possessions. Such a cure would be a destruction of liberty worse than the disease. Moreover, it actually would go against the duty of government to protect the natural inequalities of persons. We may all be created equal in the eyes of God or enjoy metaphysical equality, but we are not in fact all created equal in talent. Human society will always reflect inequalities in talent and differences of opinion, and we need to deal with the realities of human nature, not with pie-in-the-sky proposals to remake humans. Is anyone in D.C. listening?

He proposes instead to deal with the effects of faction. He sets out the danger of democratic systems, such as ancient Athens, where the ability of people to communicate with each other within a homogeneous and geographically confined polity allows permanent majority factions to appear that oppress minorities. Those endangered minorities are political and religious dissenters and the propertied

classes. In fact, he singles out taxation as a tool particularly susceptible of abuse against them. Does this sound familiar at all? The opposite danger could also appear, in oligarchies, where a permanent minority faction might oppress the majority. The key, then, is to prevent both of these permanent conditions. Like Plato and Aristotle, among others, Madison sees both oligarchy and democracy as corrupt political forms. Like many of them, he proposes something he calls a "republic."

The danger of oligarchy is mitigated by the republican principle of the vote. Easy enough. More difficult is the danger of unadulterated democracy. It is worthwhile to re-read his mellifluous and powerfully concise indictment of such a system in the paragraph that begins, "From this view of the subject…." The control, though not cure, for that ill is the element of deliberation introduced through the republican principle of representation. By itself that is still not enough, as small republics suffer from similar defects as democracies. The second crucial element to forestall oppressive permanent majorities is the large size of the American republic with its large and diverse citizenry. That lessens the dangers of popular passions easily communicated and organized to oppress the minority.

Madison cleverly turns the arguments of his opponents against them. Among Antifederalists, it was almost an article of political faith that a government for a large dominion inevitably becomes oppressive. Not content merely to defend the Constitution and the increased power of the national government against charges that the new system threatens liberty, Madison goes on rhetorical offensive against the political instability found in states with which his contemporaries were all too familiar. In a hard-hitting paragraph near the end ("The influence of factious leaders…."), he argues that the central government is *less* dangerous than states or localities. It is noteworthy what he perceives to be the bad results from too much democracy: "[A] rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project…."

Ingenious as his control of faction is by embracing its reality while blunting its worst manifestations (an issue to which he returns in Federalist 51), is he still right today? Certainly there are big variations in dominant popular political opinions between states or even within states. Though the contrast is becoming paler, there still is greater political homogeneity within particular localities than among Americans as a whole. On the flip side, mass communication and personal mobility, along with a weakening of intermediary institutions, make even our national system much more like the participatory or plebiscitary democracies about which Madison warned. Moreover, the central government, through means to be addressed in future papers, has taken on some of the very characteristics the Antifederalists feared. If that is the case, isn't local control (and the ability to vote with one's feet) more conducive to personal liberty than top-down central government from which there is no escape?

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. He has also spoken on business law and contemporary constitutional issues before professional and community forums. Read more from Professor Knipprath at: http://www.tokenconservative.com/ .

Archive for the 'Federalist No. 11' Category

May 12, 2010 – Federalist No. 11 – Cathy Gillespie

Thursday, May 13th, 2010

You all are kicking up some dust in the comments today! I love the back and forth.

And thank you to Dr. Postell for your essay! We appreciate your participation and guidance.

Thank you also to Constituting America's founder and co-chair Janine Turner for her brilliant essay, published early today! I am burning the midnight oil.

I begin tonight with these sentences, the first sentences of Federalist No. 11:

"THE importance of the Union, in a commercial light, is one of those points about which there is least room to entertain a difference of opinion, and which has, in fact, commanded the most general assent of men who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries as with each other."

The above quote reflects another area in which the founding fathers showed great insight, wisdom and vision. Today, African countries are suffering economically from the tariffs and entry fees they impose on each other. European countries suffered as well. Only recently have they unified economically, learning from our example. And some see a political unification of Europe as a likely next step. The founders saw the necessity of economic unity, and acted on it, over 200 years before Europe came to the same conclusion.

It is fascinating to me that in the early stages of our country, the founders could so clearly discern "the adventurous spirit, which distinguishes the commercial character of America," and recognize that "the unequaled spirit of enterprise…..is itself an inexhaustible mine of national wealth."

The power of Congress "to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes," found in Article 1, Section 8 of the Constitution, certainly propelled our country to its preeminent world economic leadership position. The Commerce Clause allows the United States to present a unified economic front to the world, and for individual states to not penalize each other. But the Commerce Clause has been a double edged sword. When utilized to keep markets free and unfettered, it allows our Nation to soar, tapping into that uniquely American "unequaled spirit of enterprise." But when the Commerce Clause is utilized to regulate and stifle the spirit of enterprise, it can "clip the wings by which we might soar."

The current health care reform legislation stretches the Commerce Clause further than it has ever been stretched before. Instead of regulating economic activity between the states, Congress is using its power to mandate that people pro-actively make purchases from private sector companies. I wonder what Mr. Hamilton would think of the federal government's intervention into that type of "commercial relations."

Tim W. said it especially well in his post today, "It was refreshing to see Hamilton cast commerce as a virtue, rather than the vice portrayed by some in power and in the larger information media." The

founders recognized that the most valuable natural resource of the United States is its people ,their "adventurous spirt," and "unequaled spirit of enterprise."

Thank you to all of you who are joining us in shining a light on the founding principles of our country, so that they may once again be our guide. Please continue to spread the word, and invite your friends to read and blog with us.

On to Federalist No. 12!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 11 | No Comments »

May 12, 2010 – Federalist No. 11 – Janine Turner

Wednesday, May 12th, 2010

Well, I had great fun reading Alexander Hamilton's Federalist Paper No. 11, especially toward the end of the paper, where he makes a statement regarding Europe:

"The superiority she has long maintained, has tempted her to plume herself as the mistress of the world, and to consider the rest of mankind as created for her benefit. Men, admired as profound philosophers, have, in direct terms, attributed to her inhabitants a physical superiority; and have gravely asserted, that all animals, and with them the human species, degenerate in America; that even dogs cease to bark, after having breathed a while in our atmosphere…. It belongs to us to vindicate the honor of the human race, and to teach that assuming brother moderation. Union will enable us to do it. Disunion will add another victim to his triumphs."

This statement, once again, exhibits the vision of our Constitutional founding fathers and Publius; strength in numbers, success with unity. They envisioned a United States that could, with her richness, vastness, intellect, unsurpassed spirit of enterprise, and republican virtue compete with Europe and do so with dignity and in a way that would, "vindicate the honor of the human race."

Other points that I found to be of interest were regarding a strong and unified navy. "The rights of neutrality will only be respected, when they are defended by adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral."

This statement is relevant today and is applicable to our current situation regarding 9/11 and terrorism. It is, also, represented by human nature. Bullies only attack the weak. Other nations watch our administration and our country's stance on defense. If they sense any leniency, or lack of response to attacks on American soil, which is "despicable by its weakness," then we, as Americans forfeit our privilege of being neutral. Peace is no longer an option for us if we do not exhibit and execute strength – strength politically (a congress that thinks in terms of what is best for America and not factiously),

militarily, (readiness and response), and financially (solvency). Strength, also, lay in our resources – our own oil and advances in new fuels.

It is best illustrated by Alexander Hamilton's own words regarding unity and strength:

"The unequalled spirit of enterprise, which signalizes the
genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost; and poverty and disgrace would overspread a country, which, with wisdom, might make herself the admiration and envy of the world."

As a final note of relevancy – the many mentions of the phrase, "spirit of enterprise" in the Federalist Papers, in this case, "unequalled spirit of enterprise." America was built on this spirit – a can do, true grit American determination. The greatness of America will cease with the continuance of a "nanny state." America was not built with her hand out. America was built with her hands at work.

God Bless,

Janine Turner
May 12, 2010

Posted in Constitutional Essays by Janine, Federalist No. 11 | 5 Comments »

May 12, 2010 – Federalist No. 11 – The Utility of the Union in Respect to Commercial Relations and a Navy, for the Independent Journal (Hamilton) – Guest Blogger: Dr. Joe Postell, Assistant Director of the Center for American Studies, the Heritage Foundation

Wednesday, May 12th, 2010

Federalist #11

Over the past century, as America has become more involved in world affairs, many are wondering what the Founders would have said about such a trend. *Federalist #11* gives us a glimpse of how the Founders approached questions of international politics. What we see is that the Founders were neither isolationists nor internationalists. Their approach was to put America's security and interests first, and to preserve American sovereignty and self-determination, but to adopt an active role in the world in order to achieve that end.

The 11th essay is part of a series (running from *Federalist* 2 through 14) on preserving the Union. The 11th essay argues that preserving the Union will make the country stronger in its commerce with foreign nations. Alexander Hamilton, writing as Publius, explains that European nations are jealous of America, because America will eventually be strong enough to prevent Europe from colonizing the Western Hemisphere. (We see the roots of the Monroe Doctrine already in this essay.) The nations of Europe "look forward, to what this country is capable of becoming, with painful solicitude." Publius predicts that the European countries will try to weaken and undermine the fledgling country. If the country is not unified, these attempts will be more effective.

But by remaining unified, Publius argues, America can gain the upper hand over Europe. By gaining strength, America can make its own policy as a fully independent nation rather than follow the dictates of Europe. With its combined strength, America could enact regulations preventing countries from trading in its markets, thus leading them to adopt a friendlier stance towards American merchants.

Furthermore, a unified America could build a dominant navy. This navy would protect America from attack, but more importantly, it would also allow America to receive equal and fair terms of trade, throwing its naval support "into the scale of either of two contending parties" in Europe. America could use its navy to ensure independence, demanding equal treatment as a nation equal in standing to those of Europe. Hamilton writes that "The rights of neutrality will only be respected, when they are defended by an adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral."

A weak nation becomes the servant of stronger countries, and unity is the key to building American strength. Hamilton goes so far as to say that America "might make herself the admiration and envy of the world" by adopting the right policies. Alternatively, if union is abandoned, other countries would be able "to prescribe the conditions of our political existence."

Hamilton looks to the future, envisioning the eventual position of America as a strong country which serves as an example of liberty to the world. He goes so far as to write that we should "aim at an ascendant in the system of American affairs." Through Union America will "be able to dictate the terms of the connection between the old and the new world."

But in contrast to nations which use their strength for self-aggrandizement, America can use its standing in the world to protect the sovereignty and independence of nations from European interference. The Founders were not isolationists, yet they did believe that their principles put strong limits on what they could do in international affairs. Their principles required that military power be used to defend American sovereignty, but defending sovereignty requires respecting the sovereignty of other countries.

In this essay, we see that Hamilton and his readers were not opposed to American involvement in world affairs. But they did not think that the purpose of foreign policy was not to go on a crusade for liberty around the world. Rather, they sought to be involved in world affairs in order to secure their independence.

Counter intuitively, the Founders believed that the only way to be independent of the entangling affairs of other nations was to be active in the world. Only by asserting itself on the world stage could America

become strong enough to dictate its own affairs in the pursuit of its interests. If America isolated itself, the Founders believed, it would be placing itself in a position of weakness and disadvantage.

The wisdom of the Framers is especially relevant today, when Americans are concerned about becoming the "world policeman" yet wish to avoid isolating themselves from the rest of the world. The Founders' principles of security and respect for the sovereignty of other nations provide a middle ground between isolationism and internationalism.

Dr. Joe Postell is Assistant Director of the Center for American Studies at the Heritage Foundation heritage.org

Archive for the 'Federalist No. 12' Category

May 13, 2010 – Federalist No. 12 – Cathy Gillespie

Friday, May 14th, 2010

Federalist Number 12

Thank you to Dr. Paul Teller for your insightful post today, and to Dr. Joe Postell for your enlightening post yesterday! We are blessed to have Constitutional scholars such as yourselves helping us on our journey through the Federalist Papers! And thank you to everyone who continues to comment, and share your thoughts! I am learning so much from each of you.

"The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,–all orders of men, look forward with eager expectation and growing alacrity to this pleasing reward of their toils."

Taxes. No one like them. Since biblical times the tax collector has been seen as one of the most despised members of society.

Taxes sparked the American Revolution. It is in our heritage to resent taxes, especially when we feel we have little or no say in how the money is being spent!

Yet, Alexander Hamilton, in Federalist No. 12 makes an argument we may not like to hear – taxes are necessary. We must find ways to fund the government :

"*A nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province. This is an extremity to which no government will of choice accede. Revenue, therefore, must be had at all events."*

The question is how.

It is fascinating to observe the progression of taxation in our country. From the Article I, Section 8 of the United States Constitution:

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To a federal tax code that is over 7,000,000 words long (thank you to my friend Steve Moore for this fact, cited in a great piece he did for National Review http://article.nationalreview.com/268573/our-income-tax-monstrosity/stephen-moore)

What happened?

In federalist No. 12 Hamilton advocates consumption taxes because they are more fair, people will tolerate them better, and they are easier to collect. There were no assured means of assessing personal property ownership or personal income during this period in our country, and as Hamilton wrote, "because personal assets are difficult to trace, large tax contributions can only be achieved through consumption taxes."

In three years we will "celebrate" the 100th anniversary of the income tax, the ratification of the 16th Amendment to the United States Constitution. It is hard to believe that this complicated, lengthy tax code has been in existence for less than 100 years. The explosion of this code in such a short time shows the tendency of government to grow and intrude into our life and liberty, unless we vigilantly keep it at bay, guarding the boundaries of our freedom.

It was eye opening to read Federalist No. 12, and see that in the early days of the Republic, an income tax was the furthest thing from the founders' minds. These were men of great vision, and this is one more area where their foresight shines.

If only we had listened to them more closely!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 12 | No Comments »

May 13, 2010 – Federalist Paper No. 12 – Janine Turner

Friday, May 14th, 2010

As I read each day one of the Federalist Papers, my goal is to see the true intention of our Constitutional forefathers and also to see how it is relevant today.

Their wisdom and foresight continue to astound me.

"A prosperous commerce is now perceived and acknowledged, by all enlightened statesmen, to be the most useful, as well as, the most productive, source of national wealth and has accordingly become a primary object of their political cares."

A prosperous commerce is the most productive source of national wealth. How is this relevant today? Is America's prosperous commerce being compromised? When the Federal government becomes a source of income, care and resources, when they seize control of her commerce, American enterprise and inspiration are stigmatized. This stigmatization stifles the prosperity of commerce because citizens lose their motivation and one of their most precious American traits – ingenuity.

"The genius of the people will illy brook the inquisitive and peremptory spirit of excise laws."

This is very relevant today in regard to businesses being heavily taxed.

And lastly, "A nation cannot long exist without revenue. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province."

Our debt is surpassing our ability to recover. How long will we be able to survive economically, politically? How will we be able to protect ourselves? When destitute of support will we then resign our independence and sink into the degraded position of, yet again, a province?

These are serious times. Our forefather's words serve as warnings. They documented it for us in our United States Constitution and the Federalist Papers. They provided the answers. Will we heed their wisdom? To do so we must know about it. We must understand it. Knowledge is power. Spread the word.

God Bless,

Janine Turner

P.S. I thank our fantastic scholar today, Paul S. Teller, and yesterday's scholar Dr. Joe Postell. How lucky we are to have their insights and educated opinions!

Posted in Constitutional Essays by Janine, Federalist No. 12 | No Comments »

May 13, 2010 – Federalist No. 12 – The Utility of the Union In Respect to Revenue, from the New York Packet (Hamilton) – Guest Blogger: Paul S. Teller, Ph.D., Executive Director of the RSC

Thursday, May 13th, 2010

In Federalist 12, Hamilton seeks to convince skeptical states that forming a union will increase and regularize a revenue stream. His main argument centers on the assumption that the best source of revenue is the taxation of consumption, particularly consumption from abroad. He takes great effort to dispel any possible advantages to a federal tax on land (since doing so would be "too precarious" and would put America's agrarian livelihood at risk). Any sort of direct (i.e. income) tax would also be "impracticable" because collection is difficult, hard currency is scarce, and such tax has never generated enough revenue in other places they had already been tried.

So duties was the way to go—and especially "duties on imported articles." But the problem remained, as Hamilton saw it, that, if each state levied its own duties at varying rates on different products, the likelihood of fraud would go way up. After all, he reasoned, the states were all adjacent to several others, shared a language, enjoyed a long history of interaction already, and were connected by myriad modes of transportation, including rivers and bays. Therefore, "all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty, and would insure frequent evasions of the commercial regulations of each other."

But a unified system of duties across all states, collected and enforced by the federal government via "a few armed vessels," would not create such incentives to cheat and would greatly improve the efficient collection of revenue.

But why do we even need revenues? Well, as Hamilton asserts in Federalist 12, "a nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province." That is, to Hamilton, an independent and consistent revenue stream is necessary for political independence.

To increase the universe of revenue, Hamilton saw only one acceptable path: increase commerce. After all, he argued, "the prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth." It also increases the quantity of currency in circulation and thus makes the payment of taxes much easier (thereby increasing the "supplies" to the treasury). Plus, and not insignificantly, a growing and varied commerce contributes to the individual—and thus the national—happiness.

So let's follow the Hamiltonian logic here. To maintain political independence, a nation must have a consistent and increasing revenue stream. A consistent revenue stream best comes from a federal government levying duties on commerce—particularly commerce with foreign nations. An increasing revenue stream comes from expanding commerce. And expanding commerce "multipl[ies] the means of gratification"—or happiness.

Hamilton might find it fascinating that, 223 years after he wrote Federalist 12, some of the themes he addressed in it form the basis of some of today's most furious debates. For example:

- **Should the federal government receive an ever-increasing revenue stream?** While many Americans regard any increase in revenue to the federal government as a positive development, other Americans regard increasing federal revenues as a guarantor of increasing federal spending on matters less and less constitutional. After all, for example, how could we expect a grossly overweight man to gorge less when more and more food is put in front of him?
- **Should the federal government levy taxes on commerce with foreign nations?** This question is of course at the center of the ongoing debate between free trade and so-called "fair" trade. One would be hard-pressed to find any modern evidence of tariffs and other such duties being a net benefit for either levier or levee.
- **Should the federal government encourage the expansion of commerce?** Here, Hamilton is spot-on. Robust commerce benefits man and nation alike and thus should be positively promoted. Hamilton would be horrified, however, at today's practice of the government *participating* in commerce—not just facilitating it.

Regardless of how you feel about these three questions and other issues addressed in Federalist 12, we all can likely agree that Hamilton could never have conceived of the levels of revenues that pour into the federal government today. Over the last forty years, tax revenue has averaged 18% of the Gross Domestic Product, and is projected to increase significantly under a variety of scenarios.

Paul S. Teller, Ph.D. is the *Executive Director of the* RSC the caucus of House Conservatives

Archive for the 'Federalist No. 13' Category

May 14, 2010 – Federalist No. 13 – Cathy Gillespie

Friday, May 14th, 2010

A big thank you to Dr. Morrisey for his insights today on Federalist 13, and his broader thoughts on the themes of Federalist 1–14.

We especially appreciate Dr. Morrisey coming back later in the day! The exchange between Dr. Morrisey and Marc Stauffer on the relationship between economics and morality hit on an important founding principle. Free enterprise is more than an economic issue or theory; it is a moral issue.

Mr. Stauffer brought up the fact that we "tend to look at our government in terms of economic remedies/gain and less at its moral implications." Dr. Morrisey expounded on this by pointing out that "The Founders understood the relation between morality and economics in a much more careful way than we do."

Indeed, there is a moral case to be made for free enterprise: People should have the freedom to pursue their entrepreneurial dreams; our children should not be held back by the debt of our generation; the tax burden of our country should not fall on a minority of our citizens, and at death parents should be able to pass on to their children the assets they worked hard for all their life, instead of turning a large portion over to the government in the form of a death tax. Our founders understood that economic freedom is a fundamental moral issue before it is anything else.

Arthur Brooks, President of the American Enterprise Institute, makes the moral argument for economic freedom better than anyone I have ever heard speak on the subject. For anyone who is interested in this view, I suggest his excellent ***Wall Street Journal*** article, "The Real Culture War is Over Capitalism," from April 30, 2009: http://online.wsj.com/article/SB124104689179070747.html

When the moral argument for free enterprise is made, we begin the cultural shift that is so needed in our country.

Thank you again to Dr. Morrisey and Mr. Stauffer for bringing up this important topic.

Have a wonderful weekend everyone!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 13 | No Comments »

May 14, 2010 – Federalist No. 13 – Janine Turner

Friday, May 14th, 2010

What a great dialogue today. I thank all of you for joining and I also thank Dr. Will Morrisey for his wonderful interpretation of today's paper and The Federalist in general. It was super grand that Dr. Morrisey revisited our blog throughout the day! Thank you, Dr. Morrisey!

I feel lucky to be having this national conversational/blog regarding something as important as the founding framework of our country. Understanding this foundation will be the basis for maintaining our great republic. By great, I don't simply mean powerful or rich, but I mean virtuous and free – free to think, free to live, free to express, free to fail, free to succeed, free to speak, free to worship.

There truly is a "180" movement in our country. Recently, a candidate was ousted and it was revealed by the constituents that it wasn't because of the usual concerns such as: the economy or terrorism. It was because he didn't heed the United States Constitution. Posing these questions, pondering these truths may lead our present and future congressmen and women to pause, pause upon the principles of our country and hence reflect principled behavior. We shall insist upon it as the future of our country depends upon it.

Through this process, our "90 in 90," I am gleaning a deeper understanding of my, until recently mostly intuitive and instinctive, aversion to big government.

Publius argues forthrightly about the benefits of a strong union. This makes perfect sense as they lay out their arguments, most compellingly by their comparisons to Europe. The United States could have easily succumbed to a similar scenario, mirroring the divided countries of Europe. Our founding father's persuasive passions to unite the colonies were truly Providential.

Yet, never do I interpret the United States Constitution, or the Federalist Papers, with the objective of obtaining a strong, overbearing Federal government. They wanted focus, fortitude and fluidity – yet never to be a tourniquet impeding the states' rights – the states' rights to diversify in spirit, make decisions best representing their local domain and maintaining the wherewithal to do so.

The question thus begs: how do we cut the line of dependency, dependency on federal bait and bargain?

Like a fish caught on the bait, we are flapping in the wind. If only, "catch and release" were an option perhaps then we could swim in the big pond together yet maintain our different stripes.

God Bless,

Janine Turner

May 14, 2010

Posted in Constitutional Essays by Janine, Federalist No. 13 | 3 Comments »

May 14, 2010 – Federalist No. 13 – Advantage of the Union in Respect to Economy in Government, for the Independent Journal (Hamilton) – Guest Blogger: Dr. Will Morrisey, William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Friday, May 14th, 2010

Federalist 13: Why Union?

Always, Americans face two questions: the question of *regime*; the question of the *modern state.*

By "regime" I mean three things: *who* rules; by what *forms* or *institutions* the rulers rule; and what *way of life* rulers and ruled will lead. These three dimensions of the regime intertwine. If, for example, a tyrant rules, he will require such institutions as a large standing army controlled exclusively by himself for *internal* policing as well as for conquest, a judiciary dependent on his will alone, and a legislature without independent powers. If a tyrant rules, the way of life will encourage a moral atmosphere of mutual distrust and self-protective secrecy among neighbors, habits of fear punctuated by moments of terror.

If the people rule, *the same thing might happen*. The popular majority might tyrannize as well as—maybe worse than—a `majority of one.' Hence republicanism or representative government, a republic of *extensive* territory and population wherein no one faction may obtain a ruling majority.

The first fourteen numbers of *The Federalist* address the crucial question of regime—whether a people can truly govern themselves non-tyrannically, by reflection and choice, not accident and force. But they equally address the question of statism.

Modern political philosophers—in England, such men as Francis Bacon and Thomas Hobbes—sharply criticized *feudalism*. A feudal society structures itself politically rather like a cinnamon roll: ruling authority organizes itself into swirls and morsels—an aristocrat here, a city there, with a king mixed in and a network of churches and common law courts throughout, each with more or less independent sources of power, sometimes overlapping one another but none simply superior to the others.

The *statists* did away with this. Statesmen organize states along the lines of a wagon wheel, with a central hub of authority and spokes radiating out to the border. Along these institutional spokes reside administrators or bureaucrats, beholden to the center for their appointments and salaries, exerting control over the population, now reconceived as the *nation* organized into the *nation-state.* From the center of the state commands and force flow out; to the center, recruits and revenues flow in, far more efficiently than under the feudal order. Wherever a state appeared, neighboring political communities more or less needed to imitate it, lest the wheel roll over them.

For Bacon and Hobbes and their royal sponsors, the best regime for the modern state was monarchy, giving unity of command to the powerful state. Having felt the pincers of monarchic statism, the Founders disagreed, with muskets.

But the defense of the natural rights enunciated in the Declaration of Independence via institutions of political liberty required the strength and unity that only a modern state could provide. Only a state could muster the economic and military strength to defend itself against the surrounding European empires, with their contempt for republicanism.

Publius therefore puts the matter of *federal union* front and center in his introductory essays. The Founders propose to solve the problem of republican self-government in a dangerous world of centralized, monarchist, imperial states by gathering military powers in a national government under popular control, with carefully enumerated, balanced, separated powers while leaving most domestic authority firmly in the hands of the governments of the several smaller states, where citizens can more readily govern themselves—states equally represented in one house of the national legislature.

In the thirteenth *Federalist*, Publius warns against *di*sunion by appealing to Americans' sense of economy. Were we to divide into separate confederacies, the two or three new governments would nonetheless rule extensive territories, larger than those of the British Isles. Instead of one federal government we would have at least two, with unnecessary duplication of ruling institutions and commensurately heavier expenses per capita. If jealousies arose between these confederacies, commercial tariffs and larger militaries would further degrade prosperity. North America would look more and more like the Europe from which Americans had declared their independence. To those who look askance at a national government, Publius replies, one such thing is better than two or three. To undertake to found *thirteen* such sovereignties would involve Americans in "a project too extravagant and too replete with danger to have many advocates."

But can one government—even a carefully limited government—truly govern one such large territory? Publius answers this question in his fourteenth essay, concluding his introduction to the new Constitution.

Will Morrisey holds the William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College. His most recent books are *Self-Government, The American Theme: Presidents of the Founding and Civil War, The Dilemma of Progressivism: How Roosevelt, Taft, and Wilson Reshaped the American Regime of Self-Government*, and *Regime Change: What It Is, Why It Matters.*

Archive for the ‘Federalist No. 14’ Category

May 17, 2010 – Federalist No. 14 – Janine Turner

Tuesday, May 18th, 2010

Howdy from Texas. I hope you had a nice weekend. I started reading a wonderful book this weekend, which I have found to be a great companion piece to our “90 in 90 = 180.” It is entitled, “Miracle at Philadelphia,” by Catherine Drinker Bowen. Check it out!

I thank Professor W.B. Allen for his thought-provoking essay today. I really appreciate his time and talents. I thank you, Professor Allen. And I thank all of you who are joining us! Please spread the word about our important mission here and read it with you children and/or family members or friends. Please also spread the word about our contest for kids. The “We the People 9.17 Contest.” Our children are in desperate need to be educated about our founding principals. It is up to us to teach them. Check out tonight’s behind the scene video. It is my daughter informing other kids about the contest!

Tonight’s reading once again reveals our Constitutional founding fathers’ amazingly brilliant ingenuity. It is obvious from the Constitution that they did not want any resemblance of class warfare or “Nobility.” The art of a Republic was the perfect balance for a democratic state. James Madison makes a striking point regarding the complaints that there was no precedent for a Republic. Was there a precedent for the Declaration of Independence, that courageous and biting document that sparked and validated the Revolutionary War? Was there a precedent for the Revolutionary War?

Regarding relevancy today, how many modern day citizens really know that we are a Republic? Do our children know that we are a Republic? Do they understand and value our freedoms, rights and free enterprise? In one of Cathy’s recent essays, she included a link to a statistic that I found to be alarming. A Rasmussen poll in 2009 stated that 13% of people over 40 years of age believed that socialism was better than capitalism, yet in the group of people under the age of 40, 33% believed socialism was better than capitalism. I find this statistic to be very alarming! Imagine what the statistics would be today?

Thomas Jefferson words send us a timely warning, “If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.”

James Madison states in Federalist No. 14, “The kindred blood that flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their union, and excite horror at the idea of their becoming aliens, rivals, enemies.”

May our kindred blood unite in preserving our truly magnificent country and may we focus on both the founding principles that shaped our country and the goodness of the people that made it be. May we set

the precedent for rekindling the flame of awareness about the brilliant framework of our country and its relevancy today.

God Bless!

Janine Turner
May 17, 2010

Posted in Constitutional Essays by Janine, Federalist No. 14 | 1 Comment »

May 17, 2010 – Federalist No. 14 – Cathy Gillespie

Tuesday, May 18th, 2010

Federalist #14

First, a big thank you to Dr. Allen for his insightful comments. As usual, Dr. Allen does much more than simply explain to us what is in the reading, he takes us several steps further.

And thank you to all of you who commented today. Especially to Kay for her heartfelt story about the airport encounter, and the glimpse into the soul of our Union.

Wow! I loved Federalist #14! There are so many beautiful passages about unity in our country – "the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies." While the American people "have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience…" But the item that most caught my attention was the discussion of the difference between a republic and a democracy. I was struck by the fact that many of the communication and travel constraints our founding fathers operated under have been removed in present day by technology, and by the fact that technology is facilitating our country's move toward democracy, something our founding fathers would not see as an improvement.

The difference between a republic and a democracy is so important, and so little understood. In Federalist 14 and elsewhere, Publius devotes a good amount of time explaining the difference between these two forms of government, and detailing the weaknesses of a democracy as opposed to a republic. In our founding fathers' time, a democracy within a large geographic area was impossible, limited by the "*distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions*." In Federalist 14 Madison points out that the geographic size makes the United States much more suited to a republic than a democracy.

Today, technology has erased the constraint imposed by geographic size, and our culture is drawing us towards democracy. Television shows such as American Idol where millions of people cast ballots; online polls where instant readouts of the public's tastes, preferences and opinions are measured;

Twitter, Facebook: all put more power than ever in the collective public's hands to instantly express opinions on any matter.

But the weakness of pure democracy is the same, whether it is a small geographic area where the people are physically coming together to vote on every issue affecting them, or whether it is millions sitting at computers, in front of their televisions, or texting on their cellphones "voting." As Hamilton states in Federalist 71, "*The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests.*"

In Federalist 10 the weakness of pure democracy was summed up this way: "*From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions*.

As the culture draws us toward democracy, and with the geographic constraints on democracy removed by technology, it is more important than ever that we understand the systemic flaws of this type of governance.

Our elected officials must be firmly grounded in the meaning of the republic, and their role in balancing competing interests and factions. We must understand the fundamental reasoning and principles that drew our founding fathers to govern through a republic, and the Federalist Papers are vital for that understanding.

I am so grateful for all who are adding to our knowledge base each day, and journeying with us through these readings. Thank you!!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 14 | 1 Comment »

May 17, 2010 – Federalist No. 14 – Objections to the Proposed Constitution From Extent of Territory Answered, From the New York Packet (Madison) – Guest Blogger: W. B. Allen, Dean and Professor Emeritus, Michigan State University

Sunday, May 16th, 2010

In the fourteenth essay Publius argues that America has discovered the merit of making the mechanical principle of representation the basis of unmixed and extensive republics. This is not only an extended republic, but it is a republic in which we do not have to make a special place for the rich and the poor. We will not reserve one legislative house for the rich, another house for the poor. We will not create formal classes in government, and the government will not depend on class distinctions.

It may not have been observed that the tenth essay's principle of the extended sphere of the republic has a consequence in the operations of politics. There will be commerce, and single district representation also. There will be the "multiplicity of interests." But we must not neglect that as interests multiply they must affect more people. The consequence of that fact for the ancient distinction between the rich and the poor is a significant diminution in the numbers of the poor. The logic and dynamic of the extended commercial republic is precisely to squeeze rich and poor towards the middle.

The real impact of this constitutional design is to get rid of the struggle between the rich and the poor. The great American middle class is an historical oddity that has come to characterize all the modern world impacted by the industrial revolution and the principles of modern republicanism. This growing middle class is the basis of the unmixed constitution, a constitution founded on the middle class that turned almost into the only "class." One of the most extraordinary things about the argument in the tenth essay, which is reflected as well in the fourteenth essay, is that it anticipates the nineteenth century debate about class and political life. Publius responded in advance, in effect, to the arguments of Marx and others, insisting that the United States need not have the rich overcome the poor or the poor overcome the rich. It could rather offer a social, economic, and political dynamic through which in fact those distinctions disappear in terms of their political significance.

Grant we must that what are called the super-rich do exist, as do the tabloid sheets that celebrate. But we do not view the rich, or even the super-rich as a class. Which is the reason that they can be just about anyone, from extraordinarily gifted athletes to people of very old money and families. They are isolated; they are individuals. They are not a class. In fact the only thing that distinguishes them today is their money. Otherwise they seem much like everybody else, and sometimes less. What matters is that this happened not by accident; it happened by a constitutional design that aimed to base the Constitution's support on the strength of a very large middle class.

The claim, therefore, in the fourth paragraph of the fourteenth essay, that we have an umixed and extensive republic, goes to the very heart of the Antifederalist challenges to the Constitution and leads Publius to inquire in the paragraphs following, what are the limits of a democracy? and how are we supposed to calculate this? The question must be asked because we know that general arguments must be tested by practical limits. We cannot assume that there are no limits to representation as an approach, especially if we take seriously the task of "harmonizing and assimilating" differences. Differences must at least be kept to such a level that they are subject to being thus harmonized.

Publius provides a calculation in the fifth paragraph and those following. It is interesting because of what it says about 1787 technology and what it implies about the future. First, he describes the limits of democracy as a dynamic function: "the natural limit of democracy is that distance from the central point, which will just permit the most remote citizens to assemble as often as their public functions demand."

The natural limit is the distance determined by public functions. The natural limit of a republic is that distance from the center, which will barely allow the representatives of the people to meet as often as may be necessary for the administration of public affairs. Can it be said the limits of the United States exceed this distance? "It will not be said by those who recollect that the Atlantic coast is the longest side of the Union, that during the term of thirteen years, the representatives of the States have been almost continually assembled."

To say that members of the Confederation Congress were "continually assembled" is a bit disingenuous; for although the Congress was almost constantly in session, one of the chief complaints about it was the notoriously poor attendance of delegates.

Publius then conducts a lesson in public geography, leading him to conclude that the ability to travel from any point, within a certain period of time (two weeks in 1787), to reach capital and conduct business, sets the allowable size of the system. This is a fairly mechanical definition, and it can be misleading. Not only does it not respond to the matter of harmonizing and assimilating, but it deflects attention from the ultimate basis of Publius's judgment. The twelfth paragraph makes this clear, when Publius appeals to ties of affection to sustain "one great respectable and flourishing empire."

In other words, Publius reminds us that we started with a Union, not with a theory on the strength of which we generated a Union. A theory may tell us that the Union is not too big for its britches, but that does not imply its indefinite extension. The condition for extending the Union is the continual existence of the Union. But that, in turn, would depend upon people accepting its principles, and first and foremost those principles enunciated in the Declaration of Independence.

Thus, two things operate simultaneously: first, the notion of the mechanical theory, the distance limit and, second, the moral limits, the moral distance. To the extent that we accomplish Union on the scale of the moral distance, it becomes possible by the mechanical theory to justify extending the reach of the Union, and not one bit farther.

W. B. Allen is Dean and Professor Emeritus of Michigan State University

Archive for the 'Federalist No. 15' Category

May 18, 2010 – Federalist No. 15 – Cathy Gillespie

Wednesday, May 19th, 2010

Have you been watching Janine's Behind the Scenes Videos? They are fantastic! Last night Juliette Turner, Constituting America Youth Director, talked about the We The People 9.17 Contest, and how important it is that young people understand the Constitution and founding principles of our country! Check out these fun, short videos – where else can you see pets reading the Federalist Papers, or meet Longhorns with names like Revolution or America's Pride? You'll see some beautiful Texas landscapes, and if you click on the right one, you'll even get to hear Janine sing the Star Spangled Banner!

Thank you to Professor Allison Hayward of George Mason University! Your thorough explanation, and tie-in to Europe's present day troubles, made Federalist No. 15 come alive! Thank you also to all who posted today. If you are reading, and haven't written your comments in our blog, please join the conversation! We need your voice and view!

I echo Professor Hayward's observation that Hamilton's Federalist No. 15 is a bit of a downer after Madison's optimistic essay yesterday. Madison's Federalist No. 14 made my heart swell with pride to be a citizen of the United States of America. Federalist No. 15 reminds us that our country soared to greatness, strength and respect from humble beginnings. In 1788 the prospect of failure was very real. Hamilton does a brilliant job describing the environment, and paints a bleak picture, "the last stage of national humiliation": lack of respect in the world, debt, no troops, declining commerce and land values, lack of private credit - the list goes on and on. The country was at a low point.

But out of this low point, rose our great Nation – rebuilt upon the framework of the United States Constitution. In fact, if all had been going well in the late 1780′s, the beautiful, unique, perfectly balanced republic that emerged might never have been born.

That is the lesson I take from Federalist No. 15. And one I have learned from Constituting America's co-chair and my good friend, Janine Turner, who is an inspiration to me. Janine often speaks about how tough times etch our character and shape us into who God wants us to be. The tough times in Hamilton's day produced the United States Constitution.

Our country is again going through tough times. Hamilton's words throughout Federalist No. 15 could easily be describing our present day circumstances. But look what these tough times have already wrought: a renewed passion and engagement of the citizens of the United States! There is an energy and thirst for knowledge taking hold across the country that I have not felt before in the 25 years in which I have been involved in politics.

Where will this lead? What lies ahead? When we Americans join together, with our spirit of enterprise, ingenuity and passion, only good things will result. We are once again on the "precipice" Alexander Hamilton speaks of, but I predict we will not plunge into the abyss. Instead, we will emerge stronger, fortified, with a renewed, patriot's zeal and commitment to our country's founding principles.

I look forward to the readings that lie ahead, sharing with you and others, and putting what I am learning to use!

Good night and God bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 15 | No Comments »

May 18, 2010 – Federalist No. 15 – Janine Turner

Wednesday, May 19th, 2010

Relevancy today. It is very clear in Federalist Paper No. 15 that cohesion between the states was necessary in order to preserve our union in a viable way.

Our guest scholar, Professor Allison Hayward, (I thank you Professor Hayward for your wonderful essay!) speculates about the future of today's European Union, "I suspect that the EU may fail, because its constituent nations will be unwilling to yield the necessary sovereignty to create a sufficient federal government."

The potential failure of the European countries to render themselves to a singular government speaks volumes about why the United States was able to succeed. Americans had the foresight and the fortitude to unite after the Revolution, rendering brilliant results. Thus, two miracles birthed the United States of America, one the success of the Revolutionary war, the other the success of the United States Constitution.

Homage must be paid to our Constitutional forefathers who tirelessly, tenaciously and methodically gave their time and talents to achieve the three pertinent steps: the Constitutional Convention, the rendering of the Constitution and the eventual ratification. This was no easy feat, yet it proved to be our rallying point and the launching pad for realizing the potential of our countrymen and the wealth of the land.

Yet, today, we must question if the confines of our great Constitution have been stretched beyond what our forefathers intended. A federal government to persevere and preserve is very different than a federal government to control and contrive.

Here are some of Alexander Hamilton's words that I find relevant today and thought provoking:

"I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot, which binds the people of America together, to be severed or dissolved by ambition or by avarice, by jealousy or by misrepresentation."

"We may indeed, with propriety, be said to have reached almost the last stages of national humiliation. There is scarcely any thing that can wound the pride, or degrade the character, of an independent people, which we do not experience."

"Do we owe debt to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence?"

"Is public credit an indispensable resource in a time of public danger?"

“Because the passions of men will not conform to the dictates of reason and justice, without constraint.”

“The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption.”

Are we not experiencing all of the above today?

God Bless,

Janine Turner
May 18, 2010

Posted in Constitutional Essays by Janine, Federalist No. 15 | 1 Comment »

May 18 – Federalist No. 15 – The Insufficiency of the Present Confederation to Preserve the Union, For the Independent Journal (Hamilton) – Guest Blogger: Professor Allison Hayward, George Mason School of Law and fellow with the Center for Competitive Politics

Tuesday, May 18th, 2010

Federalist #15

Alexander Hamilton’s Federalist 15 is a gloomy counterweight to Madison’s optimistic Number 14. Madison ended No. 14 praising the noble course set by the founders of the new nation. Hamilton’s No. 15 is like a splash of cold water, reminding citizens of the moment’s terrible perils.

And the troubles are many. The nation’s present configuration is inadequate to the task. The central government cannot govern, and thus cannot honor its debts, defend its territory, engage in diplomacy, or unite its constituent state governments.

And therin lies the rub, not just for Hamilton and the founders, but for generations afterward. How should the central national government relate to the states? The states are the unit of government charged with the ratification of the constitution. But Hamilton knows that a “mere” confederation of states will not survive, not in the dangerous world of the late 18th century. The central government needs sufficient power to govern the nation as one unit, when solidarity is required. Recalcitrant states must be brought to heel to honor their obligations. That meant, in contrast to the Article of Confederation, extending the federal government’s power to impose obligations upon real citizens as individuals, not just intangible state governments.

This is a big step. Hamilton’s challenge is to appeal to his reader’s fear of irresponsible state governments. He can then position the national government as a solution to that problem, rather than as a tyrant to be feared itself. But among his readers are also the political leaders within New York, so he must argue carefully. He isn’t attempting to convince his New York readers they need to fear for

irresponsibility in their own state government. He doesn't need to accuse them of fecklessness. It is enough that other states will take advantage of a weak central government to pursue short term agendas to the ultimate detriment of all.

As we know, debate over the size and scope of the federal government persisted after the ratification, even to this day. From our vantage point, it may seem odd to entertain the notion that the central government could be too weak. Federal statutes and regulations reach deeply into American society, and into areas of governance traditionally left to state and local governments, such as criminal law, education and corporate governance. But in 1787, the prospect that the United States could become a "failed" state was real. However one feels about the size of government today, reading Hamilton should remind us that "ordered liberty" requires some authority to maintain the order.

Federalist 15 makes interesting reading in light of the financial crisis in Europe. Although the EU has an executive, the power of the central government is fragile and nothing like that established by the Constitution. Is the European Union sufficiently powerful to bring fiscal order to its constituent nations? Or will the lack of fiscal discipline in Greece, to name but one member, pull the EU down, destroy the Euro, and provoke domestic crisis throughout Europe? Can Europe impose a federal solution? I suspect that the EU may fail, because its constituent nations will be unwilling to yield the necessary sovereignty to create a sufficient federal government.

Professor Allison Hayward teaches election law at George Mason School of Law and is also a fellow with the Center for Competitive Politics

Archive for the 'Federalist No. 16' Category

May 19, 2010 – Federalist No. 16 – Cathy Gillespie

Thursday, May 20th, 2010

A big thank you to our guest blogger Marc Lampkin! Marc, thank you for guiding us today!

I so appreciate all of you who take the time to comment. You often see nuggets of wisdom in these papers that I have glossed over on my first reading, and your posts send me scrambling back to find the phrases you elaborate on.

Two phrases jumped out at me upon my **first** reading of Federalist 16, though, and they are the same mentioned by Nickie and Carolyn:

An experiment of this nature would always be hazardous in the face of a constitution in any degree competent to its own defense, and ***of a people enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority****. The success of it would require not merely a factious majority in the legislature, but the concurrence of the courts of justice and of the body of the people. If the judges were not embarked in a conspiracy with the legislature, they would pronounce the resolutions of such a majority to be contrary to the supreme law of the land, unconstitutional, and void. If the people were not tainted with the spirit of their State representatives, they,* ***as the natural guardians of the Constitution****, would throw their weight into the national scale and give it a decided preponderancy in*

the contest. Attempts of this kind would not often be made with levity or rashness, because they could seldom be made without danger to the authors, unless in cases of a tyrannical exercise of the federal authority.

"A people enlightened," "natural guardians of the Constitution"

"We the people," are the natural guardians of the Constitution, because as our country drifts from the Constitution, it is "We the people," who have the most to lose. If we are not "enlightened," to understand what we had, and have, we will certainly not know what we have lost, and are losing. And our children will understand even less than us. We must not only enlighten ourselves, but enlighten our children, so the torch of freedom may be passed to the next generation of Americans. Watch Janine's Behind The Scenes Videos starting today, as she teaches her daughter about the Constitution in a several part series! Janine Turner Short Film Part 1 Constituting America

I am both amazed, and a bit embarrassed to admit how much I am learning through this exercise. I graduated from Texas A&M University with a B.A. in political science, yet I don't recall ever picking up the Federalist in college. This reading is my first time through these prescient papers. Tonight, I feel empowered that I am becoming "enlightened," and that the founding fathers considered us - **'we the people"** – to be the guardians of the Constitution. The more I learn, the better I can guard it! And the more I can teach my children! On to Federalist No. 17!

Good night and God Bless,

Your fellow guaridan of the Constitution,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 16 | 2 Comments »

May 19, 2010 – Federalist No. 16 – Janine Turner

Wednesday, May 19th, 2010

I want to let you know that I have begun a short film with my daughter for my "Daily Behind the Scenes Videos." Tonight is Part 1. Check it out. The link is on the website on the home page or the link to the YouTube version is on the Constituting America Facebook Page. It's going to be fun! I direct these and edit them on my computer nightly – with the help of my daughter, of course. The goal of these videos is to enlighten American citizens about our great United States Constitution, our "90 in 90" and our "We the People 9.17 Contest" so, spread the word!

Here we are at Federalist Paper No. 16! I want to thank Marc S. Lampkin for joining us again today. We are so lucky to have your scholarly insights, Mr. Lampkin!

Alexander Hamilton's quote, "When the sword is once drawn, the passions of men observe no bounds of moderation," speaks volumes. First of all, it is how Alexander Hamilton died, in a dual of passionate discord with Aaron Burr. Secondly, I can't help but find relevance in these words regarding the situation in Arizona. The more I read, absorb and learn about our United States Constitution, the more I start seeing all aspects of our current political environment through Publius' eyes –their reasoning, their framework – which, of course, is the whole point of our "90 in 90."

"When the sword is once drawn, the passions of men observe no bounds of moderation," starts to make more and more sense to me when I witness, with the rest of America, the friction between our "United States", Arizona and California. It was experienced over two hundred years ago, has happened throughout our history and it is happening today – "faction." What we are experiencing as a country is a sample of what would have happened if we had not ratified our Constitution. There would have been no way to keep the peace and find a unity in vision and mutuality of purpose.

Thus, my current assessment is that the cohesiveness of a Federal government served and should continue to serve its purpose in certain areas – one of those areas is the defense and protection of her states.

Thus, the question begs the answer. Why hasn't the Federal government protected her border states? Yes, states have rights, and yes, the Federal government has grown way beyond our founding father's intentions but in this instance regarding defense, the federal government should have stepped up to the plate. Arizona has been left to fend for herself and is getting abuse from all angles.

Consequentially, we are witnessing state against state – accusations, misinterpretations – faction. Will California boycott her ally? Will Arizona turn her brother's lights?

"When the sword is once drawn, the passions of men observe no bounds of moderation."

Let us experience the freedom, uniqueness and independence as individual states yet, the unity of brotherhood as a country. Once the sword is drawn where will the passions end? Discourse is an enticement. United we stand. Divided we fall. Has this not been the theme of these Federalist Papers?

God bless,

Janine Turner

May 19, 2010

Posted in Constitutional Essays by Janine, Federalist No. 16 | 1 Comment »

May 19 – Federalist No. 16 – The Same Subject Continued: The Insufficiency of the Present Confederation to Preserve the Union, From the New York Packet (Hamilton) –

Guest Blogger: Marc S. Lampkin, partner at Quinn Gillespie and Associates LLC and graduate of Boston College Law School

Wednesday, May 19th, 2010

Federalist #16

In Federalist #16, Alexander Hamilton continues to outline the deficiencies of the present system of government authorized under the Articles of Confederation. It is Hamilton's view that the loose confederation will lead to lawlessness and ultimately anarchy once the inability to enforce its own laws becomes apparent.

This exceptionable principle may, as truly as emphatically, be styled the parent of anarchy: It has been seen that delinquencies in the members of the Union are its natural and necessary offspring; and that whenever they happen, the only constitutional remedy is force, and the immediate effect of the use of it, civil war.

The system that was in place had two important facets: it was a voluntary association of the states and secondly it was in most respects a government whose actions were non-binding. The fact that the Articles of Confederation were voluntary meant that the Congress ruled with the consent of the governed and therefore exercised their authority lawfully. However, the fact the government could not enforce its dictates meant that ultimately festering conflicts could result in armed conflict among the several states as the enforcement mechanism of last resort. Furthermore, due to the differences between the size and influence of some of the states, the confederation was particularly ill suited for America. With no enforcement power, the confederation created asymmetric power centers encouraging large and powerful states to see national policies for their benefit while disregarding the needs of the smaller and less powerful states. In the unlikely circumstance wherein the Congress adopted a policy that might benefit small states, larger states might ignore them with impunity. Such a circumstance potentially leads to civil war.

In fact, Hamilton observes that this asymmetric distribution of authority had other problems unrelated to the tendency towards internal armed conflict. Even when faced with exogenous threats, because the states view themselves as sovereigns — motivated primarily by their own self preservation — the national government would either not have access to the resources necessary to prevent an attack from a foreign enemy or perhaps simply not respond to an attack if the attack was perceived as being against one of the states rather than the nation as a whole.

If there should not be a large army constantly at the disposal of the national government it would either not be able to employ force at all, or, when this could be done, it would amount to a war between parts of the Confederacy concerning the infractions of a league, in which the strongest combination would be most likely to prevail, whether it consisted of those who supported or of those who resisted the general authority. It would rarely happen that the delinquency to be redressed would be confined to a single member, and if there were more than one who had neglected their duty, similarity of situation would induce them to unite for common defense.

On the other hand, since the Articles of Confederation do not give Congress the power to lay and assess the taxes without consent or to compel the armies necessary to stave off attacks, the weakness that the American government presents to other nations would appear quite provocative. Hamilton complains that by their nature, the states as sovereigns are not transparent entities and therefore even assessing duties or raising armies is unduly difficult. Does a state refuse to pay up its share because of actual shortages it is experiencing or because its support for the cause identified is lackluster?

If there were a national government like the one described in the Constitution, it would already have the authority to defend itself — recognizing that an attack on one part was an attack on all.

Even if the conflict from foreigners is not the result of a coordinated assault i.e. a war, foreign governments would still be tempted to sow dissension among the states, Hamilton argues. As long as the states themselves are complete sovereigns, they have every incentive to evaluate foreign relations, trade, and even aid solely in terms of its impact on them as sovereigns and not on the nation as a whole. Hamilton calls this "*Its more natural death is what we now seem to be on the point of experiencing, if the federal system be not speedily renovated in a more substantial form."*

Nevertheless, even if the states were to voluntarily provide the resources for an army, would the force be used to intimidate would be attackers or instead to enforce through intimidation its policies among the states themselves?

It remains to inquire how far so odious an engine of government, in its application to us, would even be capable of answering its end. If there should not be a large army constantly at the disposal of the national government it would either not be able to employ force at all, or, when this could be done, it would amount to a war between parts of the Confederacy concerning the infractions of a league, in which the strongest combination would be most likely to prevail, whether it consisted of those who supported or of those who resisted the general authority.

Then this would present concerns that are even more troublesome. Wouldn't it be the case that what Hamilton calls the "delinquency" (meaning the failure of compliance) would occur not just among one state but also likely among several? In addition, wouldn't powerful states attempt to align themselves in ways to avoid suffering the consequences of their delinquencies? If so using the military to enforce compliance begins to look a lot like civil conflict or civil war now that the states joined together in alliances are using enforcement of national policies as a tool of enforcing their perceived advantages.

Hamilton writes, "*It would rarely happen that the delinquency to be redressed would be confined to a single member, and if there were more than one who had neglected their duty, similarity of situation would induce them to unite for common defense. Independent of this motive of sympathy, if a large and influential State should happen to be the aggressing member, it would commonly have weight enough with its neighbors to win over some of them as associates to its cause."*

A final critique that Hamilton makes of the Articles of Confederation stems from the notion that it would be beneficial that states would affirmatively approve most of the policies adopted by the national government. While on its face, it might appear that requiring a second step in order to assure that a given statute must go into effect would be good for liberty, Hamilton argues that it was more likely to lead to anarchy or civil conflict.

Under the U.S. Constitution many checks and balances were already put in place, which acted in many ways as hurdles to excessive, or passion based legislation. The new Constitution by its design sought to encourage greater deliberation leading to legislation that is more necessary and weeded out that which was frivolous. Forcing the additional step of state approval would be needlessly limiting the flexibility of the national government while sowing seeds for conflict.

Hamilton asserts, *If it be possible at any rate to construct a federal government capable of regulating the common concerns and preserving the general tranquillity, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed Constitution. It must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have aright to resort to all the methods, of executing the powers with which it is intrusted, that are possessed and exercised by the government of the particular States. To this reasoning it may perhaps be objected, that if any State should be disaffected to the authority of the Union, it could at any time obstruct the execution of its laws, and bring the matter to the same issue of force, with the necessity of which the opposite scheme is reproached.*

Hamilton reveals himself to be quite alarmed by the potential threats posed by the Articles of Confederation. While he may not see the U.S. Constitution as a panacea to all problems that the young nation might face, he believes that by its design, it is far better able to prevent conflict, or in the event that conflict occurs, it would be able to see that the nation was ultimately able to survive it.

Marc S. Lampkin, partner at Quinn Gillespie and Associates LLC is a graduate of Boston College Law School

Archive for the 'Federalist No. 17' Category

May 20, 2010 – Federalist No. 17 – Cathy Gillespie

Thursday, May 20th, 2010

What a great discussion we've had on Federalist No. 17! Thank you to William C. Duncan for his insightful comments! Dr. Morrisey, thank you for joining us today with your contributions as well!

In Federalist 17 Hamilton addresses the concerns of the anti-federalists by making the case that the national government will not try to encroach upon the states' rights and powers:

"It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected; because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government."

For the sake of argument, Hamilton imagines a scenario where the national government might try to overstep its bounds, and explains that "the people of the several States would control the indulgence of so extravagant an appetite."

The founders had set up the unique and artfully constructed set of checks and balances to keep the federal government from extending its reach past the powers it was specifically given. So, what happened? How could Hamilton have gotten it so wrong? I have been pondering this all day. The answer is that the system the founders so carefully constructed was tampered with. It is ironic that Federalist No. 17 was rendered inaccurate by the 17th Amendment! Like any piece of delicate machinery, once the balance is off, the results go awry.

Hamilton could also not fathom that the national government would desire to control the details of peoples' lives. He thought it would be too tedious a task for a government more interested in the big picture of "commerce, finance, negotiation and war." Our country had been founded on personal liberty and the "unequaled spirit of enterprise," mentioned in Federalist No. 11. It would go against everything their countrymen had fought for, for the federal government to encroach into peoples' lives and trample their rights, so it was truly hard for Hamilton to foresee.

It is so commonplace today for the federal government to involve itself in the minute details of daily living, that most people don't realize the balance of government is far off what the founders had envisioned, and the Constitution dictates. It is eye-opening to see the world through Hamilton's eyes, a time in history when people could not imagine or predict the scope of power the federal government has achieved.

Only by studying the founders' intentions, and the structure specified in the Constitution, can people understand how far off the path of freedom our country has veered. The Constitution is our road map and our guide, and to head in the correct direction, we must consult the map.

I thank everyone for their continued participation!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 17 | No Comments »

May 20, 2010 – Federalist No. 17 – Janine Turner

Thursday, May 20th, 2010

Where did we go wrong as a country that we let the Federal government overtake the states? This was obviously not the intent of our founding fathers. As explained in Federalist Paper No. 16, the communities and local passions were to always be the stronghold against the homogeneous nature that springs from a Federal formation.

Obviously, Alexander Hamilton could envision great commerce and industry from such a fastidious people as Revolutionary Americans, but how could he see the vast transformation of communication and transportation? From his post in the 18th century, the local influences and perspectives were dominant, and the national sways were secondary.

He could not imagine the amazing feats in engineering that would revolutionize transportation broadening the horizons of the people. Nor could he foresee the formidable transformations resulting from the inventions of the telephone, radio and television. With this occurrence, the states lost their uniqueness, the people their distinctness and the federal government gained power – a shift occurred.

But was this enough to open the door for the Federal government to eat away at the core of the states' powers?
What gave the Federal Government the power to encroach? Perhaps it was the Constitutional Amendment XVI – Income Taxes. What was the incentive that enticed the people to forfeit their individuality and their rights? Subsidies – the spoon-feeding mentality that usurped the American "can do" spirit.

The slippery slope began. Alexander Hamilton stated in Federalist No. 15, "When the sword is once drawn, the passions of men observe no bounds of moderation."
Perhaps it should be, "When the sword of taxes is drawn, the passions of government observe no bounds of moderation."

Knowledge is power. With the awareness and education of the true intention of our United States Constitution, the American spirit will be revived and the people will recognize the power of their vote. Our Republican form of government offers the way to rectify.

To quote Alexander Hamilton, "There is one transcendent advantage belonging to the province of state governments, which alone suffices to place the matter in a clear and satisfactory light.. I mean the ordinary administration of criminal and civil justice."

The criminal and civil justice belong to the states.. something to ponder.

God Bless,

Janine Turner
May 20, 2010
P.S. I thank William C. Duncan for joining us today and for his insightful essay! Thank you, Mr. Duncan!

Posted in Constitutional Essays by Janine, Federalist No. 17 | 2 Comments »

May 20, 2010 – Federalist No. 17 – The Same Subject Continued: The Insufficiency of the Present Confederation to Preserve the Union, For the Independent Journal (Hamilton) – Guest Blogger: William C. Duncan, director of the Marriage Law Foundation

Thursday, May 20th, 2010

One of the most significant criticisms of the proposed Constitution was that it would eviscerate the autonomy and authority of the individual States. As Alexander Hamilton described it, the argument was that the Constitution "would tend to render to government of the union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave with the states for local purposes." While some today would not think of that as a weakness, this criticism was important because both the Framers and many of their contemporaneous critics believed that functioning States were crucial to ordered liberty. Thus, the Constitution provided that of all the appropriate objects of government authority, only a small and specifically identified set would be delegated to the national government, *by the States*.

So, in Federalist 17, Alexander Hamilton could respond to the criticism by arguing that the threat actually goes the other way (that the States might interfere with the proper ends of the national government). He supported his arguments for the likely predominance of State power by noting that: (1) the enumerated powers of the national government (commerce, finance, negotiations, war) will likely be very alluring targets for people driven by ambition so they won't bother with the larger set of issues regulated by States, (2) meddling in local concerns would likely create enough trouble for the national government as to make doing so undesirable to national officials, (3) the people of the States would not likely stand for the usurpation and they are the constitutions of the national government.

In support of this last point, Hamilton notes that it accords with human nature: "It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object." Thus, "a man is more attached to his family than to his neighbourhood, to his neighbourhood than to the community at large" so "the people of each state would be apt to feel a stronger bias towards their local governments, than towards the government of the union, unless the force of that principle should be destroyed by a much better administration of the latter." The States also have the important advantage of being responsible for matters "of criminal and civil justice" which make them "the immediate and visible guardians of life and property." The national government, dealing only with "more general interests" that are "less immediately under the observation of the mass of the citizens" is "less likely to inspire a habitual sense of obligation, and an active sentiment of attachment." Since the States "will generally possess the confidence and good will of the people" they "will be able effectually to oppose all encroachments of the national government."

Hamilton's analysis is persuasive but might seem a little alien in a climate where the national government increasingly dominates not only the objects of proper governmental authority but areas of life the Framers would not have contemplated government would regulate. Nevertheless, Hamilton does hint at a motivation for this dramatic incursion of the national government. Thus he notes that hypothetically "mere wantonness, and lust for domination" could lead national leaders to desire to interfere in State prerogatives. He believed, however, that the political process would turn back any such incursions since the States, with the support of their citizens, would "control the indulgence of so extravagant an appetite."

Why has this check not been more effective? Perhaps it would have been if the sole threat to the notion of a national government of limited powers was the personal ambition of national leaders and others who might have a financial stake in government functioning. A more menacing challenge, however, was developing in Europe at the time of the Framing but which had not taken root in the fledgling United

States. This was the emergence of ideology and its attendant schemes for improving not only the administration of traditional government functions but rather human nature itself. The scope of such an ambition obviously would not be confined to interstate commerce and international relations but would also contemplate the objects of State governments like criminal and civil justice. In this project, the States have too often been complicit in order to secure largesse from the national government. Then, as the province of the power of the national government expanded, the subjects which might tempt ambitious individuals and financial speculators multiplied and created interest groups with a strong incentive to continue national involvement in traditional State concerns.

The best hope to change this state of affairs is a return to the modest scope of national power and the reemergence of robust State authority.

Mr. Duncan is director of the Marriage Law Foundation (www.marriagelawfoundation.org). He formerly served as acting director of the Marriage Law Project at the Catholic University of America's Columbus School of Law and as executive director of the Marriage and Family Law Research Grant at J. Reuben Clark Law School, Brigham Young University, where he was also a visiting professor.

Archive for the 'Federalist No. 18' Category

May 21, 2010 – Federalist No. 18 – Cathy Gillespie

Friday, May 21st, 2010

Another week of 90 in 90: History Holds the Key to the Future draws to a close! Thank you to Andrew Langer for your participation as a Guest Constitutional Blogger! And thank you to everyone who is posting such well thought out and researched comments.

In Federalist 18, the founding fathers are telling us that **History**, indeed does hold **the Key To the Future**, as the name of this blog indicates.

Not even a fourth of the way through the 85 Federalist Papers, and we have all been amazed at the foresight of the founding fathers. They seem to have an uncanny ability to see the future. We know they did not have a crystal ball or special powers, so what was their secret? The answer is that they were extremely well read students of history, philosophy, and human nature. They took the time to think; they actually thought about the future, and used their knowledge to predict outcomes if certain paths were chosen.

Today, we live in an instant gratification society. If a problem is not immediately upon us, it is not dealt with. If a problem looms twenty years away, we do not want to address it. Our founding fathers had a much longer vision looking ahead, and looking back.

The depth of knowledge of the founders about ancient civilizations, and the lessons drawn from them is fascinating. As Juliette, Janine's daughter observed, they knew all this and didn't even have Google!

The founders took the time to study these ancient civilizations so they could draw the important lessons from them: the necessity of a closer union so the strong states would not tyrannize the weak, that "a

weak government, when not at war, is ever agitated by internal dissentions, so these never fail to bring on fresh calamities from abroad," that a stronger union can repel invaders.

Somewhere along the way our society has lost respect for history. People want to alter it, to make it fit their world view. In arrogance we believe we are immune from the mistakes of the past and don't take the time to analyze events or draw lessons from them.

In today's comments, Ron made an important point – to change this culture of disrespect for and ignorance of history, **we need to take action**! He encouraged us to *"find some historical event that you're passionate about, do the research, and tell the story. Service clubs need speakers for every week's meetings, so there are plenty of opportunities. We just have to do it. Taking action is important. Exercises like this should stimulate us to some action; if we finish this FP exercise and go back to living our lives as we did before, then we've gained knowledge, but done nothing to rediscover our heritage or, more importantly, to help others do the same."*

Ron is so right!! As we read the Federalist, our eyes open to many truths, one of which is the importance of looking at lessons from history as we move forward. We need to find ways to take action, and share what we are learning with others. Whether it is Ron's idea of speaking to civic clubs, or simply forwarding a link to this blog to your personal email list, you can make a difference in opening people's eyes to the founding principles of our country, and the importance of knowing the United States Constitution.

Thank you to each of you for all you do for our Nation!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 18 | 1 Comment »

May 21, 2010 – Federalist No. 18 – Janine Turner

Friday, May 21st, 2010

Today my 12-year-old daughter read Federalist Paper No. 18 to me as I was driving her to ballet class after school. As she was reading, she would stop to look up words she didn't know and yet had some understanding of the culture because she has been studying Latin and Greek this year. Her first comment was, "Wow, he knew all this and he didn't even have Google!"

I agree with our guest Constitutional scholar, Mr. Andrew Langer, (I thank you for blessing us with you scholarly insights again today, Mr. Langer!) that one of the Providential aspects of our country's founding and birth of the United States Constitution is that the deliberators and creators were so well read and prolific in their knowledge.

In the book I mentioned earlier this week, ***Miracle at Philadelphia***, it recounts how James Madison asked Jefferson for a few books, "Whatever may throw light on the general constitution and droit public

of the several confederacies which have existed." Jefferson sent some, by the hundreds. Madison instantly threw himself into the study and wrote essay after essay in preparation for the challenge that lay ahead.

Thus, coupled with extreme knowledge and intellect was another most needed ingredient, passion. Carolyn Attaway quoted Churchill in her blog today about how people don't rise to the occasion until it is too late.
In this regard I actually have a spark of hope. I see and sense an awakening of the American patriotism, passion and practicality. Americans are taking action, speaking out and yearning for truths and our founding American principles – just like all of you great patriots who are dedicating your time to join our "90 in 90."

Americans have a keen sense of right and wrong, justice and injustice. It is in our blood. We will rally and rise to the occasion. The prevailing theme of these Federalist Papers – union – stimulates our cause and fortifies us with knowledge and inspiration.

I thank you for joining us. Please continue to spread the word and please reach out to your children and/or a child you know and teach them about the history of our great country. History proved to be a beacon for Publius and our American history will prove to be the beacon for us.

God Bless,

Janine Turner
May 21, 2010

Posted in Constitutional Essays by Janine, Federalist No. 18 | 9 Comments »

May 21, 2010 – Federalist No. 18 – The Same Subject Continued: The Insufficiency of the Present Confederation to Preserve the Union, For the Independent Journal (Hamilton & Madison) – Guest Blogger: Andrew Langer, President of the Institute for Liberty

Friday, May 21st, 2010

Federalist #18

What sets the founding of the American republic apart from the founding of so many nations on Earth was the depth and breadth of knowledge, research, analysis and debate that went into it. This is made evident from Madison's *Federalist #18*, written under his pseudonym "Publius". In 18, Madison delves deeply into the experience of the ancient Greek states and the various federations, alliances, and confederations that they had historically formed. In an era without instant electronic access to libraries of information, the sheer amount of scholarship presented in these pieces is nothing short of astounding.

Federalist #18 charts the shortcomings that arose within these various confederacies, presenting them as analogs and object lessons for the then-current struggles the fledgling republic was experiencing. The message was simple: we must learn from these mistakes, and make every effort to correct where the

learned Greeks were deficient. It is the essence of archival scholarship: those who do not know history are doomed to repeat it.

Two key lessons emerge. First and foremost, the issue of balancing minority interests against those of a powerful majority, and vice-versa. It was only though the careful historical scholarship of the founders that the delicate structures that we have today were created—and direct lines can be drawn from these lessons to the creation of two *very* different legislative branches, one stemming from direct democracy (The House), the 2nd stemming (initially) from a more genteel (but, in my estimation far more responsive to the people) source of power (The Senate, which until the ratification of the 17th Amendment drew its members from the nominations of state legislatures); the electoral college (which serves to balance the interests of rural and urban population centers); as well as the very system of dual sovereigns that underpins the system of federalism.

The second lesson arose out of the first—that whatever federal union would be created, would have to be strong. That even though federalism "secures to citizens the liberties that derive from the diffusion of sovereign power" (The Supreme Court in *Coleman v. Thompson, 501 US 722, 759 (1991)*), nevertheless there would still have to be a strong and unified central power, to ensure that the nation would not only grow and prosper, but be able to effectively defend itself. There is strength to be had in numbers, and this is the essence of *E Pluribus Unum* (Out of Many, One).

Call it happenstance, call it the coincidence of timing and talent, or call it (as I do) divine providence. The bottom line is that at the time when this nation needed learned minds and steady hands guiding it, those men were to be found leading it. Their grasp of the lessons of history (both the mistakes, and triumphs) are evident in *Federalist #18.*

Andrew Langer is the President of the Institute for Liberty

Archive for the 'Federalist No. 19' Category

May 24, 2010 – Federalist Paper No. 19 – Janine Turner

Tuesday, May 25th, 2010

Howdy from Texas! I hope "y'all" had a great weekend. I hope you had a chance to start reading, 'Miracle at Philadelphia." It is such a great companion piece to what we are doing and did y'all watch the History Channel's, "America: the Story of US?" It is fantastic!

I thank you for joining us today and I thank Professor Knipprath's words of wisdom!

I hope you have a chance to check out my daily video today, (it's on the website or the link to YouTube is on Facebook), and my daughter's weekly video as National Youth Director, Week #2

Please spread the links via e-mail and Facebook. Today's videos encompass quotes from Senator Patrick Moynihan and President Ronald Reagan and highlight the 1st Amendment and William J. Bennett's book, "America: The Last Best Hope."

As I read Federalist Paper No. 19 by Alexander Hamilton today I was intrigued with the following quote regarding sixteenth century Germany, "Military preparations must be proceeded by so many tedious discussions, arising from the jealousies, pride, separate views, and clashing pretensions, of sovereign bodies, that before the diet can settle the arrangements, the enemy are in the field."

I find this phrase to be remarkably relevant today. We are experiencing so much "discussion" regarding threats to our country from foreign countries, so much "discussion" with foreign countries, so much dissension amongst our political parties and so much clashing pretensions from our Congress and Executive Branch that our vision is being obscured in regard to the fact that our enemy is in the field.

And Alexander Hamilton's words about the lack of military alertness echoes forth a warning, too.

"The small body of national troops which has been judged necessary in time of peace, is defectively kept up, badly paid, infected with local prejudices, and supported by irregular and disproportionate contributions to the treasury."

Are we prepared?

God Bless,

Janine Turner
May 24, 2010

Posted in Constitutional Essays by Janine, Federalist No. 19 | No Comments »

May 24, 2010 – Federalist No. 19 – Cathy Gillespie

Monday, May 24th, 2010

Professor Knipprath, thank you for an essay that goes way beyond Federalist 19, addressing the natural order of the universe! Your observations not only reflect what we have seen in history, but also what we are seeing in our country today.

Federalist 19 continues to reveal to us that the United States system of government as outlined in the Constitution is not just the result of our founding fathers' vivid imaginations and creativity. The system of government they designed is based on an astute observation of history, an analysis of strengths and weaknesses of the governmental systems of many civilizations, and the improvements upon those systems our founders devised, taking into account their deep understanding of human nature, the people of the United States, and the resources of our great land.

Publius' arguments for ratification are compelling because he doesn't simply give an opinion, he backs up his position with example after example.

One of the last sentences of Federalist 19 caught my eye:

"*So far as the peculiarity of their case will admit of comparison with that of the United States, it serves to confirm the principle intended to be established. Whatever efficacy the union may have had in ordinary cases, it appears that the moment a cause of difference sprang up, capable of trying its strength, it failed*."

Unlike many governmental systems in history, the system of government designed by our founders, within the structure of our Constitution, has allowed our country to withstand differences capable of "trying our strength." Our system of government has not failed us, even in trying times. We survived the Civil War. We survived the Great Depression. We survived riots in the 1960's. We survived World War I, World War II and terrorist attacks upon our country. We will survive the current immigration problems besieging many of our states. Through the course of history we have calibrated and recalibrated the course of our Nation through our elected representatives.

I believe that is what Andy was trying to say in a post this weekend:

"This country was founded on the ability to change direction in government by the vote. That happened two years ago because a majority of people felt change should happen. If that change went too far, then an opportunity to reset the course will occur in November."

and what Janine says in her FoxNews Op-ed, Your Vote is Your Voice:
http://www.foxnews.com/opinion/2010/04/30/janine-turner-supreme-court-justice-constitution-elections-elected/

Going back to Professor Knipprath's essay, an informed, educated and engaged citizenry is the **energy** that keeps our Republic from **decay**. It is what keeps our system of government so carefully constructed by our founders, from failing us during the trying times.

The responsibility rests with We The People. When we understand our rights embodied in the United States Constitution as well as the principles upon which this country was founded, we can elect those who will use the Constitution as our guiding light as we forge the course of the future, keeping us strong during the times capable of "trying our strength."

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 19 | No Comments »

May 24, 2010 – Federalist No. 19 – The Same Subject Continued: The Insufficiency of the Present Confederation to Preserve the Union, For the Independent Journal (Hamilton & Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, May 24th, 2010

E Pluribus Unum. “Out of Many, One.” This aphorism is one of the mottos adopted by the Confederation Congress in 1782 for the Great Seal of the new United States. It not just describes the union of states that was put together through the efforts of the Second Continental Congress. That particular choice also recognizes the relative novelty of the political experiment Americans were undertaking, a novelty memorialized as well in a motto on the Seal’s reverse, Novus Ordo Seclorum, “A New Order for the Ages.”

Federalist No. 19 continues the examination of dangers from weak confederations, a topic that has, in one form or another, been at the core of most of Publius’s preceding efforts. As in the adjoining papers, the theme is the tendency of weak confederations towards internal turmoil, external weakness, and eventual collapse. Here, Madison focuses on the weaknesses of the Holy Roman Empire of the German Nation, an entity intended to re-create an old order for the ages.

The historical evolution of the Germanic realm that Madison describes is the opposite of E Pluribus Unum. “Out of one come many” better represents the unfolding of the usual order of things. That theme is common in creation explanations from religion, philosophy, and science. God created Adam, then Eve from Adam, who together multiplied. For Plato and his later interpreters, reality followed from the singularity of the Form of the Good. In physical science, everything developed from the singularity that is the source of the Big Bang. Under the theory of biological evolution, all life multiplied from some original single-celled organism. Out of one, many.

Likewise, the usual order of things is for systems, once established, to move from flourishing to decay, from order and unity to chaos and multiplicity, from the whole to the parts. This holds true for physical and biological systems, as well as systems of human organization. The body decays. Stars decay. Personal relationships decay. Political orders decay. Personal experience and a basic study of science and history lead us to these common sense conclusions.

Following initial Creation, subsequent creations may form new systems from pre-existing parts. People come together to form new families, communities, and states. At the level of states, these events are infrequent, and, as Madison points out in a later essay, usually the result of one charismatic man’s influence. But any such creation is immediately threatened by the tendencies towards decay and multiplicity.

The protection against decay and chaos is “energy.” To maintain our bodies, we use energy through food. Plants use the sun’s energy to stay alive. In families, it takes energy (physical and emotional) to maintain a well-functioning unit. So it is with political systems. The Germanic realm was created by Charlemagne, a very energetic statesman. But subsequent emperors were more ordinary, and the system itself failed to provide the structures that would allow the government to act with the requisite energy to maintain it. This need for “auxiliary measures,” that is, constitutional structures, to insulate the country from instability caused by variability in the qualities of the governing officials is raised in several essays.

Publius frequently raises the critical quality of energy in government in various writings. To underscore the force of his argument in Federalist 19, Madison’s recitation of the emperor’s formal powers suggests, not too subtly, those under the Articles. The princes, with their own claims to particular sovereignty, produced chaos within the system and intrigue from without. Madison’s warning about the

deleterious effects of the decision to devolve power onto "circles" within the Empire was a pointed rebuke to supporters of the Articles who argued that common interests and customs within regions of the United States would produce amicability and desire for concord among neighboring states in ordinary matters, while the Confederation took care of external challenges. The Empire's structure could not provide the conditions for energy in government when the emperor's personal ordinariness could not surmount the system's deficiencies. Neither could the Articles. The Constitution would.

Too little energy in government is a problem; so is too much. The sun's energy is necessary for living systems. Yet too much energy kills as relentlessly as too little. Much of the debate over the Constitution was not about the need for energy in government, but about the amount. Some opponents of the Constitution thought that the Articles supplied enough. Others agreed with Publius that the Articles were defective, but worried that the Constitution went too far.

Though the particulars of Madison's historical account might be open to question, his basic conclusions have merit. Still, the Empire lasted a thousand years. Indeed, Antifederalist writers lauded the relative stability and continuity of the systems that Madison derides. For well over three centuries (from the early tenth through the thirteenth), the Empire functioned effectively and energetically. It will take more than another century for the United States to reach that longevity. Meanwhile, we must ask whether the system that has emerged under the Constitution provides the right amount of energy to the central authority—or too much. Or did the Framers get the structure right, but have the people, through a lapse of republican virtue and political participation, permitted politicians and bureaucrats to stretch the structure beyond its original contours and to draw energy from individuals and other constituent parts to the central government?

As the mottos declare, the forming of the United States was a creative act to forge one out of many, first under the Articles and then, "to form a more perfect union," under the Constitution. This was to be a new order for the ages, one that would seek to avoid the inevitable decay and dissolution through a novel constitutional accommodation. There is, too, a revealing third motto on the Great Seal, "Annuit Coeptis," translated as "He [God] Approves Our Undertakings," to complete the description of the project at hand. To avoid the fate of the polities that Madison describes in Federalist 19, we must remain vigilant to keep our constitutional, political, and social order true to the aspirations expressed in all three mottos and in the Constitution.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is www.tokenconservative.com

Archive for the 'Federalist No. 20' Category

May 25, 2010 – Federalist No. 20 – Cathy Gillespie

Wednesday, May 26th, 2010

"Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred."

Thank you Mr. Duncan for your excellent observation that the founders relied on experience to ascertain truth, not "their unaided ability to reason out new solutions," not "subtle thinking and cleverness," and definitely not partisan politics.

Thanks to our enlightened, well educated founding fathers, the United States of America rests on the foundation of thousands of years of lessons learned from many civilizations. As Hamilton observed in Federalist No. 9, "*The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients*."

Our culture does not value history as much as it once did. And there is an undisputable massive effort underway to re-write the history that we are teaching our children. If our leaders are ever to return to a framework for decision making that incorporates an objective look at history, we must all work, in our own way, to instill in our children and fellow citizens a renewed passion for learning about the past. We must work to preserve the integrity and accuracy of the history taught in our schools.

I am still thinking about Ron's call to action last week in the comments section of Federalist No. 18, and how important it is that we all engage in culture creation.

As Janine so eloquently wrote in her op-ed, A Call to Arms for America's Parents, we as parents must take responsibility for teaching or children history. We can start with some of the excellent books by Dr. William J. Bennett, including **The American Patriot's Almanac** and **America: The Last Best Hope Volume I and II.** We can encourage our children to enter Constituting America's We the People 9.17 Contest, asking them to think about and articulate how the U.S. Constitution is relevant today. And we can share the **90 in 90: History Holds the Key to the Future** project with our families.

Sign up for our newsletter email list and forward the emails out to your friends. Forward the link to Juliette Turner's Youth Videos like the one below where she reads from Dr. Bennett's book and talks about the First Amendment.

Juliette Turner\'s Weekly National Youth Director Video

We can each have an impact in our circle of influence. And if we all work in our own small way to change the culture, to encourage an awakening to our country's roots, foundation, and founding principles, to encourage a thirst for learning the lessons written for us in history, we will succeed.

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 20 | No Comments »

May 25, 2010 – Federalist Paper No. 20 – Janine Turner

Tuesday, May 25th, 2010

The Ransom of Reason

Reason be and reason we
Away our distant shores
Wander not and wanton trot
Afraid of written mores

Did we not through seasons see
The meaning, yet for many
We forgot the how,
We riddled out the penny

"I know this and I know that
Believe me for I've the vision
Follow me and listen now
For I rewrite the mission

We is the forgotten us
It matter not for you
I seek your best and vest my truths
It is I who reap the view."

Freedom this and Freedom that
Ring in empty vestibules
History renders ghosts forgotten
Lost the written tools

"I seize the rapture
Seek doleful and the bane
Meeker making spirit spree
I linger not in vain

Feed the weakness, starve the heart
Watch the soul regress
Rhyme and reason take their toll
Happy opportune the guess."

By Janine Turner
May 25, 2010

Posted in Constitutional Essays by Janine, Federalist No. 20 | No Comments »

May 25, 2010 – Federalist No. 20 – The Same Subject Continued: The Insufficiency of the Present Confederation to Preserve the Union, from the New York Packet (Hamilton & Madison) – Guest Blogger: William C. Duncan, director of the Marriage Law Foundation

Tuesday, May 25th, 2010

Federalist 20 is one of a series of essays that discuss the governmental precedents of other nations as illustrations of some of the weaknesses of the Articles of Confederation. In it, James Madison discusses the Netherlands, painting a picture of a weak government held together by a strong magistrate and the pressures created by hostile surrounding nations. Madison underscores the fact that the government has overstepped its constitutional bounds on occasion because those bounds do not allow it to meet emergencies.

A lesson here is that a weak and ineffectual government is a threat to liberty just as an overly strong and active government would be. He explains that the experience of the Netherlands demonstrates: "A weak constitution must necessarily terminate in dissolution for want of proper powers, or the usurpation of powers requisite for the public safety." The implication for the United States Constitution is that it must create a government capable of meeting true emergencies and dealing forcefully with threats from other nations. The failure to do so not only could result in dissolution, but ironically, could lead to too strong a government: "Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than out of the full exercise of the largest constitutional authorities."

Madison attributes the weakness of the constitution of the Netherlands to "the calamities brought on mankind by their adverse opinions and selfish passions" and recommends that Americans "let our gratitude mingle an ejaculation to Heaven, for the propitious concord which has distinguished the consultations for our political happiness."

In addition to evoking gratitude, there is another important lesson in Federalist 20 for current political debates.

In the Pennsylvania Convention, John Dickinson had taught: "Experience must be our only guide. Reason may mislead us." At the end of Federalist 20, Madison explains why he has spent time describing the precedent of other nations in words that echo Dickinson's: "Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred."

An obvious application of this point is to the ongoing debate over whether our government should continue to press for greater and greater social controls. It would seem obvious that the unequivocal disaster of socialist and communist governments ought to warn us away from that precipice.

More generally we can heed the Framers' example of willingness to learn from experience rather than to trust only in their unaided ability to reason out new solutions. Subtle thinking and cleverness have their place but must be disciplined by a willingness to learn lessons from human experience. One of the greatest strengths of the U.S. Constitution is its dual application of (1) the principles of self-government learned in the colonial experience and (2) the lessons of history derived from careful study and reflection.

Returning to a theme from the discussion of Federalist 17, there is a temptation to apply not experience, but ideology, to problems we face as a nation. Doing so appeals to a hubristic temperament. Some will always be dissatisfied if political reality is not made to conform to prefabricated theories even when doing so requires compulsion and control. In fact, the ability to control society may be the attraction of such theories; at least to some of their adherents.

The Framers eschewed easy answers and paid the price in experience, deliberation and study to create a secure foundation for our national government. That foundation incorporates the lessons of experience. Our response to current challenges must do the same.

Mr. Duncan is director of the Marriage Law Foundation (www.marriagelawfoundation.org). He formerly served as acting director of the Marriage Law Project at the Catholic University of America's Columbus School of Law and as executive director of the Marriage and Family Law Research Grant at J. Reuben Clark Law School, Brigham Young University, where he was also a visiting professor

Archive for the 'Federalist No. 21' Category

May 26, 2010 – Federalist Paper No. 21 – Janine Turner

Thursday, May 27th, 2010

Well, small business profits are on the decline and government provided benefits are on the rise. Carolyn, I read your blog and I also heard about these frightening statistics today. Socialism is rearing its ugly head. Next will be the general demise of spirit and motivation in our country. This exact scenario was predicted by Samuel Adams in his warning over two hundred years ago, "The pooling of property and redistributing of wealth are both despotic and unconstitutional."

As duly noted in last night's reading of Federalist No. 20. We must learn from the experience of history. It makes no sense, and has been proven by history, that if a country becomes a nanny state and feeds the people's every whim, punishes the hard working enterprising people, snuffs the spirit of business by taking over their free enterprise then the country and her citizens become mired down with a lack of motivation.

If motivation is at a minimum, productivity ceases to prevail and if productivity ceases to prevail then there is no money for the nanny. If the nanny does not provide then the people rebel. When the people

rebel then there is a need for a strong force to control. Enter Tyranny. Good-bye Democracy. Good-bye Republic.

Carpe Diem. We must seize the day and reverse course while we can. This begins with knowledge and fortification. Wisdom whispers in the words of Publius.
The answers are in the United States Constitution.
Spread the word.

God Bless,

Janine Turner
P.S. I thank you Horace Cooper for joining us today and for your brilliant insights

Posted in Constitutional Essays by Janine, Federalist No. 21 | No Comments »

May 26, 2010 – Federalist No. 21 – Cathy Gillespie

Thursday, May 27th, 2010

Yesterday, May 25, 2010, marked the 223 anniversary of the convening of the Constitutional Convention in Philadelphia. The National Constitution Center is sponsoring an innovative Twitter program which Constituting America is promoting: www.twitter.com/secretdelegate .

The premise is that a rogue delegate is secretly "tweeting" from the Constitutional Convention and giving us "the inside scoop." It is fun! If you are on Twtter, check it out! If you aren't on Twitter, consider signing up! It is vital that we utilize "new media," to spread the word about the Constitution and the founding principles of our country.

Thank you to all of you who participate in this blog, follow Constituting America on Facebook (www.facebook.com/constitutingamerica), and Twitter (www.twitter.com/constituteUS) , and forward emails out to your friends! A big thank you, also, to Horace Cooper for sharing your insights on Federalist 21 with us!

In Federalist 21, Publius begins an itemization of the weaknesses of the Articles of Confederation in order to build a case for the proposed Constitution. The Articles of Confederation were clearly not taking the country in the direction the founding fathers hoped it would go. Imagine what shape the country must have been in, in 1787, for our founders to have undertaken the monumental task of travelling to Philadelphia, and spending over three months in the oppressive summer heat crafting the Constitution.

From Hamilton's writings, it seems the national government did not have enough funds to operate, the states were not being adequately protected from domestic uprisings such as Shays Rebellion in Massachusetts, and the founders foresaw long term problems in the unequal way taxes were being collected from the states through quotas.

How are these Federalist Papers relevant today? The United States of 2010 is again in a period of challenging times. A shaky economy, threats from our borders, and protesters from groups such as SEIU that are increasingly bold and unruly. Most recently to the point that Nina Easton, a member of the media who would normally support the rights of protesters, has openly condemned a group of over 500 who showed up next door to her home, on the lawn of her neighbor, Greg Baer.

All the while, the national government seems to be ever growing and reaching, employing the "Star Trek" principle: Boldly Going Where No United States Government Has Gone Before – running our auto companies, our health care system, and even trying to dictate what types of food we eat!

For those who are unhappy with the course of our country, there is solace in Alexander Hamilton's words:

Where the whole power of the government is in the hands of the people, there is the less pretense for the use of violent remedies in partial or occasional distempers of the State. The natural cure for an ill-administration, in a popular or representative constitution, is a change of men.

Thanks to our Constitution, and our republican form of government, there is a structure in place to change the course of the country, and get back onto the path envisioned by our founders, the path of individual liberty, limited government, and free enterprise.

Tough times in 1787 sparked an amazing document that has guided our country for over 200 years, now the oldest federal constitution in existence.

What positive outcome will the tough times of 2010 produce? I am praying it will be a rekindled passion for the United States Constitution, and the founding principles of our country – the principles that have allowed us to be, in Janine Turner's words, "America the beautiful, America the hope."

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 21 | 1 Comment »

May 26, 2010 – Federalist No. 21 – Other Defects of the Present Confederation, For the Independent Journal (Hamilton) – Guest Blogger: Horace Cooper, Director of the Institute for Liberty's Center for Law and Regulation

Wednesday, May 26th, 2010

The Federalist #21: In Defense of Politics

Hamilton opens Federalist #21 with a continuation of a theme: it will be easier to understand the need to adopt the new Constitution if the defects of the old Articles of Confederation are better understood. He embarks on an effort to outline what he calls the *"enumeration of the most important of those defects which have hitherto disappointed our hopes from the system established among ourselves."*

He starts with the fact that under the Articles of Confederation, the federal government had no power to enforce its rulings. He sees this as an almost fatal flaw. He complains that the "*most palpable defect of the subsisting Confederation, is the total want of a SANCTION to its laws. The United States, as now composed, have no powers to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privileges, or by any other constitutional mode."* In addition to the hardships that beset any government incapable of enforcing its on rules and laws, Hamilton explains that such a posture is certainly unique among nations. He argues that there are no nations — kingdoms or any other kinds of governments which operate without the fundamental ability to carry out its interests.

A second flaw in the present system is that in almost all respects the states are left to fend for themselves. In one crucial way, Hamilton points out this isn't even in the interest of states. What happens in the event there is a local insurrection? There is no ability for the governor of one state to enlist the citizens of another state to step in and offer assistance. Thus, there is the potential that states would have to devote significant resources solely for domestic armies that would lay in wait for an uprising meanwhile draining the treasury. Collectively one might imagine this duplicative waste across the several states equaling more than the amount that a federal government would use to handle the same concerns. Additionally, the mere fact that the federal government could respond to an internal insurrection could be sufficient to prevent one from forming altogether. Hamilton further points out that the Constitution's guarantee that all its citizens would have a "republican" form of government means that in the event the leaders of a state attempt to declare a dictatorship or otherwise suspend democratic control the Federal government could intervene to return liberty back to the hands of the people.

Hamilton turns next to the taxation system set up under the Articles of Confederation. The "quotas" system that he derides essentially assessed the states themselves instead of having direct taxing authority. Hamilton explains that a system based on state assessments would fundamentally fail to meet the needs of the American government. It would be insufficient and in his view significantly inequitable in that it simply presumed that all states were equal in most respects financially. Hamilton explains that "*there is no common standard or barometer by which the degrees of it can be ascertained. Neither the value of lands, nor the numbers of the people, which have been successively proposed as the rule of State contributions, has any pretension to being a just representative."* Furthermore he explains, "*there can be no common measure of national wealth, and, of course, no general or stationary rule by which the ability of a state to pay taxes can be determined. The attempt, therefore, to regulate the contributions of the members of a confederacy by any such rule, cannot fail to be productive of glaring inequality and extreme oppression."* While making his argument for a federal consumption tax, Hamilton demonstrates a degree of clarity about the consequences of tax rates being too high that many modern leaders would do well to recall. If you tax too high, you get less. Hamilton explains, "*It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against*

excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds.

With the three defects that Hamilton identifies by implication the answers provided in the U.S. Constitution are clearer and more readily understood. The Federal government in the Constitution has the power to enforce its rules, defend each of the states individually and collectively and finally assess taxes directly rather than through the states. Prior to this change the Federal government was indebted, powerless and in many ways so weak, it threatened the liberty of all Americans because it was unable to defend them against most threats.

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Archive for the 'Federalist No. 22' Category

May 27, 2010 – Federalist Paper No.22 – Janine Turner

Friday, May 28th, 2010

Why write many paragraphs when a few lines will do, three lines to be exact, from Alexander Hamilton's Federalist No. 22?

1. Though the genius of the people of this country..

2. Its opposition contradicts that fundamental maxim of Republican government, which requires that the sense of the majority shall prevail.

3. The fabric of American empire out to rest on the solid basis of THE CONSENT OF THE PEOPLE.

Are these words being honored in our American government today?

God Bless,

Janine Turner
May 27, 2010
I thank our guest scholar, Dr. Will Morrisey, for joining us today!

Posted in Constitutional Essays by Janine, Federalist No. 22 | No Comments »

May 27, 2010 – Federalist No. 22 – Cathy Gillespie

Thursday, May 27th, 2010

Thank you Dr. Morrissey for walking us through Federalist No. 22! Publius certainly covers a lot of ground in this Federalist Paper! If only our current elected officials would take the time to methodically explain major proposed legislation in this manner. Our "sound bite" culture and collective short attention span does not lend itself to deeply and thoroughly understanding the many issues facing us.

The weaknesses of the Articles of Confederation were many: lack of federal regulation of commerce, including foreign commerce and interstate commerce; the weakness of the state quota system for raising armies; problems of equal suffrage among the states; the weaknesses of the 2/3 majority requirement for important resolutions ; lack of "one Supreme Tribunal," and overall so many problems with the Articles of Confederation that they were not deemed fixable by amendment. Publius goes on to point out the weakness of a Congress with only one legislative body, and the final and most important flaw: The people never ratified the Articles of Confederation. It is with this final point that my favorite quote from Federalist 22 appears:

"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."

One of the things I have enjoyed most about reading The Federalist are the quotes like the one above, that leap off the page, and speak to us so clearly, 223 years later. They encapsulate principles that our country has drifted from, and remind us of the intent of the founders. When these principles are followed, our country flourishes. When we drift from them, we stagnate.

If only our founding fathers could come back today, and write a series of Federalist Papers where they analyze our current governmental structure in the same manner they analyze the Articles of Confederation, and methodically itemize all the places our country has deviated from their original founding principles. I have a feeling they would have a hard time confining their essays to 85!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 22 | No Comments »

May 27, 2010 – Federalist No. 22 – The Same Subject Continued: Other Defects of the Present Confederation, From the New York Packet (Hamilton) – Guest Blogger: Dr. Will Morrisey, William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Thursday, May 27th, 2010

The Federalist #22: In Defense of Politics

Publius here concludes his critique of the old constitution, the Articles of Confederation, a critique he began with *Federalist* #15. To understand this critique, we need to step back and consider the problem the Founders intended to solve: Can *modern states* practice *politics*? This seems an odd question. There

seems to be no shortage of politics in the modern world. And why should politics—messy, compromising, frustrating, roiling politics—be something anyone would want to encourage, anyway?

Undeniably, politics has aroused the interest of the greatest minds: Plato titles his most famous dialogue *Politeia*, which means "regime"; Aristotle devotes an entire book to politics. In that book, Aristotle points to the family as the embryo of politics; in the household we can see the DNA of political life. Aristotle identifies three kinds of rule within every family: the rule of master over slave, whereby the ruler commands the ruled for the benefit of the ruler; the rule of parent over child, whereby the ruler commands the ruled for the benefit of the ruled; and the reciprocal rule of husband and wife, in its proper form a consensual rule animated by discussion and compromise—"ruling and being ruled," as Aristotle puts it. An overbearing spouse acts like a master or parent toward one who does not by nature deserve to be treated like a slave or a child. Genuinely *political* rule consists of this consensual rule, rule along the marital rather than the masterly or parental model. In human societies only tyrants attempt masterly rule, only kings attempt to *rule* as if they were fathers of their countrymen.

The small, ancient polis and the larger feudal communities lent themselves readily to political rule. In a polis, where everyone knows everyone else, unquestioned rule of *one* over many seldom lasts. Under feudalism, the presence of numerous titled aristocrats, each with his own independent source of revenue and of military recruits, will not submit to tyranny forever, as King John of England should have learned at Runnymede, but didn't.

By contrast, the political engine of the modern world, the *state*, threatens to put an end to political rule, to make all rulers rule in masterly/tyrannical or parental/ authoritarian modes. Large and centralized, the state can mortally compromise all independent bases of authority in its domain, repressing any need to discuss or compromise. At the same time, the very power the modern state marshals requires all neighboring societies to institute states of their own, upon pain of conquest.

The Founders thus attempted something that seemed impossible: To constitute a modern state that is sufficiently powerful to defend itself against other states but nonetheless *political*, not masterly or tyrannical. They solved the problem in principle by adopting and refining the idea of federalism. A single, centralized state stunts political life, but if that state can be made to consist of a set of smaller communities, each with governing to do—townships, counties, and smaller states, all with their own responsibilities, and their own elected representatives—then politics can continue to flourish in the modern world.

Why should we want it to? Because, as Aristotle argues, human beings differ from all the other animals in their capacity to speak and reason: If I say `Jump' and allow you to say no more than, `How high?' you may be speaking but you are not reasoning. Your character as a human being suffers. In political life, you can talk back. To be sure, at some point, you will run up against the `being ruled' side of the Aristotelian equation. But so will everyone else.

The Articles constitution tried to protect political life by keeping most of the American states small enough to feature political life but strong enough to be sovereign—even as, in federation, they multiplied their strength to fend off enemy states. As Publius has argued in this series, however, the Articles constitution contradicted itself. The general or federal government could only raise revenues

and soldiers with the consent of the member states. But there *can* be no "sovereignty over sovereigns." Disunion threatened. Foreigners sneered and circled for the kill.

Publius lists seven additional defects of the Articles, all of them flowing from this overarching defect. As seen in #21, the first three of these defects are the lack of sanctions for violations of federal law; the lack of any guarantee of mutual aid in case of usurpation within any one state; and the lack of any common standard for determining the revenues each state owes to the general government that protects them.

Publius now turns to the remaining defects, both material and moral. Materially, the structure of government under the Articles constitution impedes national commerce by allowing member states to enact protective tariffs against one another. Morally, this inclines each state to treat others as "foreigners and aliens"—the way Europeans do. Materially, the federal government also wields inadequate military strength, as states remote from the battlefields have little incentive to contribute men or material; morally, this leads to "inequality and injustice among the members."

Speaking of inequality and injustice, equal representation of each state in the *unicameral* Articles Congress "contradicts that fundamental maxim of republican government, which requires that the sense of the majority should prevail." Why will—why should—New York and Virginia long tolerate a government that allows tiny Delaware or Rhode Island to hamstring it? Especially if the legislatures of the small states were to fall under the influence of foreign powers, and not republican ones.

To these economic, military, and political defects of the existing government, Publius adds another problem with the legal system. Not only does it have no power to enforce Congressional laws, it lacks a federal judiciary to oversee "a uniform rule of civil justice." Without a federal judiciary, encroachment of federal authority by the states can find no defenders beyond the military; force, not law, will rule.

The Articles government has only one ruling institution, the Congress. The absence of other independent but complementary branches of government might have undermined genuinely political life in the United States, except that the framers of the Articles made the Congress more or less impotent *vis-à-vis* the member states. But this caused another problem. Unqualifiedly *sovereign* member states will incline to violate the fundamental law of contract, of government by consent: That no party to any contract may excuse himself from the terms of the contract without the consent of the other parties.

Therefore, the new constitution will require ratification not by the governments of the states but by the people of each state, and moreover by the people of states now to be united by the only true rulers of a republican regime. This new governing contract, "flow[ing] from that pure, original source of all legitimate authority," will supply the national *means* needed to secure the national *ends* listed in the Preamble. Therefore, also, the new and more powerful wielder of those means, the federal government, can no longer rest in the hands of *one* ruling institution, but in the tripartite structure of legislative, executive, and judicial branches. This newly-devised institutional structure for American self-government can preserve politics, reciprocal ruling-and-being-ruled, at the highest level of American government *without* necessarily exposing Americans to conquest by imperial monarchies.

Will Morrisey is William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College.

Archive for the 'Federalist No. 23' Category

May 28, 2010 – Federalist No. 23 – Cathy Gillespie

Saturday, May 29th, 2010

As I read Federalist 23, I thought about attacks the United States has endured in the last century: especially the air attack on Pearl Harbor, and September 11, when hijacked commercial airliners were flown into the World Trade Center and the Pentagon, and United Airlines Flight 93 was crashed before it could reach its target. These types of attacks have been unimaginable to the people of the United States, even our leaders at the highest levels of government, until they occur. And the only certainty is that our country will eventually be attacked again, in a new creative way, that we once again cannot imagine.

Alexander Hamilton knew this. His words, "The circumstances that endanger the safety of nations are infinite…." and, "it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them," ring true as we remember the wars our country has fought through the years since 1787, and the many times the President has had to send troops into hostile situations.

The founders wisely built checks and balances into our national defense. While the Congress is given the power in Article I, Section 8 to declare war and to raise and support troops, the President is designated as the Commander in Chief in Article II, Section II, a power used broadly by Presidents to send troops where the President has deemed necessary. The War Powers Act of 1973 attempted to clarify and formalize consultation with Congress by the President when sending troops into hostile situations, and put a time limit on troops sent by the President without Congressional approval. The Constitutionality of this law has been questioned, some have advocated for its repeal, and most recently in July, 2008 a bi-partisan Commission led by former Secretaries of State James Baker and Warren Christopher, recommended improvements.

While there is tension between the executive and congressional branches over the parameters of their war powers, it is imperative that our government provide for our defense, and be given the power to do so. Whether it be stopping Hitler and Japan in World War II, halting the spread of communism, as was attempted in Vietnam, or fighting terrorists in Afghanistan and Iraq, our American Troops, directed by our Commander in Chief, have bravely kept our country safe and preserved our liberty.

It is fitting we read Federalist No. 23 on this Memorial Day Weekend. Let us honor those men and women who have sacrificed their lives so that our freedom lives on, and let us be thankful for the wisdom of our founders who knew that providing for the common defense was best left in the hands of our federal government.

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 23 | No Comments »

May 28, 2010 – Federalist Paper No. 23 – Janine Turner

Saturday, May 29th, 2010

Today, our guest Constitutional Scholar of the day, Mr. Troy Kickler's, insightful essay states, "Hamilton and other Federalists believed, write constitutional scholars Colleen A. Sheehan and Gary L. McDowell, that interest, reputation, and duty would bind the representatives to the Constitution and public opinion."

I find this quote intriguing, especially the section "..duty would bind the representatives to the Constitution and public opinion." This singular line encapsulates wisdom and inspires reflection.

The first reflection is upon the word, "duty." Duty seems to be a word that is lost in our American culture today. As the decades descend from World War II, the sense of duty to ones country appears to be diminishing. I looked up the word, "duty," and found the following definition: "a social force that binds you to a course of action demanded by that force. " The definition was followed by a quote by John D. Rockefeller, Jr., "every right implies a responsibility; every opportunity an obligation, every position, a duty." Today the focus of America's representatives as well as many Americans and the American culture seem to be one of self-interest. With the blessing of the Providential rights that are secured for us in our Constitution lay a responsibility. One of those responsibilities is to know, respect and understand the United States Constitution, as well as to encourage others to do so. The same should apply to the American Culture. How far we have drifted from the days when patriotism and love of country were, as President Ronald Reagan said, "in the air." Is our country perfect? No. But as the Former Senator Patrick Moynihan said, "show me a better one." We, as patriots who love our country and appreciate the founding principles upon which she was founded, need to rise to counter the palpable negativity that permeates our air today. One has to question whether our Congressional representatives are bound to their duty of their country and constituents, or to themselves.

The second reflection is upon the statement that duty would bind representatives to the "Constitution." "..bind one to the Constitution." The more I read the United States Constitution and the Federalist Papers, the more I realize how much we have strayed from the Constitution in cultural thought, personal awareness, legislative acts and supreme court rulings. This slow usurpation is due to a lack of knowledge and by a lack of pressure applied on our representatives to uphold the Constitution's principles. As a Republic we rule through our representatives, thus, our vote is our voice. The checks and balances of our government begin with us. Thus, I suppose, there is a responsibility that we, as patriots, must own – if our representatives have grown callous and irreverent regarding the Constitution, it is because we have allowed it by our lack of diligence and duty to hold them accountable. How well do they know the United States Constitution? How do they intend to abide by its stipulations? These should be the questions of paramount importance.

The third reflection is upon the two words, "public opinion." "Duty would bind the representatives to the Constitution and public opinion." Public opinion seems to be virtually ignored by our representatives today. As mentioned in Federalist Paper No. 22 and in previous papers, Publius had a respect for the "genius of the people." The American people have a genetic disposition and inherent ability to seek the truth and know the truth and American patriots rise to the challenge of duty. "The experience of history" has proven this to be a tried and true trait of Americans. All of the attempts by the current branches of government to "reason" their way around the Constitution and govern a Republic without respecting the Constitution, and the history of the American spirit, will do so in vain. Duty to preserve our great

country, founding principles, bill of rights and free enterprise will be the Paul Revere ”call to action” of our day.

God Bless,

Janine Turner
May 28, 2010

Posted in Constitutional Essays by Janine, Federalist No. 23 | 4 Comments »

May 28, 2010 – Federalist No. 23 – The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union, From the New York Packet (Hamilton) – Guest Bloggers: Troy Kickler, Ph.D., Director of the North Carolina History Project and Daren Bakst, J.D., L.L.M., Director of Legal and Regulatory Studies at the John Locke Foundation

Friday, May 28th, 2010

Federalist #23

When Alexander Hamilton attended the 1787 Constitutional Convention in Philadelphia, he was thirty-six years old. Despite his young age he was a leading statesman, who was knowledgeable not only regarding current events at home and abroad but also the classics and the historical lessons that they contain. The future, first U.S. Secretary of the Treasury, Hamilton incorporated his political observations and knowledge into *The Federalist*.

Hamilton penned more than half of *The Federalist* essays. In them, he pointed out the defects of the Articles of Confederation and argued that the Constitution and the powers that it enumerated to the national government were necessary for the Union’s survival. To remain under the Articles, Hamilton contended, meant certain death for the Union, for the states would continually act in their self-interest and ignore the Union’s interest. Laying the foundation for his reasoning in subsequent commentaries (24-29), the New York lawyer put forth this particular argument in Federalist 23: “The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union.”

When debating Anti-Federalists–those who questioned or opposed the Constitution's ratification–Hamilton and other Federalists used the word "energetic" to describe a government that had power to fulfill its given responsibilities such as providing for a national defense. An "energetic" government was not one that encroached on individual rights. It meant simply giving life to a dormant national government and allowing it to exercise and fulfill its responsibilities.

In Federalist 23, Hamilton asks what are the proper duties of a national government. He contends they are providing for the common defense, preserving public peace, regulating interstate commerce and foreign trade, and conducting foreign affairs. For the remainder of the essay, Hamilton emphasizes why it is essential for the national government to provide for the common defense and what means are necessary for it to ensure the Union's longevity.

To charge someone with a responsibility yet not empower them to perform their duty is imprudent. That is what Hamilton believed. In Federalist 23, he writes that if the national government is given the task of providing for the common defense then it should have the necessary authority to do so. Even the framers of the Articles, Hamilton points out, understood this necessity: they allowed Congress to ask the states for unlimited requests for men and money to wage war; however, they erroneously trusted states to provide adequate goods and munitions and men for the national government to use at its discretion. States many times ignored requests.

The assumptions of the framers of the Articles, Hamilton declares, were "ill-founded and illusory," and he claims that states worked strictly for their self-interests. To make the Union last, a change in governmental structure, Hamilton contends, was imperative: power and the means necessary must be given to the national government to provide for a common defense. To meet this particular end, Hamilton argues that the federal government should, in effect, bypass the states and "extend the laws of the federal government to the individual citizens of America."

In regards to national defense, Hamilton believes it is "unwise and dangerous" to not give the national government power to provide for a common defense: the powers "ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." He reminds his political opponents that to withhold such means and power from the national government is counterproductive and welcomes national instability. (Hamilton was aware of the lingering Anti-Federal skepticism and considered many of their objections to be merely nitpicking).

The change in government was needed to preserve national interests, and the proposed federal government was worthy of the people's trust. Hamilton and other Federalists believed, write constitutional scholars Colleen A. Sheehan and Gary L. McDowell, that "interest, reputation, and duty would bind the representatives to the Constitution and public opinion." That belief is expressed and implied in Federalist 23.

Although Anti-Federalists and Federalists waged a genuine and intense intellectual battle, both were concerned with protecting American liberties. In many ways, they were champions of freedom and had much in common. Both considered constitutions essential to the existence of a free society, and both believed that restraints should be placed on government. Both would be horrified how far many modern-day lawmakers and constitutional theorists have strayed from original intent.

–Troy Kickler, Ph.D., is Director of the North Carolina History Project and Daren Bakst, J.D., L.L.M., is Director of Legal and Regulatory Studies at the John Locke Foundation.

Archive for the 'Federalist No. 24' Category

June 1, 2010 – Federalist Paper No 24 & 25 – Janine Turner

Tuesday, June 1st, 2010

On this Memorial Day season, I think it is appropriate to truly contemplate and think about the soldiers and families who have sacrificed their lives and loved ones, and given their time and dedication to our country.

Sometimes it is beyond reach to put ourselves in someone else's shoes and feel, to the most heightened sense, what it would be like to say good-by to our loved ones for perhaps the last time. Do we take the time to feel empathy for the soldier who has to walk away from his family – mother, father, wife, husband, daughter, son – to be potentially killed out in the field – to die away from family – in perhaps some distant land, in enemy territory, on foreign soil? How frightening this would be.

It is difficult in our daily lives that are hectic with work, pressures, commitments and family responsibilities to really pause to think about the sacrifice our men and women in uniform have made and are making to protect us. Our men and women in uniform were and are the brave, the special, the few and the truly great patriots. Without these soldiers, we, America and Americans, would not be here – plain and simple. The air we breathe, the land we walk, the sky we sketch, the country we call home, is because of the sacrifices of our men and women in uniform.

No matter which war they called their own, they all fought the enemy, whether near or far, whether boots were on the ground, in the air or on the sea, whether the enemy was present or premeditating. As Alexander Hamilton expressed in Federalist Paper No. 24, " cases are likely to occur under our governments, as well as under those of other nations, which sometimes render a military force in the time of peace, essential to the security of the society." Thus, an actual battle or a state of ready alert has served the same purpose – the enemy was to know and knew that he would not prevail against men and women who had the Divine right of liberty in their soul, passion in their hearts and the supreme strength of military readiness.

Memorial Day is the day to set aside time and sit down with our children and teach them about our wars and war heroes. It is a time to teach them about the Revolutionary War and the reasons why we fought it. They should know about the soldiers who walked barefoot in the snow, leaving the stain of their blood on the ice and about those soldiers who died miserable deaths as POWs in the stifling bowels of the British ships at sea. They should know about heroes such as Paul Revere, Israel Putnam and Nathan Hale who said, "I only regret that I have but one life to lose for my country."

We should take a moment during our Memorial Day season, and everyday, to pray for our men and women in uniform. We should teach our children about those who served in the War of 1812 when the British returned, how they burned down the White House and how President James Madison's wife, Dolly Madison, ran to save the portrait of President George Washington.

They should know about the Civil War, why we fought it and how thousands of our soldiers died from a new type of bullet that shattered their bones. They should know about the horrors of slavery, how it had permeated the world throughout history and yet how, according to William J. Bennett, "the westerners led the world to end the practice." They should know about how Americans fought Americans claiming hundreds of thousands of soldier's lives.

They should know about World War I and how the soldiers lined up in rows, one after the other, to be shot or stabbed by swords. They should know about World War II and the almost inconceivable bravery of the soldiers who ran onto the beach to endure the battle of Normandy, which claimed thousands of American lives. They should understand what history has to teach us about the mistakes in politics that bred the tyrants who led millions to slaughter. As Publius teaches us, we should not rule with reason but upon the strong foundation of the lessons of history.

They should know about the Korean War, the Vietnam War and the Communist Regimes that ripped the souls from its people. They should know that our soldiers did not fight or die in vain in Korea or Vietnam because even though the enemy was physically in their field, the enemy's propaganda permeated and thus threatened our field.

They should know about the soldiers who stood on alert during the Cold War and their willingness to die. (My father is a West Point Military graduate and served in the Air Force. He was one of the first to fly twice the speed of sound, Mach II, in the 1960's. He flew the B-58 Hustler and was ready to die on his mission to Russia when his country called him to do so.) The cold war was won by the ready willingness of our brave soldiers in uniform and a country who was militarily prepared.

A prepared state is a winning state. Alexander Hamilton wrote in Federalist Paper No. 24, "Can any man think it would be wise, to leave such posts in a situation to be at any instant seized by one or the other of two neighboring and formidable powers? To act this part, would be to desert all the usual maxims of prudence and policy."

Today, we fight in Iraq and Afghanistan. We fight the insurgencies at our borders most especially in Arizona, Texas and California and we fight an elusive enemy that is creeping into our fields. They are creeping both from abroad with violence and from within with the slow usurpation of our founding principles. Alexander Hamilton warns in Federalist Paper No. 25, "For it is a truth which the experience of all ages has attested, that the people are commonly most in danger, when the means of injuring the rights are in the possession of those of whom they entertained the least suspicion."

A strong and honest government based on the Constitution and ruled by the people through the Constitutional Republic will prevail but only if we, as citizens, know about it and only if our children are raised on the fruits of this knowledge. As Alexander Hamilton states in Federalist Paper No. 25, "It also teaches us, in its application to the United States, how little rights of a feeble government are likely to be respected, even by its own constituents."

Wars are fought physically and wars are fought mentally. As civil servants we must be alert to the enemy that is amongst us. Alexander Hamilton states in Federalist Paper No. 25, "…every breach of the fundamental laws, though dedicated by necessity, impairs that sacred reverence, which ought to be maintained in the breast of rulers towards the constitution of a country…"

On this Memorial Day season, we begin our mission with an education of the thesis and basis of our country – what we fight for – the United States Constitution and the wisdom, freedoms, righteousness and structure that it upholds.

May God bless all of our service men and women past, present and future, who have fought valiantly for these principles.

God Bless,

Janine Turner
June 1, 2010

Posted in Constitutional Essays by Janine, Federalist No. 24, Federalist No. 25 | 3 Comments »

May 31, 2010 – Federalist No. 24 – Cathy Gillespie

Monday, May 31st, 2010

It is interesting that in the early days of the republic, people feared a standing army. The Pennsylvania and North Carolina Constitutions went so far as to say, "As standing armies in time of peace are dangerous to liberty, THEY OUGHT NOT to be kept up." This was a legitimate fear, based on history, as Allison Hayward points out in her essay today. (Thank you, Allison, by the way, for your second Guest Blogger essay!! We appreciate your insights!!)

Our founders addressed this possible threat to the peoples' liberty by placing the power of Commander in Chief with the executive branch (Article II, Section II of the Constitution), but the power to raise armies with the legislative branch (Article I, Section VIII of the Constitution). And they even included a clause which forbade the appropriation of money for the support of an army for any longer period than two years, as a precaution to keeping troops without necessity.

Today, on Memorial Day 2010, most Americans look at our military not with the suspicious eye of our forefathers, but with heartfelt pride and gratitude. Two days ago Rasmussen announced a poll showing that 74% of Americans have a favorable view of the U.S. Military. Only 12% had an unfavorable opinion and 13% weren't sure.

I believe part of this strong support for our troops is due to the founding fathers' wise use of checks and balances in structuring the government's control of the military, balancing power between the legislative and executive branches. The abuses that the anti-federalists feared have not come to pass.

An equally important factor responsible for American support of our troops is the ***quality*** of the men and women who, since the elimination of the draft, have chosen to serve. These are brave, selfless men and women – fathers and mothers – who leave their families for years at a time to go to foreign lands and defend freedom. These members of the armed services make sacrifices in their personal life, their financial life, their physical and mental health, and sometimes make the ultimate sacrifice, all to defend our liberty. I am honored and blessed to count many active duty members of the military as friends, and

I cannot think of any people with higher character, sense of patriotism and duty to country than these service members.

God bless those who have sacrificed their lives in defense of our freedom, may God be with their families, and may God be with and bless our active duty military and veterans. Our country owes you all a huge debt of gratitude. Thank you, from the bottom of our hearts.

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 24 | No Comments »

May 31, 2010 – A Memorial Day Message from Constituting America

Monday, May 31st, 2010

On this Memorial Day, 2010, let us remember and give thanks for those who have made the ultimate sacrifice for the preservation of our freedom. Let us honor them by thanking those brave men and women currently serving in our military, and our veterans.

It is fitting that the Federalist Papers we are reading this weekend address our national defense. Thanks to the foresight of our founding fathers, we have the greatest military in the world, and the best men and women serving, all of whom take an oath to "support and defend the Constitution of the United States."

Thank you to our armed forces, and may God be with you as you perform your duties. You are in our prayers.

Wishing you all a Blessed Memorial Day! God Bless our Troops!

Janine Turner and Cathy Gillespie

Posted in Federalist No. 24 | 3 Comments »

May 31, 2010 – Federalist No. 24 – The Powers Necessary to the Common Defense Further Considered, For the Independent Journal (Hamilton) – Guest Blogger: Allison R. Hayward, Vice President for Policy at the Center for Competitive Politics.

Monday, May 31st, 2010

Federalist 24

Allison R. Hayward

Federalist 24 continues Hamilton's argument in favor of strong national government for national security purposes. Here, he addresses the explicit complaint that the Constitution would permit standing armies in peacetime.

Critics of the Constitution feared that standing armies would become either a tool for those in power to seize power in perpetuity, or a means to usurp elected government with a military one. Colonists in America were not far removed from the days of Oliver Cromwell, who after prevailing in the English Civil War became Lord Protector of England, Ireland, Scotland and Wales. Quite possibly the families of many of the colonists reading the Federalist Papers migrated to the New World to escape Cromwell's Britain (or the Restoration aftermath, plague, fire, and general 17th century misery). Certainly many were familiar with the fall of the Roman Republic at the hands of the Roman General, Julius Caesar. In any case, popular opinion would have feared standing armies as a destabilizing force and a threat to democracy. This is thus a powerful argument that the Federalists need to answer.

Hamilton responds to these critics in several ways. First he implies that these critics misinterpret the constitutional separation of powers. He reminds them that the Constitution places the responsibility for raising an army with Congress, not the President. Moreover, any appropriation may be for no longer than two years. Under this division of authority, the election branch – Congress – which is most responsive to the public, must consent to military mobilization. Unlike the Roman and English examples, sole military authority is denied the American Executive. Moreover, the existing regime under the Articles of Confederation contains no standing army limit. This fact allows Hamilton to imply that the anti-Federalist criticisms are disingenuous.

Moreover, notes Hamilton, the world poses security dangers to America apart from "formal" war. The nation is bordered by territories of Britain, Spain and France, and much of the frontier is inhabited by native Americans. Any of these could threaten Americans (and America) if the nation relaxed its guard. Frontier garrisons in particular require support even during "peace." Finally, for American to meet its potential as a commercial power, it needs to build a navy, which requires outlays for dockyards –even in peacetime. Hamilton argues that the Constitution properly leaves these decisions to Congress, the people's elected representatives.

Today, the Pentagon's proposed budget for the coming fiscal year is $708 billion, including a $56 billion "black budget" for classified programs. About 1.5 million individuals are in the active service, about 560,000 in the Army alone. Notwithstanding concerns voiced through time about the size, expense, and "military industrial complex" the United States has, since World War II, maintained a large professional armed force. Moreover, it has done so under the supervision of the Executive – not, as Hamilton contended, under Congress.

Further, military spending is seen by many Congressmen as an important part of their representative role – not simply to keep the country safe, but to keep constituent military contractors profitable. One wonders what Hamilton might have made of the current political "war" over the military's budget, in which the Defense Secretary has demanded the end to certain programs. Yet Congress insists on keeping them.

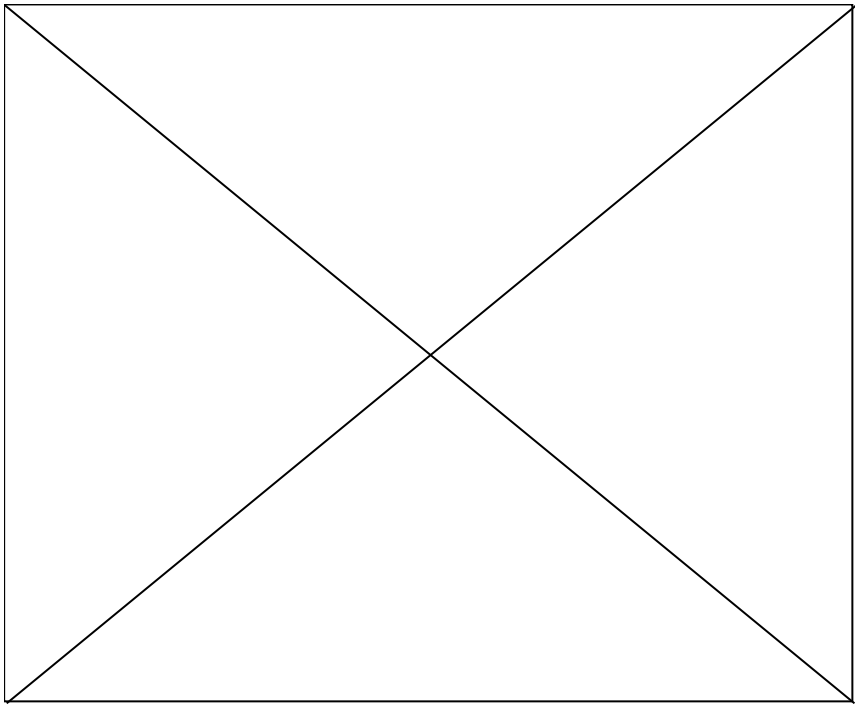
Allison R. Hayward is the Vice President for Policy at the Center for Competitive Politics.

Archive for the ‘Federalist No. 25’ Category

June 1, 2010 – We The People 9.17 Contest Update and Federalist No. 25 – Cathy Gillespie

Wednesday, June 2nd, 2010

DON’T MISS!! Juliette Turner’s newest video about our contest:
http://www.youtube.com/watch?v=pNnhC3F5nJE



We are almost one month away from our **We The People 9.17 Contest** entry deadline of July 4. We need everyone’s help in recruiting kids to enter! We have been told email is the most effective means of recruiting entries and spreading the word, so please feel free to cut and paste this blog and circulate it to your email list.

Constituting America is seeking high school students to submit entertaining short films, public service announcements, cool songs, and of course, essays by July 4th for our We The People 9.17 Contest!! We have a good number of essays, but not as many short films, public service announcements and songs as we were hoping for, **so if you know any high school students who have a talent for making movies, or composing and singing songs,** please direct them to: http://www.constitutingamerica.org/downloads.php for more information, rules and to sign up online!

Prizes for high schoolers include $2,000, a trip to Philadelphia on September 17 (Constitution Day), and Governor Huckabee has invited the contest winners on his show! The National Constitution Center has offered to show the winning short film in their theatre, and highlight our contest winners in their Constitution Day events.

Constituting America is seeking Middle School Students to enter cool SONGS and well written essays!! We have a good number of essays, but not as many songs as we were hoping for! Please spread the word to any Middle School kids you know, especially those who like to compose and sing, and direct them to: http://www.constitutingamerica.org/downloads.php for more details, and to sign up online!! Prizes for Middle School kids include gift cards, publicity on the Constituting America website, and other cool surprises!

And, calling all Elementary Schools kids who like to write poems or draw! We need poems, and art for a holiday greeting card! Again, please see: http://www.constitutingamerica.org/downloads.php for rules and details, and to sign up for the contest online!! Prizes for Elementary School kids include gift cards, publicity on the Constituting America website, and other cool surprises.

If school is still in session in your area, please contact social studies teachers, art departments, music departments, and theatre/film departments! This is a great project to fill those last days of school when teachers have possibly run out of curriculum or want to give students a chance to earn some extra credit! Church youth groups are another possiblity. And if anyone has ideas or ways to get the word out to the military about this contest, we would love your help in doing so!

As for Federalist No. 25 – first of all, thank you Professor Knipprath! I echo Susan in saying I always look forward to your posts. And what a beautiful essay Janine wrote on Federalist 24 & 25. I am not sure I have ever read a better tribute to the troops for Memorial Day.

Like Greg, Professor Knipprath's line: "Hamilton raises an important broader point here, namely, the use of contrived crises not only to justify military action, but any government action," especially resonated with me. It seems that more and more frequently, "crisis," is used to justify the government creeping into areas of our lives, and the marketplace, where our founding fathers never intended it to go.

In Federalist 24, Hamilton used a phrase I love – he describes the American people as "so jealous of their liberties." If we can once again become a people educated about and "jealous of our liberties," we can begin to roll back some of the government encroachment the founding fathers tried to guard against. We must stay alert and awake!

A hard task at 2:26 a.m. as I write this post!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 25 | 1 Comment »

June 1, 2010 – Federalist Paper No 24 & 25 – Janine Turner

Tuesday, June 1st, 2010

On this Memorial Day season, I think it is appropriate to truly contemplate and think about the soldiers and families who have sacrificed their lives and loved ones, and given their time and dedication to our country.

Sometimes it is beyond reach to put ourselves in someone else's shoes and feel, to the most heightened sense, what it would be like to say good-by to our loved ones for perhaps the last time. Do we take the time to feel empathy for the soldier who has to walk away from his family – mother, father, wife, husband, daughter, son – to be potentially killed out in the field – to die away from family – in perhaps some distant land, in enemy territory, on foreign soil? How frightening this would be.

It is difficult in our daily lives that are hectic with work, pressures, commitments and family responsibilities to really pause to think about the sacrifice our men and women in uniform have made and are making to protect us. Our men and women in uniform were and are the brave, the special, the few and the truly great patriots. Without these soldiers, we, America and Americans, would not be here – plain and simple. The air we breathe, the land we walk, the sky we sketch, the country we call home, is because of the sacrifices of our men and women in uniform.

No matter which war they called their own, they all fought the enemy, whether near or far, whether boots were on the ground, in the air or on the sea, whether the enemy was present or premeditating. As Alexander Hamilton expressed in Federalist Paper No. 24, " cases are likely to occur under our governments, as well as under those of other nations, which sometimes render a military force in the time of peace, essential to the security of the society." Thus, an actual battle or a state of ready alert has served the same purpose – the enemy was to know and knew that he would not prevail against men and women who had the Divine right of liberty in their soul, passion in their hearts and the supreme strength of military readiness.

Memorial Day is the day to set aside time and sit down with our children and teach them about our wars and war heroes. It is a time to teach them about the Revolutionary War and the reasons why we fought it. They should know about the soldiers who walked barefoot in the snow, leaving the stain of their blood on the ice and about those soldiers who died miserable deaths as POWs in the stifling bowels of the British ships at sea. They should know about heroes such as Paul Revere, Israel Putnam and Nathan Hale who said, "I only regret that I have but one life to lose for my country."

We should take a moment during our Memorial Day season, and everyday, to pray for our men and women in uniform. We should teach our children about those who served in the War of 1812 when the British returned, how they burned down the White House and how President James Madison's wife, Dolly Madison, ran to save the portrait of President George Washington.

They should know about the Civil War, why we fought it and how thousands of our soldiers died from a new type of bullet that shattered their bones. They should know about the horrors of slavery, how it had permeated the world throughout history and yet how, according to William J. Bennett, "the westerners led the world to end the practice." They should know about how Americans fought Americans claiming hundreds of thousands of soldier's lives.

They should know about World War I and how the soldiers lined up in rows, one after the other, to be shot or stabbed by swords. They should know about World War II and the almost inconceivable bravery of the soldiers who ran onto the beach to endure the battle of Normandy, which claimed thousands of American lives. They should understand what history has to teach us about the mistakes in politics that bred the tyrants who led millions to slaughter. As Publius teaches us, we should not rule with reason but upon the strong foundation of the lessons of history.

They should know about the Korean War, the Vietnam War and the Communist Regimes that ripped the souls from its people. They should know that our soldiers did not fight or die in vain in Korea or Vietnam because even though the enemy was physically in their field, the enemy's propaganda permeated and thus threatened our field.

They should know about the soldiers who stood on alert during the Cold War and their willingness to die. (My father is a West Point Military graduate and served in the Air Force. He was one of the first to fly twice the speed of sound, Mach II, in the 1960's. He flew the B-58 Hustler and was ready to die on his mission to Russia when his country called him to do so.) The cold war was won by the ready willingness of our brave soldiers in uniform and a country who was militarily prepared.

A prepared state is a winning state. Alexander Hamilton wrote in Federalist Paper No. 24, "Can any man think it would be wise, to leave such posts in a situation to be at any instant seized by one or the other of two neighboring and formidable powers? To act this part, would be to desert all the usual maxims of prudence and policy."

Today, we fight in Iraq and Afghanistan. We fight the insurgencies at our borders most especially in Arizona, Texas and California and we fight an elusive enemy that is creeping into our fields. They are creeping both from abroad with violence and from within with the slow usurpation of our founding principles. Alexander Hamilton warns in Federalist Paper No. 25, "For it is a truth which the experience of all ages has attested, that the people are commonly most in danger, when the means of injuring the rights are in the possession of those of whom they entertained the least suspicion."

A strong and honest government based on the Constitution and ruled by the people through the Constitutional Republic will prevail but only if we, as citizens, know about it and only if our children are raised on the fruits of this knowledge. As Alexander Hamilton states in Federalist Paper No. 25, "It also teaches us, in its application to the United States, how little rights of a feeble government are likely to be respected, even by its own constituents."

Wars are fought physically and wars are fought mentally. As civil servants we must be alert to the enemy that is amongst us. Alexander Hamilton states in Federalist Paper No. 25, "…every breach of the fundamental laws, though dedicated by necessity, impairs that sacred reverence, which ought to be maintained in the breast of rulers towards the constitution of a country…"

On this Memorial Day season, we begin our mission with an education of the thesis and basis of our country – what we fight for – the United States Constitution and the wisdom, freedoms, righteousness and structure that it upholds.

May God bless all of our service men and women past, present and future, who have fought valiantly for these principles.

God Bless,

Janine Turner
June 1, 2010

Posted in Constitutional Essays by Janine, Federalist No. 24, Federalist No. 25 | 3 Comments »

June 1, 2010 – Federalist No. 25 – The Same Subject Continued: The Powers Necessary to the Common Defense Further Considered, From the New York Packet (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, May 31st, 2010

Alexander Hamilton began his Revolutionary War service as a member of a New York militia unit. He then joined the Continental Army as an artillery officer and became General Washington's adjutant in 1777. After resigning that post, he persuaded Washington to give him a position as a field commander at the decisive Battle of Yorktown in 1781. From his experience as line officer and staff member, Hamilton was well aware of the capabilities of a trained army and those of the militia. More, in 1783, the Confederation Congress had appointed Hamilton to head a committee to investigate the creation of a standing army.

That background stands out in Federalist No. 25. Supporting Congress's power to create a standing army, Hamilton rejects the argument that, if there is to be such an institution, it should be under the control of the states. Hamilton also rejects a more moderate position supported by Brutus and other Antifederalists that the national government be permitted to raise and keep troops for frontier duty and to counter threatened attacks, but not to keep armies generally during peacetime. He uses a rather trite "where-do-we-draw-the-line" argument to defend drawing no line at all. Brutus has a ready response: Just specify the purposes for which peacetime troops may be raised and kept, and require a two-thirds vote for Congress to act.

But, rejoins Hamilton, "how easy would it be to fabricate pretences [sic] of approaching danger?" A peacetime army might be kept up, through collaboration between Congress and the President, on the flimsiest of excuses and for however long they judge the danger to exist for their own political ends." Hence, there should be no restriction on Congress's power to raise and keep a peacetime army. Because a limited power might be abused, there must be an unlimited power? It is this logical leap that the Antifederalists reject.

Hamilton raises an important broader point here, namely, the use of contrived crises not only to justify military action, but any government action. As Publius notes in several other essays, government thrives

on crisis, while individual liberty shrivels. Power flows from the individual to government, from local governments to the central government, and from the legislative and judicial branches to the executive. Such crises fuel an explosion of political energy that produce dangerously excessive unity over individuality, and conformity over liberty, at least temporarily. Government officials gain from such crises, be they real or contrived. "Never let a good crisis go to waste," is a brilliantly apt aphorism of this phenomenon. Wars and natural disasters are real crises, but one frequently hears crisis terminology used to describe more run-of-the-mill political issues, from "wars" on poverty and drugs to health care and obesity "crises," to justify government intrusion into individual autonomy. Not long ago, there was even a "hidden" child care crisis, with government efforts made all the more critical because the crisis was so insidious no one recognized it.

Hamilton also anticipates the assertion that the militia suffices for the national defense, an argument he roundly rejects. This was a particularly sensitive ideological issue for Americans of the time. The myth of the citizen-soldier was a powerful republican tale. The ideal soldier was Cincinnatus, the Roman consul-turned-farmer who was subsequently called to be dictator and general during a war, which offices he resigned upon successful completion of the military campaign. He then returned to his farm. Making this republican myth concrete for Americans was that they had their own Cincinnatus in the person of George Washington. Revolutionary War officers formed the Society of the Cincinnati to promote this republican ideal.

The militia embodies the ethos of the citizen-soldier. Hamilton pays due homage, but recognizes the inferiority of the militia to a regular army in sustained military operations. "The American militia, in the course of the late war, have, by their valour on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know, that the liberty of their country could not have been established by their efforts alone, however great and valuable they were." As he noted in Federalist 24, even in peacetime the militia would be unsuited to perform regular soldiering duties such as guarding the frontier. "The militia, in times of profound peace, would not long, if at all, submit to be dragged from their occupations and families, to perform that most disagreeable duty." Worse, he declares, is the economic inefficiency of compelling the militia to such service, produced by a loss of labor and industrious pursuits and by the expense to the society of frequent rotation of the militia. Since militia service was universal for adult males of a wide age range, such burdens would be even more objectionable than if they fell on a body of citizen volunteers, such as today's National Guard.

Our current military system depends on a combination of a professional standing army in active service and volunteers in the National Guard and in various reserve units. The system has advantages in training and professionalism, which become more important as the technology in fighting becomes ever more complex. The war-fighting skills of the massed citizen soldiers of the ancient Athenian hoplite formation or of the Roman legion were relatively simple to master. Today's warfare is infinitely more complex, and continuous campaigns are measured in years, not weeks. Relying on citizen-soldiers, even volunteers in the National Guard, for long commitments produces hardships and economic dislocation, as news reports often point out. This is well worth remembering when politicians blithely call for a state's national guard to be deployed to guard the frontier against trespassing aliens, or when cuts in the defense budget are proposed while the scope of military commitments abroad continues at a high level.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential

succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 26' Category

June 2, 2010 – Federalist Paper No. 26 – Janine Turner

Wednesday, June 2nd, 2010

"…the state legislatures, who will always be not only vigilant, but suspicious and jealous guardians of the rights of the citizens, against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if anything improper appears, to sound the alarm to the people, and not only to be the VOICE, but if necessary, the ARM of their discontent."

When I read these words of Alexander Hamilton, I think to myself, " WHAT HAPPENED?" This is one of the absolute best paragraphs in the Federalist Papers! When one wants to know what's the big deal about the Federalist Papers, when someone wants to know why the United States Constitution important, when someone says, "We haven't strayed that much from the Constitution," I would direct them to this paragraph in Federalist Paper No. 26.

These are the words that define the vision of our founding fathers, and the structure of the United States Constitution, in regard to restraining the federal government.

"the state legislatures, who will always be not only vigilant, but suspicious and jealous guardians of the rights of the citizens"

"against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers"

"and will be ready enough, if anything improper appears, to sound the alarm to the people, and not only to be the VOICE, but if necessary, the ARM of their discontent."

Have we proceeded too far to save America? Will we ever get back to the true intention of our Constitutional government? Will American's ever cut the umbilical cord?
Are we to watch our flag burning in the street as citizens insist that the government owes them benefits? Will the age of entitlement ever be replaced by the original age of entrepreneurial vigor? Are we to sink on the same ship as Greece? Our GNP is projected to meet Greece's GNP by 2020.

How will America survive?

If American's do not know what they have they will not know when it is slowly being taken away from them.

As Alexander Hamilton states,"Schemes to subvert the liberties of a great community, require time to mature them to execution."

The time has come and the alarm must sound before it is too late. What are our state legislatures doing? They are not representing us in the U.S. Congress anymore and the federal government has tied their hands.

The tenth amendment needs to be revisited and rekindled.

We must act now before America's great liberties are swallowed into the great abyss of socialism and democracy fails – but this will happen only if we let it. We must be the VOICE and the ARM of discontent. The best way to do this is by education. We must educate our friends, our family, our neighbors, our CHILDREN about the United States Constitution, the Federalist Papers and our country's founding principles.
We must be vigilant!

It begins with YOU. Spread the word about our website and "90 in 90," and our contest for kids!

God bless you!!
God bless America.

Janine Turner
June 2, 2010

Posted in Constitutional Essays by Janine, Federalist No. 26 | 2 Comments »

June 2, 2010 – Federalist Paper No. 26 – Cathy Gillespie

Wednesday, June 2nd, 2010

Thanks to everyone who joined our discussion today, and to our Guest Constitutional Scholar Bloggers, Daren Bakst and Troy Kickler!

I asked you all last night to help us recruit kids to enter the We The People 9.17 Contest, Entries due July 4! Thank you!! We have had several new online signups today at http://constitutingamerica.org/contestsignup.php Please keep spreading the word!!

Here is one additional request – as you recruit young people to the contest, **please ask their parents, and the older kids, to join us on this blog!** We learn so much from each other. The more people we have participating, the more we learn!!

Tonight, the first paragraph of Federalist #26 grabbed my attention. I even printed it off and carried it down the hall to show my husband who was trying to watch TV in peace! But as he read the sentences below, he agreed – these words ARE relevant today:

IT WAS a thing hardly to be expected that in a popular revolution the minds of men should stop at that happy mean which marks the salutary boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights. A failure in this delicate and important point is the great source of the inconveniences we experience, and if we are not cautious to avoid a repetition of the error, in our future attempts to rectify and ameliorate our system, we may travel from one chimerical project to another; we may try change after change; but we shall never be likely to make any material change for the better.

I admit I had to look up a few words. I had a vague understanding of their meanings, but reading the definitions added to the richness of Hamilton's message.

ameliorate – to make or become better, more bearable, or more satisfactory; improve; meliorate**.**

chimerical – 1 : existing only as the product of unchecked imagination **:** fantastically visionary or improbable
2 : given to fantastic schemes

Even though Publius uses this first paragraph to make his case for the legislature to have the power to provide for national defense, these words reverberate with meaning, as I think of the numerous ways the balance between "legislative power and liberty" (thank you Mr. Bakst & Kickler for that phrase) has been disrupted.

Our founders created a system of checks and balances, and nothing less than our freedom is dependent upon its equilibrium. Whether we tip too far towards anarchy, as Hamilton feared if the legislature wasn't granted the power to provide for the national defense, or too far towards government control in our lives, the result is a deviation from the system of government our founding fathers so carefully designed. When "We the people" allow the government to get out of balance, we allow our liberty to fade, creating those "inconveniences," Hamilton references, and we fail to make "any material change for the better."

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 26 | 1 Comment »

June 2, 2010 – Federalist No. 26 – The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered, For the Independent Journal (Hamilton) – Guest Bloggers: Daren Bakst, J.D., LL.M., Director of Legal and Regulatory Studies at the John Locke Foundation and Troy Kickler, Ph.D., Director of the North Carolina History Project

Wednesday, June 2nd, 2010

At the start of Federalist No. 26, Alexander Hamilton addresses the challenging balancing act required between legislative power and liberty. Using this as a jumping off point, he makes the case that the legislature must have the power to provide for the national defense.

While he acknowledges the balancing of interests, he argues that the scales tip toward having strong legislative power when it comes to national defense. Restraining legislative authority in the area of national defense "is one of those refinements which owe their origin to a zeal for liberty more ardent than enlightened."

He explains that it would "endanger the public safety" if there were "impolitic restrictions on the legislative authority." He goes on to suggest that anarchy would result and the American people would not support such an anarchy.

Hamilton then turns his attention to the question of standing armies during peacetime. Pointing to England, he explains how it had lived under the rule of monarchs who had almost unlimited power. After the Revolution of 1688, the monarch's power to raise armies was drastically reduced.

The only manner in which an army could exist in peacetime was with the consent of the Parliament. As Hamilton argues, even in England where the desire for liberty during this time was great, the only restraint believed necessary was to prohibit the executive from having sole power to raise armies.

The British revolutionaries who fought for liberty knew that there was a need for troops in peacetime. There always needed to be troops ready to meet any contingency that faced the nation. By placing power with the legislature, this was the proper balance between liberty and public safety.

According to Anti-Federalists, in particular Brutus in his "Tenth Letter," those opposed to standing armies in peacetime were concerned with executives gaining excessive power. To support this argument, they used Rome and Britain as examples.

In Rome, writes Brutus, Julius Caesar changed "it [Rome] from a free republic…into that of the most absolute despotism." In Britain, the armies had been used by Oliver Cromwell to take away the people's liberty.

Hamilton though counters these concerns by stressing the role of the legislature. One key protection was the appropriations process. The legislature must, every two years, vote on whether to allow a military force. Their constituents could hold them accountable at the ballot box if their actions were inconsistent with their will.

Further, according to Hamilton, state legislatures would protect their citizens. Hamilton saw a strong federalist system where states fought against the encroachments by the federal government. States would not simply voice their concerns, but they would be the vehicles by which the citizens would be protected.

Since Hamilton's time, a key component to the power of state legislatures has been lost. Until 1913, state legislatures had the power to elect Senators. They were not elected like they are now by a direct vote of the people. This was a major check that states possessed in preventing excessive national power.

However, under the current system, state governments are mere shadows of what Hamilton envisioned. This does undercut his argument. The federal government has become a behemoth with state governments beholden to it due to an over-reliance on federal funds.

Fortunately, the military has never posed a significant threat to domestic tranquility. This can be attributed to numerous factors, including the legislative check on executive power that Hamilton articulates in Federalist No. 26. Given our country's past and current foreign threats, he appears to have been correct in espousing the need for a standing army in peacetime.

– Daren Bakst, J.D., LL.M., is Director of Legal and Regulatory Studies at the John Locke Foundation and Troy Kickler, Ph.D., is Director of the North Carolina History Project.

Archive for the 'Federalist No. 27' Category

June 3, 2010 – Federalist No. 27 – Cathy Gillespie

Friday, June 4th, 2010

Thank you to our Guest Constitutional Scholar Blogger, Julia Shaw! And thank you to all who posted your comments today.

While reading Federalist 27, I found myself thinking, "How was Hamilton so wrong?"

He begins by arguing with one of the premises of the anti-federalists:

"As far as I have been able to divine the latent meaning of the objectors, it seems to originate in a presupposition that the people will be disinclined to the exercise of federal authority in any matter of an internal nature."

Hamilton may be correct that people will be accepting of the federal government if it is well administered, but as Peter Roff so correctly points out in his coment today, it is impossible to effectively manage the behemoth the federal government has become. And while most people do not mind the exercise of federal authority in the internal matters enumerated as federal powers in the Constitution, what they do mind is the federal government's usurpation of those powers that according to the 10th Amendment are "reserved to the States respectively, or to the people."

This quote startled me as well:

"The inference is, that the authority of the Union, and the affections of the citizens towards it, will be strengthened, rather than weakened, by its extension to what are called matters of internal concern."

Ask any small businessperson who is struggling to comply with EPA, OSHA, IRS, and numerous other sources of "red tape," if his or her affection towards the federal government is strengthened or weakened by all the mandates, regulations, rules and laws with which he must comply.

Hamilton could not have imagined the reach the modern day federal government has into U.S. citizen's "internal" lives. He had no way of knowing the 17th Amendment would be added to the U.S. Constitution, one of many factors that threw off the systems of checks and balances the founders had so carefully constructed to avoid a power grab by the federal government.

Hamilton got this right, however:

"It will be sufficient here to remark, that until satisfactory reasons can be assigned to justify an opinion, that the federal government is likely to be administered in such a manner as to render it odious or contemptible to the people, there can be no reasonable foundation for the supposition that the laws of the Union will meet with any greater obstruction from them, or will stand in need of any other methods to enforce their execution, than the laws of the particular members."

Many would argue that we are moving into the "odious and contemptible" zone with the ever expanding powers of the federal government contained in some of the legislation passed in the last few years. At least 13 states would deem the health care bill "odious and contemptible," as they mount their constitutional challenges to it.

In the comments section tonight, Adam proposed an interesting idea – a fourth branch of government entitled the Accountability Branch. I would argue that branch already exists, but it goes by another name: "We The People." We are charged with keeping the government accountable. As Janine wrote so eloquently in her Fox News Op Ed, Your Vote is Your Voice, http://www.foxnews.com/opinion/2010/04/30/janine-turner-supreme-court-justice-constitution-elections-elected/, our power to vote is the great leveler in restoring the balance to our government.

In order to use that power wisely, We The People, of the Accountability Branch, must be educated and awake. Thank you to all of you for your participation, and for your wakefulness! Let's keep spreading the word, and inviting others to join us!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 27 | No Comments »

June 3, 2010 – Federalist Paper No. 27 – Janine Turner

Thursday, June 3rd, 2010

"Man is a creature of habit. A thing that rarely strikes his senses, will have but a transient influence upon his mind." Alexander Hamilton, Federalist Paper No. 27.

Bingo. Once again, from the minds of Publius rings relevancy today. The United States Constitution is a thing that rarely strikes the senses because it is so infrequently discussed or taught. Consequently, it has but a transient influence upon American's minds and passions. The mainstream American culture is basically void of any mention or remembrance of the United States Constitution. Hence, our calling, as

concerned American's who value our Constitutional Republic, is to rally our Republic and curb the tide of irreverence that is engulfing the United States Constitution.

We must make it prevalent and relevant to the senses of our citizens. Knowledge is power. Culture is contagious. The United States Constitution is critical. Actually, it is in critical condition and its survival is the antigen to the disease of socialism. It embodies the vaccine that needs to be boosted in American society.

Man is a creature of habit and without the awareness of the basic structure, the true intent and the proper application of the principles of our United States Constitution then our Republic will be but a fleeting memory.

It is projected that by 2020 our economy will match the failing economy of Greece and democracy as we know it, America as we know it, will meet its demise. The spending must cease and the only way to accomplish this is to reinvigorate the can do spirit that built America. As John F Kennedy said, "My fellow Americans, ask not what your country can do for you; ask what you can do for your country."

We must counter the culture. One way to do this is to have parties in your home to study the Constitution and encourage people to join our "90 in 90" or refer people to the essays that are in our "90 in 90" archives. Cathy and I want to build a library that will provide a richness of resources to be utilized at any time.

Another way to counter the culture is with our children, the youth of our country. The culture is sending them the wrong message and the awareness of the Constitution is either vague, repugnant or nil. I thank you for getting your child, or a child you know, to join our contest. Taking the time out of "summer time slumber" or "summer time frenzy" is the first step to requisite better habits.

Our sense of pride in our country needs to be rekindled, and the paramount awareness of our rights and our basic foundation needs to be reaffirmed, by infusing the culture the American grassroots way. If not by the culture or mainstream media, then by the sheer will of dedicated Americans, like you.

God Bless,

Janine Turner

Posted in Constitutional Essays by Janine, Federalist No. 27 | 6 Comments »

June 3, 2010 – Federalist No. 27 – The Same Subject Continued: The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered, from the New York Packet (Hamilton) – Guest Blogger: Julia Shaw, research associate and program manager at the Heritage Foundation's B. Kenneth Simon Center for American Studies

Thursday, June 3rd, 2010

We are all familiar with the recent skepticism about government's performance. Ever since Rick Santelli's rant on the floor of the Chicago Board of Trade, Americans across the country have gathered in tea parties to discuss and protest the plethora of bad policies pouring forth from Washington. Frustration with government, though, is not limited to tea party participants. The recent oil spill in the Gulf Coast has renewed discussions on the left and the right about what the federal government can and should do in such emergencies.

How should we understand the recent frustration with government and skepticism about its role? Writing as Publius in *Federalist*27, Alexander Hamilton explains the cause of such dissatisfaction and the suggests a remedy to restore the people's confidence in and affection for government.

In *Federalist*27, Publius addresses the charge that the new government "cannot operate without the aid of a military force to execute its laws," ultimately because "people will be disinclined to the exercise of federal authority in any matter of an internal nature." Publius counters the presumption that people will be disfavor this new government, arguing that "I believe it may be laid down as a general rule that their confidence in and obedience to a government will commonly be proportioned to the goodness or badness of its administration."

Publius rejects the notion that people arbitrarily despise their government. Instead, he argues that there is a relationship between effective administration of government and public affection for government. People have confidence in and affection for a well-administered government. Conversely, people distrust and become frustrated with a poorly administered government.

This is not an unfamiliar argument. President Obama acknowledged that Americans were desperate for a well-administered government. But when Obama proclaimed in his inaugural address, "the question we ask today is not whether our government is too big or too small, but whether it works," he suggested that effective government is unrelated to the size and scope of government. Good administration is necessary for good government. But this does not mean that good administration is unrelated to the size of government.

But *Federalist*27 anticipates Obama's argument. Good administration is inseparable from limited government. Publius explains, in *Federalist*27 and throughout the entire *Federalist*, that the constitutional design of the government lends itself to gaining the affection of the people. In *Federalist*27, Publius highlights the expanded choice in election, the selection of the senate, and the reduction of factions as examples of the changes that will engender good will toward the new government. The rest of the *Federalist* discusses in greater detail the powers and limits on the new government. And, it is this limited government of enumerated powers that "the citizens are accustomed to meet with it in the common occurrences of their political life, [and] the more it is familiarized to their sight and to their feelings, the further it enters into those springs of the human heart, the greater will be the probability that it will conciliate the respect and attachment of the community."

Considering that people have affection for good administration, and that good administration is inseparable from a limited government, it follows that people's current dissatisfaction with government is ultimately rooted in the government's abandonment of constitutional limitations. Every day, entitlement programs grow, government spending increases, and Washington bureaucrats issue new regulations to control our lives. It may be a difficult task to return to limited constitutional government,

but, as Publius reminds us in *Federalist*27, the affection of the people and the long-term health of the country depend upon the such a return.

Julia Shaw is a research associate and program manager at the Heritage Foundation's B. Kenneth Simon Center for American Studies.

Archive for the 'Federalist No. 28' Category

June 4, 2010 – Federalist No. 28 – Cathy Gillespie

Sunday, June 6th, 2010

Thank you to Dr. Morrisey for your insight into Federalist No. 28, and for checking back in with us over the weekend! You are a wonderful resource to our "90 in 90" Participants!

It is interesting to me that Hamilton seems to be calling for the federal government to use the military to enforce domestic law in some circumstances. He mentions specifically "seditions and insurrections."

However, the American people have a strong history of opposing military enforcement of domestic law, unless requested by the state. Our forefathers rightly feared a standing army, due to abuses and usurpations of power the British Army had imposed on them.

After the Civil War, during Reconstruction, U.S. soliders were utilized to enforce law in the South. The issue came to a head during the election of 1876. Democrats dropped their challenge of this very close election (Rutherford Hayes won by one electoral college vote, but Samuel Tilden won the popular vote), when a compromise was reached to pass the Posse Comitatus Act of 1878:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

Federalist No. 28, and the subsequent Posse Comitatus Act are both very relevant today, because in 2006, President Bush could not send federal troops in to Louisiana to assist in the aftermath of Hurricane Katrina, until he was specifically requested to do so by Governor Blanco. As a result, the federal government was not able to respond as quickly as many would have liked.

Later that year, an attempt was made in the 2006 Defense Authorization Act to revise the Posse Comitatus Act, to enable the President to respond more quickly in these types of emergencies. While the measure passed in 2006, it was repealed in 2008. As United States Citizens, it is "in our genes," to be wary of standing armies, and certainly military enforcement of domestic law.

As I read Federalist 28, the below quote reminded me of why it is so important we all continue our effort to educate our youth and citizens about the U.S. Constitution and the and the foundation it sets forth regarding our freedoms and rights.

"The obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them."

Thank you to all of you who are joining us in our mission, speading the word and taking the time to blog with us!

Have a Blessed Sunday, and we look forward to blogging on Federalist 29 tomorrow!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 28 | No Comments »

June 4 , 2010 – Federalist No. 28 – Janine Turner

Saturday, June 5th, 2010

Howdy from Texas! I want to thank Mr. Will Morrisey for joining us today and for his wonderful interpretation of Federalist Paper No. 28. I underscored Alexander Hamilton's quote, "If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense, which is paramount to all positive forms of government; and which, against the usurpation of the national rulers, may be exerted with an infinitely better prospect of success, than against those of the rulers of an individual state."

I find this to be relevant to today in the respect that so many representatives in our United States Congress are betraying their constituents and they are doing so with arrogance, and a condescension, that is disturbing. I refer once again to the often-repeated phrase of Publius, "the genius of the people." Our current Congress is paying little heed to this phrase and their underestimation of the patriots of America, and that Americans rule through her elected officials, is an action that, I believe will hinder and surprise many currently elected officials in November.

Publius is reaffirming the collective strength of the people and their right to take action. This is a comforting reinforcement for the passions of the many Americans who are now finding their voice and utilizing it. As predicted by Alexander Hamilton, the unity of the states, the brothers and sisters of America, as opposed to individual states, are reaping resounding results.

"The usurpers, clothed with the forms of legal authority, can too often crush the opposition in embryo," is another source of wisdom from Alexander Hamilton. Relevant to today too often lawyers seem to be "usurping" our democratic process and the United States Constitution. Teams of lawyers are constantly poised and ready to redefine the process of protest by squelching it before it has begun with intimidation and coercive measures. Double speak and mind games prevail.
Americans are tiring of this game and the continual twisting of the true intentions of our Constitution and our rights.

However, in order to be a true guardian of the gate, we must carry forth our journey to be a people who protest with a basis of formidable knowledge in our principles. Knowledge is power.

Alexander Hamilton states in this paper, "The obstacles to usurpation, and the facilities of resistance, increase with the increased extent of the state: provided the citizens understand their rights and are disposed to defend them."

"Understand their rights and are disposed to defend them." Hence, if Americans do not know their rights then they will not know when they are being taken away.
The counter measures of our current culture are imperative. The Constitution needs to be the theme that is prevalent and prevails, as does the readiness and willingness of Americans to stand up, take a stance and go the extra mile. When we are too tired, or too busy, or too distracted by the mundane, this is when it is of the most importance to rally our wills and wits to carry on and carry forth the torch of our forefathers and foremothers who sacrificed so much and stopped at nothing to underscore and manifest what was right, what was worthy and what was the true intent of our God.

God Bless you for your willingness and courage,

Janine Turner
June 4, 2010

Posted in Constitutional Essays by Janine, Federalist No. 28 | No Comments »

June 4th, 2010 – Federalist No. 28 – The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered, for the Independent Journal (Hamilton) – Guest Blogger: Professor Will Morrisey, William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Friday, June 4th, 2010

The Federalist #28: Federalism and Rebellion

Publius has turned to the justification of "energy" or power in the federal government—in particular, the power of military self-defense. In #27 he began consideration of perhaps the most sensitive topic in any *federal* system, namely, military defense against internal rebellions. He argued that union finds its primary bulwark in peaceful habits of cooperation. Frequent appeals to armed enforcement of the union will only weaken the union–either by fostering resentments piqued by fresh injuries or by transforming that union into a tyranny that rules by nothing more than force. The careful limitation of federal powers—"the *enumerated* and *legitimate* objects of [the government's] jurisdiction"—coupled with the structural device of divided and separated powers within the federal government itself, should work to strengthen the Union over time.

Nonetheless, times will come when only force can preserve the Union. Publius addresses this likelihood in *Federalist* #28, making this paper one of his most candid and tough-minded performances.

Recall the fundamental law of contract enunciated in #22: no party to a contract may *unilaterally* and *legally* violate the contract. This maxim of course provided the crux of the Founders' argument in the

Declaration of Independence; King and Parliament had violated the unalienable rights of the colonists by unilaterally altering the terms of their governing charters, leading ultimately to acts of war against the colonists by the King, funded by the Parliament. The revolution occurred not because the colonists rebelled but because the British government had.

At least as often, some part of the people will rebel. Indispensable to good government, rule by law will not always suffice. Rebellion causes an immediate emergency but, more importantly, it "eventually endangers all government"; rebellion in one place can spread to others, plague-like. Publius remarks that this will hold regardless of whether the country remains united, inasmuch as an America divided into one, a few, or many sovereignties will still suffer the occasional insurrection.

As a revolutionary warrior, Publius maintains the right to revolution against tyranny. The "original right of self-defense," part of our natural right to life, always remains "paramount" to "all positive forms"—i. e., all conventional, man-made forms—"of government." The human institution of government rightly serves God's `institution' of human nature, and when the human contradicts the divine, the divine rightly asserts priority. This much we know from the Declaration of Independence: In some circumstances the rule of law rightly gives way to illegal but just force.

Publius then advances a much more surprising argument, one based on prudential reasoning not logical deduction from first principles. Usurpation of citizens' rights by "the national rulers" will find stiffer resistance than usurpation by the rulers of the member states. The lesser governments within the states—townships, counties—have relatively weak governments and so would likely lose any contest of arms to a state-capital cabal, especially if the state government controlled the militia. A usurpatory federal government, however, would face opposition by the states—by experienced public officials with every motive to remain alert to encroachments on their constitutional rights. The federal government under the new Constitution will check usurpatory moves by the states; the states will retain the power to check federal usurpation. "The people, by throwing themselves into either scale, will infallibly make it preponderate." By ratifying this Constitution the people will do just that, peacefully, but they could also do so in war, if they judge it necessary—as they had, in 1776.

Here the argument of *Federalist* #10 for the value of an *extensive* republic reappears. There, extensiveness of territory diluted factions: groups of citizens acting some way "adverse to the rights of other citizens"—individuals—or to the "permanent and aggregate rights of the community"—the society as a whole. Here we see the reverse situation; a group of citizens acting in defense of their rights, in accordance with the permanent and aggregate rights of the community, will find refuge in the size of America. States distant from the usurpers who've seized the capital city would have time and space in which to organize themselves military and fight back.

This raises an obvious question: What if an *un*just group or faction controlled *distant* states? Could the federal government suppress the rebellion? Publius cannot predict the outcome of such a struggle. If asked, he could only say that under the weak government of the Articles, no such *just* suppression could occur at all.

Professor Will Morrisey is the William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Archive for the 'Federalist No. 29' Category

June 7, 2010 – Federalist Paper No. 29 – Janine Turner

Tuesday, June 8th, 2010

Greetings from NYC. I am here, with Cathy and Juliette, and we are Constituting America. Be sure to tune in tomorrow to Fox News midday as I am going to be a guest on Megyn Kelly's show. I will, also, be on Glenn Beck's Show, the Founding Father's Friday, on Friday! Yea! Great exposure for Constituting America and our "90 in 90" and our We the People 9.17 Contest for kids. Deadline for our contest entries is July 4th – so please continue to spread the word!

I am glad to have Marc S. Lampkin back with us today, thanks Mr. Lamkin for your wonderful insights and I was also really happy to see some of our regular bloggers back today, such as Maggie and Carolyn, as well as some new bloggers…welcome!

I find that I agree with Carolyn Attaway's blog entry today. My favorite quote from today's reading was the following:

"Where in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits and interests?"

As Carolyn said, our military fights for our love of country not for the love of a leader. Our military also fights for a love of his countrymen. We are brothers and sisters, neighbors and fellow citizens. Our unity through diversity is what makes us unique. Our Constitutional forefathers gave us a brilliant structure, and roadmap, to keep us that way, to keep us unencumbered by the weight of heavy-handed government. Our freedoms have given us our opportunities and identity and breathed life into our bond as a brethren working together. Our limited government has given us the ability to dream. Our sense of adventure has flourished and made America great because Americans have not been censored. Rooted in this spirit is a moral compass that has guided our way. If we loose this, we loose everything.

Alexis de Tocqueville summed it up best:

"I sought for the greatness and genius of America in her commodious harbors and her ample rivers, and it was not there; in her fertile fields and boundless prairies; and it was not there; in her rich mines and her vast commerce, and it was not there. Not until I visited the churches of America and heard her pulpits aflame with righteousness did I understand the secret of her genius and power. America is great because she is good, and if America ever ceases to be good, America will cease to be great."

God Bless,

Janine Turner
June 7, 2010

Posted in Constitutional Essays by Janine, Federalist No. 29 | 23 Comments »

June 7, 2010 – Federalist No. 29 – Concerning the Militia, From the Daily Advertiser (Hamilton) – Guest Blogger: Marc S. Lampkin, partner at Quinn Gillespie and Associates LLC and graduate of Boston College Law School

Monday, June 7th, 2010

Federalist #29 written by Hamilton continues the focus on the subject of the militia and the standing army. Hamilton is quite enthusiastic in embracing the needs for a common or national military force. He explains, "*THE power of regulating the militia, and of commanding its services in times of insurrection and invasion are natural incidents to the duties of superintending the common defense, and of watching over the internal peace of the Confederacy.*"

In Hamilton's view, the efficiencies of having one national force as opposed to 13 were significant enough even to overcome the fear that this national force might oppress the people. Since domestic rebellions in a given state were of interest to the national government (as part of its responsibilities for national defense) as well as to the particular state where the rebellion occurred, it wouldn't be necessary for a state to expend the resources necessary to handle such a capability and the national force would provide a sufficient capacity to handle such problems.

Arguably, Hamilton claims there could even be advantages that a national force might have over a state force in such a situation. He says, "*uniformity in the organization and discipline of the militia would be attended with the most beneficial effects, whenever they were called into service for the public defense. It would enable them to discharge the duties of the camp and of the field with mutual intelligence and concert an advantage of peculiar moment in the operations of an army; and it would fit them much sooner to acquire the degree of proficiency in military functions which would be essential to their usefulness.*"

In Federalist #29, Hamilton wants to respond to those who say that the new Constitution would be far better if somehow the national defense power remained diffused between the several states. Hamilton believes this would be in the long term destructive to the new American nation. Moreover, remarkably he turns the argument on itself. If a standing army is a threat to liberty he asks, why have thirteen standing threats? Hamilton asserts, "*If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security. If standing armies are dangerous to liberty, an efficacious power over the militia, in the body to whose care the protection of the State is committed, ought, as far as possible, to take away the inducement and the pretext to such unfriendly institutions.*"

A second point that Hamilton makes is that sometimes the type of federal or national response needed may not include the need for lethal force. Because the federal government might have various alternatives to pick from it may not see the need to respond first with a purely military show of force. A federal government may have a variety of administrative forms that it can use to respond to a given situation, varieties that a state government might not have or if it does to have it across multiple states would be unnecessarily duplicative and therefore inefficient.

Next Hamilton directly addresses Posse Comitatus – also sometimes referred to as sheriff's posse – originally part of the English common law it involves the authority of a law enforcement officer to obtain assistance from non law enforcement personnel to assist him in keeping the peace or to pursue and arrest a felon. Hamilton insists that critics can't have it both ways. They cannot say that the federal Constitution should be opposed because it does not explicitly provide for this authority or be opposed because its power to engage in posse comitatus is unlimited. Hamilton argues, *It would be as absurd to doubt, that a right to pass all laws NECESSARY AND PROPER to execute its declared powers, would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws, as it would be to believe, that a right to enact laws necessary and proper for the imposition and collection of taxes would involve that of varying the rules of descent and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it*."

Then Hamilton turns to the question of the threats associated with the national militia. Repeating arguments he has made earlier, Hamilton expands upon the concept that not only would 13 armies be unnecessarily duplicative, but it also would be financially and personally burdensome on the people as the force necessary by the aggregation of the states armies across the several states would be greater than the total force used by the national level and even this wouldn't succeed because the burden would ultimately be rejected by the people. Hamilton explains, "*It would form an annual deduction from the productive labor of the country, to an amount which, calculating upon the present numbers of the people, would not fall far short of the whole expense of the civil establishments of all the States. To attempt a thing which would abridge the mass of labor and industry to so considerable an extent, would be unwise: and the experiment, if made, could not succeed, because it would not long be endured.*"

Finally, Hamilton asks whether the critics who worry about the national militia are being serious. After all the national army is not made up of people from a foreign land, he says. "*What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits and interests?"*

In addition, how could the federal government agree to unfairly subdue a state when not only the state is represented in the federal government, but all of the other states through their representatives would need to consent to such an action. *"Where in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens?*"

In Hamilton's considered view opposing the new constitution over the issue of a militia at the federal level is a red herring. The benefits of having national concentrated authority far outweigh any perceived gains of dispersing this authority over multiple states.

Marc S. Lampkin, partner at Quinn Gillespie and Associates LLC is a graduate of Boston College Law School

Archive for the 'Federalist No. 30' Category

June 8, 2010 – Federalist Paper No. 30 – Janine Turner

Tuesday, June 8th, 2010

Howdy from NYC! Today Cathy, Juliette and I had a very successful day promoting Constituting America! It is such a joy to promote the United States Constitution and the brilliant Federalist Papers. We were on Glenn Beck's radio show this morning and then on Megyn Kelly's show on Fox News this afternoon. Check out the links on our Facebook sites to view and they will be up on our site shortly.

How lucky we are to be able to study these great works together and I thank Janice R. Brenman for her wonderful insights today on Federalist Paper No. 30! I am also thrilled that we have many new bloggers today. Join us today and visit our archives if you desire to reflect upon our essays from the past 35 days.

There were, once again, many powerful and relevant points made in Federalist Paper No. 30 by Alexander Hamilton.

"I believe it may be regarded as a position, warranted by the history of mankind, that in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources."

The relevancy for America, and Americans, today is obviously our tremendous debt. We have built a huge conglomerate of necessities that are certainly not equal to our resources. This statement serves as a warning to us.

We have accumulated so much debt that our liberty cannot be sustained.

Another quote from Alexander Hamilton echoes our current dilemma.

"But who would lend to a government, that prefaced its overtures for borrowing by an act that demonstrated that no reliance could be placed on the steadiness of its measures for paying."

What happens when we are so in debt that we cannot repay our lenders, such as China? What happens when we cannot pay our bills or even borrow money because we have "demonstrated that no reliance could be placed on the steadiness of its measures for paying."

It is easy to spend other people's money. This is what many of our Congressman and Representatives are doing. They are spending our money with absolutely no regard as to how it will be repaid – long after they are out of office. Our massive expenditures and social programs have no financial foundation.

May Alexander Hamilton's dream not vanish, the "..hope to see the halcyon scenes of the poetic or fabulous age realized in America.."

God Bless,

Janine Turner
June 8, 2010

Posted in Constitutional Essays by Janine, Federalist No. 30 | 6 Comments »

June 8, 2010 – Federalist No. 30 – Concerning the General Power of Taxation, From the New York Packet – Guest Blogger: Attorney Janice R. Brenman

Tuesday, June 8th, 2010

Alexander Hamilton is widely known as the first Secretary of the Treasury, and one of the strongest advocates of our Constitution. Born illegitimately in the Caribbean to a Scottish merchant father and a mother of French Huguenot descent, he was already managing the affairs of an accounting office by age 15. After penning an essay in French detailing the devastation from a local hurricane, Hamilton was offered educational opportunities in the new, promising American colonies. He volunteered with a local militia, and became an aide to General Washington during the Revolutionary War. Afterward, Hamilton began an expansive career as a lawyer and political activist. One of his most enduring achievements was authoring many of The Federalist Papers (originally known as, The Federalist), a series of manifestos advocating the ratification of the United States Constitution.

To maintain anonymity, Hamilton, along with co-authors James Madison and John Jay, used the pseudonym "Publius" (after famed Roman Empire consul) to publish articles in three prominent New York newspapers, and later in bound volumes. These articles reflect Hamilton's enthusiasm for the new American country and his sharp mental abilities. His death, via a duel with political rival Aaron Burr, was the final touch on a life filled with vigorous advocacy in the public policy arena with a special focus on promoting a strong national government for the United States.

Federalist Paper #30, "Concerning the General Power of Taxation." is perhaps Hamilton at his finest. Hamilton begins by explaining that the National Treasury exists to subsidize a wide range of legitimate pursuits of the federal government. The Articles of Confederation gave Congress responsibility for managing needs of the confederacy, yet did not provide the means to do so.

Herein lies the function of taxation – a system by which all citizens have a stake in balancing benefits and costs afforded by a federal government positioned to furnish a functioning army, paying government employees, repaying current and future national debts, and other appropriate expenses. He posited that a government cannot function absent some taxes, and its power to collect taxes among the populace is necessary. Without taxes, the people would be plundered as a substitute for legitimate taxation, or, the government would eventually perish.

Hamilton delves into what many of his contemporaries saw as a substantive controversy: internal and external taxation by the new federal government. Hamilton explains the difference between an external tax and an internal tax, and then describes how the federal government should be responsible for both. An external tax is a custom duty levied against any item coming into a colony to raise revenue – for example, a piece of machinery made in England. The duty is paid by the shipper and passed on to the consumer, in the form of a higher price for that machinery. An internal tax is unrelated to imports or exports. The Stamp Tax in England set an example – an excise tax imposed on stamped paper for legal

documents (including licenses and permits), bills of lading, pamphlets and newspapers. Therefore, the price of a newspaper included the cost of the stamp placed on the paper as the tax.

Critics of the new Constitution charged that internal taxation should be used exclusively by the State governments and external taxation reserved for the federal government. Hamilton noted this ideal to be "romantic poetry" and that external taxes alone, on items such as commercial imports, cannot provide enough revenue for a government as extensive as the one proposed, especially in times of war. Disallowing the federal government from internal taxation violates the maxim of good sense and sound policy he argues. Essentially, critics claim internal taxation should be the sole authority of local government, and trade revenues should go to the federal government. This policy, however, not only subordinates the federal government, but also forces it to rely on states for security and prosperity of the nation as a whole. Eventually, the Union would weaken and create conflict between the federal and state government, and perhaps even between the states themselves.

This conflict becomes even more evident during wartime. The United States was in its infancy, thus capital reserves minimal. The federal government could not depend on State requisitions alone – a loan would be needed for even the wealthiest of nations since no government would extend credit to the United States absent a reliable method of debt repayment. Dependence on the states, which might not prove reliable, would force the federal government to seek loans in the private markets essentially subsidizing loan sharks that would charge the new government high interest rates. For any other national emergency, some might fear funds allocated via taxation would be diverted, even if the national government has the unrestrained power of taxation.

However, two considerations will quiet these fears: (1) during a crisis the full resources of the community will be used for the benefit of the Union; and, (2) deficiencies can be supplied by loans. Thus, Hamilton argues for a federal internal tax as well as an external federal tax.

Special thanks should be given to a myriad of sources (including Mary E. Webster) with regard to translating the complex lexicon of Chancery Standard used in the Papers into modern English.

Ms. Janice R. Brenman is a former prosecutor now in private practice in Los Angeles. She has commented in major legal publications on the subject of legal reform and celebrity influence on the legal system. She has also appeared in medical malpractice, products liability and complex civil litigation, and is well versed in all forms of discovery. From 1999 to 2000 Ms. Brenman was a City Prosecutor and Community Preservationist. She clerked for the Honorable Rupert J. Groh, Jr., of the United States District Court for the Central District of California. Ms. Brenman also worked researching, writing and editing under a Nobel Prize winning laureate.

Archive for the 'Federalist No. 31' Category

June 9, 2010 – Federalist No. 31 – Cathy Gillespie

Wednesday, June 9th, 2010

"IN DISQUISITIONS of every kind, there are certain primary truths, or first principles, upon which all subsequent reasonings must depend. These contain an internal evidence which, antecedent to all reflection or combination, commands the assent of the mind."

Federalist No. 31 has one of the strongest beginnings and endings of any of the essays I have read so far. Hamilton begins by reminding us of the importance of "primary truths," and "first principles." When our elected officials are guided by the first principles and truths upon which our country was founded, our freedom and prosperity will be protected.

Mr. Cooper makes an excellent point in his essay today, that instead of scrutinizing specific tasks the government takes on, our elected officials should start from the macro level, and apply first principles in every decision, asking the question, "is this task a legitimate function of the federal government?"

After laying out the importance of the guiding truths in discerning the legitimate functions of government, Hamilton makes the case for the federal government having the "unqualified power of taxation," so it has the resources to fulfill those duties and powers for which it is responsible, according to the Constitution.

Our modern day problem is that the federal government has utilized its power to tax, to fund powers far beyond the scope of those enumerated in the Constitution.

Hamilton could not imagine the federal government's modern day usurpation of powers because the checks and balances the founders designed were meant to curb governmental encroachment. Indeed, because of the power of the states in selecting U.S. Senators (before the adoption of the 17th Amendment), Hamilton envisioned States more likely to usurp federal powers, than the other way around.

Hamilton closes by reminding us that the responsibility to stop the encroachment of government at the state or federal level, rests with the people, thus ending Federalist 31 as strongly as he opens it. "We the people" must keep government within its proper scope and powers "delineated in the Constitution." He states that the people "hold the scales in their hands," and hopes they "will always take care to preserve the constitutional equilibrium between the general and the State governments."

"Everything beyond this must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the State governments."

How will "We The People," adjust the scales to bring the constitutional equilibrium back into balance? It is clear the founders expect us to.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 31 | No Comments »

June 9, 2010 – Federalist Paper No. 31 – Janine Turner

Wednesday, June 9th, 2010

Howdy from Boston! It is thrilling to be here in a city that has so much revolutionary history! Juliette and I walked around in the rain and saw State Hall and Park Church. (Be sure to watch our behind the scene video!) We also saw the graves of Samuel Adams, Paul Revere and John Hancock. I spoke Samuel Adam's words over his grave, "The pooling of property and redistributing of wealth are despotic and unconstitutional." The bells then started to ring from Park Church so I said recited it again!

As I read Federalist Paper No. 31, I felt such a since of wonder and also such a sense of gratitude that I am having this opportunity to read the words of Publius. Understanding their interpretation of the United States Constitution and their vision of the country is empowering and incredibly relevant.

I am most intrigued with how the structure and checks and balances of our then newfound government were founded with such reason and based on the guidance and wisdom of history. As I read and digest their words, I am realizing how far we have strayed from their original intent. One of the ways is with the seventeenth amendment. This was a pivotal part of the balance of government. The seventeenth amendment was one of the ways that the states could keep their power. The senate was to represent the states and the house the people.

I wonder if the healthcare bill would have ever passed if the Senate had been left in its original intent? I also wonder if the Federal Government would ever have had the opportunity to become so vast and powerful if the Senators had continued to be elected by the state legislatures? Who has been looking after the states' interest since the passing of the 17th Amendment?

The Federalist Papers reveal that Publius and our Constitutional forefathers never intended for the federal government to become so intrusive into the states' rights, the states' affairs or citizens' lives. Alexander Hamilton writes in Federalist Paper No. 31, "I repeat here what I have observed in substance in another place, that all observations, founded upon the danger of usurpation, ought to be referred to the composition and structure of the government, not to the nature and extent of its powers. The state governments, by their original constitution, are invested with complete sovereignty."

Do our states have complete sovereignty today?

Another interesting statement in Federalist Paper No. 31 is: "As in republics, strength is always on the side of the people; and as there are weighty reasons to induce a belief, that the state governments will commonly possess most influence over them, the natural conclusion is, that such contests will be most apt to end to the disadvantage of the union; and that there is greater probability of encroachments by the members upon the federal head, than by the federal head upon the members."

Is this true today? I say it is not true today.

Alexander Hamilton's last paragraph of Federalist Paper No. 31, is our call to action, "Everything beyond this, must be left to the prudence and the firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the state governments."

"Everything beyond this must be left to the prudence and the firmness of the people; AS THEY HOLD THE SCALES IN THEIR OWN HANDS.." This quote has a tremendous amount of treasure. We, the American people must have prudence and firmness in regard to our governmental affairs. Publius talks often about the "genius of the people." We should not underestimate ourselves. We should call upon our prudence in governmental affairs and we should be firm. The best way to do this is to be vocal and to vote. We the people rule… through our elected officials.

When I think about the shift in power in our governmental structure and checks and balances, I think about how our founding fathers would be greatly distressed. I, also, ponder upon the political environment during the years around 1913. Why was this amendment allowed to happen? Were our predecessors not firm, informed or prudent?

Of course, this will very likely be the thought process that our grandchildren may have about our generation? "Why did they allow our liberties to be constrained, our country to be diminished, by living beyond their means?"

It was we, the American people, who were to hold the scales in our hands. It was we who were to preserve the constitutional equilibrium between the general and the state governments. We the people. If our country fails it is because we the people have let it. Benjamin Franklin, when asked what he had constructed for the people during the Constitutional Convention, responded, "A republic, if you can keep it."

Do our children know that they are the, "we the people?"
Or do they think it is the, "we the government?"

It is by our actions, education and involvement that they will see the true intent of our founding fathers, our United States Constitution and a government of the people, by the people, for the people. May it not perish from the earth.

God Bless,

Janine Turner
June 9, 2010

Posted in Constitutional Essays by Cathy, Federalist No. 31 | 9 Comments »

June 9, 2010 – Federalist No. 31 – The Same Subject Continued: Concerning the General Power of Taxation, From the New York Packet (Hamilton) – Guest Blogger: Horace Cooper, Director of the Center for Law and Regulation at the Institute for Liberty

Wednesday, June 9th, 2010

Federalist #31 continues on the topic of the taxing power of the new central government. Contrasting his significant math and science knowledge with his considered skepticism about humankind generally, Hamilton suggests basic maxims ought to apply as a principle for government's effective operation. Just as *the maxims in geometry, that "the whole is greater than its part; things equal to the same are equal to one another; two straight lines cannot enclose a space; and all right angles are equal to each other,* Hamilton asserts that in *ethics and politics, that there cannot be an effect without a cause; that the means ought to be proportioned to the end; that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation*. In other words instead of putting the focus on the means of a particular government activity, greater attention should be paid to whether the purpose is a legitimate one or not.

Rather than merely scrutinizing the technique by which the central government carries out it task say, bailing out automobile manufacturers, Hamilton suggests greater consideration be given to whether it is a legitimate function of the federal government to concern itself with the success or failure of car manufacturers. *A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people.*

Unless one is particularly scrupulous as to what responsibilities are assigned to the federal government, Hamilton's view of seemingly unlimited powers of the federal government particularly in the area of taxing authority comes across as audacious and perhaps even dangerous. However, it is clear upon review that the real danger lies in not carefully assigning duties and responsibilities of the central government.

One key charge of the new government was and remains today, national defense. In the context of taxation, Hamilton asks how national security can really be put in the hands of the central government if it does not have the ability to call upon the resources, as it needs to carry out its duties. This is no spurious charge. One serious problem with the Articles of Confederation is that ostensibly the National Congress had responsibility for national defense, in practice it could not pay for or mandate the carrying out of many of its foreign policy priorities. Over time this reality could prove quite provocative to the enemies of the new country in America.

Hamilton sees that taxing authority is critical to carrying out national security responsibilities. *As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent must necessarily be comprehended in that of providing for those exigencies.*

In the military context, this argument is perhaps most powerful. Nevertheless, even outside of that arena one can contemplate areas of responsibility (such as the administration of justice) in which it is

necessary to focus on the importance of the objective and therefore loosening the limits on methods. If the area of responsibility is appropriate, Hamilton argued that the central government needed the taxing authority to carry out the responsibility.

Critics charged that a general taxing authority for the federal government would make it difficult for states to raise the resources they need for their responsibilities, as the taxes of the federal government would tend to crowd out the resources needed by the states. It is true that excessive taxation would have that effect, but not necessarily taxation generally. Hamilton recognizes that there will be legitimate responsibilities that government should carryout. If those are excessively funded or there are duties undertaken greater than the legitimate responsibilities that government should have, the flaw is not with taxing authority but instead with the government's makeup or its design. *I repeat here what I have observed in substance in another place, that all observations founded upon the danger of usurpation ought to be referred to the composition and structure of the government, not to the nature or extent of its powers.*

Powers split among a bicameral legislature along with an executive and judicial branch each with unique and overlapping authorities providing a check and balance against each other resulting in a greater protection of liberty for all the citizens will do more than a limit on the type of taxation policy.

Hamilton closes essay #31 with an observation that reveals a great amount of prescience for such a young man. He says that the same risks that could lead to a national government over-reaching in its power and authority over the people existed just as well with the state government. While at the time it was nearly universally assumed that state governments — being close to the people — would never overstep their bounds, it appears today that composition and structure matter just as much as the state level as it does at the local level. Modern state governments have taken on most if not more of the duties of the central government's welfare state with far fewer organizational or structural restrictions on doing so than exist at the federal level. Taking the opposite view of Hamilton, many states have balanced budget requirements but no formal limits on the types of duties that it may assume. Often as a result the residents in these "ambitious" states are extremely overtaxed. States like Texas and to a lesser degree Florida have far more limits on the accepted tasks of the state government and their residents are taxed less. Nevertheless, regardless of one's concerns about the lack of formal limits on taxation in the constitution, Hamilton concludes *it is by far the safest course to lay them altogether aside, and to confine our attention wholly to the nature and extent of the powers as they are delineated in the Constitution. Every thing beyond this must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the State governments.*

Horace Cooper is the Director of the Center for Law and Regulation at the Institute for Liberty

Archive for the 'Federalist No. 32' Category

June 10, 2010 – Federalist No. 32 – Cathy Gillespie

Friday, June 11th, 2010

Thank you to Professor Knipprath for your excellent insight into Federalist No. 32. We greatly appreciate your generous gift of time to the **90 in 90: History Holds the Key to the Future Project**!

The purpose of Federalist 32 seems to be to reassure citizens that the Federal Government's power to tax will not preclude states from raising the revenue they need to operate their state governments. While making that point, Publius gives us an excellent tutorial in the balance of power that exists between the federal government and the states, under the Constitution:

"the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States."

This sounds very much like the language in the 10th Amendment:

Amendment X: *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.*

Publius goes on to explain the three types of cases where the Federal government is granted exclusive authority, overriding state sovereignty:

(1) "Where the Constitution in express terms granted an exclusive authority to the Union;

(2) where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority;

(3) and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally CONTRADICTORY and REPUGNANT.

Making it clear that states will be allowed to levy taxes on "all other articles," except imports and exports, Publius does caution that it might not always be prudent for the federal government and states to exercise their concurrent taxation powers and tax the same articles, but that "an inconvenience of the exercise of powers" doesn't "extinguish a pre-existing right…." Most people would agree that modern day levels of taxation at the state and federal levels have passed the point of prudence!

The balance of power between the federal and state governments Hamilton describes in the beginning of the essay was structured to ensure our freedom. The disturbance in the equilibrium of the balance of power between the federal and state governments has resulted in greater levels of taxation at the state and federal levels, thus limiting our personal financial freedom and damaging the economy.

As unfunded federal mandates on the state governments have grown, the states' need to raise revenue has increased. IRS.gov lists only nine states without an income tax! As the states' need to raise revenue has increased, they have become more and more dependent on federal dollars, with mandates attached, thus altering the balance of power even more. As the federal government has ventured in to areas our founders never intended, its need to raise revenue has increased as well.

Once again, we see the damage done by disturbing the delicate balance of power so artfully designed by our founding fathers. The more we learn about the original structure and design of our government, the better equipped we are to work to restore the equilibrium which protects our liberty.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 32 | No Comments »

June 10, 2010 – Federalist Paper No. 32 – Janine Turner

Thursday, June 10th, 2010

Howdy from Boston, well, really Quincy and Cambridge!
Juliette and I had an amazing day. It was a day devoted to one of our most influential founding fathers, John Adams.

We started our day with a trip to Quincy, sections of which used to be named Braintree. We visited John Adam's very modest childhood home and then a few cobblestones away, the small, simple home where John lived with his brilliant wife, Abigail.

I was mesmerized when I saw the tiny desk where Abigail wrote all of her letters to John throughout the Revolutionary war. My sense of awe was rekindled when the Park Ranger recounted the story of how Abigail, realizing her son's promise, and realizing the needs of her future country, sent her ten-year-old son abroad with John. She knew the experience would give him a wealth of knowledge – a knowledge that America would need in her future leaders. John and John Quincy traveled across the Atlantic in February. Their ship hit hurricane force winds and was struck by lightning and four crewmen died.

Abigail was and is an example of a wife and mother who knew no bounds of fortitude and selflessness. This is why I wrote about her in my book, "Holding Her Head High."
A statue of Abigail Adams with her son John Quincy, who would become our 6th President, was in the town square. Inscribed on the statue were her words: "Improve your understanding for acquiring useful knowledge and virtue such as will render you an ornament to society an honor to your country and a blessing to your parents." She is an inspiration for me as a patriot and a mother.

In John and Abigail's first home was an even smaller desk than Abigail's It was on this desk that John wrote the Massachusetts's Constitution. Included in his draft of the Constitution for the Commonwealth of Massachusetts were: three branches of government, a bi-cameral legislature, a supreme court of the land, as well as, a list of "rights". I would like to study the Massachusetts's Constitution. The fact that the states had their own constitutions before the United States Constitution holds a revelatory poignancy to the modern day debate regarding states' rights.

In Federalist Paper No. 32, Alexander Hamilton argues a point regarding the levies of money and the states' power:
"because I am persuaded that the sense of the people, the extreme hazard of provoking the resentments

of the state governments, and a conviction of the utility and necessity of local administrations, for local purposes, would be a complete barrier against the oppressive use of such a power."

This statement illuminates, once again, the original intent of the federal government, which was to respect the state's rights and to be a federal power held to accountability through the checks and balances of both the people and the states.

After Juliette and I visited the original homestead of John and Abigail Adams, we visited Peacefield. Peacefield was the home of John and Abigail Adams after the war. In this home I saw the original furnishings: dishes, chairs, paintings and thousands of John Quincy's original books on exhibit in the land's first library – the John Quincy Adam's Library. A poignant point that resonated through the experience of visiting their homesteads was sacrifice – a sense of duty for their country. John and Abigail were willing to put themselves in great peril – a peril based on value, faith and righteousness.

It is worthy to note that John Adams was chosen to be the one to represent America in England as our first ambassador. John Adams walked in to greet the king, the king who wanted to hang him, and announced that he was there to represent our new country – the United States of America. I am also in awe of the fact that it was John Adams who so valiantly fought for the Declaration of Independence and suggested that Thomas Jefferson write it. It was John Adams who nominated George Washington to be the General of the Revolutionary army. It was John Adams who, on his own accord and literally on his own, traveled to Amsterdam and negotiated a 3 million dollar loan for the our revolutionary army who had no shoes and were suffering tremendously. It was John Adams who was one of the five who negotiated the magnificent Treaty of Paris that ended the Revolutionary War. It was John Adams who predicted that the French revolution would be a bloodbath that would end in tyrannical government. The list goes on and on.

John Adams is truly an American hero. May we teach our children about his great genius, sacrifice and dedication to our country. May he be an example of what it is to be a selfless American patriot. When Juliette and I visited the room, which held the tombs of John Adams and Abigail Adams, John Quincy Adams and Louisa Catherine Adams, I was overcome with emotion. In this room, as tears flowed down my cheeks, the director of the Church of the Presidents, Arthur W. Ducharme, told me how important "Constituting America" was to the future of our country. It was a moment I will never forget.

God Bless,

Janine Turner
June 10, 2010

Posted in Constitutional Essays by Janine, Federalist No. 32 | 7 Comments »

June 10, 2010 – Federalist No. 32 – The Same Subject Continued: Concerning the General Power of Taxation, From the New York Packet (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Thursday, June 10th, 2010

In various essays, the reader has met Alexander Hamilton, polemicist; in Federalist No. 32, Alexander Hamilton, constitutional lawyer, takes a turn. The topic is whether the power to tax granted to the national government under Article I, Section 8, clause 1, of the Constitution deprives states of the power to tax. In a logical and (mostly) clear progression of premises and conclusions rooted in classic exegesis of the Constitution, Hamilton lays out the argument that the state and national governments have concurrent powers to tax. The matter of "exclusive" and "concurrent" powers is an exploration of the mechanics of our federalism.

From the perspective of government, the power to tax is an essential aspect of sovereignty and self-determination. Our personal experience tells us that dependence on others for funds makes one less fully autonomous and in control of one's life. Just as an invigoration of Congress's power to tax was an essential part of the Philadelphia Convention's mission, retaining the power to tax is essential to state sovereignty, and Hamilton seeks to assuage concerns on that point.

Powers granted to the national government are exclusive only if the Constitution says so (such as the power to make laws for the District of Columbia), if the power is expressly prohibited to the states in some manner (such as the states' lack of power to tax imports and exports), or if a reservation of the same power to the states would be "absolutely and totally *contradictory* and *repugnant*" [italics in original] to the national government's exercise of the power. All other powers are concurrent, and any conflict between the governments over whether one should tax an activity that the other is already taxing is merely a matter of pragmatic policy. Based on the language of the clause that grants the power to tax to the national government, and the clause in Article I, Section 10, that expressly prohibits the states from taxing imports and exports without Congress's assent, Hamilton concludes that the power to tax is concurrent, not exclusive.

Today, interpreting powers as concurrent is preferred. That maximizes the residual sovereignty of the states. But, since it does nothing to reduce the powers of the national government, reading a power as concurrent merely multiplies the layers of (often duplicative) government regulations, as, for example, applicants for many types of permits know well.

Hamilton's argument seems so clear, one wonders why he even made the effort. The answer lies in the sophisticated attacks from the Antifederalists that foretell of political conflict over the practical ability of both the national government and the states to seek tax revenues from the same sources, and over the broader issue of overlapping powers in this novel federal system.

The opponents, led by "Brutus," see a deeper constitutional problem rooted in an inevitable grab for power by a national government that will seek ever-greater amounts of revenue, to the detriment of the states."The power to tax is the power to destroy," as Chief Justice Marshall would write later in *McCulloch v. Maryland*. Ultimately, the individuals or assets taxed will bear no further assessments. At that point, Brutus predicts, the national government will use the taxing power, the necessary and proper clause, and the supremacy clause to pass laws to gain pre-eminent access to available revenues and to preclude the states from gaining revenues needed to maintain their governments.

While one may question whether such a dire scenario will ever play itself out at a constitutional level through explicit federal legislation to prohibit state taxes (or whether such a law would even be constitutional), it is already happening indirectly. The national government's hunger for tax revenues is

becoming more voracious as ever more aspects of individual lifestyle choices are transferred to national bureaucracies. That leaves the states increasingly hard-pressed to find sources for taxes not yet tapped to the hilt by Congress, though it must be recognized that California politicians, at least, seem to be very creative in finding new turnips from which to squeeze figurative blood.

The national government has long exercised control over the states by distributing to them grants subject to conditions intended to induce state compliance with federal mandates. Those grants are funded through taxes that, if the national government did not levy them, would be available to the states, which could spend the revenues raised without needing to comply with federal mandates. This creeping control over state sovereignty through the taxing and spending powers is one aspect of the lawsuit by various state attorneys-general against the recently-adopted health care reform law.

Hamilton also contrasts the situation of an exclusive federal power where no state participation in the area is constitutionally permitted, with the case where, though the states have concurrent power constitutionally with the national government to legislate, there are "occasional interferences in the *policy* [italics in original] of any branch of administration [that] would not imply any direct contradiction…of constitutional authority." A slightly modified version of the latter is the current interpretation of Congress's expansive power to regulate interstate commerce. That power is concurrent, and the states are able, within broad limits, to regulate interstate commerce through, for example, inspection laws and truck weight regulations.

Congress also can pass laws under its constitutional powers that, under the supremacy clause, override ("preempt") the states' otherwise proper concurrent regulations. It was precisely this type of scenario that Brutus raised in his alarm about the effect of the Congress's taxing power on the states' power to raise revenue. Hamilton has not directly addressed that argument in Federalist No. 32. He attempts a response in the next essay.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 33' Category

June 11, 2010 – Federalist Paper No. 33 – Janine Turner

Friday, June 11th, 2010

Howdy from Boston! Juiette and I continued our walk down the red lined path of the Freedom Trail today. (Check out today's video either through our Facebook link to YouTube or the Video Box on the top of our website.) Boston is an incredibly beautiful city and the history is so well preserved! The city and its people have exceeded all of my expectations and it has been an absolute joy to visit.

We were actually able to walk into the Old Granary Burial Ground today. We saw the graves of Paul Revere, John Hancock, Samuel Adams and the men who were killed in the Boston Massacre. It was truly mesmerizing to be able to see the resting places of such heroes! It was also insightful to see how humbly they were buried. Paul Revere's initial headstone was just a tiny headstone inscribed, "REVERE'S TOMB." Everywhere we walked there was a statue of an American hero. If only every city could revere our Revolutionary history in such a reverent way.

Juliette and I were in awe as we gazed upon the beautiful Old State House. It was in this house that the Stamp Act was debated and it was from the East Balcony where the Declaration of Independence was first read to the people. Can you imagine such a moment?

FYI, I handed out Constituting America business cards and bracelets to fellow tourists along the way! Constituting America in Boston! (We are going to have bumper stickers soon so if you are interested in one, or even extras to pass out, e mail us!)

In regard to Alexander Hamilton's essay today, I feel like I should say, "Same Subject Continued," It is just remarkable to me how often Publius refers to the fact that the states would continue to have their rights, the federal government would remain small, and that the American people would be vigilant if the government ever started to cross its bounds. In today's reading, Federalist Paper No. 33, Alexander Hamilton states:

"If the federal government should overpass the just bounds of its authority, and make a tyrannical use of its powers; the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the constitution, as the exigency may suggest and prudence justify."

Need I write more? Spread the word of the pertinent relevancy of our United States Constitution and Federalist Papers! It a "measure to redress the injury done to the constitution."

God Bless,

Janine Turner

June 11, 2010

Posted in Constitutional Essays by Janine, Federalist No. 33 | 32 Comments »

June 11, 2010 – Federalist No. 33 – Cathy Gillespie

Friday, June 11th, 2010

In Federalist No. 33, Hamilton defends the Necessary and Proper clause, found in Article I, Section 8 of the United States Constitution:

The Congress shall have Power To…….. make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Hamilton's main defense of the clause, as Professor Knipprath points out, is to say that the clause merely restates a power that exists with or without the clause.

Driven by curiosity as to why the framers included the controversial words, if the power existed with or without them, I did some research.

I found the following information in the excellent resource book, **The Heritage Guide to the Constitution**, Edwin Meese III Chairman of the Editorial Advisory Board:

The necessary and proper clause served two purposes in the framers' minds:

1. to allow the Congress to do what was necessary to organize the government (create executive departments, set the number of Supreme Court Justices, divide out judicial power among courts).

2. to help carry out Congress's enumerated powers contained in Article I, Section 8.

In his essay on pages 146-150, in The **Heritage Guide to the Constitution**, David Engdahl tells us the opponents of the Constitution nicknamed this clause the "sweeping clause," or the "general clause," and Brutus, their spokesperson, said it "leaves the national legislature at liberty, to do everything, which in their judgment is best."

Engdahl tells us that James Wilson who authored the clause, explained at Pennsylvania's ratification convention that he saw the clause as "limited," and "for carrying into execution the foregoing powers." Wilson stated that the clause authorizes what is "necessary to render effectual the particular powers that are granted." In other words, the clause authorizes no more than the powers already enumerated, and is to assist in fully effectuating those powers.

The Necessary and Proper Clause has become the proverbial camel's nose under the tent, much as the anti-federalists feared. Congress is able to justify certain laws constitutionally by enacting legislation that is within the scope of its enumerated powers, but the same legislation may also affect areas outside of the enumerated powers, adding to the "federal creep," unintended by the founders and predicted by the anti-federalists. As Professor Knipprath points out, the Necessary and Proper Clause is aptly nicknamed the "elastic clause."

Hamilton's answer to this problem is clear,

"If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify."

This is why it is so important that "We The People" are educated, and understand the "just bounds of authority." If we don't know the Constitution, how will we know when it is injured?

Thank you to all of you who are joining us on this educational journey! Your energy and enthusiasm is inspiring, and we are learning from every comment on the blog!

Please continue to forward our web address, http://www.constitutingamerica.org to your friends, and encourage them to join us.

If you are silently reading along, please add your voice to our blog!! **90 in 90: = 180** is not complete, without YOUR thoughts!!

Have a great weekend!

God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 33 | 4 Comments »

June 11, 2010 – Federalist No. 33 – The Same Subject Continued: Concerning the General Power of Taxation, From the Daily Advertiser (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Friday, June 11th, 2010

After the appearance in the preceding essay of Alexander Hamilton, Esquire, Federalist 33 sees the return of Hamilton, the rhetorical swordsman, slashing at his opponents and parrying their contentions. The target of his invective is the assertion that, though the national government's power to tax may not be exclusive and can be exercised by the states concurrently with Congress, the necessary and proper clause allows Congress to expand the reach of its substantive powers beyond what is enumerated. Further, the supremacy clause enables Congress to override otherwise valid state laws that are in conflict with such overreaching federal law. In short, Congress might pass laws prohibiting the states to tax in various ways, as a means to protect Congress's sources of revenue.

The heat of Hamilton's response is a measure of the significance, then and now, of the bigger question. This is no longer about the power to tax. Rather, this implicates the breadth of the federal government's power to act and, therefore, the very nature of the federal system and the division of sovereignty created under the Constitution.

This is not the last time that Publius addresses these topics. Madison has his turn in Federalist No. 44. Nor is *The Federalist* the only forum. The scope of Congress's discretion to carry into effect its enumerated powers comes up in extended debate as early as the incorporation by the Confederation Congress of Robert Morris's Bank of North America in 1781. It occurs again with great vigor in the debates in Congress and the Cabinet in 1791 over the chartering of the Bank of the United States. It

occurs once more, in the Supreme Court in 1819, in *McCulloch v. Maryland*. It continues to this day. Not for nothing has this clause been termed the "elastic clause."

In these debates the course of argument is always the same. As Hamilton points out, the necessary and proper clause merely restates a power that Congress already has by implication. Even if that clause were omitted, Congress could, by the very existence of a grant of substantive power, adopt any law needed to carry out the object of that enumerated power: "What is a power, but the ability or power of doing a thing? What is the ability to do a thing, but the power of employing the *means* [italics in original] necessary to its execution?…What are the proper means of executing such a power, but *necessary* and *proper* laws?" Congress may have only enumerated powers to which it must point whenever it acts. But within those enumerated powers, Congress has plenary authority, including choosing the proper means.

Once a power to adopt any means necessary and proper to an objective is conceded, it becomes necessary to limit the power. Otherwise, an unlimited power to adopt the means needed to achieve delegated and limited ends effectively creates unlimited power to legislate. These "means" can always be connected to some enumerated constitutional objective through linked justifications that, as Jefferson sneered, resemble the rhyme "This Is the House That Jack Built."

Hamilton avers that only laws that are proper means to the constitutional objective are permitted. What is "proper" must be judged by the nature of the power to which it is directed. Thus, the federal government could not control intestacy laws because those would not be proper to the "national" nature of any federal power under the Constitution. Yet the Supreme Court recently upheld, under that same clause, a federal law that provides for the civil commitment of certain persons deemed dangerous even after they have completed their criminal sentences. While the criminal law under which these people were sentenced had a (bare) connection to the federal commerce power, it is very difficult to understand how the civil commitment law has anything but a very attenuated connection to a federal power. The connection (as Congress makes clear) is to "public safety," which is not a delegated federal power, but, rather, a state power.

Moreover, the recent health care law imposes an "individual mandate" to purchase health insurance because that is necessary and proper to regulate the interstate health insurance market. The necessary and proper clause has long stretched, one might say, the meaning of the term "elastic." Hamilton declares that the usual remedy for a violation must be the citizenry's judgment. Unfortunately, when Congress expands its powers beyond previous bounds by pandering to some item on an interest group's wish list, there is usually a collective yawn from the electorate. Will reaction to the foregoing examples be different?

Hamilton also analyzes the supremacy clause, which summarizes the fundamental principle that, within its assigned powers, Congress has plenary power that prevails over any conflicting state act. That supremacy principle extends to federal statutes and treaties, as well as to the Constitution itself. By approving the Constitution, the states accepted that its provisions superseded conflicting ones in their constitutions and laws.

Indeed, the supremacy clause principle and the specific listing of Congressional powers was the more benign proposal in Philadelphia. Madison, Hamilton, Washington, and other "large-state" nationalists supported the Virginia Plan that would have given Congress both a broader and more direct veto over

state laws and the power to legislate "in all cases to which the Separate States are incompetent; or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." One shudders to imagine what policies such forthright grants would produce in contemporary Congresses when even the fig leaf of limited and delegated powers is removed. On the other hand, a skeptic might respond that, by constitutional subterfuge abetted by a mostly passive Supreme Court, Congress has already arrogated to itself virtually the same breadth of power.

Hamilton argues that only federal laws that themselves are constitutional can be the supreme law of the land. There is nothing to fear from that clause, as long as Congress does not exceed its powers under the other clauses. As discussed above, in that last point lies the rub.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 34' Category

June 14, 2010 – Federalist Paper No. 34 – Janine Turner and Cathy Gillespie

Monday, June 14th, 2010

Howdy from Independence Hall in Philadelphia! Actually we just entered Interstate 95 South! Cathy, Juliette and I are returning from Philadelphia to Washington, D.C. Cathy is driving, Juliette is editing the behind the scene video and I am typing tonight's essay on Federalist Paper No. 34 which Cathy and I are doing in tandem.

Cathy, Juliette and I were in Philadelphia scouting locations for our Constitution Day celebration of our Constituting America, "We the People 9.17 Contest" winners. It is going to be so much fun!! We are planning our events, which will include press opportunities, regional and national; entertainment; historical enlightenment and a bevy of educational wonders.

We visited the brilliant National Constitution Center, and we are excited to reveal the news that they have offered to exhibit ALL of the winners' works at the center. Our winners' works will be a part of the legacy honoring the United States Constitution. Our winners will also stand as a tribute to American citizens and other children regarding the value of knowing and respecting our Constitution.

The minute we walked into the doors of the Constitution Center we were enveloped by the magnificence of our founding fathers' document. The details about the Constitution, exhibited in both a formal and modern way, instantly intrigued our senses. They had mesmerizing movies and interactive information at our fingertips and we wanted to stay for days.

One of our favorite places was the Signers' Hall, which had statues of all of the signers of the United States Constitution, in animated conversation. It was so cool!! (Be sure to watch our Philadelphia behind the scenes video!) David Eisner, the President and CEO of the Constitution Center, has offered to have a screening, reading and performance of our winners essays, songs and short film (and the behind the scene documentary we are going to film of the winners) in the Kirby Theatre in front of a distinguished audience and press.

We then joined our Constitutional colleague and friend, Rochelle, who guided us through other visually stimulating opportunities in front of momentous monuments such as Independence Hall!! The winner's trip to Philadelphia is going to be an enriching experience for all of us and an inspiring event for the country.

If you haven't yet encouraged your children or children you know to join our "We the People 9.17 Contest" then please do so. There still is ample time! Entries are due July 4th.

Now we turn our attention to Federalist Paper No. 34.
The topics are varied in this paper but there were a couple of Alexander Hamilton's statements that captivated Cathy's and my interest.

"Let us recollect, that peace or war will not always be left to our option; that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambitions, of others."

"To judge from the history of mankind, we shall be compelled to conclude, that the fiery and destructive passions of war reign in the human breast with much more powerful sway, than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquility, would be to calculate on the weaker springs of the human character."

These two paragraphs represent Alexander Hamilton's
genius and foresight. However "mild and beneficent" we may be, we are powerless to "extinguish the ambition of others." How relevant is this statement to the challenges we face today with terrorism. A strong defense is the only rational choice when up against the "fiery and destructive passions of war" that weave within the fiber of human nature. If we do not remain vigilant then we will be basing our decisions along side the "weaker springs of the human character." History has proven this time and time again and our forefathers always based their decisions upon the lessons of history.

When one doubts the timely application of the writings of the Federalist Papers and the resiliency of the Constitution, one needs to simply become acquainted with the phrases such as these by Alexander Hamilton in Federalist Paper No. 34.

America is under attack, and unfortunately will continue to be. We must not align ourselves with the weaker side of human nature. We must always be readily prepared to carry the torch of peace, freedom and prosperity with the wiser forces of human nature: wisdom, willingness, and a watchful eye that is buoyed by a strength and fortitude that defies the enemy.

God bless from now Mount Vernon, Virginia!

Janine Turner &
Cathy Gillespie
June 14, 2010

Posted in Constitutional Essays by Cathy, Constitutional Essays by Janine, Federalist No. 34 | 4 Comments »

June 14, 2010 – Federalist No. 34 – The Same Subject Continued: Concerning the General Power of Taxation, From the New York Packet (Hamilton) – Guest Blogger: Brion McClanahan, Ph.D., author of The Politically Incorrect Guide to the Founding Fathers

Monday, June 14th, 2010

By the time Alexander Hamilton wrote Federalist No. 34 on 4 January 1788, he had been publishing essays on the topic of taxation at a blistering pace. He penned two the day before, and he authored seven essays, each around two thousand words, in the span of twelve days. No. 34 directly addressed portions of essay No. 7 by the Antifederalist Brutus, presumably Robert Yates, which appeared the day before in the New York press. Read in tandem, the two provide a window through which readers can clearly view the competing positions of the Antifederalists and Federalists.

Brutus charged that the unlimited taxing power for the general government under the Constitution would result in two scenarios: "Either the new constitution will become a mere *nudum pactum* [naked promise], and all the authority of the rulers under it be cried down, as has happened to the present confederation—or the authority of the individual states will be totally supplanted, and they will retain the mere form without any of the powers of government." He additionally argued that coequal taxing authority as designed in the constitution was impractical in a confederated republic. In his estimation, taxes should be "divided" between the States and the general government "and so apportioned to each, as to answer their respective exigencies…." Thus, Brutus advocated a true federal republic that maintained State sovereignty, and in particular the expressed and limited taxing power of the general government. Simply stated, Brutus feared the destructive effects of a "national" government on State and local authority.

Hamilton retorted that history had proven this position incorrect. The Romans had two equal and often hostile legislative bodies with the power to repeal and annul the acts of the other, "yet these two legislatures coexisted for ages, and the Roman republic attained to the utmost height of human greatness." But, Hamilton argued, the Constitution did not allow either the States or the general government to "annul the acts of the other," and he also contended that the "wants of the States will naturally reduce themselves within A VERY NARROW COMPASS…" Hamilton countered that if the Framers had adopted Brutus' line of reasoning, then the States would also be limited in their respective areas of taxation, either exclusively or proportionally, and the end result would be State subordination to the general government, the very thing Brutus argued against. Hamilton was admitting, however, through his statement that States would have "a very narrow compass," that the Constitution created a "national" and not a "federal" republic.

States, Hamilton opined, would need little to support their domestic affairs while potential "contingencies" may require the vast and unlimited resources of the central authority. Limit the taxing power of the general government, and you limit the ability of the common defense. In his mind, history had proven that foreign and domestic dangers would arise and as such the "national" government should have the means to preserve the "tranquility" of the republic. "To judge from the history of mankind," Hamilton stated, "we shall be compelled to conclude that the fiery and destructive passions of war reign in the human breast with much more powerful sway than the mild and beneficent sentiment of peace; and to model our political systems upon speculations of lasting tranquility, is to calculate on the weaker springs of the human character."

Brutus agreed with Hamilton's assessment of human nature, but he also believed that the States had a primary role in resisting foreign or domestic disruption. States ensured domestic peace by "administrating justice among its citizens," and through "the management of other internal concerns." This was the basis of the "happiness of the people," and if the States did not have the resources to maintain peace—if they could not raise enough revenue—then they would be easily "subdued by foreign invaders." Like Hamilton, Brutus believed history had proven his point, and if the States were robbed of adequate taxing power, then the "peace and good order of society," what Brutus called the "province of state governments," would suffer. After all, Brutus argued that the object of government was to, "save men's lives, not to destroy them," and as such the "united states" should be an "example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves." Central authority and excessive taxation were not required to do so and could potentially result in internal discord.

Here are the two competing visions of the American order: Hamilton the nationalist; Brutus the champion of a federal republic. While Brutus incorrectly thought that the States would disappear if the Constitution were ratified, they have certainly been reduced to little more than administrative provinces for the federal government, and he was correct that revenue would be a consistent problem for State and local governments. Surely, State efforts to combat illegal immigration—"foreign invaders"—could be better augmented by revenues destined for federal coffers, and internal discord caused in part by excessive centralization and taxation has been a problem in American history. For his part, Hamilton never envisioned this happening. He firmly believed in 1788 that the States were an essential component of the new government, though not to the same extent as Brutus. As he later said, "The states can never lose their powers till the whole people of America are robbed of their liberties. These must go together; they must support each other, or meet one common fate."

Brion McClanahan, Ph.D., is the author of The Politically Incorrect Guide to the Founding Fathers, and has written for townhall.com, humanevents.com, lewrockwell.com, and thetenthamendmentcenter.com. He currently teaches history at Chattahoochee Valley Community College in Phenix City, Alabama.

Archive for the 'Federalist No. 35' Category

June 15, 2010 – Federalist No. 35 – Janine Turner & Cathy Gillespie

Wednesday, June 16th, 2010

Hello from Virginia, three miles from Mt. Vernon! The Gillespies are so glad to have Janine and Juliette staying with us for a few days during their East Coast Constituting America Tour! They began in New York last week, travelled to Boston, and yesterday we visited Philadelphia (with a side trip to the Jersey shore)!

Today began with Janine and Juliette taping a radio interview with Laura Ingraham! Stay tuned to this site for news as to when it will air!

We then walked the halls of Congress, and visited several Members, including Congresswomen Michele Bachmann and Marsha Blackburn, and Congressman Scott Garrett, the Chair of the Congressional Constitution Caucus. We saw many groups of young people touring the Capitol Complex, and we took the opportunity to talk to as many of them as possible, and invited them to enter our We The People 9.17 Contest! We got a great reaction from them, and many indicated they would enter! Remember, entries are due July 4th!!!!

We were excited to learn about the Congressional Constitution Caucus. We should encourage our elected Representatives to join this caucus, and assist Congressman Garrett in his mission of educating members of Congress about the original intent of the Founding Fathers.

Tonight, the Gillespie house is buzzing with Constitutional Activity! Janine is preparing for an interview with Fox News, Juliette and my daughter Mollie are editing the Behind the Scenes Video of our trip yesterday to Philadelphia, and Janine and I are writing our Federalist Paper No. 35 essay together, since we are in the same place.

Thank you to Joseph Postell for an excellent analysis of Federalist No. 35: a continuation of Publius's discussion of taxes, and reflections on the nature of representative government. How fitting we are blogging on this subject, on a day we walked the halls of Congress!

Publius begins his essay by stating several maxims regarding taxes, including:

"All extremes are pernicious in various ways."

"Exorbitant duties on imported articles would beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself."

"When the demand is equal to the quantity of goods at market, the consumer generally pays the duty; but when the markets happen to be overstocked, a great proportion falls upon the merchant, and sometimes not only exhausts his profits, but breaks in upon his capital."

"The maxim that the consumer is the payer, is so much oftener true than the reverse of the proposition."

"Necessity, especially in politics, often occasions false hopes, false reasonings, and a system of measures correspondingly erroneous."

And, most importantly: "*It might be demonstrated that the most productive system of finance will always be the least burdensome."*

The theme of these quotes is that the consumer, the merchant, and ultimately the economy suffers when taxes become oppressive. When raising taxes to address "necessities," false reasonings do not render the hoped for results. For example, the stimulus bill was supposed to lower the unemployment rate to 8 percent or below, but despite all the money spent, unemployment has not reached that target. Would a less "oppressive" means, such as cutting taxes, have yielded better results?

In Federalist 35, Publius also responds to various criticisms the anti-federalists made regarding the makeup of Congress. The ratification opponents argued that only a Congress reflective of the public at large, with the same percentage of merchants, landowners, manufacturers, etc as exist in the general population of the country, could truly represent the interests of the people. Publius explains that this will never happen if people are free to vote for whoever they choose. He goes on to point out that the nature of a representative government is to look past the faction that the Representative may personally hail from, and work toward the greater good. Because members of Congress are dependent upon the votes of their constituents, Publius states that Congressmen will take care to inform themselves of the opinions of all their constituents, seeking out the best policies for all, and not just individual factions.

Publius ends with a description of qualities that he feels those who make decisions on tax policy for the country should have:

"There can be no doubt that in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense the proposition has either no meaning, or an absurd one."

And calls on each citizen to judge for himself who best meets that criteria:

"And in that sense let every considerate citizen judge for himself where the requisite qualification is most likely to be found."

As "considerate citizens," our next turn to "judge" will be November 2, 2010. May we all exercise our judgment, and our precious right to vote!

God Bless,

Janine & Cathy

Posted in Constitutional Essays by Cathy, Constitutional Essays by Janine, Federalist No. 35 | 2 Comments »

June 15, 2010 – Federalist No. 35 – The Same Subject Continued: Concerning the General Power of Taxation, For the Independent Journal (Hamilton) – Guest Blogger: Joseph Postell, Assistant Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation

Tuesday, June 15th, 2010

In the midst of discussing questions of tax power and policy, *Federalist 35* ventures into a fascinating argument about the nature of representation in a democratic republic – a very relevant question today.

The argument about representation is a response to an Anti-Federalist claim that the House of Representatives will be too small to contain citizens from all classes and occupations, and that this will prevent "a due sympathy between the representative body and its constituents."

When we first read this, we can't help but identify with the Anti-Federalists. In 21st Century America there could hardly be *less* sympathy between our representative body and its constituents!

But upon further investigation, Hamilton argues, we will see that the Anti-Federalists' argument is "made up of nothing but fair sounding words." Most significantly, he rejects the call for "an actual representation of all classes of the people by persons of each class."

There are two related problems with the Anti-Federalists' argument, according to Hamilton. The first is that it misunderstands the nature of representation. The Anti-Federalists presumed that representation should produce a legislature that is a "mirror" of the public at large. It should look like a microcosm of the people themselves if they could assemble directly for the purpose of making laws. Representation, in this view, is merely a practical mechanism which should reflect direct democracy as much as possible. It should not refine public opinion.

The second but related problem with the Anti-Federalists' argument, Hamilton claims, is that representatives are not mere guardians of a particular interest. They are supposed to pursue the common good of the whole society. To argue that a legislative body should contain a composite of classes and occupations equal to the society at large is to imply that a cobbler's interest can only be pursued by a cobbler, that an attorney's interest can only be pursued by an attorney, and so on.

Such a claim is an affront to the Founders' principle of equality, because it assumes that it is impossible for representatives to transcend the particular interests of society and pursue the good which is common to all. It implies that our interests are so different that they cannot be reconciled, and that the only alternative we have is a constant struggle of class against class, economic interest against economic interest.

In essence, the basic question is this: are we merely the sum of a variety of interests, or is there something higher than our parts? Should our legislature simply be composed of a variety of classes and occupations, each looking out for itself, or should representatives be chosen who can transcend these particular interests and combine them for the good of the whole?

Hamilton and the Founders were not so naïve as to think that various economic interests will always be harmonious. But they argued that representation would subordinate the pursuit of these particular interests to the pursuit of the general good. The way to do this is not to give every interest a seat at the table, but to keep representatives accountable to all of their constituents.

Hamilton argues, "Is it not natural that a man who is a candidate for the favor of his people and who is dependent on the suffrages of his fellow-citizens…should take care to inform himself of their dispositions and inclinations and should be willing to allow them the proper degree of influence upon his

conduct?" Electoral accountability is the way to ensure that representatives pursue the public good, because it forces representatives to be informed of all of the interests of their constituents.

"This dependence" on the votes of the people, Hamilton concludes "and the necessity of being bound himself and his posterity by the laws to which he gives his assent…are the only strong chords of sympathy between the representatives and the government."

In today's politics, it often seems like representatives more often seek to satisfy particular interest groups than pursue the common good of the whole. Some have argued that the Founders wanted it to be this way. But in *Federalist 35* Hamilton reminds us that a representative republic allows us to be governed by those who place the public good over the clash of particular interests.

Most importantly, we can only pursue the common good by abandoning the idea of separating ourselves into classes. Dividing ourselves into separate classes overlooks the natural human equality that is the basis of our rights, and it overlooks the common interests and affections that bind us together as Americans.

Joseph Postell is the Assistant Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation. He recently received his Ph.D. from the University of Dallas.

Archive for the 'Federalist No. 36' Category

June 16, 2010 – Federalist No. 36 – Cathy Gillespie

Thursday, June 17th, 2010

Another great day for Constituting America as Janine and Juliette continue their Constituting America East Coast Tour!

Today I had the privilege of joining Janine at the DC FOX Studios, where she taped an interview with Chris Wallace of Fox News Sunday. **Janine will be featured as Power Player of the Week this Sunday, June 20.** Click here to check your local listings for airtime!

I can't think of anyone who deserves it more. As founder and Co-Chair of Constituting America, Janine has put her visionary idea into action, and is making a difference at the most fundamental level of our political system. She is reminding us of our roots, inspiring us to learn about the Constitution, and the founding principles of our government. I am honored to serve as co-chair of this effort with her, and am looking forward to seeing her as **Power Player of the Week this Sunday!**

Regarding tonight's Federalist Paper No. 36:

Barrels of ink in the Federalist Papers were devoted to taxes – a sensitive subject for our forefathers. Taxation without representation had been one of the causes of the American Revolution, and Publius obviously saw taxation as an issue that could derail ratification if not sufficiently understood.

Taxes are no less sensitive an issue for the public today. Many a candidate has lost an election after being accused of raising taxes, wanting to raise taxes, or not paying his taxes!

In Federalist 36, Hamilton closes out a seven part series of explaining the federal and the states' role in taxation, as well as defends the Constitution and the structure and powers set out for taxation. Again and again through this seven part series it is evident that Hamilton could not have predicted the size and scope of today's federal government, and the tax burden it puts on the American people.

Hamilton had envisioned minimal state taxes:

"When the particular debts of the States are done away, and their expenses come to be limited within their natural compass, the possibility almost of interference will vanish. A small land tax will answer the purpose of the States, and will be their most simple and most fit resource."

However, states tax much more than land these days! Only nine states don't have a state income tax! What happened? One contributing factor to the ever increasing taxes at the state level are unfunded federal mandates, another way the federal government has crept slowly across Constitutional boundaries. As I was doing a bit of research for tonight's essay, I stumbled upon a fascinating website:

The National Conference of State Legislators, http://www.ncsl.org Standing Committee on Budgets and Review has a section on their website called Mandate Monitor . Unfunded federal mandates are tracked and catalogued on this site. The most recent edition of the unfunded federal mandates list can be downloaded on this link: http://www.ncsl.org/documents/standcomm/scbudg/CatalogJune2009.pdf

Check out this weblink and list to see how much and what kind of burden our federal government is putting on the states!

As Jesse reminded us tonight, and as Janine likes to say: "Knowledge is power!"

Please continue to spread the word about Constituting America, our 90 in 90: History Holds the Key to the Future Blog, and the We The People 9.17 Contest for Kids! Please invite your friends to join us in our educational journey!

Thank you to all who are participating with us on the 90 in 90 Blog! Your voice is important, and we thank you for your gift of time, and your well thought out contributions.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 36 | No Comments »

June 16, 2010 – Federalist Paper No. 36 – Janine Turner

Wednesday, June 16th, 2010

Howdy from Washington, D.C. and Mt. Vernon! Cathy, Juliette and I had another busy day Constituting America. We meet with some grassroots groups to get the word out about our Constitution and then we traveled to Fox News to tape a segment for Fox News Sunday! So be sure to set your Tivo to Fox News Sunday. It will air on local Fox and the Fox News Channel this Sunday!

I know that Federalist Papers N0. 35 and 36 are primarily dealing with taxes but I am rather intrigued with some other statements that are made by Alexander Hamilton about the prerequisites of a Congressional representative. I am struck by the lack of bias in his predetermination of the qualities of a representative.

"But even if we could suppose a distinction of interest between the opulent landowner, and the middling farmer, what reason is there to conclude, that the first would stand a better chance of being deputed to the national legislature than the last."

"Where the qualifications of the electors are the same, whether they have to choose a small or large number,
their votes will fall upon those in whom they have the most confidence; whether these happen to be men of large fortunes or of moderate property or of no property at all."

"There are strong minds in every walk of life, that will rise superior to the disadvantages of situation, and will command the tribute due to their merit, not only from the classes to which they particularly belong, but from the society in general. The door ought to be equally open to all."

This paragraphs, and especially the last, best represents the greatness of America – that in America any person of a strong mind may rise superior to the disadvantages of situation, and command the tribute due to their merit.
This, of course, was the personal journey of Alexander Hamilton. (I wrote about his mother in my book, "Holding Her Head High.) This was, also, the promise for the American people from a new nation in its embryonic stage. This was the promise that had germinated in the minds of our forefathers, men who, in their own right, deserve merit and study. They were men who had the brilliant insights, the reverence for Divine Providence and the fortitude to bring both the awareness of inalienable rights and the freedom to dream to fruition.

It is hard for us, who experience our freedoms daily with an ease that parallels the involuntary rhythm of breathing, to fathom the journey our ancestors bridged into the age of enlightenment. We have to stand back and really absorb their air to truly comprehend the magnitude and genius of their visions.

It is an honor to read our United States Constitution and the Federalist Papers. It is a door equally open to all, as are opportunities of every genre.

Let's keep it that way.

God Bless,

Janine Turner
June 16, 2010

Posted in Constitutional Essays by Janine, Federalist No. 36 | 1 Comment »

June 16, 2010 – Federalist No. 36 – The Same Subject Continued: Concerning the General Power of Taxation, From the New York Packet (Hamilton) – Guest Blogger: Attorney Janice R. Brenman

Wednesday, June 16th, 2010

Federalist 36: A Final Word on Taxes

The Federalist Papers contains seven entries specifically addressing how our fledgling nation was to handle the delicate and potentially volatile issue of taxation. Having touched upon Essay #30 dealing with taxation previously, let's bookend the topic with a brief synopsis of #36 it is focusing specifically with the central government's power of taxation: "The Same Subject Continued: Concerning the General Power of Taxation."

The challenge of taxing a wide number of people fairly lies in the ability to ascertain who and how much to tax. Hamilton stressed the need for a non-oppressive tax code; one which reflects the interests of diverse individuals, ranging from merchants to carpenters to blacksmiths to lawyers. It was his hope that each individual would see the need to contribute a portion of their resources to insure continued economic growth, keeping safe a nation poised to give them the privilege of practicing trades as they saw fit and that they would be therefore more willing to comply with the taxing authority.

As Hamilton has observed, a government can be potentially be too efficient when it comes to preserving the power it has by attempting to take more power. A heavy handed taxing authority would be an example of this. Therefore, it would be preferred to collect monies from a wide swath of workers, while simultaneously shielding the "least wealthy part of the community from oppression." As the nation was deemed to be a representative republic, congressional representatives selected locally should represent each district to the national government. Ideally areas with more residents would contribute a bigger share of taxes than those which were more rural.

Hamilton vehemently opposed poll taxes whereby a "head tax" was equally levied on every adult in the community. Though poll taxes can raise large sums of money, Hamilton criticized them as unfair burdens and would "lament to see them introduced into practice under the national government." Poll taxes survived in the Deep South many years until deemed unconstitutional by the Supreme Court when they were used to limit the franchise.

The taxation issue and related debates have been around for a while. Disputes involving taxation upon the populace have existed between democratic governments as well as despotic ones. It is Hamilton's view that a central taxing authority was necessary for economic growth of the Nation as a whole and for the new government to be able to effectively carry out its duties.

For a country that has gone through so many economic cycles, through boom and bust, one can only wonder how Hamilton would have kept our budgets balanced today, since our government has taken on so many more responsibilities and duties than he ever would have imagined. The size and scope of government today not only contributes to the present recession, it approaches a near crisis level of debt.

Maybe it seems simplistic, but limited government focusing on specific tasks specially authorized in the Constitution would put our nation in a much stronger financial position and ensure individual liberty for all American.

Ms. Janice R. Brenman is a former prosecutor now in private practice in Los Angeles. She has commented in major legal publications on the subject of legal reform and celebrity influence on the legal system. She has also appeared in medical malpractice, products liability and complex civil litigation, and is well versed in all forms of discovery. From 1999 to 2000, Ms. Brenman was a City Prosecutor and Community Preservationist. She clerked for the Honorable Rupert J. Groh, Jr., of the United States District Court for the Central District of California. Ms. Brenman also worked researching, writing and editing under a Nobel Prize winning laureate.

Archive for the 'Federalist No. 37' Category

June 17, 2010 – Federalist Paper No. 37 – Janine Turner

Friday, June 18th, 2010

Howdy from Washington, D.C. Cathy, Juliette and I visited the Supreme Court today and Senator Scott Brown at the Capitol. I wanted to talk with him about laying a wreath at President John Adams grave since Senator Brown is from Boston and John Adams is from Quincy, just outside of Boston. As it so happened he already had that on his books! Yea! Be sure to watch our behind the scene video tonight! It is fun. Juliette worked really hard on it.

Be sure to show it to your kids as it may give them ideas for our contest!

Tonight's Federalist Paper No. 37 by James Madison was just brilliant. I am going to simply transcribe some of my favorite statements because they are so thought provoking and wise and well, what more do I need to add, except that every member in Congress today should be required to read them.

"It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation, which is essential to a just estimate of their real tendency to advance, to obstruct, the public good."

"Nor, will they barely make allowances for the errors which may be chargeable on the fallibility to which the convention, as a body of men, we liable; but will keep in mind, that they themselves also are but men, and ought not to assume an infallibility in rejudging the fallible opinions of others."

"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 intrusted 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."

"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."

".. delineating the boundary between the federal and state jurisdictions…"

"The real wonder is, that so many difficulties should have been surmounted; and surmounted with an 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 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 disease 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 new experiments."

THIS IS THE WISDOM WE NEED IN THE LEGISLATIVE AND EXECUTIVE BODIES TODAY. (AND NOTICE HE WAS NOT AFRAID TO MENTION "THE ALMIGHTY.")

God bless,

Janine Turner
June 17, 2010

Posted in Constitutional Essays by Janine, Federalist No. 37 | 5 Comments »

June 18, 2010 – Cathy Gillespie – Federalist No. 37

Friday, June 18th, 2010

Wow! What a day! We wrapped up the last day of Janine and Juliettte's Constituting America's East Coast Tour with a wonderful morning at the Supreme Court. We learned about Chief Justice John Marshall (considered one of the greatest Chief Justices of all time), Marbury vs. Madison (which established the principle of judicial review), and some interesting trivia about who can qualify to be appointed as a Supreme Court Justice! We saw the beautiful chambers, and some other parts of the building not often seen. We even saw the bust of John Jay, one of the authors of the Federalist Papers! It is interesting this third branch of the government did not have a permanent home until the Supreme Court building was opened in 1935.

On a personal note, I had a bit of a challenging day, as we found a leak in my closet (and mold!), I got stopped by the Capitol Police because I didn't put on my turn signal before turning (and had left my purse at home with my driver's license in it!) and my health insurance was accidentally cancelled (it has since been reinstated), but in between all those events, Janine and I kept reading today's Federalist Paper, No. 37, and discussing it, so we could get ready to write our essays tonight!

I found Federalist No. 37 a breath of fresh air, after wallowing in the weeds of taxes for the last seven papers. It was nice to take a break, and zoom out to the big picture of the Constitution once again. Madison, the father of the Constitution, is the perfect voice to remind us of the challenges that had to be overcome to produce this majestic document, a perfect balance of energy, stability, and liberty!

In this current environment of political polarization and bickering, I was especially interested in Madison's observation that, *"In some, it has been too evident from their own publications, that they have scanned the proposed Constitution, not only with a predisposition to censure, but with a predetermination to condemn; as the language held by others betrays an opposite predetermination or bias, which must render their opinions also of little moment in the question*."

Today's frenzied pace of life, which is so dependent on sound bites, and video clips, leads even more to elected officials and citizens who are tempted to pre-judge proposed policies without trying to understand them. Simply because a proposal comes from one political party or the other leads to snap judgments, and subjective analysis. To solve the tough problems our Nation faces, we need to find more of those who have "*a sincere zeal for the happiness of their country*," and "*a temper favorable to a just estimate of the means of promoting it*." We need more people in our country today – citizens and leaders – who are willing to objectively consider proposed policies, and find common ground to work for solutions.

Of course, it is hard to find common ground if we aren't starting from the same foundation. That is why it is so important that we understand the founding principles of our country.

As we think about our own government and citizens, bitterly divided by factions, we can see that it was truly a miracle that the Constitution was produced! Madison's quote:

"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,"

reminds us of the hand of God in the proceedings of the Constitutional Convention and the miracle that took place there.

May the miracle of the Constitution serve to inspire us and our leaders to work towards common goals and solutions, grounded in the founding principles of limited government, free enterprise and individual freedom.

What a gift it is to read the words of our founding fathers, and let them light our way!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 37 | 1 Comment »

June 17, 2010 – Federalist No. 37 – Concerning the Difficulties of the Convention in Devising a Proper Form of Government, From the Daily Advertiser (Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Thursday, June 17th, 2010

Federalist Nos. 37 and 38 depart from Publius's usual fare of panoramic examination of the weaknesses of historic confederations or dissection of particular objections to the Constitution. Instead, Madison takes up the cause of the project as a whole and of those who remained in Philadelphia to see it through. The thematic thread running through Federalist 37 is "fallibility," with repeated reminders of human limitations that call for humility and compromise.

His style varies, moving from the evocative tone of the raconteur to the righteous indignation of the remonstrator to the mild defensiveness of the weary apologist. His annoyance with the quantity and variety of criticisms is palpable. He impugns the motives of opponents whom he accuses of a "predetermination to condemn." Unlike the uncritical enthusiasts who support the project and whose motives may be good or ill, these opponents have no good or even excusably misbegotten motives. To Madison, they act from personal gain or the unwavering arrogance of their righteous certitude.

Madison fears that the project might, like Gulliver, become tied down by the carping of Lilliputian critics. He knows that delay works against success of any significant and controversial political innovation. He declares, therefore, that he will appeal not to minds already made up, but to the honestly persuadable reader. He pleads with readers to consider the difficulties inherent in an undertaking as momentous as the crafting of a constitution, difficulties that necessarily result in imperfect compromises that expose points for easy attack. It has been said, "A camel is a horse designed by committee." The Constitution is a camel, a durable and adaptable animal to be sure, but not a sleek and pampered horse planned by "an ingenious theorist…in his closet, or in his imagination."

Benjamin Franklin, in a speech near the close of the Philadelphia Convention, revealed his doubts about parts of the Constitution. Ever the committed skeptic, he then declared his support "because I expect no better, and because I am not sure, that it is not the best." Franklin expressed hope "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 sign the Constitution. As Madison writes in the next essay, no government is perfect, so that form which is least imperfect is best.

Madison describes the difficulties faced by the Convention in balancing energy in government, stability of laws, and republican liberty, that is, those fundamental characteristics of good government that can be at odds with each. All constitutions share minimum common ground in that they reflect by whom and how governing authority will be exercised. He lays out the delicate balance the Convention had to strike in ordering that authority:

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 intrusted 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 power, but the execution of it by a single hand.

Republicanism. Liberty. Stability. Energy. Ideas that animated the Framers, as reflected in numerous essays by Publius, those were also the objects of the Convention's plan. That plan had to be practical, driven by experience, not by unbending fidelity to some abstract theory. The vastness of the project and the limitations of human ability complicated the task. It was not merely determining the republican operation of government through elections and representation. It was also the daunting work of designing a new federal structure by balancing the state and national political domains, and of properly calibrating the separation and interaction of the three branches of the national government, all while damping the jealousies among states and regions.

This endeavor is made difficult by the "indistinctness of the object [the absence of fixed rules of nature to show how these institutions should be designed to accomplish the objects of the plan]; imperfection of the organ of perception [the fallibility of the human mind that prevents us from recognizing the perfect path], inadequateness of the vehicle of ideas [the limitations of language in the expression of ideas]." Madison regrets that "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." Interpretation of written text must start with the words. But every writing suffers from the inherent vagueness and imprecision of language. For contracts, laws, and constitutions, which affect groups of persons, the reader's mere subjective impression will not do, and recourse must be had to various extraneous sources of meaning. Those imperfections may mar the Constitution; but they will also mar any alternative.

Madison is moved to wonder "that so many difficulties should have been surmounted….It is impossible for any man of candour to reflect on this circumstance, without partaking of the astonishment. It is impossible, for the man of pious reflection, not to perceive in it the finger of that Almighty Hand, which has been so frequently and signally extended to our relief in the critical stages of the revolution." Due recognition of the fallibility of all involved requires of them humility about their own wisdom and at least a spirit of sensible compromise (though not, by that, a lack of firm principles). Those are the marks of statesmen in contrast to mere politicians, and Madison calls on both sides to be statesmen.

Good advice through the ages.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 38' Category

June 18, 2010 – Federalist Paper No. 38 – Janine Turner

Friday, June 18th, 2010

Howdy from Hollywood! Cathy and her daughter, Mollie, Juliette and I are in Hollywood, "Constituting America!" We met with a producer today regarding many things, including ideas for television specials and our game show! Tomorrow we are meeting with many, many people in the Hollywood industry to spread the word about our "90 in 90" blog and our "We the People 9.17 Contest!!"

Juliette and I have had a whirlwind trip starting in Texas. We traveled to New York City, Boston, Washington, D.C., New Jersey, Philadelphia, Washington, D.C. and now to Hollywood – all in the span of less thank two weeks!! We are "Constituting America" from the Atlantic to the Pacific!

I thoroughly enjoyed our Federalist Paper No. 38 today by the splendid James Madison. As he mentioned last night, it truly was the miraculous power of the "Almighty" that brought the new Constitution to fruition. I do believe we all agree, that with the rancor and division in our current Congress, we will never be able to achieve such levels of genius as that exhibited by the distinguished members of the Constitutional Convention.

Yet, I believe we are at as equally a dangerous crossroad now as we were in 1787. Sickness strikes our generation and it is permeating to our posterity. Will we heed the call of the doctor? Vision appears to be the most potent medicine necessitated by our current crisis. Sacrifice appears to be the most needed human virtue and bravery the highest knock at the door. Who will answer?

I believe it will be the genius of the people.

Common sense seems is my summary of today's Federalist Paper. The array of history recounted by James Madison, which describes how other countries gave the construction of their Constitutions to the power of one man, is stunning. "Fears of discord and disunion" blinded their best interests. Once again this reflects the amazing feat of unity in our historic Constitutional Convention.

James Madison's following argument is also striking:

"..They have proceeded to form new states, to erect temporary governments; to appoint officers for them;
and to prescribe the conditions on which such states shall be admitted into the confederacy. All this has been done; and done without the least color of constitutional authority. Yet no blame has been whispered.; no alarm has been sounded. A GREAT and INDEPENDENT fund of revenue is passing into the hands of a SINGLE BODY of men, who can RAISE TROOPS to an INDEFINITE NUMBER, and appropriate money to their support for and INDEFINITE PERIOD OF TIME."

Once again, it is common sense. Common sense reveals the tremendous burden of debt that is threatening our liberty – on all levels – social, spiritual, financial, physical. Is this going to be dealt with by our Congress? Do their hearts beat with that of pride or with that of the patriot? Will we be saved from "the dangers threatened by the present impotency of that assembly?"

We the people must prevail. We must sound the alarm with our voices and our votes. Many good men and women serve in our current Congress. May God bless them yet, "…a consultation is held: they are unanimously agreed that the symptoms are critical."

James Madison speaks a truth that all Constitutionalists believe. It is spoken here in this Federalist Paper. He warns about the "discord and ferment that would mark their own deliberations" and that the Constitution would not stand a fair chance for "immortality."

"Immortality." The Constitution was written for immortality! Our current dire straights, discord and ferment threaten our Constitution's immortality. Ironically, it is only with our Constitution's breath that our country will be saved. It is common sense.

God Bless,

Janine Turner
June 18, 2010

Posted in Constitutional Essays by Janine, Federalist No. 38 | 22 Comments »

June 18, 2010 – Federalist No. 38 – Cathy Gillespie

Friday, June 18th, 2010

First, a reminder to watch Fox News Sunday, for Janine as Power Player of the Week! Chris Wallace does a great sit down interview with Janine about Constituting America! Check your local listings for airtimes!

Thank you, Professor Knipprath for your essays yesterday and today. You have a great way of not only explaining, but augmenting and filling in the gaps!

I would like to echo Seth's comments today, lauding the open and vigorous debate the founders engaged in during the ratification process. In this essay, Madison takes on the anti-federalists in the most direct attack yet, by listing their objections, including a lack of bill of rights, disagreement on how the bill of rights should be framed, unequal representation for big states in the Senate and small states in the U.S. House, concern about the power of direct taxation, wariness of possible taxes on consumption, worry of a tendency towards monarchy, etc. The list goes on and on.

Madison eloquently points out that the document is not perfect, but better than the alternative:

"It is a matter both of wonder and regret, that those who raise so many objections against the new Constitution should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect; it is sufficient that the latter is more imperfect."

Indeed, one of the most beautiful traits of our Constitution is that the founders knew it was not perfect. They had a mechanism to address that: the amendment process.

The amendments trace our country's history, and are a vivid reminder for all to see of our country's attempt to refine this majestic document. Some of the amendments have been wiser than others. Some corrected grave injustices, and some made changes that in hindsight may have been better left unmade. But they all reflect the founders' intent as to how the Constitution should be modified, if change is to be made. Even the amendment process contains checks and balances!

Federalist No. 38 is an example of our country's grand tradition of political debate at its finest. Through the Federalist and Anti-Federalist Papers, both sides were thoroughly aired in a way that is a lost art in our modern culture.

Thank you to all who participate in the civil, intelligent and insightful political discourse on this site, in the true tradition of the founding fathers!

Have a wonderful weekend,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 38 | No Comments »

June 18, 2010 – Federalist No. 38 – The Same Subject Continued, and the Incoherence of the Objections to the New Plan Exposed, From the New York Packet (Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Friday, June 18th, 2010

While Federalist 37 defends the Philadelphia Convention and the Constitution by recalling the difficulties involved in completing such a complex and novel undertaking, Federalist 38 is a full-throated attack on the Antifederalists. To counter the accusations—at least formally defensible—that the Convention was a revolutionary body that threatened liberty, Madison first reminds his readers that the Convention differed from historical procedures for constitutional innovation. Traditionally, such change was put in the hands of (or seized by) a single law-giver. The danger to liberty posed by such a charismatic leader was avoided by the use of a multitudinous assembly. On the other hand, such an assembly has all the characteristics of faction that he described in the previous essay as making the Convention's work so difficult.

After this rather mild prologue, Madison sets to work. He likens the United States to an imperiled patient and the Convention to a panel of physicians. The latter agree that the situation is critical, but not so desperate that it cannot, "with proper and timely relief…be made to issue in an improvement of his constitution." [Here the reader pauses briefly to acknowledge the clever pun.] Then a prescription for relief is made, only to trigger an invasion of nay-sayers who, though they admit the danger, alarm the patient against the cure and prohibit its use. This reminds one of risk-averse bureaucracies that prohibit or stall the use of new drugs for grave conditions because the potential side-effects are not entirely ascertained.

Worse, the objectors cannot agree exactly why the cure is bad. Nor can they agree on an alternative. Madison obviously relishes the opportunity to list various objections, all arranged for maximum ridicule.

Though he avoids names, Madison's examples likely would have brought to readers' minds various specific opponents, particularly in the New York and Virginia ratifying conventions. Mocking the opponents' portrayed disunity in order to blunt the dangerous calls for a new convention that were resonating with the public, Madison uses the variety of the objections to declare that the Constitution would likely be immortal if it were put in effect "not until a BETTER, but until ANOTHER should be agreed upon by this new assembly of lawgivers. [Emphasis in original.]"

His role as a champion of the Constitution prevents him from giving rhetorical quarter to his opponents, but they were not the intemperate and intellectually vapid lot Madison portrays through his caricatured compilation. Opposing specifics of the Convention's product hardly makes one deserving of ridicule. Madison should know. Of 71 proposals he made or strongly and openly supported at the Convention, he lost 40 votes. His desired constitution would have looked remarkably different and more nationalized than what emerged.

Both sides were composed of patriots who ardently desired the success of the republican experiment and the United States. Both sides also had partisans who pursued the more parochial interests of their respective states, as well as their own personal objectives. Usually these conflicting interests operated in the same individuals to varying degrees. The strategic disadvantage the opponents suffered was that they were not a tight-knit cadre, as the writers of *The Federalist* were. And, of course, they lost. The victor writes the history. But many of them were leading intellectuals, lawyers, politicians, and other educated members of the country's elite. As Publius infrequently identifies the writers to which he is responding in a particular paper, I should like to take a few lines to mention some of the opposition leaders.

The many effective and famous Antifederalists included Patrick Henry and George Mason of Virginia, Samuel Chase and Luther Martin of Maryland, and Samuel Adams and Elbridge Gerry of Massachusetts. Some opposed the whole project; Henry declared he did not attend the Convention because he "smelt a rat." Others just wanted a bill of rights. George Mason was one of the most important contributors at the Convention, but, along with Gerry, declined to sign when the Convention refused consideration of a bill of rights. Still others eventually supported the Constitution with varying degrees of enthusiasm.

Many Antifederalists used pseudonyms, in the custom of the day. There was Robert Yates, writing sixteen papers as "Brutus." Judge Yates was a New York delegate who attended the Philadelphia Convention with Hamilton but left when the delegates moved beyond their charge only to consider revisions to the Articles. A moderate opponent, he was later recruited as a Federalist Party candidate for governor. His influential writings were widely circulated and known for their constructive and analytical criticisms, many of which, unfortunately, have manifested themselves over the years in the federal government that has evolved. Contrary to Madison's claim, Yates often made suggestions for alternatives. It is curious that Publius never mentions Brutus by name (as he does a few others), although reading the former's writings, it is clear from the language and the order of argument that he is often responding to the latter's critiques.

George Clinton, likely author of seven "Letters of Cato," was the longest-serving governor in American history at 21 years and a two-term U.S. Vice President. He presided over the New York convention and was a moderate opponent of the Constitution who favored adoption conditioned on amendments. His

"letters" were widely read, and some historians believe that the effectiveness of his letters impelled the Constitution's supporters to write *The Federalist* in response. Cato is specifically mentioned by Publius.

"A Federal Farmer" is traditionally associated with Richard Henry Lee of Virginia, a career politician who was, among many other things, a member of the Confederation Congress. More recent scholars believe that the writer is attorney Melancton Smith, a member of the Confederation Congress and the New York ratifying convention. Hamilton considered the Federal Farmer the most persuasive of the Antifederalists, and refers to him in Federalist 68. The tone in the two pamphlets containing eighteen letters is generally analytical, readable, and moderate. That makes it less likely that Lee, an emotional and powerful orator, is the author. Smith eventually voted for the Constitution, with amendments.

Towards the end of the paper, Madison engages in a dubious tactic of defending the Constitution by declaring the ways that the Confederation has exercised broad powers. That may seem good in theory, but it is unlikely strategically to convince those who are weighing arguments for and against the Constitution. Though the point is to make the Constitution sound tame, one can just as easily draw a different conclusion: If the Confederation Congress is so dynamic, why is there need for change? That said, inducing most of the states to cede their western territorial claims to the United States, taking control of the territory, and passing the Northwest Ordinance as a model of colonial administration for the territory was probably the Confederation's finest domestic policy success and showed the—ultimately unrealized—potential of the Articles.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com

Archive for the 'Federalist No. 39' Category

June 21, 2010 – Federalist Paper No. 39 – Janine Turner

Tuesday, June 22nd, 2010

Howdy from Texas! We are home, after a whirlwind trip Constituting America, up and down the east coast – the birthplace of our country. I was still Constituting America today though – in the grocery store check out line. The woman behind me had two children and I told her all about our Contest!

I want to thank our Constitutional scholar, Professor John S. Baker, for his insightful essay today and for all of you who are blogging with us. Isn't this an amazing and insightful journey?

Federalist Paper N0. 39 is stimulating. I am, once again, intrigued by Publius' knowledge of history. James Madison's detailed description of other republics compared to the one they constituted in the Constitution was a treasure to read. It is powerful to ponder upon the dichotomy of the roadmap our

founding fathers constructed for us, as well as how it differed from other countries who claimed to be republics.

Our Constituting founding fathers truly experienced a profound profusion of ideas and their compromise, their willingness to see the bigger picture, proved revolutionary in an intellectual and spiritual way. Their
"balance of powers" were delicate, yet firmly planted upon the bedrock of the "genius of the American people."

Their virtue, insightfulness, valor, willingness, foresight, bravery and determination have a reach upon the American spiritual landscape like a long branch of a Live Oak tree. Sturdy and protective and evergreen was their love for the country and their roots were immersed in the waters of wisdom.

I do believe, for those of you reading this who are of faith, that we should pray for these attributes to guide our leaders, representatives and "genius of the American people" today. If you are reading this and not of faith, then a meditative thought picturing a people who rise to meet our country's challenges with dignity and grace will be powerful. It will meet with the prayers and lift America into a realm of enlightenment.

It begins with prayers and thoughts, and resonates with action. Awareness, Acceptance, Action. We are aware of the greatness that birthed our country, has kept it thriving and holds the seeds of hope. We accept the mission put in front of us – the mission to hold our representatives accountable to the "genius of the American people" and to fight to maintain a Republican America for our children – a Republic that holds the values, the rights and the structure of free enterprise we enjoy today. We take action by spreading the word about the United States Constitution because it is the glue that holds our freedoms together.

When the President and Congressmen and women take office, they swear to uphold the United States Constitution. They swear to preserve, protect and defend the Constitution. I marvel that it does not say preserve, protect and defend "the people." I now know that it states, "preserve, protect and defend the Constitution," because it is the Constitution that protects the people.

Without the preservation of the Constitution, without the respect of the Constitution, without the awareness and utilization of the Constitution, "We the People," lay vulnerable to the dangers of tyranny, socialism, and being stripped of our rights. Without representatives that respect our Constitution, without a people who are informed about the Constitution – we are not protected.

Spread the word.

God Bless,

Janine Turner
June 21, 2010

Posted in Constitutional Essays by Janine, Federalist No. 39 | 14 Comments »

June 21, 2010 – Federalist No. 39 – Cathy Gillespie

Monday, June 21st, 2010

There are still two weeks left for young people to enter the We The People 9.17 Contest!

How is the Constitution Relevant Today?

Entries due July 4th!

High School Students: We need more short film, PSA and song entries!! We are accepting essays from high school students as well. Prizes including $2,000 per category; trip to Philadelphia; possible TV appearance!!

Middle School students: write a cool song, or an essay! Prizes include gift cards, and national exposure!

Elementary School students: draw a picture, or write a poem! Prizes include gift cards and national exposure!

Details and exact topics for each category on this link: http://constitutingamerica.org/downloads.php

Now for Federalist No. 39:

Thomas Jefferson called the Federalist Papers "the best commentary on the principles of government … ever written." Federalist No. 39 certainly lives up to this quote!

This paper reads like a textbook, and wouldn't it be wonderful if it were a part of our childrens' textbooks! I am betting it is not often included.

First the definition of a Republic:

"a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior,"

Next, a careful analysis of the national vs. federal qualities of the components that make up the "real character of the government":

(1)" the ***foundation*** *on which it is to be established"* – (ratification is a federal act)

(2) "the ***sources*** *from which its ordinary powers are to be drawn"* – the sources of power are national (U.S. House); federal (U.S. Senate); and a combination of national and federal (Executive Branch/Election of the President).

(3) "the ***operation*** *of those powers"* (national)

*(4) "to the **extent** of them"* (federal)

*(5) "the **authority by which future changes** in the government are to be introduced"* (neither "wholly national nor wholly federal")

Federalist 39 makes clear the depth and breadth of the system of checks and balances the founders so carefully constructed. The three branches of government, and the enumerated powers of the national government are some of the more obvious checks and balances of our Republic. But the fact that the elements which make up the character of our government (foundation; sources, operation and extent of power; and authority by which changes are made) are so well balanced between federal and national qualities is amazing! It is like cutting into a beautifully decorated cake, and finding intricate designs within, and on the various layers.

It is the depth with which these checks and balances are etched into the structure of our government that gives me hope that our Constitution and our Republic will survive. Though we may drift from time to time, there are systems built into the Constitution that allow "we the people" to bring our country back onto the intended path when we stray too far outside the Constitutional framework.

The Constitution is our roadmap. We must look at it, read it, understand it, and respect it. It must stay in our national consciousness. How else will we know when we have taken a wrong turn?

Our liberty hangs in a delicate balance. When the balance is disrupted, we lose our freedom!

Thank you to all of you who are blogging and adding to the debate, and our collective understanding! And a big thank you to Professor Baker for your enlightening essay!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 39 | No Comments »

June 21, 2010 – Federalist No. 39 – The Conformity of the Plan to Republican Principles, For the Independent Journal (Hamilton) – Guest Blogger: John S. Baker, Jr., the Dale E. Bennett Professor of Law at Louisiana State University

Monday, June 21st, 2010

Federalist 39 answers attacks that the proposed Constitution is not "republican" and not "federal." In his response, Publius effectively redefines both terms.

Claiming the proposed government is not "strictly republican" is a serious charge. Publius recognizes this, saying "no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution; or the honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government."

The term “republican” (Latin “res publica,” or “public thing”) had an uncertain meaning. Common to its various understandings would have been an opposition to an hereditary monarchy and aristocracy. Republicanism referred to self-government, but proponents and opponents of the new Constitution had very different ideas about what that meant.

On the one hand, Publius acknowledged that “If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.” On the other hand, the vision of republicanism offered by The Federalist was quite different from that of the opponents.

Those opposing the Constitution, the Anti-federalists, generally believed that a republic could exist only within a small territory where citizens were able to know one another, live a communal life, and directly govern themselves. Their reading of the French political writer Montesquieu and the example of the ancient republics convinced them that liberty was possible only in such republics. Thus, the Anti-federalists argued that the government to be created by the Constitution would deprive the people of their liberty.

Publius had already argued in Federalist 9 that “the petty republics of Greece and Italy” leave one “feeling sensations of horror and disgust” because “they were perpetually vibrating between the extremes of tyranny and anarchy.” He also observed that opponents to the Constitution apparently were unaware that the states were already larger than the republics discussed by Montesquieu and that he praised the benefits of a larger “confederate republic.” Indeed, The Federalist contributes to political theory the idea that liberty is better protected in a large republic, as fully explained in Federalist 10.

Federalist 39 asks “What then are the distinctive characters of the republican form?” Publius finds that political writers have wrongly applied the term to states that do not deserve to be called republics. Consulting principles of government, Publius says “we may define a republic to be, *or at least may bestow that name on*, a government which…” (emphasis added). In other words, he is giving his own definition of the term republic, one which corresponds to principles embodied in the new Constitution. Thus, Publius says a republic may be defined as “a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure [presidential appointees], for a limited period [members of Congress and the President], or during good behavior [federal judges].”

Finally, Federalist 39 contends that the language in the Constitution explicitly prohibiting titles of nobility and guaranteeing the states will have a republican form of government proves the republicanism of the proposed government.

This large republic was also to be a (con)federal republic. But the Anti-federalists also charged that the Constitution violated the federal form. Publius did not actually deny this particular charge. Rather, he contended that “a just estimate of [the argument’s] force” requires first ascertaining “the real character of the government.” Before explaining that the real character is only “partly federal,” he added that the argument’s force also depended on the authority and duty of the Convention. In the following essay, Publius will argue that the authority of the Convention, as well as its duty to the people, justified creating the form of government proposed by the Constitution.

Given the common understanding of "federal" at the time, the Constitution did violate the federal form. Prior to adoption of the Constitution, the words "federal" and 'confederal" meant the same thing, just as "flammable" and "inflammable" currently have the same meaning. The Federalist, itself at times, used these terms interchangeably. Clearly, however, the Constitution proposed to create something different from the existing confederacy.

Federalist 15 had identified the great vice of a confederacy as the attempt by a league of states to legislate for state governments, rather than for individuals. The Articles of Confederation did not directly govern individuals, but the Constitution would do so – within its limited list of powers. The new government's ability to reach individuals and the "necessary and proper clause" prompted the Anti-federalist fear that the Constitution would completely consolidate power in a national government.

Publius had to explain that the Constitution would not create a consolidated national government. Federalist 39, therefore, explained the mixture of federal and national elements among five essential aspects of the Constitution: its ratification or foundation [national], the sources of its ordinary powers [partly federal –the Senate; partly national-the House], the operation of its powers on individuals [national], the extent of the powers, i.e., limited [federal], and the method of amendment [neither wholly federal nor national]. Based on this mixture of elements, Publius concluded: "The proposed constitution, therefore, …is, in strictness, neither a national nor a federal constitution; but a composition of both."

This "compound republic" created by the federal Constitution came to be known as "federalism." As a result, the "federal" form became distinguished from the "confederal" form existing under the Articles of Confederation. This new form of federalism involved a residual – rather than complete – sovereignty in the states. Indeed, as a limited Constitution, neither the federal nor the state governments were "sovereign" in the true sense of the word as a supreme power answerable to no other power. Rather, under the Constitution, "We the people of the United States" are the political sovereign and the Constitution is "the supreme Law of the Land."

Some argue that the Anti-federalists correctly predicted the consolidation of power in the national government. Such an argument, however, overlooks the critical shift of power caused by the Seventeenth Amendment. That amendment took the election of US senators from state legislatures and gave it to the voters. As a result, the key federal, i.e. state, protection against the concentration of power was lost. That is to say, the Seventeenth Amendment deprived the states of their direct representation in the federal government. As long as the state legislatures elected senators, the states had the ability to pressure enough senators, even if only a minority, to prevent incursions on state power. State legislatures no longer have that ability.

John S. Baker, Jr., the Dale E. Bennett Professor of Law at Louisiana State University, regularly lectures for The Federalist Society and teaches courses on The Federalist for the Fund for American Studies.

Archive for the 'Federalist No. 40' Category

June 22, 2010 – Federalist No. 40 – Cathy Gillespie

Wednesday, June 23rd, 2010

Federalist No. 40 brings up a subject I have been curious about since embarking upon this journey through the Federalist Papers in April. How did the delegates, charged with revising the Articles of Confederation, justify constructing an entirely new government?

Madison lays out the case brilliantly. First quoting the recommendation of the Annapolis Meeting in September of 1786, and then the Congressional Recommendation of February 1787, Madison carefully analyzes the language used. He emphasizes the words, "such further provisions adequate to the exigencies of the union," from Annapolis, and the words from the Congressional recommendation "establishing in these states a firm national government," and "such further provisions…adequate to the exigencies of government and the preservation of the union."

He then questions, if the goals in the mission statement are "irreconcilably at variance with each other," i.e.:

a "*NATIONAL and ADEQUATE GOVERNMENT could not possibly, in the judgment of the convention, be affected by ALTERATIONS and PROVISIONS in the ARTICLES OF CONFEDERATION; <u>which part of the definition ought to have been embraced, and which rejected</u>?"*

Madison points out that one phrase deals with means, "alterations and provisions in the articles," and the other with the ends, "national and adequate government adequate to the exigencies of government and the preservation of the union." Madison argues the ends are more important than the means. While this view gave us our Constitution, it is an arguably dangerous view for our elected officials to take, and one that has been employed from time to time throughout our history and other civilizations to justify various acts.

Possibly realizing the danger of this mindset, Madison goes on to argue that, in fact, the it may not be impossible to reconcile the two charges of "alterations and provisions in the articles" with a "national and adequate government."

He proceeds to walk through each step, stating:

1. an alteration of the TITLE, could "never be deemed an exercise of ungranted power."

2. "*ALTERATIONS in the body of the instrument are expressly authorized."*

3. "*NEW PROVISIONS therein are also expressly authorized."*

4. Is "power is infringed, so long as a part of the old articles remain?"

Madison identifies the major departure from the charge of Annapolis and the Congressional recommendation as the change in the ratification process, from the requirement of the confirmation of all states, to the requirement of the approval of nine states. The founders altered the ratification process because they did not want to put the fate of the union in the hands of the 13th state.

While Madison lays out the case for the scope of governmental reform undertaken by the delegates, in the end he reminds us that whatever the delegates proposed, "*it 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."

In the end, the judgment rested with the people, as it does with us today.

God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 40 | No Comments »

June 22, 2010 – Federalist Paper No. 40 – Janine Turner

Wednesday, June 23rd, 2010

Howdy from Texas! What a glorious day for the Constitution! My daughter and I marveled as we heard that a Federal judge had struck down President Obama's six month moratorium on the drilling of oil in ocean waters. Whether one agrees or disagrees with President Obama's decision, it is just awesome to see our Constitution's checks and balances at work. Truly. My daughter and I discussed how the checks and balances keep tyranny from rearing its ugly head. It will be interesting to see what the Judge's decisions will be through the appeals court process.

This is, of course, an example of why it is tremendously important that we, as citizens and guardians of our country, and our children, our future, know that we have a government of checks and balances. We, America's citizens, are a delicate, yet vital, part of that balance. Within our voice and our vote is the weight of reason.

I thank you for joining us today and I thank Joseph Postell for his insightful essay! James Madison's Federalist Paper No. 40 encompasses many pearls of wisdom. I found the following passage to be particularly intriguing:

"..the latter (the convention) 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." By this he means, the people, through representation. One of the Federalist Paper's phrases that repeats and repeats in my ear is, one they use quite frequently, (and I do too!) "the genius of the people."

Awareness, Acceptance. Action. "We the People," through people like you, are going to spread the word about the United States Constitution and Federalist Papers. We will accept our calling and then "We the People," will take action, making educated decisions based on a foundation of knowledge. Based upon the principles of our founding fathers we, the modern day, "genius of the people" will persevere and transcend the wills of those who chose to bring America down. Knowledge is power. History is the key to the future. Our Constitutional founding father's believed this then and we believe it now. They based our Constitution on the trials and errors of history, not ideology or rhetoric. Our Constitution has withstood the test of time. We must preserve, protect and defend the Constitution. It starts with you. It starts with your children. It starts with you family, friends and acquaintances. Spread the word!

God Bless,

Janine Turner
June 22, 2010

Posted in Constitutional Essays by Janine, Federalist No. 40 | No Comments »

June 22, 2010 – Federalist No. 40 – The Powers of the Convention to Form a Mixed Government Examined and Sustained, from the New York Packet (Madison) – Guest Blogger: Joseph Postell, Assistant Director of the B. Kenneth Simon Center for American Studies at the Heritage Foundation

Tuesday, June 22nd, 2010

One can only imagine the difficulty James Madison had writing *Federalist 40*. The question was this: did the Constitutional Convention overstep its authority by *abolishing* the Articles of Confederation in favor of a new government, rather than merely reforming the Articles?

Consider that when the Convention assembled in the summer of 1787, a government already existed in America. Although it had failed in practice, the delegates were supposed to revise, not to abolish the Articles. Moreover, according to the Articles, changes had to be ratified by all of the states in order to become law.

Imagine if the same thing happened today – if the states established a convention to revise the Constitution, but which instead called for scrapping the entire document and building a new one from scratch…and which created entirely new procedures for ratifying those changes!

Indeed, there were difficult legal questions regarding what the Constitutional Convention did.

Madison's response to these issues seeks to answer two questions: "whether the Convention were authorized to frame and propose this mixed Constitution," and "how far considerations of duty…could have supplied any defect of regular authority."

In answering the first question, Madison defends the legality of the Convention's recommendations. In the first place, Madison replies, the delegates' duty was to establish a government adequate to its purposes *as well as to* revise the Articles. But if these two objectives were incompatible, "Which was the more important, which the less important part?" The objective of forming an adequate government, he implies, trumps the delegates' assignment to revise the Articles.

Furthermore, Madison argues, how do we know when we have crossed the line from revising a form of government to abolishing it? Can we "mark the boundary" between "alterations and further provisions" and "transmutation of the government"? At what point does altering the government become destroying it?

Because the Constitution preserved the essentials of the Articles of Confederation, Madison alleges, the delegates simply revised the Articles rather than abolish them. Under the Constitution "the states are

regarded as distinct and independent sovereigns." Furthermore, "One branch of the new government [the Senate] is to be appointed by these [State] legislatures." Finally, "in the new government as in the old, the general powers are limited, and…the states in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction."

Madison admits that the Convention departed from the Articles in one respect: the amendment process. However, Madison argues that this was *good*, because of "the absurdity of subjecting the fate of 12 states, to the perverseness or corruption of a thirteenth."

Having answered the first question, Madison asks the second question – whether the delegates' duty to their country could compensate for any defect of authority.

In response, Madison reminds his readers that the Convention merely proposed a Constitution for the people to approve or reject. Without ratification, the Convention's plan was "of no more consequence than the paper on which it was written."

The Constitution was ratified by the people, not by the Convention. How could the people lack the legal authority to change their Constitution? The delegates, Madison continues, "must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence" to forms "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.'"

The lessons of *Federalist 40* are important even today. Madison explains that in a free society the people are the masters of the government, rather than vice versa. In a situation where the government cannot adequately pursue the good of the people, it is the right of the people to revise the forms of government to ensure that the substance of government is in accordance with first principles.

The Founders, Madison explains, did not intend to create a rigid government, forever impervious to change. Such a government would deny the people the basic right to govern themselves. Instead, the Founders left us an amendment process because they foresaw the need for future changes.

However, Madison also cautions us against changing "the essentials" of the Constitution: our federal system, the separation of powers, and the limited powers of the national government. Though we should always determine our constitutional forms, we have the responsibility to uphold the principles of the Declaration of Independence: that government exists to protect natural rights and must be limited in order to do so.

Joseph Postell is the Assistant Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation. He recently received his Ph.D. from the University of Dallas.

Archive for the 'Federalist No. 41' Category

June 23, 2010 – Federalist Paper No. 41 – Janine Turner

Thursday, June 24th, 2010

Howdy from Texas! I thank you for joining us today and I thank Professor Knipprath for his most insightful essay!

James Madison's Federalist Paper No. 41 is full of profundities.

"It is in vain to oppose Constitutional barriers to the impulse of self-preservation. It is worse than in vain: because it plants in the Constitution necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions."

I know that James Madison was referring to the defense of the country but I believe this statement is applicable to today's cultural attack on the Constitution. To oppose the Constitution to serve one's ego, or one's personal agenda, is vanity. If fact, it is worse than vanity, it is a misuse of power and with every small misuse, with every defiant gesture disregarding the Constitution or with every action usurping the Constitutional limitations placed on one's power, one chips away at the Constitution. This defiance infects the Constitution with a germ, a conduit, which multiplies, misappropriates, and jeopardizes our country's structure, our liberties, and our future.

The Constitution isn't an ideology to be twisted to fit one person's, or one's party's, ambition. The Constitution is the foundation upon which our country was built and the tracks upon which our country has traveled through days, years, decades and centuries. The engine on this track is the principals and vision laid out in the Constitution. The conductor is the people. To manipulate, dismiss or disregard the Constitution is to derail the train, running it into the edge of a precipice.

Does the future of our country dangle on the edge of a cliff today?

As James Madison says, "A bad cause seldom fails to betray itself." To dismiss the United States Constitution is a bad cause.

"Every man who loves peace; every man who loves his country; every man who loves liberty, ought to have it ever before his eyes, that he may cherish in his heart a due attachment to the union of America and be able to set a due value on the means of preserving it." James Madison words and our Constitutional founding father's actions reflect their belief that the Constitution would preserve America.

Today that preservation starts with the citizen's knowledge of the Constitution and the Constitution's pervasive prevalence in the American culture.

As John Adam's said, "Liberty cannot be preserved without a general knowledge of the people.

Spread the word.

God Bless,

Janine Turner
June 23, 2010

Posted in Constitutional Essays by Janine, Federalist No. 41 | No Comments »

June 23, 2010 – Federalist No. 41 – Cathy Gillespie

Thursday, June 24th, 2010

Yesterday we passed the halfway mark for the 90 in 90: History Holds the Key to the Future Program ! We are more than halfway through our 90 day journey to read the Federalist Papers and U.S. Constitution in 90 Days!

A big thank you to all our 90 in 90 particpants. We thank you for taking the time to read, and share your thoughts. Some of you blog so regularly, I feel I know you! Others pop in from time to time, and it is always refreshing to read a comment from a new person!

Please continue to spread the word, and invite your friends. Every comment adds to our group's understanding. Don't be shy! Your comment or thought may be just the thing someone needs to read!

Thank you to Professor Knipprath for your enlightening essay. You continue to be one of our groups' favorite guest Constitutional Scholar Bloggers! We appreciate you coming back on during the day to add comments and answer questions. Today, your analysis of the Congress's power to spend, and the general welfare clause was very helpful!

What a gift it is to read the writings of these brilliant men and have the benefit of hindsight – to be able to look back 222 years and see which of their predictions were correct, where the anti-federalists' fears were substantiated, and to be able to heed their wise words, relating them to situations we face today.

As Professor Knipprath points out, Madison once again returns to addressing the anti-federalists' fears of a standing army. Abuse at the hands of the British Army was a real and painful memory to our founding fathers. And throughout history standing armies had become enemies of the people they were charged with protecting.

Madison wisely recognizes the need for the Union to be equipped to protect itself:

"How could a readiness for war in time of peace be safely prohibited, unless we could prohibit, in like manner, the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack."

This statement is even more true today, when our enemy cannot be pinpointed geographically, and is ever present. Thankfully, the anti-federalists' fears of a standing army were unfounded. As I mentioned in my Memorial Day essay, a recent Rasmussen poll showed that 74% of Americans have a favorable view of the U.S. Military. Only 12% had an unfavorable opinion and 13% weren't sure.

While the anti-federalists' fears of a standing army were never validated, their fears of Congress's power to spend certainly were!

Madison protests:

"Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed, that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction."

If Madison were alive today, I believe he might owe the anti-federalists an apology! The anti-federalists' worst fears about "an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare," have been realized. Congress's taxing and spending is out of control, and the national government has reached into areas far beyond its enumerated powers.

What are we to do? In Federalist 51, Madison states, "A dependence on the people is, no doubt, the primary control on the government."

"We The People" are to exercise our control.

"Every man who loves peace, every man who loves his country, every man who loves liberty, ought to have it ever before his eyes, that he may cherish in his heart a due attachment to the Union of America, a be able to set a due value on the means of preserving it."

I look forward to the next few Federalist Papers, as Madison defends the Congress's powers, and we examine them in depth.

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 41 | 1 Comment »

June 23, 2010 – Federalist No. 41 – General View of the Powers Conferred by the Constitution, For the Independent Journal (Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Wednesday, June 23rd, 2010

In a lengthy essay, Madison embarks on a series of defenses of Congressional powers that he pursues in more detail through Federalist 46. In Federalist 41, he proposes to divide that task over the course of the following several essays by examining whether any particular power is unnecessary and improper and also whether the entire mass of powers is dangerous to the continued vitality of the states.

He opens with a reminder that, in the end, the Constitution is a practical undertaking, not a theoretical blueprint for an ideal state. He derides the opponents as having "chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible

abuses which must be incident to every power of trust, of which a beneficial use can be made." He proceeds with a powerful and very relevant indictment. "[This tactic] may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking, and may confirm the prejudices of the misthinking: but cool and candid people will at once reflect, that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT good; and that in every political institution, a power to advance the public happiness, involves a discretion which may be misapplied and abused."

This passage richly describes a basic phenomenon in politics. Human institutions are designed by imperfect beings to control imperfect beings and administered by imperfect beings. "A government of laws, not of men," matters, but only to a point. In the end, government is still administered by humans. Perfect systems are imaginary. "Utopia," which we treat as if derived from the Greek "Eutopia" (a good place), actually is Greek for "not a place." Utopias do not exist. Rhetorical appeals over potential, yet unrealized, abuses of power are a staple of political discourse. When considering the merits of politicians and political choices, there are always ideological purists who accentuate slight differences rather than bountiful similarities. For them, a political figure who does not perfectly reflect their own vision of the perfect system is suspect, and a political choice that deviates even in minor particulars from their utopian views must be condemned. The perfect, as the saying goes, becomes the enemy of the good. As he did in earlier efforts, such as in Federalist 37 and 38, Madison urges more temperate and balanced reflection.

After some general observations, he returns to a favorite topic of contention, the keeping of a peacetime army. He proclaims that the matter "has been too far anticipated, in another place, to admit an extensive discussion of them in this place." Yet, he proceeds to declaim about the topic for half the paper, evidence once again of the frequency and relentlessness of the opponents' attacks. Those attacks resonated with the public and with many delegates because of the troubling history of standing armies and the tension they reflect with republican ideas.

Two passages stand out. The first is, "Security against foreign danger, is one of the primitive objects of civil society. It is an avowed and essential object of the American union." There are those who will happily give to the government powers to intrude into the most everyday matters, but act aghast when miliary funding is sought or when a state (reacting to the failure of the federal government to carry out its responsibility in such matters) seeks to protect its people from threats to security coming across the border. This kind of attitude inverts the purpose of government, to provide for personal security for people and allow them to pursue happiness as befits them, not to reduce people to a state of dependency on the government for personal needs.

The second passage is, "It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain: because it plants in the constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions." As Publius has written before, necessity knows no bounds in the law. The first rule of nature, for individuals and societies, is self-preservation. There always exists, as countless writers on political theory have declared, a natural right of self-defense. For the proper exercise of that right, there must be a right to arm oneself with reasonable means, a right that applies to individuals as much as nations. Any attempt to restrict that right will fail, as the impulse to self-preservation will prevail at least in those individuals or societies who have not

become personally or civilizationally enervated. Indeed, restricting that right will undermine the legitimacy of the constitution itself, as respect for the whole is undermined by repeated violations of an unsustainable provision.

The last portion of the essay discusses a power that has become a conspicuous symbol of the expansion of government, the power to spend. Madison objects that opponents of the Constitution have mislead the people in arguing that the power to "lay taxes…to pay the debts, and provide for the common defence and general welfare of the United States," gives the Congress the power to *legislate* for the general welfare. First, he declares correctly that this is a nonsensical reading. "A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents…must be very singularly expressed by the terms 'to raise money for the general welfare.'" The general welfare language, then, is not a broad grant of power that would make the following enumeration of powers superfluous and contradictory, but a limitation on the power to spend the revenue raised under the taxing power.

As an interesting historical side note, during the Convention, the clause, derived from language in the Articles, was intended to prevent spending of money for "internal improvements" that promoted the welfare of particular states or localities, rather than the general welfare of the United States. But Pennsylvania's Gouverneur Morris, a strong nationalist who was also the principal draftsman on the Committee of Style that was responsible for the final wording of the text, surreptitiously inserted a semicolon between the power "to lay and collect…excises," and the limitation of "to pay the debts…." That made the latter seem like an independent power, just as the other powers were separated by semi-colons. Connecticut's Roger Sherman discovered Morris's sleight of hand, and the Convention voted to replace the semicolon with a comma.

Second, Madison defines the general welfare as defined by the following specific clauses. He maintained that position in later debates. Hamilton, in contrast, during the debates in the Washington cabinet over the Bank of the United States, claimed that the other enumerated powers of Congress already include within them an implied power to spend for those objectives. Thus, a power to establish post offices includes the power to pay for them. According to Hamilton, the power to spend for the general welfare goes beyond the objectives listed in the Constitution. That is the long-established view of the Supreme Court, as well.

However, that raises the question of what limits exist on the power of Congress to spend. After all, if Congress can spend for objects not within its enumerated powers, it might be able to do indirectly what it cannot do directly. Spend money to control education, for example. Hamilton insisted that the limit was that the spending had to be for the "general" welfare. Yet, unlike the Convention, he also supported spending on subsidies for manufactures and, after some initial misgivings, on internal improvements. He had a much laxer view of "general" welfare.

Today, that leaves Congress in charge of defining "general" welfare. Since many expenditures are earmarked for projects that benefit particular individuals, companies, or communities, the Congress is adept at cloaking rather everything as somehow affecting the general welfare. The spending power has gone far beyond the understanding of the Framers. Bloated spending may prove to be much more of a threat to the national well-being of the country than the standing armies that prompted such concern.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 42' Category

June 24, 2010 – Federalist No. 42 – Cathy Gillespie

Friday, June 25th, 2010

"But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain."

This quote sums up the challenges the founders faced in pulling such disparate interests together for the common good. Each state presumably had laws in place that favored their particular state. From commerce to naturalization, the elected leaders of the states had crafted policy to benefit their parochial interests. Even though Madison makes very convincing arguments for the necessity of the powers claimed by the Congress, it must have been very difficult for the States to cede some of their authority, even for their collective long term gain.

It is indeed a miracle that the delegates were able to set aside their states' "impatient avidity for immediate and immoderate gain," and produce the United States Constitution!

"Impatient Avidity for immediate and immoderate gain," continues to be the stumbling block for many governmental reforms today, aggravated by our immediate gratification culture. If we want to read a book, we download it to our Kindle. If we want to watch a movie, we download it to our laptop or TV. We grab songs mid-air straight off the radio and pull them into our iPods! Hungry? Pop a meal into the microwave or drive through your favorite restaurant. Want to go somewhere? Hop on an airplane. Talk to someone? Call them on your cell or text them! If our computer is "slow," meaning a page takes a few extra seconds to load, our blood pressure rises.

Given this way of life, it is no surprise that we want quick fixes to the policy problems our country faces. We don't have the patience to work out the hard issues. Unlike our founding fathers, we have been unwilling to make short term sacrifices for long term gain.

Instead of doing the hard work necessary to reach a consensus in line with our country's founding principles, and that most Americans could accept, health care reform was hurriedly passed in a matter of months.

Most people agree a simpler income tax code such as a flat tax, or a national sales tax in place of an income tax, would be an improvement on our complicated system! Yet, those who benefit from the

complex code, or who currently pay no taxes, find it hard to support a reform that would cause them to personally sacrifice short term, but in the end bring more freedom and prosperity to all.

The same holds true for social security reform. Those currently receiving social security, or those who are about to receive it, do not want to give up their "immediate…..gain," to support a reform that could ensure long term security of our citizens.

Our energy policy poses a similar challenge. We know our dependence on foreign oil is a problem, and depending on our relations with the world, could put our country in a crisis situation. But what are we doing to address it?

Susan mentioned immigration policy as another example of a "hard issue," that our leaders have not had the tenacity to tackle.

These types of reform and legislative action take long term vision, and often cause some short term sacrifice. Our founders had the vision and fortitude to work through the tough problems and overcome "*the clamors of an impatient avidity for immediate and immoderate gain."*

Can our elected officials do the same? We The People must make our voice heard, and encourage them to pursue policy with a zeal for the overall good, in line with our founding principles, despite "*clamors of an impatient avidity for immediate and immoderate gain."*

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 42 | 4 Comments »

June 24, 2010 – Federalist Paper No. 42 – Janine Turner

Friday, June 25th, 2010

Howdy from Texas!!!
"But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies as well as individuals, by the clamours of an impatient avidity for immediate and immoderate gain."
– James Madison

The rising voice of the American people is mild, by this I mean reasonable, and it is being drowned out by a clamorous Congress and Administration seeking immediate gain. It is not unreasonable that the people want to be heard: Our forefathers had a great respect for the "Genius of the People." It is not unreasonable to want:
A solvent budget
An economy based on honest, free enterprise,
Borders that are secured,
States supporting each other,

States regaining adequate sovereignty,
Terrorism taken seriously,
Respect for our allies,
Health care that remains in the hands of the caregiver and not in the grips of the Government,
The respect and adherence for the Constitution and its principles,
A government that does not prohibit the religious freedom of the people.

We as citizens plead for a selflessness from our leaders that reflects the magnificence, sacrifice, vision, and love of country and country men that embodied our founding fathers.

Our liberty, our Republic, our sacred honor, relies upon it.
God Bless,
Janine Turner
June 24, 2010

Posted in Constitutional Essays by Janine, Federalist No. 42 | No Comments »

June 24, 2010 – Federalist No. 42 – The Powers Conferred by the Constitution Further Considered, From the New York Packet (Madison) – Guest Blogger: Horace Cooper, Legal Commentator and Director of the Institute for Liberty's Center for Law and Regulation

Thursday, June 24th, 2010

In Federalist #42, James Madison attempts to clarify the importance of national powers found in the Constitution that are essential to the successful operation of the government particularly in national and international affairs. Categorizing these powers as second and third class was a means of distinguishing them not to disparage them. Among them are: relations with foreign nations including the ability to make treaties, to send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; and to regulate foreign commerce as well as interstate commerce between the states among others.

It is noteworthy that among the "second class of powers" he refers to is specifically the power to regulate and ban the importation of slaves. Rather than hide or downplay this provision, Madison like many of the founders understood that while the acceptance of the institution of slavery was part of the compromise that allowed them to go forward with the Constitution, they made sure the public understood their anti-slavery sentiment and their plans to exercise the powers at the federal level. Madison reminds his readers that *"while it is to be wished, that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation"* within the space of 20 years "*It ought to be considered as a great point gained in favor of humanity …. within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; …..it will receive a considerable discouragement from the federal government, and may be totally abolished.."* As Madison predicted and although it is often unmentioned, Congress banned the importation of slaves in August of 1808 the same year that the Constitution gave them the authority to do so.

In any event, Madison explains that while several of the international powers existed within the Articles of Confederation, others did not. Treaty making and ambassadorial relations were among the powers of the first government. However, the Constitution made treaty making easier by requiring two-thirds of the Senate to ratify them and caused ratified treaties to be treated as the equivalent of federal law in terms of conflicts with state laws.

On the other hand, the Articles failed to adequately address the issue of defining and punishing piracies and other felonies committed on the "high seas." Madison explains that the Constitution is far superior in this regard because although tribunals were authorized under the Articles, the actual definition of the violations as well as the scope of activity covered was not provided for in the Articles. Madison feared that such a scenario could mean that one of the States could have a law defining an offense as piracy that the other states do not recognize. When a breach of this law occurs, Madison laments that such a situation could result in the other states being obligated to submit manpower and related resources to defend claims that they do not even recognize or embrace.

Since the regulation of international or foreign commerce had been addressed in other contexts, Madison passes on it here.

Among the third class of powers that Madison references are those involving "the harmony and proper intercourse among the States and these include: *"to regulate commerce among the several States and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; to establish a uniform rule of naturalization, and uniform laws of bankruptcy, to prescribe the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States; and to establish post offices and post roads."*

It is difficult to look at this list of authorities without seeing the merchant class sympathies of Madison and the founders. While it may seem incredible today to consider, Madison and Hamilton were not neutral on the question of whether the new government should be pro-business or not. Explicitly empowering the federal government to coin money, establish standards for weights, prevent counterfeiting, enact bankruptcy laws as well as create a federal mailing system and construct federal highways make much more sense if one understands the founders' sympathies for America being a mecca for entrepreneurship and related economic opportunity.

Madison makes clear that the power of interstate commerce was tied to international commerce and without interstate commerce power state and local governments would continue to have the authority to frustrate trade. *"A very material object of this power was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former. We may be assured by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquility."*

Madison recognizes commerce and business activity as crucial to the success of the American system. Madison makes clear that even in the context of Indian relations that commerce with the tribes was a key issue that warranted national government attention. *"What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible."* Madison argues that with this issue handed completely and explicitly to the federal government the nation would get the benefits without undue restraint interfering.

Next Madison turns to the question of rules of naturalization. Instead of the uniform system that we take for granted, Madison complained about the fact that each of the former colonies had adopted its own views for immigration policy which prevented the new government from deciding in a sophisticated way who it desired to become citizens and who it didn't. *"The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of the Confederation, it is declared "that the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall, in every other, enjoy all the privileges of trade and commerce," etc. ....* The result is that some states essentially had the ability to confer upon individuals rights that they could exercise all across the nation based solely on the happenstance of which area they entered.

Just as Madison argued that it was in our nation's interest to have a uniform immigration policy established by the Federal government one would imagine his displeasure at the failure of today's federal government to maintain control over its on rules with regard to immigration policy. Either because of complexity of compliance with immigration rules, a failure to construct adequate border barriers, limited personnel assigned to immigration enforcement etc, the federal government today is allowing a hodgepodge policy to form influenced more by where or how a person enters the United States instead of ascertaining in advance who should be allowed to enter.

Madison concludes the essay with a statement that reaffirms his view of the importance of business and commerce. *Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care.*

Horace Cooper is a legal commentator and is the Director of the Institute for Liberty's Center for Law and Regulation.

Archive for the 'Federalist No. 43' Category

June 25, 2010 – Federalist No. 43 – Cathy Gillespie

Friday, June 25th, 2010

The entry deadline for We The People 9.17 Contest is drawing near! The deadline of July 4 is only 9 days away. There is still time to enter, though, and we would love as many entries as possible!!

Most schools are now out for the summer, so please sit down with your child, grandchild, niece, nephew, or other children in your life, walk through the rules and guidelines on this link: http://constitutingamerica.org/downloads.php and encourage them to enter our contest!!

If you have high school kids, our contest is especially cool! The high school winners and a parent or guardian will be our guest for an exciting trip to Philadelphia on September 17, Constitution and Citizenship Day. Once in Philadelphia, the National Constitution Center has offered to show the winning short film and PSA in their theater, and use their theater as a venue for the winning song to be performed and the winning essay read. We have a press conference planned, and a possible appearance on a television show is in the works! High school students also receive $2,000 for the winning entry in each category: Short Film, PSA, Song and Essay. We are especially hopeful for more Short Film, PSA, and Song submissions, so encourage that teen in your life, grade 9-12 during the 2009-2010 Academic Year, to get their creative juices flowing, and get busy this weekend!!

Elementary and Middle School kids are part of the contest, too!! Middle School students may submit a song, or an essay and Elementary School kids submit a drawing, which will be used as the official greeting card for Constituting America, or a poem. Younger kids will receive gift cards and other cool prizes.

The winning entries will be showcased on a Behind the Scenes downloadable DVD that will highlight the first prize recipients, contain educational material about the U.S. Constitution, and interviews with the winners. We are making this DVD available on our website as a teaching tool for schools on September 17, Constitution and Citizenship Day, a day all educational institutions receiving federal funds are required to present educational programs about the U.S. Constitution.

We The People 9.17 challenges kids to think about how the Constitution is relevant to their lives today, and express themselves in new and innovative means. By creating their contest entry, they internalize a deeper interest in and awareness of our United States Constitution.

As for Federalist No. 43, I was amazed at the thoroughness of the founders in addressing some of the not so obvious, but important elements of a Republic. The laundry list of miscellaneous powers all contribute to "the safety and happiness of society."

One of the most important powers listed in Federalist 43 is that of amending the Constitution:

"That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

The existence of an amendment process for the Constitution shows that our founders knew it was not a perfect document. There is a process for changing it. And even the amendment process contains checks and balances!

The Constitution is not a living, breathing document that changes with the times, or at the whim of a judge, Congress, or the President. That does not mean it cannot be changed. There is a process that should be respected, and the difficulty of making a change causes us to respect the amendments. They are reminders of our struggle as humans, and as a country to continually strive to improve, and to correct our mistakes. If we find an amendment doesn't work, we have the freedom to repeal it, but even if repealed, the amendment will always be there, a reminder of what we tried.

Thank you to all who have blogged with us this week. A big thank you to Professor Knipprath for your thoughtful, well researched essays!

Don't forget to recruit some kids to the We The People 9.17 Contest! It's not too late!! Entries due July 4th.

Have a wonderful weekend,

Good Night and God Bless!

Cathy Gillespie

P.S. See you Monday, for Federalist Paper No. 44!!

Posted in Constitutional Essays by Cathy, Federalist No. 43 | No Comments »

June 25, 2010 – Federalist No. 43 – Janine Turner

Friday, June 25th, 2010

Howdy from Texas. I thank you for joining us today and I thank the amazing Professor Knipprath for his diligent and intelligent contributions as one of our regular and treasured scholars! Isn't it rewarding, this process of reading through the Federalist Papers?

I must admit that some nights, I am plowing through the night's reading with such fatigue that I discover that my eyes are crossing. And yet, I persevere with the indefatigable spirit of our forefathers because I am constantly challenged by their sacrifices and tenacity and their marvelous wisdom. This is what our "90 in 90" is providing, a window of wisdom.

As I start the nightly reading I, at times, wonder how I will get through the pages and yet by the time I am finished with the reading, I am always exhilarated by the revelations I have encountered and most especially by the relevancy to today's issues.

There are many aspects to tonight's paper that are worthy of notation. One paragraph in particular:

"promote the progress of science and useful arts, by securing for a limited time, to authors and inventors, the exclusive right to their writings and discoveries."

These words, freedoms and rights were the engine to the ingenuity and entrepreneurial genius in our country. Great minds were no longer restricted by the limits of ownership. The great ideas and industry of men were no longer chained by the denial of the fruits of their labor.

Men could now dream, fly and hope without being tethered. Free enterprise. The acknowledgment of hard work, tenacity and brilliance with the rewards that naturally align to such achievements are what led the likes of Thomas Edison to try again and again, at least a thousand times, until he successfully created the light bulb.

This is human nature, a psychology of the mind and soul, which our forefathers truly seemed to understand. Men will soar on eagle's wings when they are free to pursue life, liberty and happiness.

This is one of the greatest arguments against Socialism and Communism, an argument that has been proven by the disastrous accounts of history. To stifle the hope, the industry, by withholding the rewards, is to kill the drive, the spirit.

To see the success of such freedoms and ownership of accomplishments, one has to only look around and see the vast array of astonishing accomplishments in our country from trains, planes, telephones to the heart transplants of modern medicine. Human nature thrives on incentives. Human nature flies on Providential inspiration.

Yet, men are not angels. Hence the check and balances that were intrinsically woven into our Constitution and founding principles. The modern day, knee jerk reaction is to concur with the prevalent belief that the checks and balances were solely to govern the rise of greed and quest for power. This is one reason.

Another reason, it seems, was to govern the jealousies and quest to dominate. Domination dresses in many guises. One that is less obvious in today's culture, because citizens so quickly and conveniently forget the horrors of history, is an attempt to dominate through a permeation of the cultural thought: that the desire to succeed and flourish is unfair.

It is hard to get many balloons, filled with air, into confinement. It is easy to get many balloons under control when the air is out of the balloon. A flat spirit cannot rise. Why else would communism deny God, squelch creativity and punish free enterprise?

The trend of today is to teach our children that to succeed is bad. The trend of today forgets to teach our children their rights. Why else would the United States Constitution be touted as irrelevant and locked into trunks in dusty attics? Better yet, how many schools have copies of the United Stated Constitutions in their classrooms or libraries? How many households have a copy in their home?

"From each according to his ability, to each according to his need." Polls reflect that most American's today believe these words are in our Bill of Rights. They are the words of Karl Marx. Is it any surprise this is becoming the mantra of America?

It is because American's do not know. It is because America's children and college students are not required to read and study the United States Constitution.

Our saving grace will be the rise of our educated voices and the prevalence of our vote. Our saving grace begins with educating our nation's children. It starts with knowledge. It starts in the hearts of Americans. It starts in the home. Spread the word. Talk with your children.
Teach them the words of Emily Dickinson,

"We never know how high we are
Till we are called to rise;
And then, if we are true to plan,
Our statures touch the skies."

God Bless,

Janine Turner
June 25, 2010

Posted in Constitutional Essays by Janine, Federalist No. 43 | 9 Comments »

June 25, 2010 – Federalist No. 43 – The Same Subject Continued: The Powers Conferred by the Constitution Further Considered, for the Independent Journal (Madison) – Guest Blogger: Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Friday, June 25th, 2010

In Federalist 43, Madison continues his examination of Congress's enumerated constitutional powers, presenting a miscellany of provisions. Tucked away at the end of this rather lengthy essay, as if Publius half hopes the reader will be too fatigued to notice, is a matter of signal importance, the provision that only nine states' approval was necessary to establish the Constitution. Publius dismissed this matter as inconsequential in the extended discussion of the legitimacy of the Constitution in Federalist 40.

One problem for the Philadelphia Convention was that it ignored the requirement in the Articles that any amendment (and certainly a wholesale replacement) had to be by unanimous consent of the states. Madison could have justified the nine-state requirement by declaring that the Constitution was a new project entirely severed from the Articles, and that the old system was dissolved when the Framers met in convention. Dissolving the bonds and returning to a "state of nature" had been the basis for the revolutionary founding under the Declaration of Independence. If the states were once again in a state of nature towards each other, unbound from the prior rules, the approval of the nine states, binding them alone, was proper. Every state that wanted to join had to agree, thereby preserving the social contract fiction of individual and unanimous consent.

For solid reasons, Madison does not select that option. For one, to do so would implicitly endorse charges that the Convention was incompetent to act beyond its mandate because the Constitution would be "revolutionary." For another, in Federalist 40, Publius emphasized the *continuity* between the Articles and the Constitution. Likewise, Madison in the current essay describes the change as one merely of

political form of an existing civil society, not as the foundation of a new commonwealth. All require obeying the Articles' unanimity provision for constitutional change.

He is left, then, with intellectually more meager rationalizations. One of these is such strained legalism mixed with a splash of late-18th century American constitutional theory about the deficiency of the legislative amendment process under the Articles that he introduces the concoction with a self-conscious "Perhaps."

The other is one of unvarnished pragmatism, untethered to any constitutional support. He appeals to the "absolute necessity of the case" (Rhode Island, not having sent delegates, was unlikely to approve); the lesson of "our own experience" (Maryland's four-year long failure to adopt the Articles during the crucial period of the Revolution); "the great principle of self-preservation"; and the "safety and happiness of society…at which all political institutions aim, and to which all such institutions must be sacrificed" (the ends justify the means, just as in Federalist 40). The lesson here is that necessity creates its own legitimacy, and matters of extreme national interest and safety cannot be burdened by constitutional technicalities. In political theory this is the doctrine of "reason of state," something that executives long have understood.

A few brief points about some other provisions mentioned. Several involve the organic connection between the national and state governments. The sections regarding admission of new states and control over territory belonging to the United States were intended to give express authority to what the Confederation had done in regards to the western territories. They provide a constitutional basis for the acquisition and integration of the new lands that marked the westward expansion across the continent.

The guarantee to each state of a republican form of government assumes that each state will meet the minimum of avoiding monarchy or hereditary aristocracy. Beyond that, republics can take varied forms, and Publius pledges the federal government to avoid interfering with the states' choices among them. There are many who have argued that the Supreme Court's reapportionment decisions violate that pledge.

The protection against invasion commits the Union to a fundamental covenantal obligation. Though "invasion" usually suggests military force, it can mean any threat to the stability of the state from outside its borders, particularly an armed threat. Arizona, facing spill-over from the Mexican drug cartel violence, as well as a more general criminality from illegal entrants onto its territory, might plausibly argue that the federal government has breached that covenant and forced the state to act on "the great principle of self-preservation."

There are provisions related to the capacity of the national government to exist as a practical sovereign, such as the creation of a federal district as the seat of government. It is noteworthy that this section draws a clear distinction between "district" and "states." Recent statutory proposals to extend voting representation in Congress to the residents of the District of Columbia must founder on that distinction and on the Constitution's textual requirement that voting and representation (beyond the "municipal" government of the district) rests on residing in a "state." Perhaps a cession of most of D.C. (excepting the main government district) to Maryland would solve the problem.

Requiring approval of amendments by three-fourths of the states (and introduction by two-thirds of the states or of the members of each house of Congress) represents a confluence of experience and constitutional theory. Early state declarations of independence and constitutions, both of which altered the existing constitutional orders in those states, were commonly done by majority votes of the legislatures. Such practices reflected the constitutional theory inherited from Great Britain that the legislature virtually represented the general will of the commons expressed through the instruments of parliamentary sovereignty.

However, those practices conflicted with the developing American doctrine that constitutional changes were "explicit and authentic acts" of popular sovereignty superior to ordinary laws. Legislation was, after all, merely an act by the people's agents in a body created under a constitution. In that view, constitutions were not only descriptions of how things were run, but commands of how they must be run. Constitutions were law, created by the ultimate earthly lawmakers, the people. Since direct participation of the entire people was unrealistic, constitutions were to be proposed by special assemblies and approved by popular vote or a supermajority of representatives. The Constitution relies almost entirely on the supermajority vote principle.

The requirements for amendment were also recommended by experience. Legislative majorities are transient and, therefore, likely to lead to considerable instability and flux in constitutional structure. The experience with continuous constitutional agitation in the states during the 1770s and 1780s alarmed the Framers. At least equally alarming, however, was the hurdle presented by the unanimity requirement of the Articles. While its conformance to emerging American constitutional theory was pristine, it was a practical disaster by frustrating needed reformation. The Framers, being nothing if not practical in their project, sought to craft a method for amendment that was neither prone to instability by too frequent amendment nor to paralysis through too-stringent requirements. Debate continues about whether their solution has worked well, given the relative infrequency of formal amendment, or is too constraining and has resulted in giving the unelected courts too great a role in altering constitutional norms.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 44' Category

June 28, 2010 – Federalist No. 44 – Janine Turner

Tuesday, June 29th, 2010

Howdy from Texas. I thank Professor Knipprath for joining us today, and all of you who have joined us on our blog.

When Juliette and I were in Boston we ran into a semi- circle of statues surrounding the American flag. One of the statues was inscribed “Religion” and the statue was of a man praying as he looked up to the flag. The other statue was inscribed “Industry” and it was a man at work. The other statue was inscribed “Learning” and it was a young man reading a book.

These are the three virtues that keep America great.

1. Religion – a moral basis for our lives and a moral compass for our country
2. Industry – the great American work ethic, free enterprise
3. Learning – as John Adams said, “Liberty can not be preserved with out a general knowledge of the people.”

I say, “Liberty can not be sustained with out a general knowledge of the United States Constitution.”

Americans are grossly void of such knowledge, even with the “Cultural Elite.” Recently, a respected political analyst stated that the Constitution denied him and women the right to vote.

This statement represents the negative knee jerk reaction to the Constitution and why the “irrelevancy” aspect permeates our society. The rest of the panel piped in about the Amendments, saying that they are a part of the Constitution, to which this particular analyst commented that they should then be taught with the Constitution.

Well, the Amendments ARE the Constitution, the continuation of our Constitution. They tell the history of our country, warts and all, in an honest and forthright way. Why wouldn’t it be taught? The continuing pages of our Constitution mirror our country’s continuation. The amendment process was stipulated in the Constitution because our founding fathers knew the “genius of the people” would want to make changes. It is there for all of us to see – past, present and future generations – the growth of our country and thus the relevancy that the Constitution imbues.

The most ironic question begs, why would this political analyst assume that Cathy and I would want to start a foundation that stresses the learning of a Constitution that would deny African Americans the right to vote, deny women the right to vote? Not to mention, deny the Bill of Rights – the first ten amendments?

This is the great challenge that we Constitutionalists encounter today – the misinterpretation of the Constitution – the easy, convenient dismissal of the Constitution as antiquated – the mantra that it is a document that is to be tossed aside.

When we, as Americans toss aside our Constitution, we toss aside our individual liberties. Tread on the Constitution and we tread on our freedoms.
Disregard our roadmap and we lose our way.
Dishonor the principles and we lose our dignity.
Renounce its structure and we lose our footing.
Blight its flame and we die in the darkness of a people who knew not, sought not, her own country’s light.

The learning of our Constitution is the moral industry of our day.

Janine Turner
June 28, 2010

Posted in Constitutional Essays by Janine, Federalist No. 44 | 1 Comment »

June 28, 2010 – Federalist No. 44 – Cathy Gillespie

Monday, June 28th, 2010

In Federalist No. 44 Madison completes his list of and defense of powers delegated to the federal government. In this essay he discusses restrictions on the authority of the States in Article I, Section 10 of the Constitution. Most of these restrictions make sense, even today, such as the restriction on States entering into treaties, coining money, producing paper money, granting any title of nobility etc.

In Article 1, Section 10, States are also prohibited from passing bills of attainder and ex post facto laws. I wanted to know more about this, and did a little research in the **Heritage Guide to the Constitution** . On page 170 essayist David Forte writes, "The framers regarded bills of attainder and ex post facto laws as so offensive to liberty that they prohibited their use by both Congress (Article 1, Section 9, Clause 3) and the states." Essayist Daniel Troy points out "these are the only two individual liberties that the original Constitution protects from both state and federal intrusion."

It quickly came back to me that ex post facto laws are retroactive laws, punishing an act that was lawful when it took place.

I had to look up bill of attainder, though. Webster defines bill of attainder (also known as an **act** or **writ** of attainder) as "an act of legislature declaring a person or group of persons guilty of some crime and punishing them without benefit of a trial."

Madison states, "Bills of attainder, ex-post-facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation." David Forte, in the **Heritage Guide**, points out that some States had enacted these types of laws after the Revolution, and our founding fathers wanted to eliminate these tyrannical practices many had suffered under, under the crown.

It is interesting to note that the federal government's powers are specifically enumerated in the Constitution, while the States' powers are not enumerated. By listing only what the States are prohibited from doing, the groundwork is laid for what eventually became the 10th Amendment:

"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."

Madison spends a good deal of the second half of his essay defending the "necessary and proper clause." We last heard about the "necessary and proper," clause in Federalist No. 33**, The Same Subject Continued: Concerning the General Power of Taxation,** by Alexander Hamilton**.**

In both Federalist 33, and Federalist 44, Publius addresses what is to be done if the federal government oversteps its bounds, as many opponents of the necessary and proper clause feared**.**

Hamilton stated in Federalist No. 33:

"If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify."

And Madison in Federalist No. 44:

"If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution, and exercise powers not warranted by its true meaning……in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers."

A recurring theme of the Federalist Papers is that the responsibility to uphold the Constitution rests with the people.

To uphold the Constitution, we must first know it, and understand it.

I am grateful for all I am learning each day. Some days I learn from an enlightening quote that pops off the page. Other days, I delve deeper into a topic I don't quite understand or want to learn more about. Every day, I learn from all of your blog comments and through our wise and talented Guest Constitutional Scholar Bloggers. Thank you to Pofessor Knipprath for being one of our most frequent contributors! We love your essays!

Thank you for joining us on this journey, as we strive to continue learning, so we can live up to the phrase our founders bestowed upon our collective intellect, "the genius of the people."

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 44 | No Comments »

June 28, 2010 – Federalist No. 44 – Restrictions on the Authority of the Several States, From the New York Packet (Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, June 28th, 2010

Federalist 44 completes a series that examines specific grants of power to Congress. Madison identifies two classes of powers. One involves direct limits on the states; the other involves a direct grant to Congress and indirect limits on the states.

Among the first, Madison cites prohibitions—carried over from the Articles—against foreign policy by states, a practice that is inconsistent with even weak notions of union. A more significant innovation is the prohibition on the coinage of money and the use of paper currency (bills of credit). Such activities, he believes, can be carried out responsibly only by the national government, a conviction that, one trusts, would be shaken to its foundation were he alive today. His disquisition on the perils from profligate printing of paper money is illuminating:

"The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man; on the necessary confidence in the public councils; on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the states …."

Why he believes that the federal government would be less scandalously addicted to easy money policies than states such as Rhode Island is difficult to fathom, and he undertakes no explanation. Presumably, he places his faith in the contest of interest groups spread throughout the large republic, especially debtors versus creditors, that would limit the likelihood of an extended "rage for paper money" that he condemned in Federalist 10. If so, he misjudges the effect on spending from "log-rolling," "earmarks," and patronage fostered by special interest groups and guarded by entrenched Congressional barons. Even if these factions were unlikely to influence the federal government individually, they quickly learned to act in concert, a habit that the pragmatic Framers either were derelict in ignoring or believed might be controlled through constitutional structures.

His explanation for the prohibitions of bills of attainder (legislative decrees of criminal guilt against an individual or group that were routinely used against political opponents in 16th and 17th century England) and of *ex post facto* laws (laws that retroactively criminalize conduct), as well as of laws that impair the obligation of contracts, is instructive. The last clause arose from experience with the practice by states to cancel public and private debts (at first those owed to British subjects, but later also obligations owed to American creditors) and to meddle otherwise in vested contract rights. A contentious topic at the Convention, Madison justifies the "contracts clause" as needed to combat economic distortions and social disturbance caused by persons seeking government support for their economic schemes: "[The people] very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

However, if such interferences with vested contracts were to originate in federal law, they would still be invalid. Like bills of attainder and ex post facto laws, they are so fundamentally destructive of security in one's person and property, Madison writes, that they violate the "first principles of the [Lockean] social compact." This raises an interesting point, one eventually taken up by the judiciary. If a constitution does not expressly address the legislature's power to abridge a particular personal right, does that silence permit the legislature to limit that right? Or are there extra-constitutional limits on the discretion of the political majority, beyond those expressly enumerated in that constitution?

If appeal may be made to such extra-constitutional principles in *political debate* to prevent adoption of a law (which surely may be done), will such an appeal also lie in a *judicial proceeding* to declare the law unconstitutional once it is adopted (a much more dubious proposition)? If the answer to the last point is affirmative, exactly what principles may be considered, and how would the judge know? "First principles of the social contract" flows easily from the pen of the writer and the lips of the orator, but it is freighted with assumptions and epistemological uncertainties. Judges are chosen for their knowledge of the law, not their "wisdom" as political or moral philosophers, notwithstanding any contrary assertion by the occasional Supreme Court nominee.

Are same-sex marriage, polygamy, suicide, or abortion part of such "first principles"? We can be fairly certain of what Publius would have said. What about the right to pursue a calling or to run a business without a myriad of labor, environmental, and other regulations that dull initiative? The response of the Framers in 1780s republican mode (not in the then just-emerging "classic liberal" mode) might be surprisingly equivocating.

The second class of grants to Congress discussed in Federalist 44 includes the necessary and proper clause and the supremacy clause, topics already addressed by Hamilton in Federalist 33. The examination of the necessary and proper clause is a preview of the famous *McCulloch v. Maryland* case in 1819, considered by many the Supreme Court opinion with the greatest impact on American politics. The initial issue in *McCulloch* was Congress's power to charter the Second Bank of the United States, a controversy that had begun even during the Articles with the debate over Robert Morris's Bank of North America and persisted through the wrangling in George Washington's cabinet in 1791 over Hamilton's proposal for the First Bank of the United States.

Congress has no express power to charter corporations or banks. Echoing Publius, Chief Justice Marshall noted in *McCulloch* that every power to accomplish an end carries with it, by necessary implication, the power to adopt the means to achieve it. This is a fundamental principle of agency law, and Congress has been delegated certain tasks by the people. It is also an inherent aspect of government. But there is a flaw. The Constitution is not silent about those means.

Luther Martin, Maryland's wily attorney general in *McCulloch*, argued instead that the necessary and proper clause provides an express definition of the means to be employed, thereby negating any theory of implied powers. He then claimed that "necessary and proper" requires a showing of indispensability. Marshall disagreed, ruling that "necessary" meant "convenient" or "appropriate." His interpretation vastly expanded the constitutional discretion for Congressional action. In light of that ruling it is noteworthy that Madison describes the power conferred under that clause as "indispensably necessary" and equates this to those means that are "requisite," which the dictionary defines as "essential." One is left to speculate whether the role of the national government might be different today, had Martin's—and, apparently, Madison's—more restrictive definition prevailed..

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary

constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 45' Category

June 29, 2010 – Federalist No. 45 – Cathy Gillespie

Tuesday, June 29th, 2010

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." James Madison, Federalist No. 45

In Federalist 45, Publius once again assures us of the limited, but necessary nature of the federal government's powers. In previous essays Madison and Hamilton have assured readers that if, in the unlikely event, the federal government oversteps its bounds, the states will sound the alarm, and the people will rise up to defend the Constitution.

Of course, the picture painted by Madison of the few and defined powers of the federal government in Federalist 45 is radically different than our reality today. One is tempted to ask, how did these wise men get their prediction of the future so wrong?

Assuming the structure of government designed by our founders was sound and sufficient to preserve individual liberty, a more appropriate question might be, how did our country deviate from the roadmap they laid out for us?

The Constitution, as designed by our founding fathers, creates a system of government designed to preserve the peoples' individual liberty. Our liberty hangs in a delicate balance of power between the federal government and the states.

As with any delicate structure or piece of machinery, when you move a part that affects the balance, the structure begins to fall, or the machine ceases to function in the way in which it was intended.

One of the key points Madison makes in his assurance that the federal government will not encroach upon state governments is the provision in the Constitution that "The Senate will be elected absolutely and exclusively by the State legislatures….Thus, each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing towards them."

The 17th Amendment, which took the appointment of U.S. Senators out of the state legislatures' hands, and provided for the direct election of U.S. Senators by the people, fundamentally changed the structure of government the founders had designed. An important check on the federal government's power was removed.

The other factor Publius did not foresee was the phenomenon of federal funding offered to states with strings attached. As more burdens are placed on states by the federal government through unfunded federal mandates, the enticement of federal dollars with strings attached grows. When states accept this type of funding, the federal government's reach into the states' purview increases.

Federalist 45 reminds us of what our country could look like, had the checks and balances laid out by the founders not been slowly eroded. For many years, "We the people," have not been paying attention.

As we go forward, we should remember Hamilton's words in Federalist No. 33:

"If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify."

What a gift these words of Hamilton, Madison and John Jay are, patiently explaining the United States Constitution, and our founders' vision for our country! We cannot understand what we are losing, if we don't understand what we had.

We cannot know if the Constitution is "injured," if we do not know what is in the Constitution. Thank you Professor Knipprath, and all the blogger commenters, for augmenting our understanding!

As Janine likes to say, "Your vote is your voice." In these federalist papers we are finding our voice, and in November, our voice will be heard!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 45 | No Comments »

June 29, 2010 – Federalist Paper No. 45 – Janine Turner

Tuesday, June 29th, 2010

Howdy from Texas and wow, wasn't today's reading of Federalist Paper No. 45 a wild ride? If anyone ever suggests that the Federal government is not bigger than originally intended I will simply refer them to the following words of James Madison.

Federalist Paper No. 45.
"The powers delegated by the proposed constitution to the federal government, are few and defined. Those which are to remain in the state government, are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the state. The operations

of the federal government will be most extensive and important in the times of war and danger; those of the state governments in times of peace and security."

The above paragraph provides a mountain of evidence concerning the true intentions designated for the federal government.

Federal Government	State Government
1. Powers are few and defined	1. Powers are numerous and indefinite
2. Powers are exercised principally on external objects, as war, peace negotiation and FOREIGN commerce; power of taxation connected primarily only to these powers	2. Powers extend to lives, liberties, and properties of the people and the internal order, improvement and prosperity of the state.
3. Operations most extensive in times of war and danger	3. Operations most extensive in times of peace and security

The Federal powers of today are most certainly not few and defined. They overshadow and overwhelm the state governments with many unfunded mandates and manipulations. The Federal powers have spread their presence beyond war, danger and foreign commerce. Federal powers have muscled their way into every aspect of American's lives.

It is obvious that the true intention of regulation regarding commerce was for FOREIGN relations only. The modern day usage of the word "commerce" has been twisted into many renderings invading the states rights and rerouting the true intention of the federal governments original purpose, which was to manage and negotiate FOREIGN commerce.

The states' powers were to extend to the areas of life, liberties, properties, internal order, improvement and prosperities.

Today's Federal government has taken the sovereignties of the states and the individual rights of the citizens into their domain. The usurpation of state's powers are tangible. The cast was thrown and the states hooked with the bait of benefits. The tide of control rose and never abated. American citizen's let it happen as they were sunbathing, napping on the beach.

The American people, however, have now awakened, and have discovered that they have been burned by the noonday sun and are drowning in the tide of commerce. They have discovered that their liberties are hooked in the "commerce" of the government.

The balm for the burn lies in the checks and balances and true intentions of the United States Constitution. The life raft of liberty lies with the passion and the purpose, the learning and the voice of the "genius of the people."

We the People have independence bred into our blood. We have true grit written in the genetic code. We have the generational work ethic embedded in our family tree. We have the wisdom of our Providential faith that yields the prevailing power of our survival.

We, "the forgotten man," have not been forsaken. Our Constitutional forefathers blazed the trail. We will once again set upon the path of our Constitution, which will balance our checks. The road may be rocky and the path may be steep but obstacles have never stymied the American's spirit and it won't now. A new turning has begun.

God Bless,

Janine Turner

June 29, 2010

Posted in Constitutional Essays by Janine, Federalist No. 45 | No Comments »

June 29, 2010 – Federalist No. 45 – The Alleged Danger From the Powers of the Union to the State Governments Considered, For the Independent Journal (Madison) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Tuesday, June 29th, 2010

Having examined various powers granted to Congress, Madison in Federalist 45 invites the audience to step back from the particular tiles to gaze at the whole mosaic of the Constitution. But, is he presenting the creation from a proper angle? Or, is the Constitution modern art, where the meaning is created by the viewer? One certainly gets that sense reading some Supreme Court justices' opinions.

Madison's conclusion that even the mass of federal powers will not be dangerous to the authority left in the several states is astonishing from our vantage in the light of experience, but understandable from his. He discounts "the supposition, that the operation of the federal government will by degrees prove fatal to the state governments….I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last than of the first…." He grounds his judgment on four supports, loyalty from the people to the more local government; states as critical constituent parts of the national government but not the reverse; fewer federal bureaucrats than state officials; and the limited number and scope of federal powers.

As to the first, loyalty to local government may indeed be more natural. But such loyalty depends on personal relationships and bonds of community, a concept that has limits. In the 1790 census, the largest city, New York, had 33,000 inhabitants. There were only five cities with more than 10,000 inhabitants. Today, the average Congressional district has nearly 700,000 residents, almost the 1790 population of Virginia, by far the largest state then. Under classic republicanism, the size of political community is a key factor for its success. Aristotle postulated that the citizens "be of such a number that they know each other's personal qualities and thus can elect their officials and judge their fellows in a court of law sensibly." Plato fixed the ideal number of citizens at 5040 adult males, or about 30,000 to 50,000 residents if women, children, aliens, and slaves are included. Perhaps not coincidentally, the

Constitution fixed the initial size of Congressional districts at 30,000 residents, a number that Federalist 57 asserts would produce about five or six thousand voters.

When today's average state assembly district in California is larger than all but one of the states in the union in 1790, the notion of community with its interacting social, religious, economic, and political relationships has long since been stretched beyond reality. Basing loyalty to governments, local or national, on distinctions between current orders of representational magnitude is doomed to fail. They lie beyond the easy grasp of human comprehension. Everyone understands the difference between ten dollars and a thousand dollars. But the difference between ten billion and a trillion dollars is the difference between a lot and a lot more, too abstract to be meaningful, though the difference in each set between the larger and the smaller amount is of the same order of magnitude. Distinctions of loyalty to government on that scale become impossible, too, at least in the sense of the civic republicanism that Madison treasures. Loyalty becomes an abstraction, not a republican reality that affects our concrete actions.

Regarding the second point, the states indeed are critical components of the federal structure but not vice versa, just as he describes (excepting the election of Senators). But there is a great difference between the formal structure and the political reality. The Framers failed to anticipate the growth of modern political parties. Those parties have taken on much of the role Madison assigns to the states in influencing the selection of federal officials. Thus, the latter are far more independent of state officials than Madison asserts.

Conversely, it is true that the federal government has no direct formal role in the selection of local officials, though the Supreme Court's reapportionment decisions and U.S. Department of Justice supervision of local elections under the Voting Rights Act throw even that in doubt. As a matter of policy, however, state and local officials are increasingly dependent on federal officials and agencies. One need only recall, among many examples, the state officials deploying, hat in hand, to Washington for federal money to cover state budget deficits (caused in part by heavy federal taxation that dries up sources for state revenues); the aftermath of Hurricane Katrina where state and local officials waited, figuratively paralyzed, for federal rescue; and California state officials' generally unsuccessful pleading with members of Congress and federal agencies to divert enough water from protecting the habitat of the Delta Smelt bait fish to allow tens of thousands of farmers to make a living.

Not much need be said about Madison's point that the far lower number of federal officials than state or local officials would preserve greater influence for the latter. It is particularly unfortunate that he seeks to assure the reader by stating that for every federal tax collector in a district there would be thirty or forty state bureaucrats. Judged by the size of government budgets as a portion of Gross Domestic Product, it is true that the state and local governments take up nearly as much as does the national government. But all have metastasized, with state and local spending in the last century going from 5% to 20% of GDP, and federal outlays increasing by an order of magnitude from 2.5% to 25%. This looks more like the "multitude of New Offices" created, and the "swarms of Officers [sent] to harass our people and eat out their substance," about which Americans fulminated against King George in the Declaration of Independence.

Madison's final point about the respective functions of the different governments also has not turned out as envisioned. True, the federal government still attends to the matters he describes, and the states

control most ordinary matters that affect people's lives. The rub is in the ever more intrusive role the federal government is assuming in matters that also affect one's daily life. The health care reform debate, the news reports about the parlous fiscal state of numerous other social programs, and the parade of additional planned regulations, are too vivid and recent to require recounting in detail.

Madison is too serious a political thinker to be accused of flimflam. Though one has one's doubts about Hamilton, most Federalists likely believed genuinely that the opponents were unduly alarmist in their visions of an increasingly dominant national government. Regrettably, political history, especially during the last eighty years, has not placed the constitutional mosaic laid out in Federalist 45 in a flattering light.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Posted in Constitutional Scholar Essays, Federalist No. 45 | 21 Comments »

Archive for the 'Federalist No. 46' Category

June 30, 2010 – Federalist No. 46 – Cathy Gillespie

Thursday, July 1st, 2010

Federalist No. 46 – **The Influence of the State and Federal Governments Compared –** How is this relevant today?

Tomorrow, Virginia Attorney General Ken Cuccinelli will appear before U.S. District Court Judge Henry E. Hudson to argue against lawyers from the Obama Administration, who have filed a motion to dismiss Virginia's challenge to the recently passed healthcare bill.

Cuccinelli will argue that the provision that forces citizens to purchase health insurance by 2014 or pay a fine, is in violation of the Commerce Clause of the U.S. Constitution, because it compels citizens to engage in commerce.

Virginia recently passed a law stating that Virginians do not have to purchase health insurance. Florida has filed a lawsuit similar to Virginia's, and over 20 states have joined.

Cuccinelli is quoted in today's Richmond Times Dispatch as follows, ""The Commerce Clause [of the U.S. Constitution] does not give the federal government the power to order you to buy a product. We're fighting to protect liberty as best as we can."

The Richmond Times Dispatch article goes on to quote Governor McDonnell as saying that the healthcare legislation would cost Virginia an additional $1.5 billion in health care costs by 2022. One of the primary cost factors is the expansion of Medicaid.

As Madison predicted:

"On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter."

And:

"They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone, and that it will not depend merely on the comparative ambition or address of the different governments, whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other."

Throughout the Federalist Papers, the above themes surface again and again. The ultimate authority of the government derives from the people. If the federal government oversteps its bounds, the people will sound the alarm, and the states will rise to defend their rights.

For many years, and for various reasons the people and the states have let the federal government slowly encroach. But the people are awake, and are awakening the states. The alarm is sounding.

Tomorrow, Cuccinelli's court appearance is an important step in guiding our country back to the path of liberty, and back to the constitutional structure envisioned by our founding fathers.

AND Thank you to David Kopel! I LOVED the breakdown of how many state, federal, local employees there are, and how many military! Last night when I read Madison's statement in Federalist 45 that fewer people will be federal employees than state employees, I immediately began trying to find those numbers, and finally gave up, because it was so late. I was happy to read your essay this morning and see that you had them.

Thank you to all those who commented today, and thank you to our founder and co-chair Janine Turner for her great press appearances today on Laura Ingraham and Megyn Kelly! I believe it was Chris Wallace who said Janine is spreading the word like a modern day Paul Revere. I could not think of a better description. All of you who are participating in this blog, and in the Constituting America effort are great patriots, and our founding fathers would be proud.

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 46 | 1 Comment »

June 30, 2010 – Federalist Paper No. 46 – Janine Turner

Thursday, July 1st, 2010

Republic For Which It Stands

The states will sound the general alarm
And the people with sufficient storm
Will rally against all usurpation
That Federal forms against the norm

The genius of the people reign
And will forever be the mindful stance
Fervor will forsake the season
And be quieted by right circumstance

The Federal will know its place
And knowledge will be the armor
The people wear to venture forth
Reasoned passion is the banner

They know their rights, stand by law
The branches right all wrongs
With checks they witness righteous measures
And balance out the demigods

Hail the unity, Hail the purpose
Hail the mighty temperate pride
Raise the calling for all posterity
Deny not your inherent stride

Be the voice, be the vote
Continue your living legacy
Be the evergreen of scene
Ring true the blessed liberty

Janine Turner
June 30, 2010

Posted in Constitutional Essays by Janine, Federalist No. 46 | 1 Comment »

June 30, 2010 – Federalist No. 46 – The Influence of the State and Federal Governments Compared, From the New York Packet (Madison) – Guest Blogger: David B. Kopel, Research Director at the Independence Institute, and Adjunct Professor of Advanced Constitutional Law at Denver University, Sturm College of Law

Wednesday, June 30th, 2010

Federalist 46 continues Madison's arguments that the federal government could never dominate or obliterate the states. He sketches out possible scenarios of federal over-reaching, and explains why the states would prevail in every case. Addressing the worst-case scenario, Madison assures his readers that a tyrannical President with a powerful army could never impose his rule on America, because the entire American population possesses firearms.

Federalist 46 is important today because it is instructive about the right to keep and bear arms as the ultimate safeguard of civic freedom, and because of the growing trend of state resistance to the federal exercise power on intrastate activities, such as the use of medical marijuana, or other health care choices.

Madison begins by reminding readers of first principles. The federal and state governments are both servants of the same master—namely the people. Opponents of the Constitution act as if the federal and state governments were uncontrollable entities who would be at war with each other. To the contrary, both governments are mere agents of the people, who are the supreme controlling power. The people choose to use their federal and state agents for different purposes. So there is no reason to think that the people will allow their two agents to fight with each other, or to interfere with each other.

The people, who are the ultimate deciders, will be much more attached to the state governments, Madison predicts. For one thing, there will be many more state employees than federal employees. Not only the individual employees, but their family, friends, social networks, and so on, will therefore inevitably have more affection for their close-at-hand state employer than the distant, small federal government.

Madison's prediction is still true. Beginning with New Deal, the federal government began to grow enormously, but state and local governments also grew rapidly. As of 2008-2009, there were about 3.8 million state government employees, plus 11 million local government employees. This compares to 2.8 million federal civilian employees, plus approximately 1.5 million active duty U.S. military. So today, the number of state/local employees outnumbers federal employees by about 4:1. To the extent that employment promotes loyalty, Madison remains generally right that the states have the advantage.

Then there's practical experience. Madison reminds his readers that even when the Continental Congress was fighting the Revolutionary War, a task of supreme importance to everyone's freedom, people generally liked their state governments better. Except for a brief period early in the war, the national government was at "no time the idol of popular favor; and that opposition to proposed enlargements of its powers and importance was the side usually taken by the men who wished to build their political consequence on the prepossessions of their fellow-citizens."

But from Teddy Roosevelt to Barack Obama, many Presidents over the last century have worked assiduously to build an idolatrous cult of personality around themselves. Over the last century, some men—including Calvin Coolidge and Ronald Reagan–have led successful political careers by resisting proposed enlargements of federal power. But many more politicians have built careers by promising that the federal government will do ever-more in taking care of the American people as a de facto parent.

Given the advantages currently possessed the by state governments, Madison continues, the people would only transfer their loyalty to the federal government if the federal government were manifestly better and more capable. And if so, there's nothing wrong with the people giving their confidence where it is most due. Even then, the states would have little to fear, "because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered."

The nineteen-sixties were a time when Madison's prediction about a transfer of affections proved prescient. At the time, the federal government was indeed far more competent and vigorous, and far less corrupt, than many state governments. National trust in the federal government rose to levels never since achieved. One reason for post-sixties decline is that as the federal government has tried to do almost everything, it has become less competent at carrying out its core functions. As Madison knew, only with a certain sphere can federal power be advantageously administered.

Another power advantage of the states is that persons who are elected to serve in the federal government will still retain some disposition towards particular state and local interests. In contrast, hardly any state or local officials will have a bias to favor federal interests over state and local interests.

Absolutely true, to this very day.

Suppose one side or the other goes too far? Again, Madison writes, the advantage lies with the states. If a state is inclined to infringe on the federal sphere, the state actions would presumably be popular with the people of the state, and would immediately be carried into effect by the state government employees. The federal government would have no practical means to overcome the states, except by the use of force, which would always be viewed with reluctance.

Conversely, if the federal government goes too far, the state's people and government would refuse to cooperate, and could obstruct federal actions. If a large, resistant state were joined by its neighbors, it would be nearly impossible for the federal government to prevail.

This analysis proved accurate for a long time. Whether in a good cause (such as resisting federal implementation of the Fugitive Slave Act) or in a bad cause (resisting the Supreme Court's desegregation orders from *Brown v. Board of Education*), state governments with strong popular support have often been able to frustrate locally-unpopular exercises of federal power.

But one major change upset the Madisonian balance. In the 1936 case *United States v. Butler*, the Supreme Court said that Congress could use its spending powers for purposes that had nothing to do with the enumerated powers which had been granted to Congress (such as the power to raise armies, set up post offices, and so on). Accordingly, Congress quickly started doling out money to state governments.

The result was to make the state governments into de facto wards of their federal sugar daddy. Whenever Congress tugged the purse strings, the states danced.

So Southern state government resistance to school desegregation did not end because of a few instances in which the President sent in federal troops to enforce court orders. As Madison expected use of military force was still a last resort. Formal southern resistance ended when Congress's Civil Rights Act of 1964 cut off federal education money to segregated schools. A good result, although not all subsequent federal threats of withholding money would be for such benign purposes.

What about a worst-case scenario, in which a federal tyrant attempted to use the federal standing army to impose a national dictatorship? Madison derided the possibility, since the people would never consent to the long-term build-up of a powerful military establishment. Here, Madison was correct for about a century and a half. After the Civil War and World War I, the large federal military was quickly demobilized, and the standing army shrunk to a size appropriate for a mid-level European power, or less.

But the aftermath of World War II did not go as planned. The Soviet Union, rather than becoming a global partner in peace and stability, emerged as an aggressive superpower intent on taking over wherever possible, and seeking the ultimate destruction of the United States. In the resulting Cold War, the United States by necessity grew used to a large, permanent standing army.

Madison continued his hypothetical: the largest possible federal army could not constitute more than one percent of the total population. This is indeed the size of the current federal military, counting active duty plus reserves. But with conscription, the federal army could be much larger than that. In 1945, the U.S. military constituted 6% of the total population. (8 of 132 million.) Today, that would mean a military of about 18 million.

Against this federal army, Madison said, would be essentially the entire able-bodied male population, with their own guns, and organized into militias directed by the state governments. This huge force could never be conquered by the much smaller federal army:

To these [federal soldiers] would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops.

The crucial reason why America was free and Europe was not that Americans had guns *and* state governments. The combination of the two would be sufficient to demolish any national tyrant:

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone they would not be able to shake off their yokes. But were the people to possess the

additional advantages of local governments chosen by themselves, who could collect the national will and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it.

Fortunately, we have never had to see whether Madison was right that a federal tyrant with a standing army could be defeated by the people. We do know that in other places (e.g., Israel fighting for independence from Great Britain in 1946-47) armed popular forces have been able to drive out very strong armies. Of course the modern availability of nuclear weapons would give an American tyrant weapons which armed civilians could never defeat. But the use of nuclear weapons against Americans might well cause an outraged U.S. military to depose the tyrant itself.

In any case, we do know that Madison was right then and now about "the advantage of being armed, which the Americans possess over the people of almost every other nation." In the twentieth century, monsters such as Hitler, Stalin, Mao, and Pol Pot took advantage of victim disarmament in order to murder millions.

Federalist 46 also shows the error of the notion that James Madison, the author of the Second Amendment, imagined that any individual could decide that the federal government was tyrannical, and then resort to violence. To the contrary, Madison envisioned that, in the very unlikely event that forcible resistance were necessary, it would be led by the states. Federalist 46 is an important corrective to persons (including gun prohibitionists who like to conjure up extreme scenarios) who imagine that a strong interpretation of the Second Amendment must lead to the legal authorization of anti-government violence by stray individuals.

Madison has been proven correct in regarding mass national armed resistance to federal tyranny as a very unlikely possibility. He was also right in a much broader sense, in that the American system of federalism, which many powers retained by state governments, and the American gun culture, with its associated spirit of self-reliance and responsibility, have helped form the freedom-loving American national character which has prevented the federal government from degenerating into despotism.

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Archive for the 'Federalist No. 47' Category

July 1, 2010 – Federalist Paper No. 47 – Janine Turner

Friday, July 2nd, 2010

Howdy from Texas. I thank Professor Baker for joining us today and for his wonderful essay! I also thank all of you who are joining us for our "90 in 90 = 180 History Holds the Key to the Future," whether by reading or by blogging!

After reading Federalist Paper No. 47, I am awestruck by our Constitutional founding father's tenacity and brilliant attention to detail. It is truly obvious that they loved their country. It is truly obvious that they loved their fellow countrymen. It is truly obvious that they knew their history and political theory. It is truly obvious that they had a reverence for the Republican form of government. It is truly obvious that they respected the "genius of the people." (I just can't say "genius of the people" enough times!) It is truly obvious that they feared, condemned, and yearned to triumph over tyranny. It is truly obvious they wanted the triumph to be pervasive and permanent.

Tyranny. This is an ugliness and cruelty that we have never, thanks to our Constitution, which has proven to uphold our Republican principles, had to experience. Yet, it was fresh in the hearts, minds and souls of our founding fathers and it was fresh in the spirits of the people.

The checks and balances have served us well. Tyranny has
yet to rear its ugly head, though, at times, the Constitution has been tested and continues to be tested.

After reading, Federalist Paper No. 47, I am more aware of the definitions of both the words, "checks" and "balances," just as I am keenly becoming aware of the true meaning of "big government."

"Checks" is obvious. The different branches must keep each other separate and accountable. "Balance" has a new meaning to me, however. The different branches must have a fluidity amongst each other. The branches must flow into the trunk to gather their nourishment from their roots.

The roots are the people and the roots need the rain. They reach across the ground in search for their nourishment. The nourishment is the knowledge, the information. Without the knowledge and information the people have no power and knowledge is power. Here is the most impressive aspect of early America, the representatives were not afraid to give the people the information. There was an honesty and transparency coupled with an intelligence and integrity.

This would answer the question of why our modern day representatives withhold so much of information, including what is in the bill and how they vote. The information is hardly transparent. But have the people demanded it? It is time we do.

I am struck by the intensity, desire and fervor with which the revolutionary citizens participated in the process. I am awed by the respect the representatives gave the citizens. They wrote 85 essays explaining a 7 page Constitution.

What do we get today?

Checks and balances are the delicate framework of our governmental structure. Yet, constituents should check their representative's actions and balance the political process with the scales of participation and inquiries.

The republic stands on the balance beam of questions and answers for all.

God Bless,

Janine Turner
July 1, 2010

Posted in Federalist No. 47 | No Comments »

July 1, 2010 – Federalist No. 47 – Cathy Gillespie

Friday, July 2nd, 2010

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny."

Federalist 47 begins a fascinating discussion of separation of powers. Thank you to Dr. Baker for your insights on this essay!

"Separation of powers," and "checks and balances," are often used interchangeably, but as Dr. Baker pointed out, they are two distinct terms. If our government had merely separation of powers, without the checks and balances, we could fall prey to tyranny through the separate "silos" of government. There would be no impeachment process for a President who violated the law; there would be no Senate confirmation of Supreme Court or high level Administration appointments. There would be no Presidential veto of legislation passed by Congress. And there would be no rulings on the Constitutionality of legislation passed by Congress.

But "checks and balances," mean that powers cannot be totally separated. They are shared, and that is what creates the balance. The President shares legislative power with the Congress through his veto. The Congress shares executive branch power through their participation in the confirmation process and the impeachment process. The courts share legislative power in their ability to declare legislation brought to them for adjudication as unconstitutional. The states and federal government share responsibility for amending the Constitution through the amendment ratification process. And ultimately, the people are the final check on government, through their vote.

Our founding fathers put the greatest care and thought into designing a system of government that would best ensure our liberty. The structure of our government, under the United States Constitution, is designed to hold our liberty in a delicate balance. I picture our freedom suspended carefully, amidst an intricate structure, with interlocking parts, all dependent upon the other, yet with distinct columns and blocks representing the three branches of government, the federal government, and then the states. Changes to the structure cause our liberty to "shift," and ultimately, it begins to disappear.

As we have discussed earlier, the 17th Amendment was a major change to the structure of our government. Other changes have happened in less obvious ways, but have had no less an impact on our liberty.

We must understand the careful structure of our government, as set forth under the Constitution, or else we will not know when the separation of powers, and the checks and balances are being disturbed. If we

don't notice when one branch usurps the powers of another, we may not notice the ensuing disappearance of our freedoms, until it is too late.

The Federalist Papers left by our founders are like an owners guide to our Constitution. They explain the Constitution, how it is constructed, why it is constructed as it is, and the historical framework they utilized to make the decisions they did. What a blessing it is that our founding fathers can speak their words of wisdom to us today, through these great papers.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 47 | No Comments »

July 1, 2010 – Federalist Paper No. 47 – The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts, From the New York Packet (Madison) – Guest Blogger: John S. Baker, Dale E. Bennett Professor of Law at Louisiana State University

Thursday, July 1st, 2010

Although mentioned in previous essays, Publius formally began to address separation of powers in Federalist # 47. Together with ## 48 and 51, #47 explained the unique understanding of that principle as built into the Constitution. The Federalists and Anti-Federalists agreed that separation of powers was essential to liberty, but disagreed on what that required in a constitution. Unfortunately, over the last century, the term "separation of powers" has almost disappeared from the civic vocabulary in the United States and been replaced by the term "checks and balances," a term with an overlapping, but different meaning.

Federalist #47 affirmed the principle upon which the Federalists and Anti-Federalists agreed: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." Thus, the Founders did not believe that voting alone guaranteed liberty.

It must come as a surprise to many Americans to learn that the Federalists and Anti-Federalists emphasized separation of powers as an absolutely essential guarantee of liberty. For many — if not most – Americans, the protection of liberty is primarily accomplished through the Bill of Rights. The Federalist and Anti-Federalists agreed on the need for separation of powers, but not for a bill of rights. The Anti-Federalists criticized the proposed Constitution for a lack of a bill of rights, but the Federalists actually contended "that bills of rights, in the sense and to the extent they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous." Federalist #84.

Instead of mere "parchment barriers," i.e. paper protections, the Framers presented a "well constructed Union." Federalist ## 10 and 39 laid out the plan and purpose of the extended, (con)federal republic. Without separation of powers, however, that structure would have been insufficient to prevent the consolidation of power in the central government. Both parts of the structure came under attack as

contrary to fundamental principles of liberty. In #39, Publius admitted that if the plan of the Constitution actually did depart from the republican principle, it would be indefensible. He did likewise in #47, admitting that if the Constitution ”really [were] chargeable with this dangerous tendency to such an accumulation, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.”.

For separation of powers, as for the extended confederate republic, see Federalist # 9, Montesquieu was the authority appealed to by both Federalists and Anti-Federalists. As with the extended (con)federal republic, Publius explained in # 47 that the claim that the Constitution violates the principle of separation of powers is mistaken. Montesquieu relied on his understanding of the British Constitution to explain separation of powers. Publius correctly observed that in the British Constitution “the legislative, executive, and judiciary departments, are by no means totally separate and distinct from each other.” Indeed, the British Constitution actually involved a “checks and balances” system, rather than one of separation of powers as understood by both the Federalists and Anti-Federalists. That is to say, separation of powers as understood by Montesquieu and the Founders included a separate, co-equal judiciary. Under the British (unwritten) Constitution, the judiciary has never been a separate, co-equal branch of government. Rather, at the time of our Founding, the British government involved a traditional governing system in which the one (the king), the few (the House of Lords), and the many (the House of Commons) checked and balanced each other.

Publius concluded that Montesquieu “did not mean that these departments ought to have no *partial agency* or no *control* over the acts of each other.” (emphasis in the original) Rather, he said Montesquieu’s meaning “can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.” (emphasis in the original). He demonstrated the point by examining aspects of the British constitution, Montesquieu’s model.

Publius then considered the state constitutions. He noted “that, notwithstanding the emphatical, and some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct.” He addressed the constitutions of all but two of the states and quoted the “emphatical” language from a couple of them. While looking at the state constitutions in order to rebut the charge that the proposed Constitution violates separation of powers, Publius was not indicating that the state constitutions are an appropriate model for the new Constitution.

The last paragraph of #47 opened, stating “I wish not to be regarded as an advocate for the particular organizations of the several state governments.” Indeed, the Framers created a government radically different from that of the state constitutions. In part, the differences were due to the fact of the federal constitution being one of limited powers, while the state constitutions have more general powers. In addition, however, the form of separation of powers in the federal Constitution differed significantly from that of the states.

In distancing himself from the state constitutions, Publius attempted to avoid giving offense by first offering a modicum of praise and an excuse for their deficiencies. (“I am fully aware, that among the many excellent principles which they exemplify, they carry the strong marks of the haste, and still stronger of the inexperience, under which they were framed.). Nevertheless, Publius was clear that the

state constitutions provided for separation of powers "on paper," but not "in practice." ("It is but too obvious, that, in some instances, the fundamental principle under consideration, has been violated by too great a mixture, and even an actual consolidation of the different powers; and in no instance has a competent provision been made for maintaining in practice the separation delineated on paper.")

Professor John S. Baker is the Dale E. Bennett Professor of Law at Louisiana State University.

Archive for the 'Federalist No. 48' Category

July 5, 2010 – Federalist Papers No. 48 & 49 – Janine Turner

Monday, July 5th, 2010

WOW. It's REALLY getting good now isn't it? Howdy from hot Texas! I have a billions dog ears and stickies on Federalist Papers 48 & 49!

I want to thank Professor John S. Baker and Professor Colleen Sheehan for their insightful essays and I also want to thank all of our Professors and Scholars who have dedicated their time, talents and energies to inform and educate us about our United States Constitution and Federalist Papers. Each and every one of you are great Patriots!

In Federalist Paper No. 48 it was refreshing to have Thomas Jefferson enter the dialogue. Understanding our Constitutional Founding Father's vision and true intent of the Branches of Government is powerful. The separation of the branches of government coupled with the need for fluidity is a timeless lesson learned.

A prerequisite for all elected officials and civil servants should be to read, or reread, the United States Constitution and the Federalist Papers. I wonder, if a poll were to be taken today, how many of our elected officials and civil servants have read the Constitution and better yet, the Federalist Papers? Would that not be revealing? They swear to preserve, protect and defend the Constitution. Should they not understand it? It is TRULY represent the dismal state of our country that so few really read, understand and revere the United States Constitution.

We, as the informed voice of our country, shall make noise and make sure that our elected officials read these documents, yes? Our vote is our voice!

I love how James Madison describes the American people in Federalist Paper No. 49, "The people are the only legitimate fountain of power."

The entire paragraph in Federalist Paper No. 49, in its entirety, reads with equal revelation:

"As the people are the only legitimate fountain of power and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived; it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new model the powers of government; but also whenever any one of the departments may commit encroachments on the chartered authorities of the others."

Should Vice-President Biden reread these words and perhaps think again or at the very least, hold his tongue, when one of "the people" asks about lowering taxes? To respond to the owner of the custard shop that he, the owner, should not "be a smartass" is certainly not worthy of an American leader or representative of a respect for the people who are the "legitimate fountain of power."

What I find to be the absolute joy in reading and studying these papers is that my inner instincts as an American, my gut, are finding validity. Now my voice is rooted in the wisdom, facts and quotes of the United States Constitution and the Federalist Papers.

Before closing, I want to mention one other paragraph that rings in relevancy: Federalist Paper No. 48.

"A great number of laws had been cast violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature."

ISN'T THIS AMAZING? Please spread the words of these quotes from Federalist Paper No. 48, regarding the PUBLIC'S RIGHT TO READ THE BILLS and Federalist Paper No. 49 regarding THE PEOPLE ARE THE ONLY LEGITIMATE FOUNTAIN OF POWER.

Knowledge is to power what action is to results.

God Bless,

Janine Turner
July 5, 2010

Posted in Constitutional Essays by Janine, Federalist No. 48, Federalist No. 49 | 2 Comments »

July 2, 2010 – Federalist No. 48 – Cathy Gillespie

Saturday, July 3rd, 2010

It is essays such as Federalist 48 that validate Thomas Jefferson's famous quote about the Federalist Papers, *"the best commentary on the principles of government … ever written."*

The checks and balances of our government, so beautifully constructed by the founders, are based on this axiom from Federalist No. 48:

"It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it."

Our founding fathers knew that separating powers into three branches of government was not enough to ensure the liberty of the people. Without "checks," any one branch could become tyrannical.

It is ironic that the best way to accomplish separation of powers is to not completely separate the powers, but for the three branches to "share" some aspects of the powers, in order to wield checks on each other.

It is also ironic that the legislative branch, the branch closest to the people (at least the U.S. House), is also the branch most likely to overstep its bounds. The quotes in Federalist No. 48 about the legislative branch could easily have been written this year, as in 1878.

"The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."

"The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments."

"Where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; <u>it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions</u>."

"One hundred and seventy-three despots would surely be as oppressive as one."

Madison points out the many reasons why legislative branches are prone to usurpations of power:

1. "Legislative power is exercised by an assembly," …… with an intrepid confidence in its own strength."

2. There are enough members of the legislative body to "feel all the passions which actuate a multitude," yet few enough to actually act on those passions.

3. "Its constitutional powers being at once more extensive, and less susceptible of precise limits," allow it to mask with greater ease "under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." (The "Commerce Clause," and the "Necessary and Proper Clause," are perfect examples in our federal legislative branch of the "more extensive, and less susceptible of precise limits," of which Madison speaks)

4. The legislative department has the power to tax ("access to the pockets of the people").

5. The legislative branch has some influence over the wages of those who fill the federal government jobs ("pecuniary rewards"), and controls the budgets of the departments and agencies.

The founders knew the predisposition of the legislative body, and thus built in checks on legislative power. One of the most important checks they devised was the appointment of U.S. Senators by the State Legislatures. The removal of that "check" by the ratification of the 17th Amendment caused a

disturbance in the balance of power, and allowed the Congress to encroach past its enumerated powers further than the founders ever dreamed possible.

In a blog comment on Federalist 46 today, Andrew points out an important truth:

"A key point most posters missed and that was not really addressed in the essay is that it still was voters who have approved of the expansion of the federal government. Voters elected congressmen and presidents who supported the expansion of the federal government. Most are reelected, and there is rarely any movement to undo expansions because those expansions are popular with the majority."

Andrew is correct. "We The People" allowed the checks and balances to break down. It is "We The People," who are charged time and again with sounding the alarm and protecting the Constitution.

"If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify." Federalist No. 33 (Hamilton)

In order to protect the Constitution, and keep government in check, we must first know the Constitution and understand the principles upon which it was based.

Thank you all for a wonderful week of blog comments, and a big thank you to Professor Baker for his enlightening essay! Federalist 48 is one of my favorite papers yet.

Looking forward to Federalist 49!

Wishing you all a wonderful July 4 weekend as we celebrate the birth our country!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 48 | 2 Comments »

July 2, 2010 – Federalist No. 48 – These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other, From the New York Packet (Madison) – Guest Blogger: John S. Baker, Jr. the Dale E. Bennett Professor of Law at Louisiana State University

Friday, July 2nd, 2010

The states had strict separation of powers in theory, but a dangerous mixture of powers in practice. Taking the opposite approach, Publius undertook "to show, that unless these departments be so far connected and blended, as to give each a constitutional control over the others, the degree of separation which the maxim requires as essential to a free government, can never in practice be duly maintained." Theory guided writing of the Constitution; but the text itself is a practical — not a theoretical —

document. As Federalist #48 states, "After discriminating, therefore, in theory, the several classes of power, as they may be in their nature be legislative, executive, or judiciary; the next, and most difficult task, is to provided some practical security for each, against the invasion of the others."

The Constitution does not even mention the term "separation of powers." Rather, the constitutional text formally establishes separation of powers by setting out the powers of each branch in a separate article: Article I ("All legislative Powers herein granted shall be vested in a Congress"); Article II ("The executive Power shall be vested in a President"); and Article III ("The judicial Power of the United States, shall be vested in one supreme Court and such inferior Courts as Congress may from time to time ordain and establish."). Omitting the term "separation of powers," into which different persons — especially lawyers — might pour their own meanings, the Constitution instead implants into the text the elements of separation of powers necessary to make it operate in practice, e.g. the President's qualified veto power.

Rather than "the parchment barriers" on which the state constitutions "principally relied," the Framers consulted experience and concluded "that some more adequate defence is indispensably necessary for the more feeble, against the more powerful members of the government." In other words, because the three branches are not naturally equal, simply separating them will not protect the weaker branches.

Experience has shown that the legislative branch will dominate the other two. According to Publius, "The legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex." It may seem surprising to many Americans that the Framers considered the legislative branch to be the most dangerous. Such an attitude is nothing new because it was prevalent at the time of the Constitution's adoption. As Publius observed, "founders of our republics,,,,seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations."

Then and today, there are those who view the President as the greatest danger to liberty. "But in a representative republic," Publius writes, "the executive magistracy is carefully limited, both in the extent and duration of its power." Compared to Congress, the President may appear to be more powerful due to the unitary character of the Presidency. Later, in Federalist 70, 73, and 74, Publius explains the unitary executive as a protection of the liberty, particularly in time of war.

Publius tells us "where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude; yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; <u>it is against the enterprising ambition of this department, that the people ought to indulge all their jeolousy, and exhaust all their precaustions.</u>. (emphasis added).

If today the President seems to have more power than the Constitution, it can only be because the Congress has delegated that power and, in most instances, the Supreme Court has upheld those delegations. Since the 1930's, the three branches of the federal government have generally cooperated in building "the Administrative State," dominated by bureaucratic agencies. While apparently building the President's power, however, the Congress has 1) avoided accountability and 2) disguised in its *de facto*

influence over executive agencies. Driving this consolidation of power is an opposition to separation of powers.

The Administrative State incorporates certain "checks and balances," which as discussed in the last essay differs from separation of powers. Federalist #9, which refers to "legislative balances and checks," indicates that the term "checks and balances" has a different historical meaning. The Constitution's version of separation of powers does include a checking function of each branch on the other. Federalist 48 explains the concern to give checking powers to the weaker branches, i.e., the President and the Judiciary. The Administrative State has grown because the Supreme Court has approved legislation giving Congress additional checking powers against the President, thereby weakening the Executive Branch. Congress, for example, has created so-called "independent agencies," which are independent of the President's control, but under the *de facto* control of Congress's power over agency budgets.

Congress's enhancement of its own powers through the Administrative State confirms the observations in Federalist 48 about the deviousness of legislative bodies. "The legislative department derives a superiority in our governments [because] [i]ts constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." (emphasis added).

Publius's indictment of legislative bodies drew "on our own experience." The Virginia constitution, for example, required separation of powers; but as Jefferson wrote in his "Notes on the state of Virginia," quoted by Federalist 48, "*no barrier was provided between these several powers*." Publius approved Jefferson's remark that "An *elective despotism* was not the government we fought for."

Federalist 48 concluded "that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands."

John S. Baker, Jr. is the Dale E. Bennett Professor of Law at Louisiana State University.

Archive for the 'Federalist No. 49' Category

July 6, 2010 – Cathy Gillespie – Federalist No. 49 & 50

Tuesday, July 6th, 2010

Greetings from Mt. Vernon, Virginia where we are busily sorting, copying, downloading and uploading We The People 9.17 Contest entries for our judges! It is inspiring to see the hard work, creativity, and talent of young people across our Nation, all pondering and expressing "How the United States Constitution is Relevant Today!"

These young people give Janine and me hope, because they are the future "genius of the people," the "fountain of power," alluded to in Federalist No. 49. Every student who sat and thought about the U.S. Constitution in order to compose a song, write and direct a short film or PSA, write an essay or poem, or

draw an illustration, is a young person who is now more aware of our country's founding principles, and more knowledgeable about the U.S. Constitution.

Federalist No. 49 and No. 50 make arguments against engaging the people too often on the very serious task of amending the U.S. Constitution. In Federalist 49, Publius takes on the idea of calling a Constitutional Convention whenever one of the branches of government oversteps its bounds, and Federalist No. 50 argues against periodic, set and scheduled Constitutional Conventions.

It is argued in both papers that having the people too regularly and directly involved in changing the Constitution will cause passions to rule over reason. Although the arguments in Federalist 49 and 50 against an Amendment process that was too open and subject to the political whims of the day are fascinating, I find it even more fascinating to explore the founders' final result: Article V of the Constitution.

The amendment process that resulted, is, like the rest of the Constitution, a marvel of design in checks and balances between state and federal power:

Article. V.

"The Congress, whenever two ***thirds of both Houses*** *shall deem it necessary, shall propose Amendments to this Constitution, or****, on the Application of the Legislatures of two thirds of the several States****, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution,* ***when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;*** *Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."*

Either Congress (through a 2/3's vote in both Houses) or the States (through 2/3's of the State Legislatures calling for a convention) may initiate the Amendment Process.

To actually ratify the proposed Amendment, three-fourths of the States must approve, either through their State Legislatures, or by State Conventions, but it is interesting to note that the mode of ratification to be utilized is directed by Congress.

The beauty of the amendment process, as Madison described in Federalist 43 is:

"It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

In practice, what is our country's history of amending the Constitution? Has it worked out as well as Madison intended and predicted?

I found some fascinating answers in **The Heritage Guide to the Constitution**, pages 284-286 in an essay by Dr. Matthew Spalding and Trent England:

5,000 bills proposing to amend the Constitution have been introduced in Congress since 1789.

Of those 5,000 bills, only 33 amendments have been sent to the States for ratification.

The states have never succeeded in calling for a constitutional convention, although some of the attempts have gotten very close – within one or two states of the required 2/3's.

Those supporting the 17th Amendment got very close, and were lacking only one state in their constitutional convention effort when Congress proposed the 17th Amendment.

Currently, there are 27 Amendments to the Constitution, the last one passed in 1992. Interestingly, this Amendment, the Congressional Compensation Amendment, was first proposed by James Madison in 1789!

The amount of amendments proposed versus amendments ratified, and the most recent amendment, which essentially took 200 years to pass, are examples that our Founding Fathers designed a process that met their goal of a process that was "neither too mutable," nor fraught with "extreme difficulty."

The amendments to our United States Constitution read like a history of our country. Each one stands for a struggle, a herculean effort of the people to "form a more perfect union." Some took hundreds of years, others took less, but all were thoroughly considered and debated. And, interestingly, the longest amendment to the Constitution, textually, by my calculations, is the 14th Amendment, which at 434 words is shorter than most of these essays!

Looking forward to today's comments on Federalist No. 51, one of my favorite Federalist Papers!

Your Fellow Patriot,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 49, Federalist No. 50 | No Comments »

July 5, 2010 – Federalist Papers No. 48 & 49 – Janine Turner

Monday, July 5th, 2010

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What I find to be the absolute joy in reading and studying these papers is that my inner instincts as an American, my gut, are finding validity. Now my voice is rooted in the wisdom, facts and quotes of the United States Constitution and the Federalist Papers.

Before closing, I want to mention one other paragraph that rings in relevancy: Federalist Paper No. 48.

"A great number of laws had been cast violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature."

ISN'T THIS AMAZING? Please spread the words of these quotes from Federalist Paper No. 48, regarding the PUBLIC'S RIGHT TO READ THE BILLS and Federalist Paper No. 49 regarding THE PEOPLE ARE THE ONLY LEGITIMATE FOUNTAIN OF POWER.

Knowledge is to power what action is to results.

God Bless,

Janine Turner
July 5, 2010

Posted in Constitutional Essays by Janine, Federalist No. 48, Federalist No. 49 | 2 Comments »

July 5, 2010 – Federalist No. 49 – Method of Guarding Against the Encroachments of Any One Department of Government by Appealing to the People Through a Convention, From the New York Packet (Madison) – Guest Blogger: Colleen Sheehan, Professor of Political Science at Villanova University and Director of the Matthew J. Ryan Center for the Study of Free Institutions and the Public Good

Monday, July 5th, 2010

Federalist No. 49 – Guest Blogger: Dr. Colleen Sheehan, Villanova University

James Madison wrote *Federalist* 49 in part as a response to Thomas Jefferson's idea that a constitutional convention should be called whenever one of the departments of government oversteps its delegated constitutional authority.

Madison argued that this was a bad idea for five reasons: 1) the proposal doesn't cover the case in which two departments combine against a third 2) routinely involving the people in rewriting the Constitution would reduce the veneration the citizens have for their laws and government, thereby destabilizing the polity 3) frequent appeals to the people's fundamental authority would excite their passions and disturb public tranquility 4) if the usurpation of power was instigated by the legislative branch (which is the most likely scenario), it is probably these same men who would be elected by the people to the convention, since they are the public figures most familiar to the people – that is, they have the best name recognition and the most influence, which is how they got elected in the first place 5) if the people didn't choose their legislators to attend the convention – perhaps because the usurpation of power by some of them was so flagrant – the choice of convention delegates would nonetheless be conducted in a turbulent atmosphere of partisan politics.

In the last case, Madison argued, it would be "the *passions*, therefore, not the *reason*, of the public [that] would sit in judgment." But this is the exact opposite of how good popular government should work. According to Madison, in a well-constructed republic the passions of the public will be controlled and regulated by the government; in turn, the government will be controlled and regulated by the reason of the public.

It is important not to misconstrue Madison's argument against frequent appeals to the people in this essay. He opposed frequent appeals to the people in their most sovereign capacity – which is what constitutional conventions represent. His claim is that convening a convention to change the Constitution every time there is an abuse of power by politicians is not the best or even, generally, a smart solution. Given that Madison was already a seasoned political leader (albeit only 36 years old) and a realist about human nature, he knew that this would mean a lot of conventions! He also knew that

asking the people to reconsider and revise fundamental law on a chronic basis would agitate and destabilize public opinion, which is the very foundation of government and the effective rule of law.

It is important to note that Madison did not argue for a blanket rejection of an appeal to the fundamental authority of the people; indeed, he insisted that a path to constitutional change must be kept open to the people, to be tread on *extraordinary* occasions. This is of course the purpose of Article V of the U.S. Constitution, which establishes the constitutional amendment process. Moreover, his discussion of reverence for the laws should not be interpreted to mean that the people ought to venerate rather than vigilantly watch over their government. In fact, in *Federalist* 57 he will stress the importance of the vigilant spirit of the people in restraining government and safeguarding liberty. In the 49th essay, however, Madison is warning his fellow citizens that we should not be unrealistic about the sway of reason in politics. Since most people are not disinterested or dispassionate philosophers, he implies here what he teaches throughout *The Federalist*: the achievement of reasonable and just public decisions is going to take substantial time and the hard work of communication and public deliberation. Essentially, Madison is saying, let's be careful not to circumvent these speed bumps, which are constructed for our own safety. Let's not be impetuous and race headlong at a dangerous pace. Slow and steady wins the republican race.

Colleen Sheehan is Professor of Political Science at Villanova University and Director of the Matthew J. Ryan Center for the Study of Free Institutions and the Public Good.

Archive for the 'Federalist No. 50' Category

July 6, 2010 – Cathy Gillespie – Federalist No. 49 & 50

Tuesday, July 6th, 2010

Greetings from Mt. Vernon, Virginia where we are busily sorting, copying, downloading and uploading We The People 9.17 Contest entries for our judges! It is inspiring to see the hard work, creativity, and talent of young people across our Nation, all pondering and expressing "How the United States Constitution is Relevant Today!"

These young people give Janine and me hope, because they are the future "genius of the people," the "fountain of power," alluded to in Federalist No. 49. Every student who sat and thought about the U.S. Constitution in order to compose a song, write and direct a short film or PSA, write an essay or poem, or draw an illustration, is a young person who is now more aware of our country's founding principles, and more knowledgeable about the U.S. Constitution.

Federalist No. 49 and No. 50 make arguments against engaging the people too often on the very serious task of amending the U.S. Constitution. In Federalist 49, Publius takes on the idea of calling a Constitutional Convention whenever one of the branches of government oversteps its bounds, and Federalist No. 50 argues against periodic, set and scheduled Constitutional Conventions.

It is argued in both papers that having the people too regularly and directly involved in changing the Constitution will cause passions to rule over reason. Although the arguments in Federalist 49 and 50 against an Amendment process that was too open and subject to the political whims of the day are

fascinating, I find it even more fascinating to explore the founders' final result: Article V of the Constitution.

The amendment process that resulted, is, like the rest of the Constitution, a marvel of design in checks and balances between state and federal power:

Article. V.

"The Congress, whenever two ***thirds of both Houses*** *shall deem it necessary, shall propose Amendments to this Constitution, or****, on the Application of the Legislatures of two thirds of the several States****, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution,* ***when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;*** *Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."*

Either Congress (through a 2/3's vote in both Houses) or the States (through 2/3's of the State Legislatures calling for a convention) may initiate the Amendment Process.

To actually ratify the proposed Amendment, three-fourths of the States must approve, either through their State Legislatures, or by State Conventions, but it is interesting to note that the mode of ratification to be utilized is directed by Congress.

The beauty of the amendment process, as Madison described in Federalist 43 is:

"It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

In practice, what is our country's history of amending the Constitution? Has it worked out as well as Madison intended and predicted?

I found some fascinating answers in **The Heritage Guide to the Constitution**, pages 284-286 in an essay by Dr. Matthew Spalding and Trent England:

5,000 bills proposing to amend the Constitution have been introduced in Congress since 1789.

Of those 5,000 bills, only 33 amendments have been sent to the States for ratification.

The states have never succeeded in calling for a constitutional convention, although some of the attempts have gotten very close – within one or two states of the required 2/3's.

Those supporting the 17th Amendment got very close, and were lacking only one state in their constitutional convention effort when Congress proposed the 17th Amendment.

Currently, there are 27 Amendments to the Constitution, the last one passed in 1992. Interestingly, this Amendment, the Congressional Compensation Amendment, was first proposed by James Madison in 1789!

The amount of amendments proposed versus amendments ratified, and the most recent amendment, which essentially took 200 years to pass, are examples that our Founding Fathers designed a process that met their goal of a process that was "neither too mutable," nor fraught with "extreme difficulty."

The amendments to our United States Constitution read like a history of our country. Each one stands for a struggle, a herculean effort of the people to "form a more perfect union." Some took hundreds of years, others took less, but all were thoroughly considered and debated. And, interestingly, the longest amendment to the Constitution, textually, by my calculations, is the 14th Amendment, which at 434 words is shorter than most of these essays!

Looking forward to today's comments on Federalist No. 51, one of my favorite Federalist Papers!

Your Fellow Patriot,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 49, Federalist No. 50 | No Comments »

July 6, 2010 – Federalist Paper No. 50 – Janine Turner

Tuesday, July 6th, 2010

Howdy from Texas. Cathy and I are so excited that we have had so many contest entries! I thank all of you who have actively participated in spreading the word about our We the People 9.17 Contest.

I encourage all of you to spread the word about our necessity as citizens to know the United States Constitution and our rights!

I do it throughout the day, with these essays but also I take advantage of every moment to share my enthusiasm. Yesterday, I was quizzing the guys at Starbucks about the Constitution and the Bill of Rights. It was amazing to watch their wheels turn as they tried to remember. They were clear on a few things. I promptly gave them my RAPPS acronym about the First Amendment: Freedom: of Religion, to Assemble, to Petition, of Press and of Speech! I pulled out my Constitution App on my phone and we continued to talk about other aspects of the Constitution.

At my nephews 18th birthday party last night, I asked the young 17 year old next to me if he knew about the United States Constitution. He seemed a bit dazed and confused. I handed him a business card with our website and told him that he was the future of the country and he was going to HAVE to know his rights!!! ☺

So see, all day long we can plant the seeds. Someday, a few years from now, that young man will remember the "crazy, Constitution lady" and will reflect, when his rights are impeded and his country is broke, "oh, so, THIS is what she was talking about!"

We MUST educate our children. They are the future "genius of the people" and they must have the knowledge of our country's foundation and thesis in order to take action.

As John Adam's said, "Liberty cannot be preserved without a general knowledge of the people."

I say, "Knowledge is to power what action is to results."

So today's reading was fascinating, as always.

In Federalist Paper No. 50, James Madison talks about how reason was, "distracted by the rage of the party."

This is certainly relevant to today. Our representatives lack the cool, calm, pacific stage of reason that reaps crucial objectivity; an objectivity that holds within its breast the future of our country and the future of our children's lives.

However, at times, the salt and pepper of parties is a necessary seasoning.

In Federalist Paper No. 50, James Madison says, "an extinction of parties necessarily implies either a universal alarm for the public safety, or an absolute extinction of liberty."

If there is no diversity of thought then that means the singular thought is under the persuasive power of tyranny.

James Madison thus concludes that diversity of party is a necessity, though passions should be unified in purpose for a continual, everlasting respect for the Constitutional constructs and for the governing of the people and preservation of liberty.

Being a realist, however, he recognized that passions of men die-hard. Thus, the men of Congress, who are intrinsically involved in the process, the predicament, may not be the best to resolve the situation regarding the Constitutional violation assessment or the Constitutional amendment process.

He then calls on outsiders who are educated on the constructs and crisis at hand and thus better able to serve the cause because they are removed from the passions of the legislature. Hence, a convention of the people may at times be the answer such as the Constitutional Convention of 1787 which was made up of men who were not all necessarily at the time employed by Congress.

This leads us back to James Madison's words in Federalist No. 49, "The people are the only legitimate fountain of power."

It is dangerous to think about calling a Constitutional Convention because of the dangerous route it may take. An honest assessment may turn into to a stranglehold by attorneys, and men of disrepute, who

could swerve the Convention away from its original intent. Yet, it is empowering to know that the option is available.

Knowledge is to power what action is to results.

God bless,

Janine Turner
July 6, 2010

Posted in Constitutional Essays by Janine, Federalist No. 50 | 1 Comment »

July 6, 2010 – Federalist No. 50 – The Same Subject Continued: The Total Number of the House of Representatives (Madison or Hamilton) – Guest Blogger: Brion McClanahan, Ph.D., author of The Politically Incorrect Guide to the Founding Fathers

Tuesday, July 6th, 2010

The authorship of Federalist No. 50 is disputed. Whether it was James Madison or Alexander Hamilton, the author's arguments have ramifications for our current political problems and, in many ways, exemplify the nature of the federal government under the Constitution. Federalist No. 50 opens with the following premise: "IT MAY be contended, perhaps, that instead of OCCASIONAL appeals to the people, which are liable to the objections urged against them, PERIODICAL appeals are the proper and adequate means of PREVENTING AND CORRECTING INFRACTIONS OF THE CONSTITUTION." The key to the opening is the last capitalized phrase. The author then proceeds to discuss how conventions called for the purpose of "correcting infractions of the constitution" would be neither productive nor "adequate" to remedy unconstitutional abuse of power by any branch of government.

The author used the State of Pennsylvania as an example to prove his premise. Pennsylvania had a Council of Censors in the 1780s that was charged with the task of determining if the State constitution had been violated and if the executive or legislative body was at fault. But most of the men who held a seat on the Council also served in either the executive or legislative branch and they often split into "two fixed and violent parties." Their conclusions were often clouded by passion and their decisions ignored by the State government. The author concludes, "This censorial body, therefore, proves at the same time, by its researches, the existence of the disease, and by its example, the inefficacy of the remedy." States would always divide into groups, and even if the State tried to remedy the problem by appointing men who had not been connected with the constitutional issue at hand, the author argues that, "The important task would probably devolve on men, who, with inferior capacities, would in other respects be little better qualified. Although they might not have been personally concerned in the administration, and therefore not immediately agents in the measures to be examined, they would probably have been involved in the parties connected with these measures, and have been elected under their auspices."

The author, of course, implied that an outside "referee" would be no better to check unconstitutional abuses of government than the "checks and balances" contained within the Constitution itself. The Senate is a check on the executive; the executive is a check on the congress, and the Supreme Court a

check on both. But the author failed to consider one of the principle arguments against the Constitution and the checks and balances system: what or who will check federal power if they have a monopoly on the "checks and balances" system? That was the heart of the anti-federalist critique of the federal judiciary, for example. Certainly, Federalist No. 50 was cogent and persuasive, and the amendment process was always showcased as a fail-proof method of altering the Constitution, but the anti-federalists had much to say on the subject.

One of the best arguments against Federalist No. 50 appeared almost four months earlier in the *Philadelphia Independent Gazetteer*. The author, An Old Whig, contended that the amendment process as written would never produce beneficial changes to the Constitution. He called the procedures for amending the Constitution a "labyrinth," and thought that before the process was over, "ages will revolve, and perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten. If the principles of liberty are not firmly fixed and established in the present constitution, in vain may we hope for retrieving them hereafter. People once possessed of power are always loathe to part with it; and we shall never find two thirds of a Congress voting or proposing any thing which shall derogate from their own authority and importance, or agreeing to give back to the people any part of those privileges which they have once parted with…." Perhaps the Old Whig was correct. Only seventeen amendments have been added to the Constitution since the Bill of Rights were ratified in 1791, and in reality only two, the 11th and the 22nd, limited the power of the central government. Others such as the 14th, 16th, and 17th, increased it exponentially.

Interestingly, if Madison was the author of Federalist No. 50, he reversed his position on the issue of an external "referee" less than ten years after the Constitution was ratified. Both he and Thomas Jefferson argued in the Virginia and Kentucky Resolutions of 1798 and 1799 that the States could interpose their sovereignty or "nullify" an unconstitutional federal law. The question was not which branch of government was a fault—both the executive and legislative branch would be culpable under this scenario because congress passed the law and the president signed it—but whether the "checks and balances" system actually worked. The people of the States, the very people Federalist No. 50 impugned as inferior, would thus rule on federal authority. If the president and the congress in concert can ignore the Constitution—national healthcare, the federal stimulus, the nationalization of the auto industry—and if the federal judiciary is, as it often has been, a rubber stamp for federal legislation, how can it be reasonably argued today that checks and balances work? The anti-federalists warned against such logic, and Jefferson and Madison provided the tonic, Federalist No. 50 notwithstanding.

Brion McClanahan, Ph.D., is the author of *The Politically Incorrect Guide to the Founding Fathers*. He currently teaches History at Chattahoochee Valley Community College in Phenix City, AL.

Archive for the 'Federalist No. 51' Category

June 7, 2010 – Federalist No. 51 – Cathy Gillespie

Thursday, July 8th, 2010

Federalist 51 – what a quotable paper! We have been busy on Facebook today (http://www.facebook.com/constitutingamerica), rolling out many of the famous and insightful lines!

Thank you to Professor Baker for your wonderful essay, and for itemizing some of the well known quotes from this paper!

The biggest challenge we face today is our government "controlling itself." As Publius points out:

"In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

Publius is quick to knowledge, in this paper and in many others, that the greatest control on government is the people:

"A dependence on the people is, no doubt, the primary control on the government."

Yet, the founders brilliantly erected a governmental structure designed to control itself, as well. One of the most important controls is the federal structure, with power divided between the states and national government. But power is also divided within the national government, between the three branches, and going even further, the founders gave each of the branches "tools" to "check" the other.

Despite this well conceived structure, our government is not controlling itself today. The national government has encroached upon areas far past its enumerated powers, and into the purview of states, and individual rights. As we have journeyed through these federalist papers, we have often asked, "what went wrong?" How could our founding fathers design a system based so carefully upon history, proven successes, with improvements on historical flaws,that could not protect us from an overreaching federal government.

We have come up with many answers:

*state budget shortfalls (in part a result of unfunded federal mandates) that necessitate federal dollars (with strings attached)

*the addition of the 17th and 16th amendments

*an aggressive Supreme Court that interprets the Constitution as a "living" document

*a Congress that does not always respect Constitutional limits on federal powers

The most important reason, though, may be that the "primary control" on government, "the people," have failed to pay attention, and to embrace their role.

Without the energy of the people, the structural system can only go so far to set limits on government.

It is now up to the "we the people," "the primary control on the government," to bring our system back into balance. When "the people" work in concert with the structure our founders designed, we will once again start to glimpse the America our founding fathers envisioned.

And how do the people control the government? First, by knowledge, and then, As Janine wrote in a recent Fox News Op-Ed: "Your Vote is Your Voice."
http://www.foxnews.com/opinion/2010/04/30/janine-turner-supreme-court-justice-constitution-elections-elected/

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 51 | No Comments »

July 7, 2010 – Federalist Paper No. 51 – Janine Turner

Thursday, July 8th, 2010

Howdy from Texas. Here we are at Federalist Paper No. 51! I want to thank Professor John S. Baker for his wonderful essay and gracious time. I also thank all of you who are blogging with us. Isn't the conversation stimulating? Isn't it wonderful to have this forum to discuss and interpret the United States Constitution and the Federalist Papers?

I am very intrigued with Federalist Paper No. 51. I feel as if I need to read it again and again. It is filled with perpetually profound paragraphs.

As I read through these papers, many of Publius' explanations are starting to gel in my mind. One is the importance of faction and the meaning of James Madison's words, "Liberty is to faction what air is to fire." Faction not only exists between states but it is essential that faction exist within the government. As Professor Baker stated, so often we hear that we should have harmony in our congress, yet total and complete accordance represents a tyranny and a monopoly, a trumping so to speak, of the diversity of voices in America.

In Federalist Paper No. 51 James Madison states:
"In framing a government that is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

Faction is a function of this control.

Another intriguing point of James Madison's is:
"In a free government, the security for civil rights must be the same for that of religious rights. It consists in one case in the multiplicity of interests, and in the other in the multiplicity of sects."

Security for civil rights and religious rights represent free government. I wonder how James Madison would view our religious rights in America today?

However, the most stunning, revealing and relevant statement of Federalist No. 51 is the following:

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be, pursued until it be obtained, or until liberty be lost in the pursuit."

We, as citizens, as humans, as spiritual beings must be allowed to seek, succeed, stumble and rise again. It is only through the hard times that we truly learn and grow. I teach my daughter that failure is an essential element of life. She must not fear it. She can only succeed if she can run the risk of failing. True genius requires true grit.
If we take away the freedom to rise and fall, then we take away our primary principle of liberty.

Liberty will be lost in the pursuit of the great cultural equalizer.

Spoon feeding justice to all Americans will not only sap the soul, it will sap our economy which will lead to a decline of industry, a debilitating debt which will jeopardize our freedoms.

Capitalism must be allowed to succeed, fail and rise again.
These are the great ingredients of success: ambition, hunger, drive, competition. This is human nature. Defy human nature and the riddle will unravel.

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be, pursued until it be obtained, or until liberty be lost in the pursuit."

Wise, prophetic words that need to be heard now. As John Adams said, "Liberty cannot be preserved without a general knowledge of the people."

History holds the key to the future.

God Bless,

Janine Turner
July 7, 2010

Posted in Constitutional Essays by Janine, Federalist No. 51 | 1 Comment »

July 7, 2010 – Federalist No. 51 – The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments, From the New York Packet (Hamilton or Madison) – Guest Blogger: Professor John S. Baker, Dale E. Bennett Professor of Law at Louisiana State University

Wednesday, July 7th, 2010

Federalist #51 is the most important of the essays in The Federalist, after #10. It completes the discussion of the general structure of the Constitution before Publius turns to a consideration of its particular elements. It ties together the main points of the previous essays.

Federalist #47 and #48 outlines the challenge of keeping the departments of government within their proper bounds; then Federalist #49 and #50 considers and rejects the suggestion of occasional or regular

appeals to the people for that purpose. Federalist #51, therefore, begins with the question: "To what expedient then shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution?"

Importantly, the answer is NOT a bill of rights! Rather, Publius writes, "[t]he **only** answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied by so contriving the interior structure of government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places." (emphasis added).

As elsewhere, the analysis of the problem and the solution rest on an understanding of human nature. Each department must have a "will of its own," which requires having "the means and personal motives" to defend its powers. Why the emphasis on power rather than "the common good." Isn't this just a cynical approach to government? Publius explains that enlisting private interests to protect the public good is the only method actually of achieving the end of government, which is justice.

The "preservation of liberty" requires "that each department should have a will of its own and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others." Rigorous adherence to this principle "would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same found of authority, the people, <u>through channels having no communication with one another.</u>" (emphasis added). The federal judiciary, in particular, does not meet this test. Publius says this deviation is justified because the mode of choosing judges ought to be the one best designed to produce the peculiar qualifications required of judges. He also presciently observes, as so many later presidents have learned to their dismay, that lifetime appointments for judges "must soon destroy all sense of dependence on the authority [i.,e., the President] conferring them."

This passage reminds us that a republic, as defined in Federalist #39, "derives all its powers directly or indirectly from the great body of the people." The judiciary, along with the President and the Senate (prior to the 17th Amendment's substitution of popular election for election by state legislatures), draws its powers "indirectly" from the people because judges are nominated by the President and confirmed by the Senate. The judiciary and the President — who is actually elected not by the people, but by the Electoral College — are both somewhat removed from the people and in need of protection from the legislative branch. Thus, if as to their salaries they were "not independent of the legislature in this particular, their independence in every other, would be merely nominal."

What follows are some of the most insightful and widely quoted observations about the relationship between human nature and government. With so much packed into one paragraph, each thought deserves to be separated out for separate consideration.

ν "the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others.:

ν "The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack."

ν "Ambition must be made to counteract ambition."

ν "The interest of the man, must be connected with the constitutional rights of the place."

ν "It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?"

ν "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."

ν "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

The notion that, at its core, the Constitution is a structure to control the self-interested tendencies of both the people and those in government may be a new idea for many Americans. To those who think that the citizenry and government require no restraint other than popular elections, Publius responds that "experience has taught mankind the necessity of auxiliary precautions." The Constitution reflects the "policy of supplying, by opposite and rival interests, the defect of better motives."

Federalist #51 then reiterates and extends the argument of Federalist #47 and #48 concerning legislative dominance and the practical implementation of separation of powers. Besides strengthening the weaker branches, Federalist #51 makes clear the need to weaken the legislative branch. "The remedy for this inconveniency is, to divide the legislature into different branches; and to render them, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit." That explains the phenomenon that even when the same party controls both houses of Congress, the two bodies nevertheless do not cooperate very well.

It is often said in the media that the American people want the branches of the Federal government to work together. The Constitution, however, guarantees conflict among the branches and between the federal and state governments in order to protect the liberty of the people. Federalist #51 emphasizes the Constitution's "double security" of separation of powers and federalism.

In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself. Federalist #51 then ties the constitutional structure back to the fundamental argument of Federalist #10. For it is necessary "not only to guard the society against the oppression of its rulers; but to guard the one part of society against the injustice of the other part." The way to avoid the "oppressions of factious majorities" is a federal system which encourages the multiplication of factions. As a result, in the United States, "a coalition of a majority of the whole society could seldom take place upon any other principles, than those of justice and the general good." Thus, change is intended to be difficult as demonstrated by the fact that legislation cannot pass simply on the basis of "the majority" in Congress. A vote in the House of

Representatives reflects one majority and a vote in the Senate represents a different majority. So, too, the President, who represents yet another majority, has the opportunity to sign or veto legislation.

The original Constitution operates on the basis of producing a legislative consensus through conflict and compromise. This reflects the Framers' view that structured conflict among the departments of government, rather than simple majorities, is more likely to produce a just consensus protective of minority interests. In such a system, there must be less pretext also, to provide for the security of the [the minor party], by introducing into the government a will not dependent on the [majority]; or, in other words, a will independent of the society itself." (emphasis added).

This structure of "double-security" has been changed in important ways. The initial addition of the Bill of Rights did not actually change the structure, as Madison explained it would not do so when he introduced the amendments for adoption by the first Congress. The Bill of Rights applied to the federal government, not to the states. The post-Civil War amendments did immediately change federalism by abolishing slavery and imposing important and just limits on the states. Nevertheless, federalism remained largely in tact as long as states continued to have a direct voice within the federal government by virtue of the election of U.S. senators by their state legislatures. See Federalist #62. The Seventeenth Amendment, however, changed that by requiring popular election of senators. Not that long thereafter, the Supreme Court became much more deferential to Congress and less so to the states.

One of the effects of the Senate no longer representing the residual sovereignty of the states, see Federalist #62, has been that the Court has had a relatively free hand – and indeed encouragement from some in Congress – to erode federalism. While there have been struggles among its members over federalism, the Court certainly has affected federalism through the manner in which, through the Fourteenth Amendment, it has applied the Bill of Rights to the states. In the course of doing so, the Supreme Court has arguably become "a will independent of the society itself" as it tends to prefer the minor party as against the states. As a result of these constitutional amendments and judicial interpretations, the states no longer offer much security against the federal government.

For Publius, "the enlargement of the orbit" through federalism (see Federalist #9 and #10) made republicanism possible. The Anti-Federalists, on the contrary, argued that such a large country was incompatible with a self-governing republic and would grow into imperialism. Despite "contrary opinions," Publius concluded "that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government." As Publius predicted, self-government has flourished in the United States because "happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the *federal principle.*" Publius's prediction, however, became a reality because predicated on the premise of the double-security of separation of powers and federalism.

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Archive for the 'Federalist No. 52' Category

July 8, 2010 – Federalist Paper No. 52 – Janine Turner

Friday, July 9th, 2010

Howdy from the air! I am traveling to Boston for an historic event! For those of you who watch our videos and read these essays, you know that Juliette and I traveled to Boston in June. We visited the birthplace and homes of my favorite forefather and foremother, John and Abigail Adams!

We visited the burial place that holds the crypts of John Adams, Abigail Adam, John Quincy Adams and Louisa Catherine Adams. When we walked into the crypt, I wept. It was wondrously moving to be standing that near to the great beginnings of America and to the great human beings who sacrificed so much to make it happen.

While I was there, I was informed by Arthur, the Director of the Visitors, that no President, Vice-President, Senator, Congressman or woman, or Governor had ever come to pay respects and lay a wreath on their graves.

I was shocked. I decided then and there I was going to try to do something about it. Graciously, Senator Scott Brown from Massachusetts, agreed to meet with me – this crazy Texan who wanted to have homage paid to the heroes of our Revolution, patriots whose lives are beyond compare.

To my joy, Senator Scott Brown was familiar with my cause and was aware of a ceremony for the Adam's family that he had been asked to attend in October. "Wonderful!" I shouted. We proceeded to reminisce about the Adam's legacy.

A week later, I called Arthur at the Church of the Presidents and told him about my mission and my meeting with Senator Scott Brown. That same moment I received an e-mail from Senator Scott Brown's office that the Senator was going to lay a wreath on John Quincy Adam's grave in July. "Fabulous!" I exclaimed.

Hence, this is why I am on the plane! Juliette and I are traveling to Boston to be a part of this historic moment.

John Adams, Abigail Adams, John Quincy Adams and Louisa Catherine Adams are shining, brilliant treasures in our American history. Homage is due to them on a large scale.

My next mission is a monument for John Adams in Washington, DC and a portrait of Abigail Adams in the National Portrait Gallery in Washington, D.C.!

The memories of John and Abigail are calling to me. They were not infallible, as men are not angels, but they had a devotion to America that was remarkable in its scope and a work ethic that I may only aspire to emulate.

As I like to say, Knowledge is to power what action is to results.

In regard to our great Constitution and Federalist Paper No. 52, the awe continues, not only in its enlightenment but with the continued precedent it sets. Publius' mission was to educate the public on the Constitution and it is rich with the historical references. Not to mention that their willingness to explain the "bill," exhibited a respect for "the people."

There is another interesting aspect to the process of the Federalist Papers. In the written word, it is hard to deceive and deviate away from the question or explanation of intent. In speeches, our modern day equivalent, doublespeak prevails and "spin" prohibits true assessment of the meaning.

Not only should all bills written by our legislature be published for public consumption, as mentioned in Publics 48, but our representatives should write an essay, or two or three, on why they believe in it and how it best represents their state and America.

It was interesting to read about other countries and how their legislatures worked and did not work. Our Constitutional forefathers were very intent that our representatives remain accountable to the people knowing that a frequent asking of the people for justification, by their vote, would keep the Representatives humble and accountable.

We should reflect as modern day patriots the voter turnout for midterm elections. They are as valuable and viable as Presidential elections, yet so few Americans vote. Our vote is our voice! Let us reach out to inspire our fellow citizens to vote this midterm. To presume that they do not matter is the surest way to continue the downward spiral of our liberties and our Republic.

The Adam's family is calling to us. Their intellect, honor, dignity and love for America illuminate the path for us. Let us take the road less traveled. Let us journey forth in the pathway of their sacrifices. What a privilege to walk in the shadows of their sublime statures.

God Bless,

Janine Turner

July 8, 2010

We can only hope to walk in the shadows of their sublime statures.

Posted in Constitutional Essays by Janine, Federalist No. 52 | 2 Comments »

July 8, 2010 – Federalist No. 52 – Cathy Gillespie

Thursday, July 8th, 2010

Greetings from Mt. Vernon, Virginia! Having spent many years working for a member of the U.S. House of Representatives, Congressman Joe Barton of Texas, I am thrilled to see several Federalist Papers devoted to the subject of the U.S. House.

Unfortunately, Congress as an institution and the people who serve there are suffering from a negative public perception. As with any group of people, there are a few who deserve the public's disdain. And there are others who may not be re-elected this November because they have not carried out their constituents' will. But based on my experience of working first hand with many of these men and women, I have developed the highest respect for the institution of the U.S. House, and for most of those elected from their congressional districts to serve, Republicans and Democrats.

The founders designed the U.S. House of Representatives to be close to the people:

"*As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.*"

Publius argues that an election every two years is frequent enough to maintain the people's liberty:

"I conceive it to be a very substantial proof,that the liberties of the people can be in no danger from BIENNIAL elections."

This is true, as long as the people uphold their duty articulated in Federalist No. 33, to "*take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify."*

Elections every two years keep members of Congress close to their constituents. There are extended breaks from votes during January, February, April, July, August, September, and Congress usually breaks for good anywhere from mid-October in election years to mid-November or mid-December in the off years. During these breaks, most Members of Congress go back to their districts, hold town meetings and other forums, and work hard to meet with their constituents and listen to them.

We have all seen the video footage from town meetings of Congressmen or women who appear to be disengaged, uniformed, hostile to their constituents, or out of touch, especially during the health care debate. From my experience, these members of Congress are the exception, rather than the rule.

Most members of the U.S. House, of both parties, are well informed, hard working individuals who deeply love their country and sacrifice a great deal to serve the people of their congressional district. Most keep their families in their congressional district, and are in Washington only when they have to be, flying in to vote Tuesday through Thursday, and back home Thursday evenings to spend Friday through Monday working in their congressional district.

Most members of Congress are very accessible to their constituents. Any citizen may "walk the halls," of Congress, and stop in at their U.S. Representative's office, or any U.S. Representative's office, often getting to at least say hello to the member of Congress, even without an appointment, if they are willing to wait. And if they request a meeting with enough lead time, most people who want to have a sit down meeting with their member of Congress are usually able to get one scheduled. Janine, Juliette and I walked the halls of Congress recently, and met with Congressman Scott Garrett, Chairman of the Congressional Constitution Caucus, and Congresswomen Blackburn and Bachmann. We even met with Senator Scott Brown on the Senate side! We witnessed all taking the time to say hello to visiting constituents while we were there.

Members of Congress also maintain offices and staffs in their congressional district, whose sole purpose is to serve the constituents, untangling them from governmental red tape, facilitating military academy appointments, and participating with citizens in the community on local projects.

It is understandable that people are frustrated and angry when Congress passes a bill so large no one can read it, with provisions that go against the U.S. Constitution and our founding principles of limited government and free enterprise. But that is where elections every two years come into play. It is the people's responsibility to make their views known, and the most effective way to do that, is on election day.

In 1994, and in 2006, the people's voice was heard. Despite gerrymandering (which I agree with Jon and Professor Rowley, is a terrible modern day development) control of the U.S. House shifted, because the people were unhappy.

As we have said many times on these pages before, knowledge is power. Before you judge your member of Congress, get to know him or her, or at least try! Find out their voting record, their attendance record. Do they hold town meetings? If so, attend! Ask a question. Send an email. Write a letter. Request a meeting. Sit down with their congressional district staff. You may be surprised to find out how hard your member of Congress is actually working for you, or you may have your worst suspicions confirmed, and decide a change is needed.

"The definition of the right of suffrage is very justly regarded as a fundamental article of republican government."

Let's use that powerful tool granted to us by the Constitution!

Thank you to all of you for your continued participation, and your insightful comments.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 52 | No Comments »

July 8, 2010 – Federalist No. 52 – The House of Representatives, From the New York Packet (Madison or Hamilton) – Guest Blogger: Charles K. Rowley, Ph.D., Duncan Black Professor of Economics at George Mason University and General Director of The Locke Institute in Fairfax, Virginia

Thursday, July 8th, 2010

Let me commence this discussion with an important caveat. There are two ways in which to evaluate the contributions of the Founding Fathers in drafting and pursuing the ratification of the various Articles and Sections of the United States Constitution. The first way is by reference to the circumstances of the emerging nation and the knowledge available to the Founders. The second way is by reference to the circumstances of our time and the accumulated knowledge that is now available. I shall focus primarily on the first way, given the exigencies of space.

The Federalist, No. 52, written by Hamilton or Madison, explains and justifies Article I, Section 2 of the draft Constitution, with particular regard to the qualifications both of the electors and of those elected to

the House of Representatives, and to the length of term for which the representatives were to be elected. These are centrally important considerations for any Constitution that seeks to establish a Federal Government of strictly enumerated powers, to ensure that elected representatives will faithfully reflect the preferences of a majority of their constituents and yet will not be overly tempted to discriminate against vulnerable minorities. If the People are to govern, then a suitable definition of the People, and how the People are to impact on government, is of crucial importance.

A key circumstance influencing the Convention was recognition that any shift from the existing Confederation to a new Federation inevitably constituted a fundamental challenge to States' rights, and must be perceived as a threat to the less populous states. In order to ratify the Constitution, those issues must be addressed effectively by PUBLIUS.

Naturally, therefore, PUBLIUS emphasized the good sense in requiring that the qualifications of the electors would be the same as those required by each State's own Constitution for the most numerous branch of that State's legislature. Of course, this implied that electoral qualifications might vary across the several States. Yet, individual States could not manipulate the suffrage by simple legislation to gain advantage in the House of Representatives. If they engaged in high cost constitutional manipulation, they could do so only by imposing upon their own State legislature any inherent disadvantages of such a manipulation.

Inevitably, norms of the day governed the extent of the suffrage. For the most part, only propertied male citizens qualified. Non-citizens (which of course included slaves), male citizens without property, and women need not apply. This restricted the electorate to some twenty-five percent of the adult population. But remember that the United States was one of only two emerging democracies. And Britain, albeit without the taint of slavery, similarly limited the suffrage at that time to a suitably-propertied male minority.

The qualifications of the representatives were a different matter. They were much less clearly defined by the State Constitutions and more susceptible to uniformity. PUBLIUS defended the proposal by the Convention that a representative must be at least of the age of twenty-five years, must have been seven years a citizen of the United States, must, at the time of the election, be an inhabitant of the State he was to represent, and, during the time of his service, must be in no office under the United States. This left the door widely open to would-be candidates, including women and persons without property. Of course, slaves could not be citizens and, therefore, were excluded from candidacy.

The Convention had decided that the House of Representatives should be composed of Members chosen every second year by the electorate. This was a truly important judgment, defended by PUBLIUS. The Founders were well aware of a British history, where monarchs not infrequently had failed to call Parliament for several years when threatened by its fractiousness towards their objectives. So the regularity of the election would avoid any such deviance on the part of fractious States. They were also aware that some long-lived parliaments had lost significant contact with their electors, and had culminated in widespread corruption and inefficiencies.

A two-year term was deemed appropriate, in that it would maintain a close linkage between individual representatives and the People without imposing an excessive urgency on their deliberations. The Founders were not disposed to introduce direct democracy into the federal legislature, recognizing its

high cost and limited effectiveness in a geographically dispersed country with a rapidly increasing population of potential voters.

With respect to the two-year term, my judgment is that the Founders were correct. The House of Representatives would become the engine of the legislature and the Senate, with its six-year staggered terms, would become the brake, especially when transient passions were running high. Sadly, the great expectations of the Founders regarding the linkage between the People and those that they elected to office would be disappointed.

The Founders failed to anticipate the emergence of powerful political parties that would demand loyalty from their members even when such loyalty conflicted with constituents' interests. They failed to anticipate the gerrymandering of districts that would provide incumbent re-election probabilities as high as in many dictatorships. They failed to anticipate the growth of political action groups and other special interests that would flood political campaigns with funding designed to distort election results away from the interests of the People. They failed to anticipate the willingness of the United States federal courts to loosen the strictly enumerated powers of the Federal Government by inappropriately redefining key Articles of the Constitution designed to limit the range of collective actions that might impact adversely upon the People. These developments, however, were products of changing circumstances and advancing political acumen unavailable to the Founders in the dying years of the eighteenth century, and at the very beginning of a great experiment in constitutional republicanism.

Charles K. Rowley, Ph.D. is Duncan Black Professor of Economics at George Mason University and General Director of The Locke Institute in Fairfax, Virginia. He is the co-author (with Nathanael Smith) of *Economic Contractions in the United States: A Failure of Government*. The Locke Institute He blogs at www.charlesrowley.wordpress.com.

Archive for the 'Federalist No. 53' Category

July 9, 2010 – Federalist Paper No. 53 – Janine Turner

Saturday, July 10th, 2010

Howdy from Boston! Today was an historical day! Juliette and I had the great fortune to witness Senator Scott Brown lay a wreath on John Quincy Adams crypt, marking our 6th President's 243rd birthday. It was the first time a sitting Senator has ever done so.

Senator Scott Brown delivered a very inspiring speech and his wife Gail is a beautiful, dedicated American patriot.

It was an honor to meet Peter Boylston Adams! He is a seventh generation Adams. It was a momentous event for me. I handed him a copy of my book, "Holding Her Head High," because I have a chapter dedicated to Abigail Adams! I told Mr. Adams that I had met with Senator Scott Brown about honoring the Adams legacy and that my next mission was to help facilitate the building of a monument dedicated to John Adams in Washington, D.C. and to have a portrait of Abigail Adams hung in the National Portrait Gallery!

There were many great patriots present at the event today. Patriots who volunteer their time and energies to preserving the legacy of John Adams, Abigail Adams, John Quincy Adams and Louisa Catherine Adams.

Arthur W. Ducharme, the director of the Visitor's Program of the United First Parish Church, (the Church of the Presidents) is one of the great patriots who were present today. He is a passionate American and is a shining example of one who understands the importance of history. He carries the torch of the Adam's legacy with dignity and grace.

John and Abigail are smiling from heaven on Arthur Duscharme.

The church has a rich history. The Reverend Sheldon W. Bennett serves as the church's minister. He is also a descendent of the Adam's family – from Henry Adams, John Adam's great, great grandfather. His presentation and prayers were wonderful and afterwards he showed us the cemetery where many of the Adams family are buried, including Henry Adams!

On the tombstone of Henry Adams, John Adams wrote the following words:

"This stone and several others have been placed in this yard, by a great, great grandson from a veneration of the piety, humility, simplicity, prudence, patience, temperance, frugality, industry and perseverance of his Ancestors, in hopes of recommending an imitation of their virtues to their posterity."

Reverend Bennett said that he finds the words, "personally inspiring." I find them to be not only inspiring but representative of a legacy that changed America.

Without John Adams we would have not had a Declaration of Independence. Our country's birth stemmed from John Adam's perseverance and it was his prudent and industrious habits that guided our country to victory and fruition.

He laid the foundation for our United States Constitution with his brilliant construction of the Constitution for the Great Commonwealth of Massachusetts and the understanding of the importance of, as mentioned in Federalist Paper No. 53, "a Constitution established by the people and unalterable by the government."

His frugality, temperance and piety as our nation's first Vice President and second President, tempered a rising nation through its infancy. Without his patience and virtue America would have not prevailed.

His son, John Quincy Adams, mirrored all of these virtues with his astonishing and tireless dedication to his country. He served as a young diplomat beside his father, then as U.S. Minister to Holland, Prussia, Russia and Great Britain, U.S. Senator, negotiator of the Peace Treaty of Ghent, (War of 1812), Secretary of State under President Monroe, promulgator of the Monroe Doctrine, the 6th President of the United States and finally as Congressman in the U.S. House of Representative.

God Bless Henry Adams for the great example he set for his posterity and for John Adams and John Quincy Adams who recognized it and honored it with their lives and legacy.

Today, Peter Boylston Adams and Reverend Bennett are a rich reflection of their heroic heritage.

Never may we take for granted the impact we may have on our country and our children. Daily we are the servants to a great cause, America, our country and Americans our children.

God Bless,

Janine Turner

July 9, 2010

Posted in Constitutional Essays by Janine, Federalist No. 53 | 1 Comment »

July 9, 2010 – Federalist No. 53 – Cathy Gillespie

Friday, July 9th, 2010

Federalist 53 was a reminder to me of how blessed our country is to live under a system of government "established by the people and unalterable by the government."

"The important distinction so well understood in America, between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, seems to have been little understood and less observed in any other country. Wherever the supreme power of legislation has resided, has been supposed to reside also a full power to change the form of the government."

We forget that in many other countries, terms of office may be capriciously changed to meet the political needs of the office holders.

Publius refers to "frequency of elections," as the "cornerstone" of free government. A theme throughout the Federalist is the people's role in protecting their own liberty. Elections are the people's voice.

Publius also outlines the importance of members of Congress having enough time to learn the job. He predicts that some members of "superior talents; will, by frequent reelections, become members of long standing."

A recent Congressional Research Service report on the average tenure of a member of Congress stated:

"The average years of service for Members of the 110th Congress, as of January 3, 2007, when the Congress convened was 10.0 years for the House and 12.82 years for the Senate. This is a record for the Senate. House Members who took their seats at the beginning of the 102nd Congress (1991-1993) represent the high point of Representatives' average tenure (10.4 years)."

This is interesting, compared to the early history of our country, when most Senators did not even complete their six year term. CRS notes that in the early Republic, House Members began to exceed their two year terms after the Fourth Congress, but their average service did rise above four years until

1901-1903. During the Great Depression, the average tenure of a U.S. House member shot up to seven years.

Many people today call for term limits, to bring back the concept of citizen legislator. As these proposals develop, attention would need to be given to the power of staff, especially committee staff, who, if not checked as well, would end up with even greater influence as members of Congress come and go.

Although Publius points out the merit of some seasoned legislators, he also warns, *"No man will subject himself to the ridicule of pretending that any natural connection subsists between the sun or the seasons, and the period within which human virtue can bear the temptations of power."*

There are strong arguments on both sides of the term limits issue, but as Publius reminds us in Federalist No. 51:

"A dependence on the people is, no doubt, the primary control on the government."

The people are the energy of the government. When they are engaged and paying attention, recognizing that knowledge is power, the need for term limits will not be as great. Even the best governmental structures will not reap the desired results, unless the "genius of the people," the primary energy of government is fully engaged and deployed.

Thank you to all of you who are joining us on this journey through the Federalist Papers. Knowledge is Power!

Looking forward to Federalist No. 54!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 53 | 2 Comments »

July 9, 2010 – Federalist No. 53 – The Same Subject Continued: The House of Representatives, From the New York Packet (Hamilton or Madison) – Guest Blogger: Marc Lampkin, partner at Quinn Gillespie and graduate of Boston College Law School

Friday, July 9th, 2010

In Federalist #53 James Madison continues a discussion about the description and operation of the United States House of Representatives. In particular his emphasis is targeted to the question of protecting liberty and ensuring electoral accountability through the use of the term for Members of the House of Representatives. Madison observes that there is a natural connection between electoral accountability and the liberty of the people. The question is how often should the elections occur? Madison mentions a prominent saying of the time which was "that where annual elections end, tyranny begins.." implying that regular election cycles particularly those that happen at least once a year were best to limit infringement of the liberty of the people. Madison attempts to explain why the Federal

Constitution provides for a 2 year cycle in the House of Representatives and why that length didn't threaten the freedom of the American people.

Ironically most states have adopted the Federal model of a 2 year cycle for their legislatures. But as Madison notes this ready embrace of the two year cycle was not always the case. When he writes the most popular election cycle for legislatures was every 6 months with a few states having annual elections. Notably Madison observes that South Carolina alone had 2 year cycles.

In any event it is Madison's view that the specific timeline isn't as important as the necessity of the elections themselves. But he argues that the single most important talisman for liberty is the immutability of the charter that authorizes government.

Unlike the British system, Madison explains the Federal Constitution does not bestow unlimited power on the legislature to change and make laws and thus liberty is advantaged. In contrast to the American model, governments that place nearly limitless power in their parliaments or legislatures like the British system must be on guard continuously for mechanisms whereby government tyranny can be checked. Madison points out, "The important distinction so well understood in America, between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, seems to have been little understood and less observed in any other country."

Madison contends that the American system is predicated on the supremacy of the American citizens and not on the legislature or the executive. In America Congressmen and Senators can't change their term of office, swap their positions or take on executive or judicial powers. But in Britain they can make these types of changes and according to Madison did. As a result many political scientists of the day had settled on the yearly election for legislatures as a ways to keep the government accountable. But with the US Constitution which places specific limits on the government and can only be changed with the consent of the citizens, liberty is much more readily protected.

Next Madison turns to the specific question of why a 2 year cycle. Perhaps surprisingly, Madison the practicing political scientist reveals himself. It is Madison's considered view that the two year cycle allows for greater professionalism on the part of the federal official than a shorter cycle might. He comes to this conclusion by comparing the relative knowledge base that state legislators have assuming a one year election cycle. Madison argues that they are capable of learning and addressing the issues of their own individual states within the year time frame.

If state legislators learn about the regulation of ports and appropriate levels of taxation for the own states within a year, assuming the federal government's issues might add additional complexity and more deliberation at least another year between elections would be useful to ensure that the federal elected officials developed the competence and knowledge necessary to be conversant about the relevant issues they are responsible for. In particular Madison singles out the critical issue of foreign affairs as an area that it would be useful for elected officials to address with some degree of skill. Madison notes: "In regulating our own commerce he ought to be not only acquainted with the treaties between the United States and other nations, but also with the commercial policy and laws of other nations. He ought not to be altogether ignorant of the law of nations; for that, as far as it is a proper object of municipal legislation, is submitted to the federal government. And although the House of Representatives is not

immediately to participate in foreign negotiations and arrangements, yet from the necessary connection between the several branches of public affairs, those particular branches will frequently deserve attention in the ordinary course of legislation, and will sometimes demand particular legislative sanction and co-operation."

Wrapping up Madison mentions that the relative distances that elected members of the House would travel also augurs for a longer term of office. And in another endorsement of the professionalization of Congress, Madison recognizes that over time members with superior talents will become members of long standing. Thus unlike the careerism incumbent upon a system that rubber stamps the election of state assemblymen "almost as a matter of course" the Constitution's election system contemplates that talented and experienced legislators would be preferred so as to avoid "snares that may be laid for them."

And finally in the event of election disputes a 2 year cycle will give Congress more time to adequately investigate and make an informed determination than might be possible with a shorter term. Madison concludes: "All these considerations taken together warrant us in affirming, that biennial elections will be as useful to the affairs of the public as we have seen that they will be safe to the liberty of the people."

Marc Lampkin is a partner at Quinn Gillespie and is a graduate of Boston College Law School

Archive for the 'Federalist No. 54' Category

Federalist Paper No. 54 – July 13, 2010 – Juliette Turner

Wednesday, July 14th, 2010

Howdy from Texas. This is Juliette Turner (Janine Turner's 12 year old daughter). I'm subbing for my mother who is very busy reading the HUNDREDS of essays that have been submitted in the We the People 9.17 Contest. She is so excited!

I just have one thing to say about Federalist Paper No. 54.

I heard today on Neil Cavuto's show that the census is not asking if people or legal or illegal.

So does that mean the people who are in this country illegally are getting "representation without taxation"?

Funny, our Revolution was started because we had "taxation without representation".

God Bless

Juliette Turner

Posted in Federalist No. 54 | 1 Comment »

July 12, 2010 – Federalist No. 54 – Cathy Gillespie

Monday, July 12th, 2010

"But what is government itself, but the greatest of all reflections on human nature?"

–Federalist No. 51

Federalist No. 54 reminds us of the fact that the United States Constitution was not, and is not, a perfect document. It is a reflection of human nature, and as our founders knew, human beings are not perfect creatures. Federalist 54 addresses Article I, Section 2, Clause 3 of the United States Constitution, the Three-Fifths clause. The counting of human beings as 3/5's of a person, and the preservation of the institution of slavery for 20 years, are some of the Constitution's greatest blemishes. Although 3/5′s was a compromise, with the ultimate goal being the elimination of slavery, it is still a blemish on a document that is a beacon of liberty for our country and the world.

I was curious where else slavery is mentioned specifically in the Constitution and consulted the **Heritage Guide to the Constitution** (one of my favorite Constitutional resource books). I found that slavery is also addressed in Article I, Section 9, Clause 1 (Slave Trade); Article IV, Section 2, Clause 3 (Fugitive Slave Clause); and Article V (Prohibition on Amendment: Slave Trade). The Slave Trade clause of the Constitution (Article I, Section 9, Clause 1) did not allow the federal government to prohibit the slave trade until January 1, 1808. According to Dr. Mathew Spalding in the **Heritage Guide**, on that very day, January 1, 1808, Congress passed a prohibition of the slave trade, and President Thomas Jefferson signed it into law. Although they could not ban slavery at the inception of the Constitution, the founders put a mechanism in place to start the country on that path, and banned it as soon as they could.

Through their humility and understanding of human nature, our founders knew the Constitution was not perfect. They devised the Amendment process to make corrections, adjustments and refinements, a process not too easy, but also not too difficult, a process Madison describes in Federalist 43:

"It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

One of the great characteristics of Americans is that we are always striving to be better, to improve, and to grow. Many Amendments to the Constitution reflect this growth.

Although we may not always be proud of every step in our journey, we can be proud that as a country we have made corrections from where we started, that our founders recognized we would need to make corrections, and that a process is in place to continue to refine this brilliant, but human, document.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 54 | No Comments »

July 12 – Federalist No. 54 – The Apportionment of Members Among the States, From the New York Packet (Madison or Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, July 12th, 2010

Although the essay's authorship has been disputed, I am following the broad consensus that Madison wrote it along with the rest of the papers about the organization of the House.

James Madison was a Southern slaveholder. But one might never have surmised that from the curiously detached tone that Publius affects in Federalist 54 in talking about what "our southern brethren [might] observe" and "the reasoning which an advocate for the southern interests might employ," which argument nevertheless "reconciles me to the scale of representation" adopted. Madison is recorded as having ambivalent feelings about slavery, but, then, most of the Southern elite did, judging by the moral handwringing that runs through many speeches and writings on the issue at the time. One need only look at Jefferson's thoughts expressed in his *Notes on the State of Virginia*. The language used on such occasions was so similar that it has led the historian Forrest McDonald to opine that slaveowners developed a nearly rote disclaimer to cleanse the conscience before proceeding to whatever topic was truly at hand.

That said, Madison at least mentions the distasteful "s-word" in Federalist 54, an appellation that the Convention tied itself into euphemistic knots to avoid writing into the Constitution, as he delves into the connections among taxation, representation, and slavery. The first two, taxation and representation, have a long and pronounced relationship in Anglo-American political history and constitutional theory. The movement for independence from the British crown is tied to them through the motto "No taxation without representation" and the events that gave rise to it.

Taxation was seen by Englishmen, as well as Americans, as particularly threatening to individuals' liberty. By having the potential to reduce people to penury and dependence, and because taking other people's money for one's own benefit is an especially strong temptation that mere mortals (even more so, political actors) find difficult to resist, taxation must be done only by consent of those taxed. English constitutional theory stylized this consent into representing a "gift from the commons," as no one could be forced to share his wealth with others. Note that this applied to direct taxes on one's person and wealth, not necessarily to indirect levies on voluntary transactions, such as duties on imports or excises on sales of goods. This class-based constitutional theory, made concrete against the King over three centuries, allowed the House of Commons (the only practical repository of popular consent) to bind the commons to pay taxes. The theory reflected the idea that the commoners were represented in the House as a class.

The Americans agreed with the English theory that consent was needed for a constitutional tax. They disagreed with the English theory of virtual representation, which held that the Americans were represented in Parliament as part of the body of commoners. Americans subscribed to a more concrete theory of direct constituent representation, that one was represented by another for whom one had a chance to vote, or at least in whose designated geographic domain one lived.

Recall that "representation" is a crucial aspect of American republicanism. In Federalist 10, Madison exalts representation as the republican principle that ties together the large geographic polity that is the United States without turning it into a tyranny. At the same time, representation, activated by the other republican principle, the vote, protects the political majority from falling victim to an entrenched oligarchy, while also protecting political minorities to some extent from the passing passions of an aroused majority.

But some aspects of republican theory are in tension with slavery—though clearly not in practice through the ages. Tying direct taxes, which reflect wealth and are assessed on the basis of the states' populations, to representation is easy. Adding slavery to the mix threatens the symbiosis. Slaves are property, that is, wealth. But they are also manifestly human beings.

Direct taxes were imposed on the basis of population, not assessed land values, facts that are not definitively causally related. That could distort the burdens between different states, as Madison recognizes. States with less or poorer land but higher population densities (mostly in the North) would bear a burden proportionately greater than their opposites (mostly in the South). True, most Northern states permitted slavery at the time. The "peculiar institution" (under developing Anglo-American jurisprudence, slavery was not "natural" and could only exist under the peculiar positive enactments of a polity) was much more entrenched and extensive in the South, however.

The political conundrum, as Madison explains, was that the slave interests wanted to include slaves for purposes of representation. Northerners, already fearful that their region would lose relative power to the South due to the greater fecundity of Southerners and the expected greater immigration to the South because of the longer growing season and the claims to larger western territories, objected. At the same time, economic analysis of Southern wealth (of which land was both the most plentiful and the easiest to tax), would likely include the value of slaves (who were taxed as personal property, however). To exclude slaves, which constituted a great part of the production of Southern wealth, from a wealth-tax census was particularly galling to Northerners. Southerners, on the other hand, argued that the truncated legal rights of slaves nevertheless did not deprive them of their status as "persons" for apportioning representation any more than the truncated rights of children and various others did.

The compromise was to assign to slaves a fractional value for both taxes and representation. That "3/5 clause" preserves the republican connection between representation and taxation, yet it also symbolizes the truncated pyramid of rights that composed the American system of slavery. That solution was not novel. It had been proposed as part of a failed amendment to the Articles of Confederation in 1783 and was part of the Pinckney and Paterson plans presented to the Convention. Nor was that the last time. The Convention was able to reach a compromise that eluded the 1829 Virginia state constitutional convention, at which the elderly Madison tried to push through a 3/5 compromise to settle a simmering conflict over apportionment between the non-slave holding western counties and the slave-holding eastern counties. The eastern planters wanted slaves fully counted, while the western yeomen wanted them excluded. The planters won. That was yet another grievance of powerlessness to be nursed by the residents of what would become West Virginia in 1862, after Virginia seceded from the Union.

Direct taxes have not been used by the federal government. They are difficult to process, as they are assessed against the states, which likely would have to collect them like requisitions under the Articles. Some, such as ancient head taxes, are deemed unfairly regressive. The recent health care law's

individual penalty has the whiff of such a tax and may, therefore, be apportioned unconstitutionally under that law. Federal land taxes are also politically impractical because they penalize population-rich, property-poor states. That said, the targets of wealth taxes are difficult to hide, which is why states and localities still use them.

Federal taxes are usually "indirect" (on conduct through excises and duties on sales or purchases of goods or services) or are income taxes. The last are difficult to assess accurately because income can be hidden. Sales cannot be hidden as easily, and such levies are easy to collect. That is also a feature of the much-discussed value-added tax. On the other hand, the final purchase price can mask the full amount of the VAT, making the tax's opaqueness a troublesome consequence to the consumer.

The slave holders among the Founders have been accused rather too easily of hypocrisy and posturing for their public attachment to equality, as represented in the Declaration of Independence. The meaning of "equality" is much more complex. We, too, have different understandings of equality. Current conflicts between equality of opportunity versus equality of outcome versus equality of condition are an example. Hypocrisy requires a conscious rejection of principles of right behavior that one espouses. Falling short of one's professed principles (when one still accepts their rightness) is not hypocrisy. Nor can we accuse the Founders of hypocrisy if their understanding of the principles differed from ours.

Only a few interpretations of equality, not generally so understood by the public at the time, might condemn slavery. Mostly, a general appeal to equality was not inconsistent with maintaining the institution of slavery. The Declaration is clearly rooted in modified Lockeanism. For Locke, basic political equality meant that all were created equal in the sense that none had the natural or divinely-created right of absolute rule over others. The Declaration, with its "consent of the governed" language in immediate proximity to the equality language, bears out this limited understanding of equality. Lack of a natural or divinely-ordained political right to rule does not necessarily foreclose an inequality imposed by peculiar laws (as Madison recognizes in his essay), or in non-political matters.

Equality in the religious society of the Founding meant theological equality before God and metaphysical equality in that all humans were moral actors (as Madison notes regarding slaves) who had to perform moral duties imposed by God and nature. God would judge personal failings in another life. This interpretation, as well, is not inconsistent with slavery on Earth.

Even a view of the term as meaning equality before the law was not incompatible with slavery. As Madison writes in Federalist 54, the slave codes provided a truncated set of legal protections for slaves. These codes became quite exhaustive over time. True, slaves lacked some of the rights of freemen (including, obviously, some crucial ones from our perspective). But so did women, children, indentured servants, criminals, the insane, and others. No one would have considered that this meant those groups were not "created equal" at a sufficiently high level of abstraction.

Americans as a group were not particularly outraged at that time about slavery because it was so common an institution in history and in their society. More immediately, the practice of the institution in the 1780s was comparatively mild, especially in contrast to the abject conditions from which many Americans had emigrated in the not-distant past. Some Americans professed concern. Thomas Jefferson wrote, musing about slavery, "I tremble for my country when I reflect that God is just." Forrest McDonald responds, "But few of his countrymen trembled with him."

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com

Archive for the 'Federalist No. 55' Category

Federalist Paper No. 55 – July 13, 2010 – Janine Turner

Wednesday, July 14th, 2010

I am still reading the fabulous Contest Entries!! I want to thank all of the students who have taken the time to blend creativity with the Constitution. They are all fantastic!! I am reading the wonderful essays, watching all of the cool videos, PSAs, and listening to the fabulous songs in preparation to sending them to our judges.

Thus, I will have to write my essays for Federalist Papers 54, 55 and 56 starting on Thursday night. I will catch up!!!

In the meantime, I have been pondering a realization:

With our national debt, I do believe we have found ourselves on the cusp of a new age of national sacrifice. These are the times when we are to bridge our thoughts, our motives, our missions with the evaluation: is this best for me or for my country?

Are we, a country of such plenty, able to delay our addiction to immediate gratifications? Without a new national sense of sacrifice - we will have no life, liberty and pursuit of happiness. We will have no rights at all. They will disappear with our national entitlement mentality.

We, the "genius of the people" must prevail against this debt that will doom us. We will.

God Bless,

Janine Turner

Posted in Constitutional Essays by Janine, Federalist No. 55 | No Comments »

July 13, 2010 – Federalist No. 55 – Cathy Gillespie

Tuesday, July 13th, 2010

Greetings from Mt. Vernon, Virginia! Ed and I make our home on land that once belonged to President George Washington. His home, Mt. Vernon, is not far from our house! I find today's issue of the total

number of the House of Representatives even more fascinating because it was the only issue on which President Washington offered an opinion during the Constitutional Convention! As our distinguished Guest Constitutional Scholar, David Bobb points out, George Washington seconded a motion to reduce the ratio of House Members to people from 40,000: 1 to 30,000: 1. This must have signified Washington's strong feelings that the U.S. House be "of the people."

I've spent most of my career working in and around Congress and never knew that the original ratio in the U.S. Constitution of U.S. House Member to constituents was 30,000: 1 !! I do know that the average Congressional district today contains roughly 700,000 people. I also know that the immense size of these districts, both by population, and often geographically, makes it expensive to run campaigns, and demanding, schedule-wise, for U.S. House members to be all the places they need to be.

Dr. Bobb points out the last time an adjustment was made in total size of the U.S. House was 1912, when it was adjusted to 435, the current number today. Despite the fact that the size of the U.S. House has not been adjusted since the early 1900's, I believe it would be very difficult, expensive, and not necessary for quality of representation, to increase the size of the U.S. House.

Increasing the size of the U.S. House would necessitate adding more office space and staff, a difficult proposition on crowded Capitol Hill. Staff are already crammed into every nook and cranny that exist in the House office buildings, and many Committee staff are blocks away in "annex" office space. One could argue that if the size of the U.S. House were to be increased, individual staff sizes per Member and office budgets per member could be reduced. In practice, it is hard to imagine Members of Congress voting to reduce their staff or office budgets, even if the number of constituents they represented decreased.

With today's technology, members of Congress are able to represent much larger congressional districts, yet be in touch with their constituents in more direct and intimate ways than their 1912 counterparts ever dreamed possible. Members of Congress "tweet"; answer messages on Facebook; participate in "tele-Town Hall Meetings" (large dial in conference calls); hold interactive polls on their websites; hire pollsters to conduct professional polls; receive instantaneous input on legislation via email (rather than wait days for snail mail to catch up with their votes cast); field thousands of telephone calls to their offices, and of course still hold the traditional town hall meetings. In geographically large congressional districts members often traverse the district via airplane. Youtube, 24 hour cable TV news, the plethora of radio and internet talk shows and blogs, all put members of Congress at an engaged citizen's fingertips.

Many would argue that despite new ways of communicating with constituents, Congress doesn't seem to be listening. Increasing the size of Congress would not change this phenomenon. Congress listens at the ballot box. Citizens must become educated and engaged, and remember that as Janine so eloquently put in one of her op-eds, your vote is your voice.

As I encouraged in a recent essay, get to know your member of Congress. Go to a town meeting and ask a question. Write a letter, send an email, request a meeting in DC or your congressional district. Visit with his or her staff. Research your U.S. Representative's voting record. You may be either pleasantly surprised, or have your worst suspicions confirmed. But either way, you will be able to make an educated decision in November.

I am unable to conceive that the people of America, in their present temper, or under any circumstances which can speedily happen, will choose, and every second year repeat the choice of, sixty-five or a hundred men who would be disposed to form and pursue a scheme of tyranny or treachery.—Federalist No. 55

Posted in Constitutional Essays by Cathy, Federalist No. 55 | 1 Comment »

July 13, 2010 – Federalist Paper No. 55 Part 2 – Janine Turner

Tuesday, July 13th, 2010

Howdy from Texas! Juliette and I have returned from our second trip to historic Boston! I have been immersed in the joyous task of reading the hundreds of our We the People 9.17 Contest essays, as well as watching the creative videos, PSAs and listening to the
wonderful songs.

How fabulous it is to see these great young patriots combine their Constitutional knowledge with creativity. The fact that they are thinking about the Constitution is a great step. The fact that they now have the realization that they may influence their peers with their knowledge and passion about our country's foundation, and cultivate the culture in the process, bodes well for our country's future.

As I have been speaking across the country, I have been encouraging a new movement among the youth. It is to form, Patriot Clubs! One of the missions of the Patriot Club is to gather and read the Constitution, as well as, discuss the possibility of reciting the Pledge of Allegiance at the flagpole outside of the schools in the morning. This may be incorporated into the prayer time that is currently occurring around the outside flagpoles at schools across the country.

In Federalist Paper No. 55, James Madison once again refers to the genius of the people in regard to the fact that the people would be well guarded by the Federal legislatures.

"I must own that I could not give a negative answer to this question, without first obliterating every impression which I have received with regard to the present genius of the people of America, the spirit which actuates the state legislatures, and the principles which are incorporated with the political character of every class of citizen."

The next paragraph is equally as revealing:

"I am unable to conceive, that the people of America, in their present temper, are under any circumstances, which can speedily happen, will choose, and every second year repeat the choice, of 65 or an hundred men, who would be disposed to form and pursue a scheme of tyranny or treachery."

These words resonate both a wisdom and a warning. We the people must awaken and pay heed to the affairs of Washington, D.C. As James Madison writes, "which can speedily happen.." Our liberties may be taken from us before we even know it is happening.

The wisdom and subsequent warnings in James Madison's former paragraph may be broken down to three steps:

1. The genius of the people – we must immerse ourselves in learning and knowledge and then we must act. Our vote is our voice. A discussion regarding the 9th Amendment is one of note on this topic.

2. "The spirit which actuates the state legislatures" – the states must rise and defend the rights of Americans and the states to stop the encroachment of the Federal government upon the states. A complete and thorough study of the 17th Amendment is applicable as well as the revitalization of the 10th Amendment.

3. "Principles which are incorporated with the political character of every class of citizen" – this is our battle cry, so to speak. We MUST become a people whose character is etched with a political desire, relevancy, fervor and savvy.

A national turning of perspectives regarding prerogatives is upon us. Instead of putting footballs in the tiny hands of newborn boys, we should put the "Constitution." Instead of visualizing our daughters as singers, and such, we should visualize and encourage them to be future leaders of our country. Patriots. Political character. Principles. Leaders of Liberty.

As John Adams said, "Liberty cannot be preserved without a general knowledge of the people."
God Bless,

Janine Turner
July 13, 2010

Posted in Constitutional Essays by Janine, Federalist No. 55 | No Comments »

July 13 – Federalist No. 55 – The Total Number of the House of Representatives, From the New York Packet – Guest Blogger: David J. Bobb, Ph.D., director of the Hillsdale College Allan P. Kirby, Jr. Center for Constitutional Studies and Citizenship, in Washington, D.C.

Tuesday, July 13th, 2010

A republican government is one in which the people rule—indirectly. How, not if, the people should be represented was one of the vexing questions faced by the delegates to the Constitutional Convention. Especially tricky was determining the size of the House of Representatives, the topic Madison takes up in *Federalist* 55.

Until the very last day and hour of the Convention's debate in 1787, the consensus opinion of delegates was that there would be one member of the House for every 40,000 American citizens. On September 17, what we now know as Constitution Day, the final day of deliberations, Benjamin Franklin made a last plea for unanimity in the signing of the document. It was a dramatic speech, and might have made a fitting coda to the Convention but for one last interjection.

Nathaniel Gorham, from Massachusetts, motioned to peg the ratio of each House member per people represented at 1:30,000 instead of 1:40,000, hoping that the new figure might bring on board a few more dissenters who wished federal elected officials to be more accountable to the people. After the motion was seconded, George Washington, who up to that point had not spoken at all during the Convention, despite presiding over it, intervened to offer his own, weighty, second to the motion. The new ratio passed unanimously (even if the Constitution did not).

Despite the adoption of the new ratio, and the promise of a 65-member House of Representatives if the Constitution was ratified, some anti-Federalists still thought the numbers, and the principle they represented, were not quite right. Lower ratios meant less chance of cabal, or undue influence by forces inimical to the common good.

To these complaints Madison offers a direct rejoinder: "Nothing can be more fallacious than to found our political calculations on arithmetical principles." Fiddle with the numbers all you want, he says, but you are still dealing with people who are prone to abusing power. "Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."

To avoid mobocracy, then, we must rely upon prudence. Sixty-five House members seems a good number for now; the nation will continue to grow, of course, Madison says. The most important point is not to get lost in the debate over numbers, because however vital it is that we get those right, we must without fail take our political bearings from human nature, not numerical calculations.

"As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form."

Men are not angels. But they also are not beasts. Don't trust human beings too much, Madison says. Similarly, don't get so down on human beings that self-government is thought impossible. Virtue is required for republican, or representative, government. What sort of virtues—"these qualities" that are mentioned by Madison—do you think are "presupposed" by republican government?

As for the numbers, it's worth noting that had the original ratio of 1:30,000 held constant, the House today would have more than 10,000 members. Today, an average of slightly more than 700,000 Americans are represented by a single member of the House of Representatives. Since 1912 the number of House members has been set by law at 435. Is this ratio in need of a readjustment?

David J. Bobb, Ph.D., is director of the Hillsdale College Allan P. Kirby, Jr. Center for Constitutional Studies and Citizenship, in Washington, D.C.

Archive for the 'Federalist No. 56' Category

July 14, 2010 – Federalist Paper No. 56 – Janine Turner

Wednesday, July 14th, 2010

Howdy from Texas! I was a guest on a radio show this morning and I then completed reading the High School essays. Yea!! They are wonderful!! I just read Federalist Paper No. 56 and I am dashing out to feed the horses, clean stalls and drive an hour into town to pick Cathy up at the airport at 2:00. Whew! (We have meetings for Constituting America in Texas this week.)

I am on a time clock here because Cathy and I are going to be organizing all of our contest entries tonight so that we may mail them to our distinguished judges. I will not have time to write an essay tonight! Thus, I am going to quickly comment on the statement that I found to be thought provoking in Federalist Paper No. 56.

James Madison wrote:

"What are to be the objects of federal legislation? Those which are of most importance, and which seem most to require local knowledge, are commerce, taxation and the militia."

Simply stated. Obvious intentions. The Federal government was intended to be small. The states were intended to be sovereign. The voice of the people viable.

Time to reclaim our country.

God Bless,

Janine Turner
July 14, 2010

Posted in Constitutional Essays by Janine, Federalist No. 56 | 5 Comments »

July 14, 2010 – Federalist No. 56 – The Same Subject Continued—The Total Number of the House of Representatives, From the New York Packet (Hamilton or Madison) – Guest Blogger: James D. Best, author of Tempest at Dawn

Wednesday, July 14th, 2010

One of the criticisms raised against the Constitution was that there were too few members in the House of Representatives to adequately represent constituents.

The rule reads: "The Number of Representatives shall not exceed one for every thirty Thousand."

Federalist 55 argued that a representative body ought to have enough members to mitigate the threat of corruption, but not so many so as to cause confusion. The initial number would be 65, but a census in three years would adjust this number. Federalist 55 basically argues that the number in the state legislatures varied, and if 65 members were too few, it would be increased in a short time after the first census.

Federalist 56 addresses the objection that a small House would not possess the collective knowledge necessary to make laws.

The first argument is one that we've heard before: The powers of the national legislature are limited, and state legislatures would have specific knowledge for the powers retained by the states. "In determining the extent of information required in the exercise of a particular authority, recourse then must be had to the objects within the purview of that authority." Since the national government had only enumerated powers, the House did not need a broad breadth of knowledge.

This led easily into the second argument, which was that national law could rely on state laws. "The laws of the state, framed by representatives from every part of it, will be almost of themselves a sufficient guide … little more to be done by the federal legislature, than to review the different laws, and reduce them in one general act."

Both arguments show that Publius believed the states would handle the preponderance of legislation and act as a safeguard against the federal government.

For these reasons, Publius concludes "that a representative for every THIRTY THOUSAND INHABITANTS will render the latter both a safe and competent guardian of the interests which will be confided to it."

This may seem like a minor issue, but in 1787 it grabbed the attention of the most powerful politician in the country. In the last days of the convention, George Washington verbally supported allowing a representative for every thirty thousand, rather than one for every forty thousand. In his convention notes, Madison wrote, *This was the only occasion on which the President entered at all into the discussions of the Convention*.

During the convention, James Madison also proposed doubling the initial number of congressmen, but as part of the Publius triumvirate, he ended up defending the smaller number.

What about today? Until 1911, the number of representatives was adjusted by population. Since that year, the population criterion has been adjusted to keep the number of representatives constant. The "shall not exceed" clause allowed the House of Representatives to restrict their membership to 435. Congress restricted their growth in number, but not their growth in power.

A quote from Federalist 55 shows that Publius never anticipated a dominating Congress. "I am unable to conceive that the State legislatures, which must feel so many motives to watch, and which possess so many means of counteracting, the federal legislature, would fail either to detect or to defeat a conspiracy of the latter against the liberties of their common constituents."

James D. Best is an author who writes historical novels and contemporary novels with a strong historical theme. Tempest at Dawn is a dramatization of the 1787 Constitutional Convention.

Archive for the 'Federalist No. 57' Category

July 15, 2010 – Federalist No. 57 – The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation,

From the New York Packet – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Thursday, July 15th, 2010

Publius continues a lengthy examination of the election and composition of the House of Representatives with a response in Federalist 57 to the charge that the chamber will tend towards oligarchy. He finds this an absurdity in light of the short term of the representatives and the liberal and flexible qualifications for both those who will be elected and those who will elect them. But, in the harsh light of experience, is the objection entirely absurd?

Classic democratic and republican constitutions commonly relied on three formal devices connected with the selection of officials to prevent concentration of power in a few ambitious individuals. Those were selection by lot, short terms of office, and term limits. These mechanisms often were used for the selection of civil executive and administrative officers, the "upper house" of the legislature (such as the Venetian Senate), and—in Athens at least—the juries. The "lower house" of the legislature in each of them was not based on representation but on participation by the whole qualified class of citizens. In the House of Representatives, however, the representative principle applies, which makes that body more analogous to the first class of offices. Our system retains traditional democratic essentials in the selection of juries, intended to produce a cross-section of the community, to prevent corruption through jury tampering, and to keep "professional" jurors from accumulating power.

Classic republicanism saw election as "oligarchic," unlike the "democratic" method of selection by lot. True, election can produce more qualified officials than the uncertainties from drawing lots. Done well, it elevates the most deserving, a point Madison hammers home in his discussion. If it works right, election can produce a true *aristokratia*, a government of the best. After all, the Athenians selected their *strategoi*, the military commanders, by vote and without term limits, because military skills are more specialized and crucial than ordinary bureaucratic talents. But the corrupt form of aristocracy is oligarchy, a government of the few for their gain. In that corruption lies the problem.

The classical distrust of elections was precisely what the Antifederalists feared, namely, that certain individuals would gain disproportionate personal power and begin to see their offices not as a public trust but as a personal estate. Inevitably, this would corrupt even the most virtuous newcomer. Moreover, once the official left office, the influence he gained in office likely would cause the office to be passed on to an ally or hand-picked successor, thereby creating a semi-hereditary sinecure. Looking at many members of Congress today (though not just them), one sees this political dynamic at work relentlessly. Short terms have not prevented the emergence of Congressional "barons," those who spend decades in Congress tending to their fiefdoms. Nor is that entrenchment necessarily due to some great superiority of personal qualities rather than the inertia of party identification among voters and the gerrymandering of districts to protect party and incumbent advantage.

What forms might such corruption take, other than those already mentioned? Among them, Madison concedes the danger from laws that favor politicians, their friends, and particular interest groups, including ones that expressly exempt politicians from the coverage of those laws. Favoring the particular over the general interest is anathema to republican purists, but also a fact of political life that, as Publius has written frequently, must be channeled, as it cannot be cured.

Madison's proposed solutions are by turns plausible, idealistic, resigned, and non-responsive. He mentions term limitation, by which he means frequency of election. Though many state offices at the time had annual terms, the two-year term for House members is sufficiently republican.

Second, the lack of property, religion, and status qualifications means that the net will be cast widely for suitable candidates. Could additional limits, other than those qualifications expressly written into the Constitution, be imposed by Congress or the states? As to the first, the Supreme Court emphatically rejected that proposition, concluding in *Powell v. McCormack* (1969) that the list of qualifications in the Constitution was exclusive. The Court also rejected that argument more circumspectly in regards to the very different issue of state regulation of the number of terms to be served in Congress, in *Term Limits v. Thornton* (1995). Madison's reference in Federalist 53 to the lengthy terms some likely would serve, somewhat supports the Court's conclusion. Third, the voters will have the same qualifications that the states themselves deem sufficiently republican.

Madison's further reliance on politicians' gratitude and sense of honor as restraining, at least for a while, the various corrupting tendencies is noble, but naive. *Homo politicus* is, unfortunately, too often characterized by a lack of these desirable natural sensibilities. The sentiment also conflicts with Publius's admonition in Federalist 51 that, to limit government to its proper purposes, "ambition must be made to counteract ambition." Madison is closer to the mark in suggesting that ambition for re-election works as a universal motivator for politicians' behavior. Public choice theory has demonstrated just that.

The problem is that Madison connects that ambition with doing what benefits the voting majority. Leaving aside whether what is good for the immediate majority is collectively good for the people over the longer term, is Madison correct? Again, public choice theory, based on just watching what politicians do, shows that politicians' self-interest and the rent-seeking by organized special interests better explains voting behavior than a strong attachment to collective good (if the latter can even be determined coherently) or even to the preferences of a weakly-organized majority. Then there is the matter of how that cozy connection between politicians and organized minorities seeking government favors affects the problem of faction that Publius has addressed repeatedly, if voting cannot cure that problem.

He grants that these internal and external controls may be "insufficient to control the caprice and wickedness of men," but declares that this is all the mind and hand of man can devise, and that these controls reflect traditional republican practice. In Federalist 51, among others, Publius discussed the importance of constitutional structures as auxiliary precautions against the excesses of government. Here, he hedges those bets. Publius is right that the forms of government are important, but can only do so much to temper corrupt extravagances. The system's success ultimately depends on the quality of people elected by voters possessed of the judgment and character that balances republican virtue, self-restraint, and vigilant self-interest, and on the subtler bonds of cultural and political tradition. Constitutional forms help, but, ultimately, responsibility lies with the people.

Madison warns against laws that will not have "full operation on [Congressmen] and their friends, as well as on the great mass of the society." Making only laws that are universally applicable "has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together." Citizen legislators must not be a privileged class.

Though the Republican take-over of Congress in 1995 spurred the passage of a law that removed Congressional exemption from a dozen anti-discrimination, labor, and safety laws, there yet remain other laws that apply to private citizens but not to Congress. Madison asserts that the American spirit will restrain the legislature from making legal discriminations in their favor and that of a particular class. "If this spirit shall ever be so far debased, as to tolerate a law not obligatory on the legislature as well as on the people, the people will be prepared to tolerate anything but liberty." Where does that place us? As many have said in some variant about republican systems, "The people get the government they deserve."

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com.

Archive for the 'Federalist No. 58' Category

July 16, 2010 – Federalist No. 58 – Objection that the Number of Members Will Not Be Augmented as the Progress of Population Demands Considered (Madison) – Guest Blogger: Brion McClanahan, Ph.D., author of The Politically Incorrect Guide to the Founding Fathers

Friday, July 16th, 2010

James Madison wrote Federalist No. 58 to defend the construction of the House of Representatives, and in particular to refute the charge that "the number of members will not be augmented as the progress of population demands." This is an interesting issue and one that demands both a retrospective and contemporary analysis.

He began by stating that the objections against the House on the aforementioned basis "can only proceed from a partial view of the subject, or from a jealousy which discolors and disfigures every object which is beheld." Madison simply pointed to the fact that the Constitution explicitly stated that the House will be reapportioned every ten years following a mandatory federal census and that the initial number of representatives was to be for "the short term of three years." He illustrated that this design was based on several State constitutions, and the United States Constitution, in contrast to the State models, had more teeth. The United States Constitution stipulated that each State must have at least one representative in the lower House and that no member would represent more than thirty thousand inhabitants. States had gradually increased the numbers of representatives in their legislative bodies without such explicit language, and Madison argued that this would surely be the case under the United States Constitution.

Moreover, because the Congress was a bicameral legislature, it could check schemes by one house or the other to seize control of the government. The Senate was, in Madison's words, the "representation…of the States," while the House was "a representation of the citizens." No house, he argued, would allow the other to compromise their specific constitutional authority, and no faction in either house would be

able to garner enough support to destroy the other. Of course, Madison was restating his beliefs in the "checks and balances" of the federal government under the Constitution. And, if the Senate, controlled by the smaller States, tried to block reapportionment, the House could refuse to fund the government. As Madison stated, "This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."

Of course, Madison based his arguments on the premise that the United States Constitution maintained a federal republic and did not create a "national" government. The States still had equal representation in the Senate. He was negating objections that were born from the federal convention in Philadelphia, namely that the "small States" would be swallowed up by the "large States." In many ways, "large State" and "small State" were code words for "national" and "State's rights." The "small States" enjoyed equal representation under the Articles of Confederation in a federal republic. The "large States" often believed they were under-represented and thwarted by "factions" of "small States;" thus, they wanted the greater control a "national" government offered. Madison tepidly argued (he wanted a much more powerful central government at the Philadelphia Convention), as did many Federalists who initially supported the Constitution, that the Constitution did not change the nature of the United States government, only the structure. As such, the House could add members without jeopardizing the equality of the States through the Senate.

Madison cut to the heart of the debate near the end of the essay. Some members of both the Philadelphia Convention and the State ratifying conventions believed that the House contained too few members to be a truly representative body of the "people." A thirty thousand to one ratio did not allow for enough democratic control of the government. Madison answered by stating, "the more numerous an assembly may be, of whatever characters composed, the greater is known to be the ascendency of passion over reason. In the next place, the larger the number, the greater will be the proportion of members of limited information and weak capacities." Madison said that history had proven that large legislative bodies were typically hijacked by "a single orator, or an artful statesman….Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation." He continued:

The people can never err more than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. Experience will forever admonish them that, on the contrary, AFTER SECURING A SUFFICIENT NUMBER FOR THE PURPOSE OF SAFETY, OF LOCAL INFORMATION, AND OF DIFFUSIVE SYMPATHY WITH THE WHOLE SOCIETY, they will counteract their own views by every addition to their representatives. The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic.

Madison's arguments in Federalist No. 58 are contemporary for two reasons. First, his contention that the Constitution did not destroy the federal republic is true when coupled with the Tenth Amendment to the Constitution and the original election of the Senate by State legislatures. The Seventeenth Amendment, which allowed for the direct election of senators, destroyed one vestige of State control over the government. In essence, both houses are now "national" legislative bodies, something Madison argued against in Federalist No. 58 (but supported in his Virginia Plan). Second, Madison was correct when he asserted that large legislative bodies are unresponsive and doomed to failure.

But in 1790, the population of the United States stood at around four million, and the largest State, Virginia, had less than 800,000 people. That is one legislative district today. Twenty-six States have a greater population than the entire United States in 1790 with four States exceeding the 1840 population of the United States. If the Framers believed that a ratio of thirty thousand to one was sufficient for a representative legislative body and that a population of four million constituted a "country," then would not the States today—forty three of which have a population greater than one million and many which have the approximate thirty thousand to one ratio in the original Constitution—be better handling the majority of legislative issues? The Founders would think so.

Brion McClanahan, Ph.D., is the author of *The Politically Incorrect Guide to the Founding Fathers.* He teaches history at Chattahoochee Valley Community College in Phenix City, AL.

Archive for the 'Federalist No. 59' Category

July 19, 2010 – Federalist Paper No. 59 – Janine Turner

Tuesday, July 20th, 2010

Howdy from Texas! Well, I am back at the essay desk after an intense week of having the great joy of reading so many essays! Cathy and I read through each one judiciously, as well as the poems. We also had fun listening to the fabulous songs, watching the PSAs, short films and looking through the artwork. However, it was a time consuming, intensive work and just today are the works off to the judges! Thus, there were absolutely not enough hours in the day to peruse all of the generous entries and write essays!

Wonderful results. We thank each and every one of you who helped spread the word. Cathy and I are presently working on our next phase, which is the Constituting America Winners Behind the Scene Documentary and the Celebration for the winners in Philadelphia – an exciting program, interviews with the press, tours, etc. More to come!

Regarding Federalist Paper No. 59, I find that I am still confused over the "places, times and manners" of then and now – other than the fact that the senate was changed all together with the 17th Amendment.

What is obvious, as our distinguished Constitutional Scholar, Professor Kyle Scott, mentioned today, is the necessity and spirit of debate and a wise, well- informed premise. Hence, the reason for our foundation!
I concur wholeheartedly.

To quote Professor Scott, the need for Americans to, "take our cue from the founding generation—and not just Publius—but all of those who took it upon themselves to embark on a high-minded political debate that touched upon perennial questions of political significance," is essential now. Now are the times that warrant the awareness, dedication and perseverance of citizens that reflect the deep love of liberty and country.

A paragraph that caught my eye in Alexander Hamilton's Federalist Paper No. 59 is:

"It ought never to be forgotten, that a firm union of this country, under an efficient government, will probably be an increasing object of jealousy to more than one nation of Europe; and that enterprise to subvert it will sometimes originate in the intrigues of foreign powers, and will seldom fail to be patronized and abetted by some of them."

Could this be more relevant to today?

The antidote to the "intrigues of foreign powers" is a government with a firm resolve to be vigilant and quick against these sly insurgencies of malice. As mentioned in an earlier Federalist Paper, "The enemy is in the field." This is true whether it be as obvious as a terror attack or as insidious as the over zealousness of "political correctness" that paralyzes common sense.

God Bless,

Janine Turner
July 19, 2010

Posted in Constitutional Essays by Janine, Federalist No. 59 | No Comments »

July 19, 2010 – Federalist No. 59 – Cathy Gillespie

Monday, July 19th, 2010

Hello from Mt. Vernon Virginia! As Janine mentioned in her essay last night, we have been very busy over the past few days reading essays and poems, viewing short films and public service announcements, listening to songs, and looking at artwork, all submitted by a diverse group of young people across the country, with theme of how the Constitution is relevant to them today!

The good news is that we received an overwhelming response for our first "We The People 9.17 Contest!" The entries have been inspiring! The contest entrants all worked hard and put forth their very best efforts and creativity!

The bad news is that there are only so many hours in a day, and I have discovered that every now and then, I actually need to sleep! I have missed writing essays on Federalist Papers for a few days, but have been greatly encouraged by the knowledge of, respect for, and dedication to the United States Constitution by the young people who entered the contest.

Stay tuned for updates on the "We The People 9.17 Contest," including the announcement of our distinguished panel of judges, and September 17 activities in Philadelphia where we will reveal the contest winners!

Federalist No. 59 discusses the advantages of the federal government regulating its elections. As someone who has worked in federal campaigns, I believe it makes sense to have uniform federal election laws, and the only way to achieve uniformity, is to regulate these elections federally.

Through a series of legislative acts, beginning in 1867 when Congress passed a law prohibiting officers from soliciting political contributions from Navy Yard workers, Congress has passed laws to require public disclosure of federal campaign contributions, set limits on individual contributions to federal campaigns, prohibit certain sources of campaign donations, restrict certain types of federal campaign expenditures, and in certain cases, limit federal campaign expenditures if public financing is accepted. Because of abuses that occurred during the Watergate era of our country, the Federal Election Commission (FEC) was established in 1975 as an independent agency, with civil enforcement jurisdiction, authority to write regulations, monitor compliance, and serve as a centralized source of information about federal elections, federal campaign committees, and federal campaign donors.

If you have never taken a few minutes to explore the Federal Election Commission website: www.fec.gov, I highly recommend it. You will find it fascinating! With a few clicks ("Campaign Finance Reports and Data" on left sidebar, and then "Search the Disclosure Database") you can search Federal Campaign Contribution Data in a variety of ways. You can also read about the latest campaign finance laws and regulations and a history of the FEC.

Like all other congressional powers, our founding fathers devised checks on Congress's regulation of Federal elections. One check, the States' power to appoint U.S. Senators, was removed with the adoption of the 17th Amendment. This was an important structural check, noted by Hamilton in Federalist No. 59 as "that absolute safeguard which they (States) will enjoy under this provision."

While the States have lost their power to have a voice in Congress's power to regulate federal elections, the judicial branch is still actively engaged. The Supreme Court's recent decision in *Citizens United vs. the Federal Electio Commission* (holding that the First Amendment prohibits restrictions on corporate financing of independent advertising in federal election campaigns) is one example.

Of course the most important check is our vote. As Janine Turner stated in her Fox News Op-Ed, Your Vote is Your Voice . Ues it! Research how your member of Congress votes on Federal Election Law issues. Do you agree or disagree? Let your vote be your voice on November 2, 2010!

Posted in Constitutional Essays by Cathy, Federalist No. 59 | No Comments »

July 19, 2010 – Federalist No. 59 – Concerning the Power of Congress to Regulate the Election of Members, From the New York Packet (Hamilton) – Guest Blogger: Kyle Scott, Political Science Department and Honors College Professor at the University of Houston

Monday, July 19th, 2010

In a representative system of government the election of legislators is of paramount importance. Given that the legislature is to be the primary lawmaking body, the election of its members will go a long way in deciding what gets done. Thus, it is no surprise that the method by which members of the House and Senate were to be chosen under the new Constitution became a contentious issue during the ratification debates. On February 22, 1788, Alexander Hamilton published *Federalist #59*—under the now well-known pseudonym Publius—to address the issue of how the election of members of Congress was to be regulated.

In the Declaration of Independence one set of grievances levied against King George III was the unfair manipulation of elections. Among the long-train of abuses that the King was found guilty of were that "He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records…He has dissolved representative houses repeatedly…He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative power, incapable of annihilation, have returned to the people at large for their exercise; the state remaining the meantime exposed to all the dangers of invasion from without, and convulsions within." The idea that a people ought to determine for itself how its representatives are elected and when the legislative branch meets and dissolves is central to the Jeffersonian conception of self-government and all those who agree with the political theory outlined in the U.S. Declaration of Independence. For without the ability to do so, the people are left unable to govern themselves and must succumb to the whim of the body that does have the power to decide how legislators are chosen and when the legislature is to meet.

Federalist #59 argues that these powers are given to the state except in instances when the national government feels it is necessary to step in. The national government, according to Hamilton's argument, may alter the times and manner for holding elections of senators and representatives, and may alter the places in which elections are held for representatives, but may not interfere with the places in which senators are elected. Hamilton's argument was that leaving these powers solely in the hands of the states would leave the Union at the mercy of the states. Hamilton's fear was of disunion. He argued that the national government should be given a check on the ability of state governments to regulate the election of members to Congress in order to prevent disunion that would result from too much state autonomy. Opponents of constitutional ratification, known collectively as Anti-Federalists and who Hamilton was responding to in #59, did not see disunion as the primary threat to self-government as Hamilton did, but rather the accumulation of political power within a centralized national government.

While the debate over how to determine the means of representation is itself important, it brings to light one of the central debates in American politics—how to balance the need for stability and the need for liberty. We see this debate play out in issue areas as varied as federalism and national security to financial regulation. It is a continuous struggle to find the balance, but it is in the struggle where the balance is found. Had Hamilton faced no opposition then one could justifiably read the constitution as a vehicle for government centralization, but because he faced opposition we know that the constitution was designed to balance the need for a central government with the need to maintain local government structures. We need to take our cue from the founding generation—and not just Publius—but all of those who took it upon themselves to embark on a high-minded political debate that touched upon perennial questions of political significance. By following the founders in this respect we will be able to engage in a reasoned and informed debate about what is most important to us. By doing so we will be able to stay faithful to the wording and intentions of the founders' Constitution as well as the spirit through which the founding generation governed.

Kyle Scott, PhD teaches in the Political Science Department and Honors College at the University of Houston. His published research deals with constitutional interpretation and its relevance for contemporary politics. His most recent book, *The Price of Politics*, critically assesses the Supreme Court's eminent domain decisions and explains the importance of property rights.

Archive for the 'Federalist No. 60' Category

July 20, 2010 – Federalist No. 60 – Cathy Gillespie

Wednesday, July 21st, 2010

Federalist No. 60 continues the discussion of the federal government regulating its own elections, this time addressing specific dangers of the national government having this power.

Publius takes each perceived danger and dissects it, asking rhetorically who would be favored by the federal government if the government were to favor a certain class of citizens through regulation of elections. He surmises that the country is diverse enough that every group will be represented and this is not a danger.

He further points out that the Congress is only empowered to regulate the time, place and manner of elections, not who can vote. Qualifications to vote are fixed in the Constitution, "and are unalterable by the legislature."

How blessed we are as a Nation that our right to vote is protected in stone, in the U.S. Constitution. We forget what uncertainty many around the world face when it comes to elections, and their right to participate.

As echoed in most of the Federalist Papers, Publius ends by reminding citizens of their role in protecting the U.S Constitution and their God given rights, citing the public as the ultimate check against tyranny of the government:

"Would they not fear that citizens, not less tenacious than conscious of their rights, would flock from the remote extremes of their respective States to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?"

What a beautiful system of checks and balances our founding fathers constructed, delicately balancing and protecting our liberty!

On to Federalist No.61!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 60 | No Comments »

July 20, 2010 – Federalist Paper No. 60 – Janine Turner

Tuesday, July 20th, 2010

Howdy from mighty hot Texas! I want to thank Mr. Best for joining us today and for his insightful essay!

Federalist Paper No. 60 once again reiterates the importance of checks and balances and the separation of power. If only all Americans were required to read the United States Constitution and the Federalist Papers. How timely they are to our current trials and tribulations and how full of wisdom are their pages.

How can anyone state that the United States Constitution is irrelevant? It is my summation that one can only make such a statement if they lack the education on its principles, power and profundity. Have they read it? The United States Constitution and the corresponding Federalist Papers offer the wake up call that we American citizens need.

Perhaps there should be a prerequisite that all members of Congress, Presidents, Vice-Presidents, etc. take a "People's Representative" test on the principles of the Constitution. Some representatives have a clear, concise understanding of the Constitution; some do not. Thus, before our representatives are allowed to take the oath that they are to, "Preserve, Protect and Defend the Constitution of the United States" should they not understand it? Isn't this common sense?

This would be similar to a drivers test. One must take a driver's test, written and literal, before one gets a driver's license. Should not our elected officials, who are going to represent Americans and uphold the basis, the foundation of our country understand, truly understand, the "handbook?" Should we not ask this of them? Would we put our children in a car with a driver who did not know how to drive? We are talking about the future of our country. We are talking about our children's future. An oath to protect the Constitution rings hollow if the oath is based on ignorance.

The 17th Amendment is a serious flaw in the balance of power. Why would the American people allow such a thing to happen? Interestingly, the only state that did NOT ratify the 17th Amendment was Utah.

Alexander Hamilton states in Federalist Paper No. 60:

"The collective sense of the state legislatures, can never be influenced by extraneous circumstances of that sort: a consideration which alone ought to satisfy us, that the discrimination apprehended would never be attempted. For what inducement could the senate have to concur in a preference in which itself would not be included?"

He also states:

"As long as this interest prevails in most of that state legislatures, so long it must maintain a correspondent superiority in the national senate, which will generally be a faithful copy of the majorities of those assemblies."

The states lost their power with the 17th Amendment. The people lost the balance of power necessary to maintain a republic as our founding fathers intended it.

Yet, the genius of the people will still prevail if they base their genius on the founding principles of our country. A learned people will rise to resuscitate their country with a breadth of spirit and passion that wisdom warrants.

Alexander Hamilton in Federalist Paper No. 60, states the call to action,

"Would they not fear that citizens not less tenacious than conscious of their rights, would flock from the remotest extremes of their respective states to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people."

The majesty of the people. The genius of the people.

Our founding fathers believed in us.

We the people.

Spread the word. Teach your children. Tell your family. Call your friends.

We are the roots of the Live Oak tree. The government represents the branches. The government need not feed us. We nourish the government.

God Bless,

Janine Turner

July 20, 2010

Posted in Constitutional Essays by Janine, Federalist No. 60 | No Comments »

July 20, 2010 – Federalist No. 60 – The Same Subject Continued – Concerning the Power of Congress to Regulate the Election of Members, From the New York Packet (Hamilton) – Guest Blogger: James D. Best, author of Tempest at Dawn

Tuesday, July 20th, 2010

Federalist 59-61 address the federal power to regulate the election of senators and representatives. The clause being defended by Hamilton reads: "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators."

Vox Populi, in Anti-federalist 59, argued against the national congress regulating the election of senators and representatives. This was viewed as an infringement on state sovereignty and a possible tool of national tyranny.

In Federalist 59, Hamilton defended this clause by saying that every government must have the means to defend itself. The safety of the national government depended on its authority to override state rules that were harmful to the election of its own members.

In Federalist 60, Hamilton again argues against unfettered state authority over the election of members of the United States Congress. A national override of election laws is less pertinent than the arguments used by Hamilton. He defends the clause by stressing that safety from oppressive laws comes from the

careful distribution of power and divergent methods of selecting each component of the national government.

He says, "the circumstance which will be likely to have the greatest influence in the matter, will be the dissimilar modes of constituting the several component parts of the government. The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors."

One is struck by the recurrence of the checks and balances theme—in Madison's convention notes, the Constitution itself, the Federalist Papers, and the minutes of the ratification conventions. There can be no doubt that the Founders believed that liberty depended on one part of the government acting as an effective check on all other parts of the government, and that meant between the national branches and between the states and the national government. The Founders abhorred concentrated power. They believed that only through judiciously balanced power—constituted by *dissimilar modes*—could liberty survive the natural tendency of man to dictate the habits of other men.

Hamilton made another interesting argument. If elected officials violated the Constitution to usurp power, "Would they not fear that citizens, not less tenacious than conscious of their rights, would flock from the remote extremes of their respective states to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?"

James D. Best is an author who writes historical novels and contemporary novels with a strong historical theme. Tempest at Dawn is a dramatization of the 1787 Constitutional Convention.

Archive for the 'Federalist No. 61' Category

July 21, 2010 – Federalist Paper No. 61 – Janine Turner

Wednesday, July 21st, 2010

Howdy from Texas! I want to thank you for joining us today and I want to thank Professor Kyle Scott for his insightful essay. We are so blessed to have such esteemed scholars donating their time to Constituting America and to all of us who are reading, blogging and eager to learn.

I always strive to find what it is in the Federalist Paper of the day that is relevant to today. I am never without a loss, as there is always something that is brilliantly and passionately poignant.

Today, in Federalist Paper No. 61 by Alexander Hamilton, I was captivated by his arguments, which are consistently coherent and colorful. How much fun it would have been to have watched him in action and listen to his orations. His mind was active, alert, educated and astute. His intellectual reasoning and

educated acumen, when paired against his opponent, was like a chess game and Alexander Hamilton was always saying, "check mate."

The obvious relevancy of Federalist Paper No. 61 to today is in regard to his comparisons that the federal rules of the government regarding elections were no different than the rules of the state. Flip this and we have Arizona.

Arizona's law is no different than the Federal law.

If anything, the state law is more lenient than the Federal law. Oh, if only, we had Alexander Hamilton here with us today to reveal this absurdity with his eloquent and searing charm.

My friend, Mark Joseph, writes about American's knee jerk reaction to issues without taking the time to understand them. The link to his essay is at the end of this essay.

Many people in America have lost all reason, all desire to check the facts. One just jumps on the ideological bandwagon of the "party line."

Political activism without preparation is like a powder keg. It only leads to dangerous incitation.

Corrupt or devious officials in power feed on the naiveté of the people. This is their trump card.

The genius and majesty of the people prevail only with an inquisitive and hungry appetite for the truth.

As John Adam's said, "Liberty cannot be preserved without a general knowledge amongst the people."

I say, "Liberty cannot be sustained without a general knowledge of the United States Constitution."

God Bless,

Janine Turner

Read Mark Joseph's Op-Ed

http://www.foxnews.com/opinion/2010/07/13/mark-**joseph**-arizona-immigration-law-papers-america-asia-obama-reagan-common/

Posted in Constitutional Essays by Janine, Federalist No. 61 | No Comments »

July 21, 2010 – Federalist No. 61 – Cathy Gillespie

Wednesday, July 21st, 2010

Greetings from Mt. Vernon, Virginia!

Thank you to Professor Kyle Scott for soaring to 50,000 feet and giving us the aerial view of Hamilton's important point in Federalist 61! I was in the weeds, struggling to make sense of where and when elections should be held, and the most important point of this paper sailed right over my head until I read Professor Scott's essay.

Federalist 61 gives us an important insight and specific example of the founders' view and intention of the construction of the United States Constitution: broad principles outlined that provide a structure and framework to guide the specifics of future legislation as time and events require.

Our founders had great wisdom as to what is appropriate for the Congress to decide, the specific powers that should be delegated to the federal government, where the federal government's limits are, and what needed to be carefully spelled out and guarded in the Constitution. Reading back through Federalist Papers 52-61, the founders gave Congress many powers when it came to elections: deciding the time of elections, the power to modify election law, even the power to alter the total number of U.S. Representatives. These are all powers Publius argues are "safe for the legislature to decide." The important guiding principles, such as the frequency of elections, and who may vote (broadened with Amendments, thanks to the "genius of the people") are safely embedded in the Constitution.

In Federalist 51, Publius writes:

"*In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.*"

Giving the government any power over the laws affecting the election of its own members is a tricky proposition. The founders' carefully crafted system of checks and balances, including "THE CONSENT OF THE PEOPLE," (Federalist No. 22) have preserved our liberty for over 200 years.

Let us not forget the words of Federalist No. 60 regarding the ultimate "check" of the people:

"Would they not fear that citizens, not less tenacious than conscious of their rights, would flock from the remote extremes of their respective States to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?"

Looking forward to hearing everyone's thoughts and comments today!!

Stay cool!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 61 | 6 Comments »

July 21, 2010 – Federalist No. 61 – The Same Subject Continued: Concerning the Power of Congress to Regulate the Election of Members, From the New York Packet (Hamilton) – Guest Blogger: Kyle Scott, Political Science Department and Honors College Professor at the University of Houston

Wednesday, July 21st, 2010

In *Federalist #61* Hamilton reveals his theory of constitutional construction in a peculiar way. Hamilton's view of the role constitutions should serve is consistent with what modern political scientists consider vital for a long-lasting constitution. Constitutions, if they are to last, must be broad and treated with reverence.

The topic of *#61* is a carryover from *#59* and *#60*; for the first of these I have already provided comments. The reason Hamilton cannot leave this topic alone is because his opponents will not. Much of the *Federalist* owes its structure to the fact that Publius was engaged in an ongoing public opinion campaign. If Publius felt that it lacked public support on a particular facet of the Constitution because of an objection raised by an Anti-Federalist then Publius would write another paper on the topic. Because many of the objections are being levied by those who favor a more decentralized structure than what the Constitution proposes; Hamilton uses the states to his advantage. In this paper He shows that, as has been customary throughout the *Federalist*, the provisions which are incorporated into the Constitution also appear in some of the state constitutions. This is a successful rhetorical strategy albeit one that lacks some logical and philosophical rigor. For instance, while Hamilton never reconciles the Constitution's inconsistency with the U.S. Declaration with regard to the location of elections, he does make it a more palatable inconsistency to show that the people of New York have dealt with this in their own state without causing much of a problem.

Hamilton gives a straightforward defense of placing the power to determine when and how elections are held in the latter-third of *#61*, something for which the reader has been patiently awaiting. Putting this power into the hands of the national government is a matter of political expediency. If the power were left in the hands of the states there would be little or no consistency with regard to elections and members elected to the House and Senate would begin their terms anytime between January and December depending upon when their state held elections. One could easily imagine what types of problems this might cause. Of course, Hamilton knows that there is an easy objection to his claim: Why leave the decision to Congress? Why not specify in the Constitution when all elections for national office are to be held? Hamilton's response is where we see his theory of constitutional construction come through.

Hamilton objects to the inclusion of such a specification in the Constitution because he is open to the possibility that events and changes may occur that would require an amendment to the Constitution as it relates to this matter. If there are such events on a regular basis, amending the Constitution on a regular basis will become necessary. Hamilton does not want to see this happen. For if Constitutions are specific in their provisions, and they contain too numerous provisions, they will require constant amendment. Being so specific is not what Constitutions are for, but rather laws. Constitutions provide the scaffolding and the laws provide the brick and mortar. Moreover, the more we amend Constitutions the more feeble they become, if not in actuality, then at least in perception, which then leads to an actual weakening. If citizens and officials perceive their Constitution as weak, then the whole system runs the risk of collapsing. A Constitution must be held in reverence by the people and officials; which means it should not be tinkered with too much after it is ratified. Hamilton knew this, and so did the Framers who approved of Article V which made the amendment process so difficult and thus unlikely.

Whether we agree or disagree with Hamilton's position that the threat to a just government comes from below rather than above, we cannot deny that his understanding of constitutional construction is accurate.

Kyle Scott, PhD teaches in the Political Science Department and Honors College at the University of Houston. His published research deals with constitutional interpretation and its relevance for contemporary politics. His most recent book, *The Price of Politics*, critically assesses the Supreme Court's eminent domain decisions and explains the importance of property rights.

Archive for the 'Federalist No. 62' Category

July 22, 2010 – Federalist Paper No. 62 – Janine Turner

Friday, July 23rd, 2010

Howdy from Texas! The day is finally here! Federalist Paper No. 62. The first Federalist Paper I ever heard quoted. The Federalist Paper that stimulated my 90 in 90 = 180 essay. This Federalist Paper that started it all.

I thank you for joining us today and I thank Professor Will Morrisey for his wonderful essay!

Federalist Paper No. 62 offers so many pearls of wisdom. James Madison was absolutely remarkable.

Here are some of the mind-boggling relevancies.

Dare anyone read these and state that the United States Constitution and Federalist Papers are not applicable to today?

Federalist Paper No. 62 states:

"In this spirit it may be remarked, that the equal vote allowed to each state, is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty."

This is how our founding fathers intended the checks and balances to be. This statement of James Madison is one of the reasons why everyone should read the Federalist Papers. It reveals the real intention of the structure of our government and empowers one with an understanding of the thesis for our government. By acquainting oneself with the facts, one becomes aware of how drastically our founding structure has changed.

Knowledge is power.

"No law of resolution can no be passed without the concurrence, first, of a majority of the people, and then of a majority of the states."

Healthcare would never have passed, nor many of the unfunded Federal mandates if the sovereignty of the states had been maintained and represented in the Senate.

“Excess of law making seem to be the diseases to which our governments are most liable..”

Relevant.

“It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust,”

Relevant.

“In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient.”

Relevantly revealing as to why we needed the Senate to be representatives of the state.

“A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained.”

Relevant: we need representatives that are devoted to the people and best understand the ways of congress, laws and legislation.

“What indeed are all the repealing, explaining and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom.”

Relevant: Vet our candidates. Do they know the United States Constitution? Do they have the adequate requisite humility, heart and knowledge sufficient for the job?

“One nation is to another what one individual is to another.”

Profound.

“The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action n; but how can that be a rule, which is little known, and less fixed?”

Really, really relevant. This is the quote that started it all for me.

“Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people.”

Relevant.

“The want of confidence in the public councils damps every useful undertaking..”

Relevant.

“What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed?”

Really Relevant.

“What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government?”

Relevant.

“But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes.”

Brilliant.

“No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.”

Sagacious.

Relevant. Relevant. All so very relevant.

Spread the word.

God Bless,

Janine Turner

July 22, 2010

Posted in Constitutional Essays by Janine, Federalist No. 62 | No Comments »

July 22, 2010 – Federalist No. 62 – Cathy Gillespie

Friday, July 23rd, 2010

In Federalist No. 62 Publius explains that the Senate was intended to be the more deliberative body. It was designed to be very different from the U.S. House. Senators must be older, age 30 instead of the required age 25 for the House; must have been citizens longer, nine years required for the Senate, while only seven for the House; and Senators were to be appointed by State Legislatures (until the ratification of the 17th Amendment providing for direct election of Senators). Senators' terms of office are six years, while U.S. House members serve for two years.

These differences were meant to slow the legislative process, to provide for a "cooling off" period, from the passions of the U.S. House. There is a famous, often quoted story, of Thomas Jefferson (who was in France during the Constitutional Convention) returning to the U.S. and asking Washington why the delegates had created a Senate. In Washington and Jefferson's day, people often poured their hot coffee into their saucer before drinking it, to cool it. Washington observed Jefferson doing this, and asked "Why did you pour that coffee into your sauce?" When Jefferson replied the obvious, "to cool it," Washington answered, "Even so, we pour legislation into the Senatorial Saucer to cool it."

The Senate's famous tactic of the filibuster is another longstanding tradition meant to slow the legislative process. The U.S. Senate website notes that until the cloture rule was adopted in 1917, there was no way to stop extended debates except by "unanimous consent, compromise, or exhaustion."

It is hard to read Federalist No. 62 and not be reminded of the healthcare bill that recently became law. Many of the founders' words of warning found in this essay could have easily been written just a few months ago about this legislation which was hurried through the Congress, without the thorough vetting or deliberation our Founders intended:

"The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions."

"It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?"

One might wonder why the Senate did not act as the Founders' had intended, as a brake on this rush to pass a healthcare bill that many Members of Congress did not have time to read? The fact that State Legislatures no longer appoint U.S. Senators may have certainly had an impact, as well as the general partisanship that exists so much more in the Senate today, than in the past.

One thing is certain, Publius's careful explanation of the Founders' intentions in creating the Senate is as good as any political science textbook I have ever read. We should all work to get the Federalist Papers back into the schools and colleges! Thomas Jefferson called the Federalist, "The best commentary on the principles of government which has ever been written." Federalist No. 62 certainly lives up to that billing!

On to Federalist No. 63!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 62 | 1 Comment »

July 22, 2010 – Federalist No. 62 – The Senate, For the Independent Journal (Hamilton or Madison) – Guest Blogger: Professor Will Morrisey, William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Thursday, July 22nd, 2010

Publius turns to an explanation and defense of the Senate, and therefore to the importance of a *bicameral* legislature, replacing the unicameral legislature of the Articles of Confederation government. With the Senate the Framers solved two crucial problems, one of them regarding the American *regime*, the other regarding the modern *state*.

The *regime* problem: Can a republican regime, a regime in which the people rule themselves through their chosen representatives, muster the *prudence* necessary to avoid devolution into foolish and unjust rule by mere majority *will*? If not, then a regime of *one* or a *few* rulers, men and women bred to rule, a regime identical to those everywhere else on earth at that time, must finally come back to America.

The *state* problem: can a centralized modern state—indispensable in a world full of such states—nonetheless provide `political space' for local and regional *self-government*? Or must centralization in the national capital or in the capitals of the constituent states of the federation necessarily dry up the springs of *citizenship*—active participation by the body of citizens in their own communities?

To keep track of Publius' argument, it's useful to outline it. He announces five topics for consideration with respect to the Senate, but quickly disposes of the first three. His treatment of topics IV and V—predictably, Publius exhibits a fondness for Roman numerals—takes up more than 90% of his attention.

The qualifications of senators (#62, paragraph 2).

The appointment of senators by the state legislatures (#62, paragraph 3).

The equality of representation of the states in the Senate (#62, paragraphs 4-6).

The number of senators from each state and their term in office (#62, paragraphs 5-16; #63, entire); this topic divided into the "six inconveniences" American suffers in *not* having such a body.

The powers invested in the Senate (#64, #65, #66).

With this outline in hand, consider *Federalist* #62.

An American qualifies for election to the Senate upon reaching his thirtieth birthday, having been a citizen here for the last nine years of his life, at least. Because the senate exercises power over foreign

policy—particularly, ratification of treaties and declaration of war—a senator should know more and exhibit greater "stability of character" than a House member. This means that Publius regards the foreign-policy powers of the Senate as weightier than the House's power of the purse. We might think the opposite, but of course we live under a system that has consolidated much more domestic power at the national level than the Founders judged wise.

To prevent such consolidation, the Framers had the senators appointed by the state legislatures. This assured the state governments a means of defending themselves from within the federal government itself. In the early decades of the republic, legislatures often sent their appointees to Washington with a list of policy instructions, which the appointee ignored at risk of his re-election. The Progressive-era abolition of this method of electing senators outflanked the states by giving individual senators a power base independent of the legislatures. This change in institutional design contributed to the centralization of domestic powers, as senators could begin to collaborate with representatives in the House, effectively transferring the old `spoils system' to their own hands—all without the messy charges of corruption attendant upon the antics of party bosses. Eventually, the roads to re-election became: first, bringing home the bacon *legally* and, second, providing *constituent services* to voters needing a guide through the bureaucratic maze. This corrupted the intention of the Framers and led to civic indifference—`consumerism' in politics instead of self-government.

An aspect of the Framers' design that remains unchanged is the equal representation of each state in the Senate. Writing first of all for a New York audience, Publius has every reason to apologize for this feature and move on quickly, as the provision amounts to a major concession by the big states to the small states. But he also fits the Senate into his larger conception of the regime. As he has already explained, the new regime is an *extended* republic (*Federalist* 10); it controls the effects of faction by multiplying factions over a large territory. American is also a *commercial* republic, unlike the military republics of antiquity—most notably, Rome. With the Senate, the United States becomes a balanced, *compound* republic, "partaking both of the national and federal character," avoiding "an improper consolidation of the States into one simple republic." Hence the *bicameralism* of the U. S. Congress, an institutional design feature elaborately defended by John Adams in his *Defence of the Constitutions of the United States.* Given the Senate's power to block laws enacted by the House, the states can defend themselves against such consolidation—against *excessive* statism—while nonetheless forming part of a national state *sufficiently* centralized to defend itself against the statist and typically monarchist war machines of Europe.

Can a republican regime avoid the fatal defect of previous republics—their lack of fidelity of purpose and of deliberation in debate? Can republics think? Can they act faithfully, steadily? Can they be wise husbands, not silly gigolos?

The small number of senators will promote real discussion instead of "the sudden and violent passions" displayed by large, unicameral legislatures. Longer terms in office will afford senators a real chance to learn their craft and to stick with long-term policies. Fickle governments bring upon themselves the contempt of foreigners and the confusion of citizens. "It will be of little avail to the people that the laws are made by men of their own choice if the laws by so voluminous that they cannot be read, or so incoherent that they cannot be understood," undergoing "incessant changes" that prevent citizens from knowing how to plan their own lives, from education to investment. Such laws subvert popular government by leaving effectual rule in the hands of "the sagacious, the enterprising, and the moneyed

few" who alone can exploit these protean convolutions that undermine the rule of law itself. "Anything goes," indeed.

If anything goes, then respect for the regime will go, too. Finally, the failure of the rule of law means the failure of rule, simply—in America's case, self-government through our elected representatives.

Will Morrisey holds the William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College. His most recent books are *Self-Government, The American Theme: Presidents of the Founding and Civil War, The Dilemma of Progressivism: How Roosevelt, Taft, and Wilson Reshaped the American Regime of Self-Government,* and *Regime Change: What It Is, Why It Matters.*

Archive for the 'Federalist No. 63' Category

July 23, 2010 – Federalist Paper No. 63 – Janine Turner

Saturday, July 24th, 2010

Howdy from Texas. I thank you for joining us today and I thank our friend, Professor Morrisey, for his wonderfully insightful essay.

Responsibility. Reasonable Responsibility. These were and are the qualities needed in the Senate. These were and are the qualities needed in the American public. We, the "genius of the people," hold in our hands the direction of our country and we either fail, or do this well, depending on our level of responsibility.

Our representatives have responsibilities but so do we.

Educating ourselves on the Constitution and the engine of our government, seeking to understand the issues of the day and future, inspiring family, friends and children to be active patriots, being vocal and voting – these are the responsibilities of the people of a Republic.

I am encouraged because there appears to be an awakening and we, the citizens of America, are getting more involved in the affairs of our government – governing through our informed choices. This is rather vital as it is, "we the people," who govern. The Congress is a reflection of our voice, our vote. We must take responsibility for it.

In America we are still are able to do just this – take responsibility for our government. We want to keep it that way.

Publius felt that it was important that the people's passions were kept in check by the cool meditations of the Senate – a check. This was also a check against tyranny.

"Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny."

James Madison talks about the vulnerabilities that Senates had faced throughout history – the vulnerability of being taken over by the people's branch. One such example was from the British.

"The British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch."

James Madison, ever ready with an historical reference or two, mentioned past Republican examples: Sparta, Rome and Cathage.

"As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable, as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second Punic War, lost almost the whole of its original portion."

All I want to know is – what happened in 1913? How was the 17th Amendment allowed to happen?

James Madison seemed to believe that if an usurpation ever were to happen, it would be restored by the people.

"We are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles."

James Madison is referring to the Senate becoming an aristocratic or independent body. Yet, is not the usurpation of the Senate by the 17th Amendment, (foregoing the states), not an equal violation of our founding father's intended balance of powers? Is it not reminiscent of James Madison's British, Sparta, Rome and Cathage examples?

Are we able to bring back the Constitution to its "primitive form and principles?"

Caution must be taken in regard to the new movement to do away with the Electoral College. There is a movement to do this through state legislatures. Only an informed and "responsible" people can prevent this from happening.

We must pay heed and take action so our posterity does not say, "What Happened in 2012 or 2014? How was the removal of the Electoral College allowed to happen?"

God Bless,

Janine Turner

July 23, 2010

Posted in Constitutional Essays by Janine, Federalist No. 63 | No Comments »

July 23, 2010 – Federalist No. 63 – Cathy Gillespie

Friday, July 23rd, 2010

Greetings from Mt. Vernon Virginia! Thank you Professor Morrisey for your enlightening essay on Federalist 63! The methodical nature in which Publius addresses every aspect of the Constitution, and the elements of the government of the United States never cease to amaze me. Federalist 62 explained how the Senate was to be organized: qualifications, appointment by state legislatures, equal representation among states, number of members and term, and the purpose of the Senate; Federalist 63

elaborates on the unique role of the Senate and its responsibility, while Federalist Nos. 64-66 explore its powers.

Federalist 63 emphasizes the role of Senators as Statesmen. By design, Senators were intended to be mature individuals who exercise responsibility, and give consideration to the long term impact of a "succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation."

Some would argue there are fewer true Statesmen in the Senate today than we have seen in the past. Senators such as Henry Clay, Daniel Webster, and John Calhoun don't seem to exist in the same way they once did. However, we recently lost such a statesman, Senator Robert Byrd of West Virginia. While some may question Senator Byrd's support of prolific federal spending, he is the undisputed "Father of Constitution Day," held each September 17!

Senator Byrd's amendment to the Consolidated Appropriations Act of 2005 designated September 17, the anniversary of the 1787 signing of the Constitution, as Constitution Day. This bill was signed into law by President Bush on December 8, 2004 as Public Law 108-4-47. Thanks to Senator Byrd, on September 17 all educational institutions receiving federal funds are required to hold programs on the United States Constitution.

Janine and I have a goal to imbue Constitution Day into the cultural consciousness of our country! Constituting America is planning several events in Philadelphia this September 17, featuring our We The People 9.17 Contest for Kids Winners. If you will be in the Philadelphia area, please join us! Watch our website for more details.

Thank you, Senator Byrd, for your vision in establishing this important day of recognition for the United States Constitution in our country. Thank you for your service to our Nation. While I may not have always personally agreed with your votes and your interpretation of the Constitution, I will miss your Statesman-like grace and love for our founding document!

Below are Senator Byrd's own words about Constitution Day:

CELEBRATING OUR CONSTITUTION

Our Constitution is the foundation of our freedoms. Just a few pages, written on parchment, established for all time the direction and structure of these United States. The first ten amendments, known as the Bill of Rights, guarantee our freedoms: freedom of speech; freedom of religion; the right to assemble; the right to petition the government; the right to bear arms; and the right to vote. Our liberties are protected by that Constitution, not only by the Bill of Rights, but also by the separation of powers and the checks and balances among the three equal branches of our government.

Each of us should give thanks that on September 17, 1787, our forefathers signed their names to the new Constitution and launched mankind's most remarkable experiment in self-governance.

But a great Republic cannot sustain itself unless its citizens participate actively in their own government. To do that, I strongly believe, that our citizens must be familiar with the Constitution and the intent of the Framers who wrote it.

In December 2004, I helped to enact a federal law that designates September 17th of each year as Constitution and Citizenship Day. I did so because I care so deeply about this precious document.

Consequently, I invite all Americans to take the time on September 17th to read, analyze, and reflect on the Constitution. It is a learned and dynamic document. Brilliant in its brevity, it remains extraordinary in its wisdom. It is my hope that citizens of every State in the Union, including children, will be inspired to organize local celebrations on Constitution Day.

Let us spread the excitement of celebrating Constitution Day far and wide, through every hill and dale, across the Great Plains, through the Deep South, across the West, the Southwest, the Northeast, as well as up and down the Atlantic Seaboard, and especially in West Virginia. Let us all unite on September 17th to appreciate our magnificent Constitution.

Unless we understand our birthright and guard it vigorously, we risk losing the gift of the Framers. Our Constitution continues to inspire millions around the globe. It has survived the stresses and strains of more than 221 years of incredible challenge and change.

Our Constitution's Framers were willing to risk everything they owned, even their own lives, to give us the great treasure that is our nation and our form of government. Each of us has an obligation to hand that treasure on to future generations intact and strong and secure."

Posted in Constitutional Essays by Cathy, Federalist No. 63 | No Comments »

July 23, 2010 – Federalist No. 63 – The Senate Continued, For the Independent Journal (Hamilton or Madison) – Guest Blogger: Professor Will Morrisey, William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Friday, July 23rd, 2010

Federalist 63: Responsibility and the Rule of Reason

A small Senate whose members serve long terms answers the need for "order and stability" in the national government, thus fostering respect for the "political system" of America—the institutional architecture of popular self-government. In *Federalist* #63 Publius turns to the importance of cultivating respect for this people and their regime among foreign nations. He then discusses the Senate's capacity to ensure the truly indispensable thing for any government: the rule of reason.

Under the Articles of Confederation foreign policy was the primary focus of the unicameral Congress, domestic policy having been for the most part the domain of the states. Despite this, Publius argues, America has lacked "a due sense of national character" in the world. He means "character" in both senses: moral soundness, but also a well-defined identity. If the world's a stage, then each player needs a recognizable role or persona. Without one, the other actors won't quite know what how to `play off

him,' so to speak. With a bad one, the other actors will treat him as Iago, or maybe as one of Shakespeare's clowns. Such notable American statesmen as George Washington and Benjamin Franklin deliberately cultivated their public faces. In choosing good roles and playing them with energy and intelligence, they strengthened their own inner characters and established their reputations among their fellow citizens and throughout the world.

A Senator's term in office and his status as one of only two representatives selected by his state legislature—itself likely to know the character of their chosen representative better than the voters at large could do—will incline him to identify his own ambitions with the welfare of his state, knowing that "the praise and blame of public measures" will attach to his own public character. He will be seen; he will be heard; he cannot evade the scrutiny of his colleagues in the Senate or in his state capital.

The matter of character fits well with Publius' final consideration: responsibility.

Although Publius did not invent this word, as some scholars have imagined (it appears in English legal writings as early as the mid-seventeenth century), he did put it squarely on the American political map. If *representation* is the central feature of a republican regime, then responsibility—meaning both responsiveness to those one represents and accountability for one's actions—is the soul of representative government. By *reasonable* responsibility Publius means that no one expects his representative to accomplish things beyond his powers; fittingly, the powers of the Senate are the topic of the subsequent three papers.

Here is where the bicameral institutional structure of Congress comes into play. The bicameral Congress will derive its energy from the often-impassioned House, its prudence from the Senate, which balances "the cool and deliberate sense of the community" against that community's urgent desires. "What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions?" Even with the greater extensiveness of the American republic, which will serve as a brake upon popular excesses even in the House, the Senate will serve as an "auxiliary precaution." It is one thing to slow passions down; it is another to map out the right direction for the country.

Above all, it is the republican institution of representation, as opposed to the democratic device of all-citizen assemblies, which will make American lawmaking more stable and reasonable than that of any ancient polis. In both foreign and domestic policy, then, the Senate will provide some of the long-term, prudential thinking previously seen mostly in aristocracies.

To those who fear that the Senate will become an outright aristocracy, dominating the other branches, Publius replies that this would require the Senate to corrupt the state legislatures, the House, and the people—an unlikely `trifecta.' Sure enough, the Progressives succeeded in deranging the Constitution in just that way, not only by changing the election rules for Senators but by providing the House with bigger revenues via the income tax. Even so, it remains quite far removed from a genuine hereditary aristocracy.

Will Morrisey holds the William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College. His most recent books are *Self-Government, The American Theme: Presidents of the*

Founding and Civil War, The Dilemma of Progressivism: How Roosevelt, Taft, and Wilson Reshaped the American Regime of Self-Government, and *Regime Change: What It Is, Why It Matters.*

Archive for the 'Federalist No. 64' Category

July 26, 2010 – Federalist No. 64 – Cathy Gillespie

Tuesday, July 27th, 2010

Federalist No. 64 begins a discussion of the powers of the Senate, specifically the power to ratify treaties.

It is interesting that the Senate and the House each possess distinct powers, reflective of the founders' view of each institution's strengths. The U.S. House, closer to the people, controls the "purse," while the U.S. Senate, designed to be the more stable and mature body, handles issues such as ratification of treaties, confirmation of certain executive branch officials and Supreme Court Justices, and serves as the court for impeachment trials.

The Senate's power to ratify treaties the President makes is another example of the brilliant system of checks and balances designed by our founders. The founders had great confidence in the ability and character of the Senators that would serve, based on the qualifications they had to meet in order to be appointed, and based on the fact that they would be appointed by the State Legislatures.

Publius states:

"This mode (appointment of Senators) has, in such cases, vastly the advantage of elections by the people in their collective capacity, where the activity of party zeal, taking the advantage of the supineness, the ignorance, and the hopes and fears of the unwary and interested, often places men in office by the votes of a small proportion of the electors."

I wonder how often Federalist No. 64 was quoted during the debates on the 17th Amendment almost 100 years ago.

Publius goes on to extol the level of qualifications a Senate candidate must meet in order to be appointed, "*men of whom the people have had time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle*."

In this age of sound bites, with newspapers closing every day, there is less and less substantive reporting about candidates. It seems that in the modern age, it is easier than the Founding Fathers imagined for the people to be "*deceived by those brilliant appearances of genius and patriotism, which like transient meteors, sometimes mislead as well as dazzle*."

This quote jumped out at me as well:

"In proportion as the United States assume a national form and a national character, so will the good of the whole be more and more an object of attention, and the government must be a weak one indeed, if it should forget that the good of the whole can only be promoted by advancing the good of each of the parts or members which compose the whole."

When the federal government makes policy that puts undue burdens on states, it is not "*advancing the good of each of the parts or members which compose the whole.*"

The Founders put every precaution and a carefully balanced structure in place to ensure members of the U.S. Senate were "*men of talents and integrity.*"

However, as is often repeated on these blog pages, and by Publius, the final check is "*the genius of the people*."

Get to know your U.S. Senators. Which, if any, in your state are up for re-election? Research their voting record. Go to their August town hall meetings. Write them a letter. Find out if your Senator is a man, or a woman, "*of talents and integrity*."

Knowledge is power!

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 64 | No Comments »

July 26, 2010 – Federalist Paper No. 64 – Janine Turner

Tuesday, July 27th, 2010

Howdy from Texas.

Publius speaks in Federalist No. 64

"That the attention and votes will be directed to those men only who have become the most distinguished by their abilities and virtues."

Virtue. Virtue is a very beautiful word. Virtue. It is a word used quite often in the Federalist and is obviously a word that carried with it tremendous power and necessity in both the course of human endeavors and the political sphere. Do we still revere it today?

Virtue: the quality of doing what is right and avoiding what is wrong. 2. Any admirable quality or attribute; "work of great merit" 3. A particular moral excellence.

An acronym of the word virtue lists what we should look for in our representatives and in our future candidates.

Verify

Identify

Responsibility

Trust

Understand

Engage

1.Verify our Representative's and/or candidate's claims.

2. Do we identify and agree with our Representative and/or candidate's mission?

3. Does our Representative and/or candidate have a record of civic responsibility?

4. Do we trust that our Representative and/or candidate will uphold our Constitution?

5. Is our Representative and/or candidate's mission thoroughly transparent and do we thoroughly understand his/her mission beyond the, as John Jay states in Federalist No. 64, "brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle."

6. Do we feel that our Representative and/or candidate will engage in proper behavior and maintain a steady course to establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity?

Virtue in our leaders is most definitely a necessity that our present times warrant.

The preamble mentioned above is profoundly pertinent to our struggles today.

Establish Justice – a Republic promises this to what extent and at what price?

Ensure domestic tranquility – do not our borders need to be defended in a prudent, precise manner that prevents a spark from becoming a bonfire?

Provide for the common defense – the enemy is in the field – is due diligence being paid to this omnipresent fact?

Promote the general welfare – are not the definitions of this statement at a fevered pitch? Promote the general welfare to the point of a Republic's and its people's demise?

Secure the blessings of liberty to ourselves and our prosperity – Are our children guaranteed life, liberty and the pursuit of happiness? Will our Republic still stand for them?

"However useful jealousy may be in republics, yet when, like bile in the nature, it abounds too much in the body of politics, the eyes of both become very liable to be deceived, by the delusive appearances that the malady casts on surrounding objects."

John Jay says it best. Relevant? I say, "yea."

"They who have turned their attention to the affairs of men, must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us, that there frequently are occasions when days, nay, even when hours, are precious."

Ominous, foreboding and motivating is John Jay's wisdom.

Who will pay heed?

God Bless and I thank you for joining us and I thank Professor Morrisey for his true commitment and patriotism.

Janine Turner

July 26, 2010

Posted in Constitutional Essays by Janine, Federalist No. 64 | 1 Comment »

July 26, 2010 – Federalist No. 64 – The Powers of the Senate, From the New York Packet (John Jay) – Guest Blogger: Professor Will Morrisey, William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College

Monday, July 26th, 2010

Publius now begins his fifth and final topic respecting the Senate: its powers. In *Federalist* 64 he considers the power to ratify treaties.

Publius argues that the state legislatures will likely choose outstanding men to represent them in Congress. Senators will be known to their electors, who will "not be liable to be deceived by those brilliant appearances of genius and patriotism which, like transient meteors, sometimes mislead as well as dazzle" (think "Aaron Burr"). State legislators will want representation by men they trust who have the intelligence and strength of character to defend and advance the interests of their state in the national government. One might add that the removal of two such men from the local scene would not bereave the less gifted rivals they leave behind.

Did it work? The record of the nineteenth century suggests that it did: Adams, Clay, Calhoun, Webster, Benton, Houston, Chase, Seward, Lodge: these men enjoyed more prominence than most of the presidents of their time. Among the best (if long-forgotten) accounts of the old Senate remains Oliver Dyer's *Great Senators of the United States Forty Years Ago*, published in 1889. One of the first

stenographers in America, Dyer worked in the Senate in 1848 and 1849, and his highly readable account of the lions of those days stands as a fine introduction to the nature of political life itself as well as a testament to the kinds of men who once found that life worth choosing.

Such prominence can serve the country in foreign policy. Given the need for secrecy and careful timing in any confidential matter, presidents and their ambassadors negotiate treaties. The experiment in making Congress responsible for such negotiations had failed to satisfy the Framers. The Senators will not negotiate treaties; they will ratify them, inasmuch as the results of secret negotiations obviously require public review. The need for a two-thirds majority for ratification ensures that the treaty will have broad support among the states.

What is more, treaties are laws; still more than that, they are supreme laws of the land. This had not been so under the Articles, under which the states reserved the power to implement treaties, with predictable results.

The supremacy of treaty law made (and still makes) Americans nervous. Publius observes that if treaties were "repealable at pleasure," no foreign country would "make any bargain with us." Treaties are contracts between nations not under one another's sovereignty. They are harder to enforce than ordinary laws. Like contracts, they require the consent of both parties to enact but would be worthless if one party were legally entitled to unilaterally rescind them—unless, of course, the contract stipulates the right to do so under specified circumstances. This does not mean that the United States cannot withdraw from a treaty—break the contract. But it should do so in the knowledge that its partner in the contract may attempt to enforce the terms of the contract, up to and including the use of military force. The conditions for the just termination of treaties and their just enforcement were familiar to the founders from the major works of international law then extant—most particularly *The Law of Nations* by the French Swiss writer Emer de Vattel, from whom Jefferson had drawn several of the phrases in the Declaration of Independence.

Domestically, the supremacy of treaty law meant that both states and individual citizens needed to abide by them. Treaties now overrode state laws.

But do they override existing constitutional law? This worried the senators who voted against the League of Nations, fearing that membership in the League would impinge upon their power to declare war. Although one never knows what a modern Supreme Court decision might say, from more or less the beginning the consensus thus far has been "no." Because treaties are made under the authority of the United States they cannot (as Alexander Hamilton observed in 1796) "rightfully transcend the constituting act"—change any constitutional law. If treaty law could amend the Constitution, this would lead to the absurdity of senators amending the Constitution without recourse to ratifying conventions of the states. The Constitution, federal statutes, and treaties are all supreme laws of the land, but the Constitution is (as it were) more supreme than statutes and treaties.

Publius touches on a remarkable feature of the treaty ratification power: it is held by the body that represents the states. The most `locally'-centered branch of the national government will hold the most `international' power. Although the states may see their laws overridden by treaties, it will be the states' representatives who consent to doing so.

Publius may imply that the habit of causing the ambassadors from the states to think in terms of treaties that will affect the whole country might serve to build national sentiments. This it might have done, but the more powerful domestic issue of slavery overcame any such sentiments in the 1850s. Be this as it may, lodging the treaty ratification power in the Senate solves the problem of the Articles. It removes the possibility of individual states obstructing a treaty by refusing to implement it, but it allows the states to retain a proximate influence upon treaties by making their representatives responsible for voting treaties up or down.

Will Morrisey holds the William and Patricia LaMothe Chair in the United States Constitution at Hillsdale College. His most recent books are *Self-Government, The American Theme: Presidents of the Founding and Civil War, The Dilemma of Progressivism: How Roosevelt, Taft, and Wilson Reshaped the American Regime of Self-Government,* and *Regime Change: What It Is, Why It Matters.*

Archive for the 'Federalist No. 65' Category

July 27, 2010 – Federalist Paper No. 65 – Janine Turner

Tuesday, July 27th, 2010

Howdy from Texas.

"Where is the standard of perfection to be found?"

Alexander Hamilton pragmatically points to the fact in his Federalist Paper No. 65, that no man, no country, no government, no Constitution is perfect.

"Who will undertake to unite the discordant opinions of a whole community, in the same judgment of it; and to prevail upon one conceited projector to renounce his INFALLIBLE criterion for the FALLIBLE criterion of his more CONCEITED NEIGHBOR?"

Is this premise not the kindling that lights the fire of faction and prejudice in not only our government but the people of our country?

Yes, James Madison wrote, "Liberty is to faction what air is to fire." However, faction may be overzealously utilized to the point of destruction.

Alexander Hamilton states,

"Yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his sceptre over all numerous bodies of men."

Where are we in our country today? To determine that our country be perfect is to beset upon her an unattainable projector and thus a disillusionment. Are not our dogged factions a determination from one conceited party to derail the other conceited party? This conceit becomes a prejudice. Prejudice is the vice of evil. Evil seeks to destroy all good.

And America is good. America may not be perfect but she is good. America may not be without blemish but she is exceptional.

All parties should lay their swords upon the battlefield of propriety and pray for wisdom to unite. A unity based on the foundations of principles lain in our Constitution, principles that give free reign to faction but yield for reflection upon the broader purpose – A Republic that imbues her people with integrity, freedom to speak and seek, rise and fall, succeed and fail at one's own determination. A call of the wild protected by civilized citation.

Diversity is to freedom what unity is to foundation.

Perfection renders failure. Virtue renders victory.

God Bless,

Janine Turner

July 27, 2010

Posted in Constitutional Essays by Janine, Federalist No. 65 | 3 Comments »

July 27, 2010 – Federalist No. 65 – Cathy Gillespie

Tuesday, July 27th, 2010

Federalist No. 65 defends the role of the Senate as the court of trial for impeachments. It is fascinating that this intuitively judicial function would be delegated to the legislative branch – another example of the intricate checks and balances built into the Constitution, perfectly calibrated to preserve our liberty!

In the impeachment process, there are "checks" even within this check, as the U.S. House "has the sole power of impeachment," (Article I, Section 2, Clause 5 of the United States Constitution). In other words, the branch of the legislature closest to the people, the U.S. House, has the power to decide if there is sufficient cause to bring charges of impeachment. Our founders believed the people should decide (through their U.S. Representatives), if there is sufficient cause for trial to determine if "Treason, Bribery, or other high Crimes and Misdemeanors" (Article II, Section 4) have possibly taken place.

The power to convict rests with the Senate, however, as the founders believed the great responsibility of impeachment should be shared between the legislative bodies. The Senate was deemed the wiser, mature, and more stable body, capable of such consequential decisions.

"Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel CONFIDENCE ENOUGH IN ITS OWN SITUATION, to preserve, unawed and uninfluenced, the necessary impartiality between an INDIVIDUAL accused, and the REPRESENTATIVES OF THE PEOPLE, HIS ACCUSERS?"

If the founders had made the impeachment process too easy, it could fall victim to the political whims of the day; too hard, and the people would not be able to remove those who violate the public trust. Much like the amendment process which seems to have found the perfect balance between "*that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults," (Federalist No. 43)*, the impeachment process is designed with the perfect equilibrium between too facile, and too complex. As Troy Kickler notes, of the seventeen Americans impeached since 1789, only seven have been convicted.

As we journey slowly through the Constitution, with the Federalist Papers as our guiding light, it is awe inspiring to uncover layer after layer of checks, balances, and built in safeguards for our liberty. And to think this beautiful, delicate governmental structure that so ably protects our freedom was designed and agreed upon in a little over three months, in a hot room in Philadelphia! George Washington called it "a little short of a miracle." With over 200 years of hindsight, and in-depth study, it becomes more and more apparent that a true miracle occurred.

Good night and God Bless!

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 65 | No Comments »

July 27, 2010 – Federalist No. 65 – The Powers of the Senate Continued, From the New York Packet (Hamilton) – Guest Blogger: Troy Kickler, Ph.D., Founding Director of the North Carolina History Project

Tuesday, July 27th, 2010

Alexander Hamilton penned three essays (Federalist 64 – 66) explaining why the U.S. Constitution invested the U.S. Senate with certain powers. In The Federalist 65, he explains, in particular, the Senate's role in the impeachment process, and why that body–and not the Supreme Court–had been given the authority to convict.

According to the Constitution, the House of Representatives impeaches a national, public official and the Senate hears the trial and issues a verdict. Since 1789, when the U.S. Constitution was ratified, seventeen Americans have been impeached. The list includes President Andrew Johnson and President William Clinton; however, it includes mainly judges at the U.S. District level. Among those accused of political misconduct, one resigned before his trial, seven have been convicted, and eight have been acquitted. Congress can only remove the convicted from their current political office. The court system will hear any other trials and issue punishment for possible criminal acts.

For the impeachment process, the Constitution requires 1) that Senators "be on Oath or Affirmation," 2) that the Chief Justice preside over any presidential impeachments (the Vice-President presided over all others), and 3) that a conviction verdict have a minimum of 2/3 vote.

Since 1776, individual state constitutions had included an impeachment process for state officials, and Antifederalists in various states questioned whether state constitutions might be undermined. Among

them was Luther Martin, who ironically later opposed Jeffersonian-Republicans by serving as Justice Samuel Chase's legal defense during an 1805, national impeachment case. Other Antifederalists genuinely worried that outside political influence during the impeachment process might affect the Senators' votes. In North Carolina, Joseph Taylor and Timothy Bloodworth worried that the House might one day impeach state officials. Edenton's James Iredell, one of the first justices on the U.S. Supreme Court, dismissed this argument by pointing out that the constitutional language was clear: only national officials could be impeached by the House of Representatives and possibly convicted by the Senate.

Alexander Hamilton was fully aware of such arguments and put forth a cogent defense of the Senate's impeachment power in Federalist 65.

One major question that Hamilton answered is why the Senate is given the power to try impeachment cases. Somewhat agreeing with Antifederalists, Hamilton admitted that partisanship or "political factions" could trump demonstrations of guilt and truth during impeachment trials. It was possible that reelection concerns and constituents would indeed play a larger role in the impeachment voting process than a genuine search for truth. But that's why, Hamilton pointed out, the Senate–not the House of Representatives–was given the power.

Before the 17th Amendment's passage in 1913, state legislatures elected national senators for their state, so Senators were not concerned with winning the popular vote. Senators were considered in Hamilton's era, as legal scholar Michael J. Gerhardt writes, "better educated, more virtuous, and more high-minded . . . and thus uniquely able to decide responsibly the most difficult of political questions." Elected by state legislative bodies, Senators were considered by Hamilton to be impartial and "sufficiently dignified" to perform the task. And to emphasize the seriousness of the impeachment and ensure a genuine search for truth, these virtuous men were required to take an oath or affirmation (affirmations were allowed so that Quakers, who were conscientiously scrupulous of taking oaths, might not be excluded).

Hamilton considered the Senate preferable to the Supreme Court, too. For one, impeachment was serious business: a conviction could doom an official's honor. Such a decision, Hamilton reasoned, should not be left to a "small number of persons" but to serious deliberation among the most virtuous Americans. Moreover, the Court should not preside over two cases. After being stripped of emoluments, the convicted might face the same—yet now predisposed–judges in another trial. Judges inevitably influenced juries, the New York lawyer also stressed. Some Constitution critics had suggested uniting the Supreme Court and the Senate during impeachment trials; Hamilton argued that might still lead to an unfair, double prosecution.

The Senate is also preferable to charging people "wholly distinct from the other departments of government" to preside over impeachment trials, Hamilton writes. That option would increase government size and possibly require permanent positions; either way it would be too costly. It also would slow down the impeachment process and thereby give the guilty extra time to obfuscate the truth. Furthermore, Hamilton regretted to point out, a delay might give House members time to influence the decision.

Revealing the popularity and strength of Antifederalist arguments in certain states, Hamilton urged readers to consider the Constitution in its entirety and to avoid letting perfection be the enemy of the good. The Constitution should not be rejected strictly for a small number of problems, Hamilton argued: [Antifederalists] "ought to prove, not merely that particular provisions in it are not the best which might have been imagined, but that the plan upon the whole is bad and pernicious." The search for perfection in government, Hamilton warned in Federalist 65, can lead to anarchy.

Troy Kickler, Ph.D., is Founding Director of the North Carolina History Project.

Archive for the 'Federalist No. 66' Category

July 28, 2010 – Federalist No. 66 – Cathy Gillespie

Wednesday, July 28th, 2010

In Federalist No. 66, Hamilton continues his defense of the Senate's role as court of trial in the impeachment process. The anti-federalists believed this role concentrated too much power in the hands of the Senate. As we work our way through the Federalist Papers, it is fascinating to have the benefit of hindsight to explore how the structure built by the framers has played out.

In my personal journey through our **90 in 90, History Holds the Key to the Future**, I have learned just how much I did not know!!

I have discovered the Senate.Gov website is a marvelous resource and repository of history. I consulted it for a list of Senate impeachment trials, and found this link:

http://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm#4

The above link contains an illuminating narrative of the Senate's role in impeachment trials, and the major controversies that have arisen over the years, including the definition of "high crimes and misdemeanors."

In 1960 U.S. Rep Gerald Ford famously stated, "An impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history."

The link also contains the below listing of Senate Impeachment Trials. Since 1789, the Senate has conducted 19 impeachment proceedings, with an even split of 7 acquittals and 7 convictions. Three cases were dismissed.

Complete List of Senate Impeachment Trials
To date, the Senate has conducted formal impeachment proceedings 19 times, resulting in 7 acquittals, 7 convictions, and 3 dismissals.

William Blount, Senator

Date of Final Senate Action: January 11, 1799

Result: expelled, charges dismissed

John Pickering, Judge

Date of Final Senate Action: March 12, 1804

Result: guilty, removed from office

Samuel Chase, Justice

Date of Final Senate Action: March 1, 1805

Result: not guilty

James H. Peck, Judge

Date of Final Senate Action: January 31, 1831

Result: not guilty

West H. Humphreys, Judge

Date of Final Senate Action: June 26, 1862

Result: guilty

Andrew Johnson, President

Date of Final Senate Action: May 16/26, 1868

Result: not guilty

Mark H. Delahay, Judge

Date of Final Senate Action: no action

Result: resigned

William Belknap, Secretary of War

Date of Final Senate Action: August 1, 1876

Result: not guilty

Charles Swayne, Judge

Date of Final Senate Action: February 27, 1905

Result: not guilty

Robert Archbald, Judge

Date of Final Senate Action: January 13, 1913

Result: guilty, removed

George W. English, Judge

Date of Final Senate Action: December 13, 1926

Result: resigned, charges dismissed

Harold Louderback, Judge

Date of Final Senate Action: May 24, 1933

Result: not guilty

Halsted Ritter, Judge

Date of Final Senate Action: April 17, 1936

Result: guilty, removed from office

Harry E. Claiborne, Judge

Date of Final Senate Action: October 9, 1986

Result: guilty, removed from office

Alcee Hastings, Judge

Date of Final Senate Action: October 20, 1989

Result: guilty, removed from office

Walter Nixon, Judge

Date of Final Senate Action: November 3, 1989

Result: guilty, removed from office

William J. Clinton, President

Date of Final Senate Action: February 12, 1999

Result: not guilty

Samuel B. Kent, Judge

Date of Final Senate Action: July 22, 2009

Result: resigned, case dismissed

G. Thomas Porteous, Jr., Judge

Date of Final Senate Action: case pending

I hope you all are learning as much as I am about the history of our country, the founding principles upon which our country is based and how these principles were applied by the framers in creating the structure of our Republic, through the United States Constitution!!

Thank you for joining us!!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 66 | No Comments »

July 28, 2010 – Federalist Paper No. 66 – Janine Turner

Wednesday, July 28th, 2010

Howdy from Texas.

To those of us who worry that the basic structure of checks and balances within our government have been tampered with, such as with the 17th amendment and may continue to be tampered with in the future, such as with the rumblings of the removal of the electoral college by circumventing the Constitution and doing it through the State Legislatures, I quote Abigail Adams, my favorite foremother in a letter that she wrote to her young son:

"These are the times in which a genius would wish to live. It is not in the still calm of life, or in the repose of a pacific station, that great characters are formed. The habits of a vigorous mind are formed in contending with difficulties. Great necessities call out great virtues. When a mind is raised, and animated by the scenes that engage the heart, then those qualities which would otherwise remain dormant, wake into life and form the character of the hero and the statesman."

Inspire your children with this beautifully insightful passage about life, bravery, duty and patriotism. Share it with your friends and family.

I thank you for joining us. I thank Horace Cooper for his constant dedication and I thank Cathy Gillespie for being the best friend a person could ever dream of having and for being absolutely mesmerizingly devoted to Constituting America.

God Bless,

Janine Turner

July 29, 2010

Posted in Constitutional Essays by Janine, Federalist No. 66 | No Comments »

July 28, 2010 – Federalist No. 66 – Objections to the Power of the Senate To Set as a Court for Impeachments Further Considered, From the New York Packet (Hamilton) – Guest Blogger: Horace Cooper, writer and director of the Center for Law and Regulation at the Institute for Liberty

Wednesday, July 28th, 2010

In Federalist #66 Alexander Hamilton attempts to respond to objections about the new United States Senate acting as the Court in the event of impeachments of judges or executive branch officials.

The first complaint raised by critics of this set up was that "the provision in question confounds legislative and judiciary authorities in the same body, in violation of that important and well established maxim which requires a separation between the different departments of power." It is noteworthy that Hamilton eagerly accepts the notion that liberty is protected by dividing duties among several branches of government. In the case of the Senate acting as the impeachment court Hamilton suggests that this "partial intermixture of those departments for special purposes" is acceptable because of the benefits which accrue and because the Constitution doesn't really mix these as much as critics charge.

Hamilton notes that the House and the Senate play unique roles that are essential — the House acts as the accuser and the Senate acts as the jury or judge. The House requires a simple majority for the accusation, but the Senate requires a concurrence of two-thirds ensuring that a too hasty or contrived accusation isn't carried out. He next points out that in the State of New York the Senate is the impeachment court and the highest judicial authority for civil and criminal cases. If having the United States play a role as jurors in impeachment is unwarranted, how much more so is it true with the Constitution of New York?

The second issue raised is that having the Senate act as the Court "contributes to an undue accumulation of power in that body, tending to give to the government a countenance too aristocratic." Not only does the Senate in conjunction with the Executive have treaty-making power, critics charged that the impeachment role potentially made them the most influential division of government. Hamilton says that there is no objective measure of which part of the new government was the most influential. Instead Hamilton argues that we should recognize that the House of Representatives being the popularly elected branch is most likely to be the most powerful and influential branch of government. Hamilton explains that the House initiates impeachment (a strong power), and it is noteworthy that all revenue bills must originate in the House. The House also adjudicates disputes over the election of the Presidency. Weighed together the unique powers of the House demonstrate that there isn't too much power being concentrated by the United States Senate.

The next objection was that the Senate would be ineffective in this role because "they would be too indulgent judges of the conduct of men, in whose official creation they had participated." Here Hamilton explains that the criticism leveled against the Senate goes against the example in most of the state governments and almost all national governments that Hamilton has ever seen. All of them

presume some role on the part of the parties that appointed individuals in policing those individuals' misdeeds. Hamilton says that one byproduct of this dual function is that Senators may be more scrupulous about who they vote to confirm since they will ultimately be called to task in the removal of those individuals if they act corruptly. Additionally since they only vote to confirm and in fact the Constitution contemplates no role in the actual selection of the individuals ultimately nominated there is little reason to think that Senators would take casually their responsibilities to confirm or convict in an impeachment trial public officials.

The final complaint was that the Senate can't objectively carryout this responsibility because "union with the Executive in the power of making treaties" may be the occasion for actual collaboration in misdeeds and corruption. Here Hamilton is responding to charges similar to those in objection number three. Instead of alleging lenience by the Senate, this objection is that perhaps the Senators would somehow be complicit in the misdeeds of the individual being impeached and therefore would fail to carryout their duties with regard to the impeached individual.

Hamilton argues that this complaint really is a complaint against the integrity of the President and the Senate generally. Whether they had impeachment power or not, their propensity for misdeeds would be distinct and separate from the issue of abusing the impeachment court process. There is no reason to think that their unique role as Senators would make them more likely to support corruption than would being a Member of the House of Representatives Hamilton explains. Nevertheless, Hamilton recognizes that even if individual members of the Senate were corrupt, the fact that they must all act in concert minimizes the likelihood that some corruption on the part of an executive branch official would be collaborated and harbored by two-thirds of Senators.

Finally, Hamilton closes with this prescient observation. Perhaps the greatest assurance that the Senators will carryout their responsibilities in impeachment impartially is that it would serve to "divert the public resentment from themselves by a ready sacrifice of the authors of their mismanagement and disgrace." In other words, rather than suffer in the public's eye, Senators will readily impeach corrupt officials.

Horace Cooper is a writer and is the director of the Center for Law and Regulation at the Institute for Liberty

Archive for the 'Federalist No. 67' Category

July 29, 2010 – Federalist Paper No. 67 – Janine Turner

Thursday, July 29th, 2010

Howdy from Texas! It is overpoweringly evident by reading Federalist Paper No. 67 that the volley of political spin has always existed. The ever so baneful attempts to manipulate words, laws and situations to best fit the perspective of the beholder, or party, was as evident then as it is now. The art of this twisting of truths in the political realm, where the sphere of influence is so broad and the outcome so tenuous, is dangerous because of its power to shape history.

The incomprehensible drone and tactics of trying to redefine facts is certainly tangible today. The best fortification against such an enterprising realm of humanity is knowledge. This is why my ever so favorite forefather, John Adams, stated, "Liberty cannot be sustained without a general knowledge among the people."

This is why the education of our children is so important in the schools and in the home. What are our children learning in school? Do we agree with what is being taught? Knowledge is power. Are we discussing the foundation of our country with our children? They are never too young. Never. Keep a copy of the Constitution in your pocket, in your purse, on your kitchen table, on your phone. Pull it out; discuss the relevancy in regard to today's events and news topics. Relish in the awe that such a document written over 200 years ago still holds within its words the guidance we need today.

Discuss how the rights that are embossed in the papers are ingrained in our American spirits.

Why? Because they were Providentially inspired. The United States Constitution was the springboard from which leapt the giant, transformational inspirations of justice, liberty and human dignity. We need it to preserve these God given attributes today. If we toss it aside like an old sock, then we toss aside our rights. With the Constitution's demise we, as a country, as a free people, die.

Our United State's Constitution is the world's oldest Constitution still in use today – for good reason. Let's keep it that way.

I thank you for joining us today and I thank Mr. Troy Kickler for his insightful essay!

God Bless,

Janine Turner

July 29, 2010

Posted in Constitutional Essays by Janine, Federalist No. 67 | No Comments »

July 29, 2010 – Federalist No. 67 – Cathy Gillespie

Thursday, July 29th, 2010

*"The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."*Article II, Section 2, Clause 3 of the United States Constitution.

Hello from Mt. Vernon Virginia! In Federalist No. 67, Publius vigorously defends the above sentence in the U.S. Constitution, and uses the anti-federalists' arguments against it as an example of their distortion of the powers of the presidency.

It is appropriate I should be writing from Mt. Vernon, Virginia today, as President George Washington made the first use of the power of the recess appointment in 1789, to fill several federal district court

judgeships. On July 1, 1795 President Washington made a recess appointment to appoint John Rutledge as Chief Justice of the United States Supreme Court, upon Chief Justice John Jay's resignation to become Governor of New York. Within 15 days of Chief Justice Rutledge's recess appointment, Rutledge made a controversial speech attacking the Jay Treaty, saying he would rather see President Washington die, than sign the treaty! Chief Justice Rutledge's tirade led many to believe he was mentally ill or intoxicated when he made the speech. (for more on this story, see my source: http://www.senate.gov/reference/resources/pdf/RL31112.pdf, page 17).

Consequently, when Chief Justice Rutledge was nominated by President Washington for a full life term in December of 1795, Rutledge's nomination was rejected by the Senate five days later by a vote of 10-14, making him the shortest serving Chief Justice in United States History!

From the moment of its inception, the United States Constitution went to work. The checks and balances and separation of powers delineated in this great document provided boundaries even on our first and revered President, George Washington. Imagine if the 24 hour news cycle had existed in President Washington's time. The story of Chief Justice Rutledge would have been covered non-stop, and his speech would have certainly been all over You Tube! But despite the difference in technology, and the span of hundreds of years, our United States Constitution works much the same today as it worked at the time of its birth, like gears in a machine, steadily providing a check to one branch, and then another, with our liberty delicately balanced.

To the extent that one branch goes too far, and encroaches on another, or provides a check where none should be, it is not a failure of the machine, it is a failure of the energy behind the machine – "We the people." Our knowledge is power, and our power translated to action is energy!

Thank you Troy Kickler for your brilliant essay, and your continued participation in our **90 in 90 History Holds the Key to the Future project**.

And thank you to our fellow Patriots and "guardians of the Constitution," (Federalist No. 16) for participating in our blog!

On to Federalist No. 68,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 67 | No Comments »

July 29, 2010 – Federalist No. 67 – The Executive Department, From the New York Packet (Hamilton) – Guest Blogger: Troy Kickler, Founding Director of the North Carolina History Project.

Thursday, July 29th, 2010

Among the 85 essays in *The Federalist Papers*, some of the most passionate language is in Federalist 67. A frustrated Alexander Hamilton admits that moderation in tone in writing #67 had been a difficult task. He denounces "writers against the Constitution" (now called Antifederalists) and accuses them of

practicing "unwarrantable arts" that include disingenuousness regarding executive power and offering counterfeit information to prey on the American people and their fear of monarchy.

He specifically calls out Cato (probably former New York Governor George Clinton) and provides a lengthy, detailed explanation of the nomination and appointments and recess appointments clauses in Article 2, Section 2. In essence, Federalist 67 has two purposes: reprimand the critics of the Constitution and explain the constitutional limitations placed on executive power.

Hamilton writes with so much verve and occasional sting—and he admits as much in the last paragraph–that it is worth including a lengthy quote: "Calculating upon the aversion of the people to monarchy, they [Antifederalists] have endeavored to enlist all their jealousies and apprehensions in opposition to the intended President of the United States; not merely as an embryo, but as the full-grown progeny. The authorities of a magistrate, in few instances greater, in some instances less, than those of a governor of New York [here Hamilton seems to know Cato's identity], have been magnified into more than royal prerogatives. He has been decorated with attributes superior in dignity and splendor to those of a king of Great Britain. He has been shown to us with the diadem sparkling on his brow and the imperial purple flowing in his train. He has been seated on a throne surrounded with minions and mistresses, giving audience to the envoys of foreign potentates, in all the supercilious pomp of majesty. The images of Asiatic despotism and voluptuousness have scarcely been wanting to crown the exaggerated scene. We have been taught to tremble at the terrific visages of murdering janizaries, and to blush at the unveiled mysteries of a future seraglio."

After rebuking Antifederals, Hamilton clarifies Article 2, Section 2 and hopes to prove that, without a doubt, State legislatures—not the President–fill Senate vacancies. Hamilton writes that only temporary appointments, including ambassadors and justices, would be made in special circumstances such as recess of the U.S. Senate. This clearly excluded, Hamilton writes, presidential appointments of U.S. Senators. He then refers back to Article 1, Section 3 which guaranteed States the authority to fill permanent vacancies in the Senate. (This was changed, however, with the passage of the 17th Amendment–popular election of Senators).

Hamilton rightly criticized Cato for misinterpreting Article 2, Section 2. Cato, however, included the recession appointment clause in his Letter #5 (Hamilton refers to this essay in Federalist 67) as a means to argue for annual Congressional elections. In it, Cato recalled similar ideas expressed by Algernon Sidney (1623-1683), author of *Discourses Concerning Politics*, and Charles de Secondat, Baron de Montesquieu (1689-1755), an Enlightenment thinker who articulated the separation of powers doctrine. Cato believed, in short, that annual elections eliminated a need for the recess appointment clause.

But back to Hamilton's points. Article 2, Section 2 reveals the Framers' fear of congressional despotism and serves as a check, alluded Supreme Court Justice Antonin Scalia in *Freytag v. Commissioner* (1991). This provision helped identify the source of temporary appointments of U.S. officers and avoided the possibility of legislative machinations. As James Wilson, a leading Pennsylvania Federalist, legal scholar, and one of the first U.S. Supreme Court justices writes, in *Lectures on Law* (1790-92): "The person who nominates or makes appointments to offices, should be known. . . No constitutional stalking horse should be provided for him to conceal his turnings and windings, when they are too dark and too crooked to be exposed to publick view." Simply put, Article 2, Section 2 ensures that Americans know who is responsible for nominating appointments described within the provision.

It must be remembered that the President nominated, but Congress approved the nomination. Presidents have sometimes evaded this procedure, to be sure, by creating positions not listed in the provision. Grover Cleveland did so in 1893, when appointing James H. Blount to report on the Hawaiian Revolution. Hamilton argues in Federalist 67 that presidents do not confirm the officers listed in Article 2, Section 2. As James Iredell, a leading North Carolina Federalist reminded delegates at his state's ratification convention, "The President proposes such a man for such an office. The Senate has to consider upon it. If they think him improper, the President must nominate another, whose appointment ultimately again depends upon the Senate." History has provided examples of implementing this governmental check: approximately 20% of Supreme Court nominations have NOT been confirmed, to name only one example.

Although Hamilton uses an accusatory tone, all involved in the ratification debates were concerned with defending liberty. The debates prompted a more clear explanation of the Constitution's checks and balances and limits on governmental power. We can be thankful for that.

Troy Kickler is Founding Director of the North Carolina History Project.

Archive for the 'Federalist No. 68' Category

August 2, 2010 – Federalist Papers 68 & 69 – Janine Turner

Tuesday, August 3rd, 2010

Howdy from Texas! As I read Federalist Papers No. 68 and 69 it becomes evident in a factual way how earnestly and tenaciously our founding Constitutional forefathers strove to protect our liberties and our Republic. Once again, they based their decisions, not on rhetoric or reason but on the wisdom wrought by history.

In no circumstance was this more evident than in regard to the election of the President of the United States. In Federalist Paper No. 68, Alexander Hamilton, states this with precision and clarity.

"Nothing was more to be desired, than that every practicable obstacle should be opposed to cabal, intrigue and corruption. These most deadly adversaries of Republican government, might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils."

Could this be more relevant throughout our history and even today? We, and democracy, have been under continuous attack from varied countries for the past two centuries and we are under attack today. "The enemy is in the field," whether it be via the insidious silencing by an overzealousness of "political correctness" or a literal attack on our soil.

America represents hope and hope is the envy of the enemy.

Our founding fathers wanted to protect our Republic from intrigue and corruption with the establishment of the electoral process. This provided a sort of perspective permeating through the passions of the people as well as a balance of power throughout the country. In times of peace and prosperity the perspective of an electorate seems redundant. Never have we seen, nor experienced the horrors that our forefathers endured that warranted and verified the need to establish such a window of wisdom laid in the hands of a few. Tyranny can easily slide in our backdoor while we slumber. Today, soldiers don't beckon at our door to spend the night in our homes – this doesn't mean it may not happen yet again.

Our only guarantee lies within the guarding and respecting and understanding the premise and principles upon which our Constitution was established.

We must never let ourselves be so far removed from the history or teaching of tyranny that we relinquish the reigns to the horse that pulls the cart. If we do this, our horse will pull our cart over a cliff into an oblivion of despair that will then be beyond our control.

"Liberty cannot be preserved without a general knowledge among the people." John Adams.

Liberty cannot be sustained without a general knowledge of the United States Constitution.

The Electoral College is also important because it balances the power between the states. If we abolished the electoral process then the more populated states, such as California, Texas and New York would control the policies and direction of the country. One has to wonder about the "winner takes all" policy regarding the electorate that exists presently in all of the states except Maine and Nebraska. My understanding of "winner takes all" is that it undermines the electoral process. It also may falsely represent the political inclination of the states and eliminate electoral votes from certain regions that could, when added all together, actually determine an election. Is, "winner takes all" a violation of the United States Constitution? Does it circumvent the amendment process?

Federalist Paper No. 68 is enlightening and intriguing. Federalist Paper No. 69 is a smart, insightful comparison of our United States Constitution with the British rule of the king. Revealing are the nine points Alexander Hamilton makes by this exercise: Term limited, Impeachment possible, Checks by the legislative body, Power to command the military but not declare war or raise arms, Treaties made with concurrent power of the legislature, Appointment of officers with approval of the legislature, No power to convey privileges, Can prescribe no rules concerning commerce or coins, No particle of spiritual jurisdiction.

The comparison of the United States Constitutional restrictions to those of the British crown are awesome and revealing. Brilliant were the checks instilled upon the Executive branch of the United States' government. This, of course, begs the question how have these limits prevailed today?

My curiosity is peeked by Alexander Hamilton's statement about the President's power of nomination being just that – a nomination – approved by the Senate – in ALL categories.

"The President is to nominate, and, WITH THE ADVICE AND CONSENT OF THE SENATE, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers

of the United States established by law, and whose appointments are not otherwise provided for by the Constitution.

The President's nominations of ambassadors, public ministers, judges, and in general all officers of the United States established by law and whose appointment are not otherwise provided for by the Constitution must be held to the scrutiny and "consent of the senate."

How does the bloating of our modern day federal government, with unapproved and unchecked "bureaucrats and czars," fair under this Constitutional scrutiny? These are the bleeds that rupture the heart of a Republic and threaten a seizure of the people.

Thoughts to ponder.

God Bless,

Janine Turner

August 2, 2010

Posted in Constitutional Essays by Janine, Federalist No. 68, Federalist No. 69 | 11 Comments »

July 30, 2010 – Federalist No. 68 – Cathy Gillespie

Sunday, August 1st, 2010

Greetings from Long Beach Island, New Jersey! The Gillespies are on our family vacation, and it has been a little hard to keep up with the essays, but I am determined to catch up! In case you are wondering, the weather has been beautiful, the water warmer than usual, and we have been visiting with Ed's extended family, his brothers and sisters and all the Greco cousins! There are at least 30 members of the Gillespie and Greco families here now, with the Moore cousins on the way, on Thursday!

The electoral college, the subject of Federalist No. 68, is one of the least understood components of the United States governmental structure. I recommend this website for anyone who wants to brush up on the subject: http://www.archives.gov/federal-register/electoral-college/

It is so important we all understand the electoral college and its importance to our republican form of government. There has a been a recent movement to abolish the electoral college. But another movement to persuade states to adopt proportional voting, instead of the traditional "winner-take-all" method, is also gaining momentum.

My daughter, Mollie Gillespie, writes about the advantage of states adopting a proportional system of allocating their electoral college votes on Juliette Turner's new Kids' Blog. Click on this link and scroll down for Mollie's essay: http://constitutingamerica.org/juliette/?p=18

Check out Juliette's Blog, and ask your kids to participate! Juliette is reading the ***Making of America***, and writing about it. She is also encouraging kids to start Patriot's Clubs!

Inspire our next generation to want to learn about the Constitution and our country's founding principles! Forward out links to Juliette's blog, and help your kids start Patriots' clubs. Take the time to teach your kids about the electoral college! They find this subject fascinating, when it is explained to them. Use the website http://www.archives.gov/federal-register/electoral-college/ as a guide.

As we have said numerous times on these pages, knowledge is power! Let's make sure our next generation is knowledgable, so they have the power to determine their future, and the future of our great country.

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 68 | 3 Comments »

July 30, 2010 – Federalist No. 68 – The Mode of Electing the President, From the New York Packet (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Friday, July 30th, 2010

Federalist 68 to 72 address the election and structure of the Presidency. Who better to address that than Alexander Hamilton, whose knowledge of executive power combines with an affinity for it that caused much suspicion during his political career?

The first essay is a brief foray into the Electoral College. The matter excited so little passion during the ratification debates that Hamilton barely gets his writing hand limbered up. He allows himself to wax poetic and substitute a couplet edited from Alexander Pope's *Essay on Man* for some of the acerbic put-downs of his preceding efforts as Publius. Yet, the frivolity of the approach should not obscure the delicate political balances reflected in the constitutional settlement of the President's election. The Framers' had rejected direct popular election (an easy call due to its profound conflict with the idea of the United States as a confederated republic), election by Congress, election by the state legislatures, and election by electors selected by regional electors elected by the people (Hamilton's multi-layered proposal).

The Framers wanted at once to have an energetic executive and to prevent the emergence of an American Caesar. The first would be accomplished by unity in the office, the latter through, among other things, care in the selection of the person. They also were deeply fearful that some foreign power might place a Manchurian Candidate among the presidential contenders. Hamilton mentions that concern in his defense of the system, a concern also reflected in the requirement that the President be a natural-born citizen. This was no small matter to the Framers. There were various plots and other connections between foreign agents and American politicians and military officers (the Wilkinson/Burr cabal with Spain, for example). Moreover, these kinds of intrigues to place a foreigner in executive office were familiar, both because they were common abroad, and because of the Confederation Congress's offer in 1786, quickly withdrawn, to the republican-minded Prince Henry of Prussia to become regent of the U.S.

The Framers faced several practical problems. Every efficient electoral system has to provide for a means of nominating and then electing candidates. Moreover, civil disturbances over what is often a politically heated process must be avoided. There must be no taint of corruption. The candidate elected must be qualified.

As to the first, the Electoral College would, in many cases, nominate multiple candidates. Electors would be chosen as the legislatures of the states would direct. Though the practice of popular voting for electors spread, not until South Carolina seceded from the Union in 1860 did appointment by the legislatures end everywhere. Once selected, the electors' strong loyalties to their respective states likely would cause the electors to select a "favorite son" candidate. To prevent a multiplicity of candidates based on state residency, electors had to cast one of the two votes allotted to each for someone from another state. It was expected that several regional candidates would emerge under that process. There likely would be no single majority electoral vote recipient, at least not after George Washington. The actual election of the President then would devolve to the House of Representatives, fostering the blending and overlapping of powers that Madison extolled in Federalist 51.

That last step corresponded to the Framers' experience with the election of the British prime minister and cabinet, and with the practice of several states. However, consistent with the state-oriented structure of American federalism, such election in the House had to come through a majority of state delegations, not individual Congressmen. Though modified slightly by the Twelfth Amendment as a result of the deadlock of 1800, this process is still in place.

The Electoral College also was to be the mediating device that would balance the desire for popular input with the realistic concern that a direct popular vote would promote candidates with "talents for low intrigue, and the little arts of popularity." Hamilton, a skilled in-fighter, possessed very sharp elbows politically, but lacked those particular talents and despised them in others. As John Jay writes in Federalist 64, the Constitution's system would likely select those most qualified to be President. Augmented by the Constitution's age requirement for President, the electors are not "liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle."

Having the voters select a group of electors, rather than the President directly, would also calm the political waters. By making that election something other than a vote about particular candidates, the process would encourage reflection and deliberation by voters about the capacity for reasoned judgment of the electors chosen. The smaller number of wise electors, in turn, would exercise that judgment free from popular passion.

There is also the problem of corruption of the electors. Every polity must address that. The Republic of Venice had a truly byzantine system of election and selection by lot of those whose sole responsibility it would be to elect the Doge (the executive). The sheer number of participants and the unpredictability of the eventual identity of the Venetian electors made vote-buying, influence-peddling, and intimidation impractical. In Federalist 68, as well, Hamilton assures the reader that, in the American system, corruption and the influence of faction are avoided by the temporary and limited duty of the electors, the disqualification of federal office holders to serve, the large number of electors, and the fact that they meet in separate states at the same time. Presumably, those protections fall away when the House elects

the President. But Congressmen have to worry about re-election and, thus, want to avoid corrupt bargains that are odious to the voters.

Though the constitutional shell remains, much of the system operates differently than the Framers hoped. The reason is the evolution of the modern programmatic party, that bane of good republicans, which has replaced state loyalties with party loyalties. The Framers thought they had dealt adequately with the influence of factions in their finely-tuned system. As modern party government was just emerging in Britain and—in contrast to temporary and shifting political factions—unknown in the states, the Framers designed the election process unprepared for such parties.

Today, the nominating function is performed by political parties, while election is, in practice, by the voters. Elections by the House are still possible, if there is a strong regional third-party candidate. But the dominance of the two parties (which are, in part, coalitions of factions) suppresses competition, and the last time there was a reasonable possibility of electoral deadlock was in 1968, when Alabama Governor George C. Wallace took 46 electoral votes. Mere independent national candidacies, such as that of Ross Perot in 1992, have roughly similar levels of support in all states and are unlikely to siphon electoral votes and block the usual process.

Parties have had a beneficial effect in that they have prevented repetitions of the debacles of 1800 (when, due to the tie vote between Jefferson and Burr, it took the House 36 ballots and probable political intervention by Hamilton on the former's behalf to resolve the election) and of 1824 (when the election dominated by just the regional candidacies anticipated by the Framers was thrown into the House and extensive bargaining precipitated charges of corruption that stymied the J. Q. Adams presidency). Had parties not emerged to provide necessary lubrication, the creaky constitutional machinery well might have had to be reformed. Though they have smoothed the process, parties arguably also have promoted the very evils (other than foreign intrigue) that Publius assured his readers were avoided under the electoral system designed by the Framers.

At the same time, the emergence of modern political parties has not made the Electoral College obsolete, as it still promotes important values. It reinforces the founding principle that the U.S. is a confederated republic and not a consolidated national government, as analyzed so persuasively by Madison in Federalist 39. Despite the occasional misfire, as in the election of 2000, the Electoral College often gives the narrow victor in the popular vote a mandate through a significant electoral college majority. The need to find a lot of electoral votes to overturn such a result reduces the likelihood of persistent challenges. Elections such as 1948, 1960, 1968, and 1992 come to mind. Proposals to change or abolish the Electoral College have appeared frequently since the Constitution's adoption and are of predictable types. But they always lose steam, as there has been no showing that they will serve republican values better than the current system. Indeed, efforts to change the system have declined in the last half century, even after the contested election of 2000, a testimony to the enduring legitimacy of the Electoral College.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary

constitutional issues before professional and community forums. His website is http://www.tokenconservative.com

Archive for the 'Federalist No. 69' Category

August 3, 2010 – Federalist No. 69 & 70 – Cathy Gillespie

Tuesday, August 3rd, 2010

Greetings from Long Beach Island New Jersey! What fun I've been having reading the Federalist Papers on the beach! And what interesting looks I get from passersby who take the time to glance at the cover of my book.

Federalist Papers 68-77 are especially interesting to me personally, as I have been fascinated by the Presidency for as long as I can remember. My first "political" experience was writing to President Nixon when I was in grade school, telling him I was praying for him during his struggles. In Junior high, I begged my father to take me to SMU, in Dallas near where I grew up, to stand in a rope line in order to catch a glimpse of President Gerald Ford. I voted for the first time in 1980, proudly casting my ballot for Ronald Reagan. My first college course in political science at Texas A&M was taught by an expert in the Presidency, and although regretfully I can't remember his name, I loved the course so much, I switched my major from business to political science that semester!

During the last decade, I got an even closer look at the Presidency through my husband's work with President George W. Bush, and opportunities our family had to interact with him. I had always admired President Bush's steady leadership, and his unwavering commitment to certain values and principles, most notably keeping America safe. But getting to know him personally, I admired the way he carried the office of the Presidency. When you are President, you are always President, whether relaxing in a small group or at public events. President Bush respected the office, and lived every day in a way that could make our country proud.

Thank you to Professor Joerg Knipprath for your enlightening and thorough essays on Federalist Papers No. 69 (The Real Character of the Executive) and 70 (The Executive Department Further Considered). The historical background you provide gives a useful prism from which to view these two papers that explore the President's powers versus those of the British Monarch and the New York Governor, and the decision of the founders to have a unified executive, versus two or more heading that branch.

In Federalist No. 69 Publius makes a convincing argument that the United States Presidency, while powerful enough to head the country, is not as powerful as the King, or even the New York Governor

(with the exception of the power to make treaties). This is a fascinating comparison, and reveals the founders' thought process on why the Presidency of our country is vested with certain powers and limited in others.

Some of the President's powers originally outlined by the founders have waned, while others have increased. The President's term in office still remains at four years, but is now limited to two terms by the twenty-second Amendment.

The President's power to

"nominate, and, WITH THE ADVICE AND CONSENT OF THE SENATE, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers of the United States established by law, and whose appointments are not otherwise provided for by the Constitution,"

has been expanded over the years by the President's ability to create "Czar" positions. These "Czar" positions sound eerily similar to the power Publius ascribes to the King, and denies the President having:

"The king of Great Britain is emphatically and truly styled the fountain of honor. He not only appoints to all offices, but can create offices."

Time Magazine provides an interesting history of "Czars" in the United States at this link: http://www.time.com/time/politics/article/0,8599,1925564,00.html

Time states the first Czar existed in President Woodrow Wilson's cabinet during World War I, when Wilson appointed Bernard Baruch to head the War Industries board, and was known as the Industry Czar. This must have been the proverbial camel's nose under the tent, as the use of "Czars" has mushroomed from that point forward.

In Federalist No. 70, Publius defends the decision of the founders to have a single executive in the office of the Presidency head the executive branch, versus two or more individuals. The benefits of a unified executive make an extraordinary amount of sense, especially in protecting the people's liberty through transparency, and accountability. As difficult as it was to pinpoint blame in Watergate, for example, imagine how much more difficult it might have been had there been two Chief Executives. Professor Knipprath quotes Harry Truman's famous line, "the buck stops here," and that indeed is one of the most important attributes of the United States Presidency.

The founders' grasp of history, as they detail the failures of past plural executives, such as the Achaens, or the dissensions between the Consuls and the military Tribunes in Roman history once again illuminates their arguments. And their grasp of human nature is equally as profound –

"Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity."

"Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to

disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character."

Our United States Presidency is a unique institution, crafted thoughtfully and skillfully by our founding fathers!

On to Federalist #71!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 69, Federalist No. 70 | No Comments »

August 2, 2010 – Federalist Papers 68 & 69 – Janine Turner

Tuesday, August 3rd, 2010

Howdy from Texas! As I read Federalist Papers No. 68 and 69 it becomes evident in a factual way how earnestly and tenaciously our founding Constitutional forefathers strove to protect our liberties and our Republic. Once again, they based their decisions, not on rhetoric or reason but on the wisdom wrought by history.

In no circumstance was this more evident than in regard to the election of the President of the United States. In Federalist Paper No. 68, Alexander Hamilton, states this with precision and clarity.

"Nothing was more to be desired, than that every practicable obstacle should be opposed to cabal, intrigue and corruption. These most deadly adversaries of Republican government, might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils."

Could this be more relevant throughout our history and even today? We, and democracy, have been under continuous attack from varied countries for the past two centuries and we are under attack today. "The enemy is in the field," whether it be via the insidious silencing by an overzealousness of "political correctness" or a literal attack on our soil.

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Thoughts to ponder.

God Bless,

Janine Turner

August 2, 2010

Posted in Constitutional Essays by Janine, Federalist No. 68, Federalist No. 69 | 11 Comments »

August 2, 2010 – Federalist No. 69 – The Powers of the President, From the New York Packet (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Monday, August 2nd, 2010

In Federalist 69, Hamilton responds to the charge by the Constitution's opponents that the president is an American king. He compares the powers of the "president of confederated America" (interesting phrasing) under the Constitution with those of the king of Great Britain and the governor of New York. He chooses the latter for several reasons. First, the essays of Publius are written during the pendency of the New York and Virginia ratifying conventions and were obviously intended in the first instance to influence those closely-fought skirmishes.

Second, Hamilton was deeply involved in state politics as a member of the downstate faction that favored both the Constitution and, later, the Federalist Party. Though it is hard to believe today, New York City politically was, in many ways, a Tory town. It was a hotbed of Loyalist sentiment during the Revolutionary War, so much so that the British made it their headquarters. Hamilton was intimately familiar with the operation of his state's government and, given the emerging significance of the city and state, would find New York's system more important than others'.

Third, the governor of New York was a rather strong chief executive compared to the state governors at the time. Comparing the president's powers favorably to those of a republican American state executive would resonate particularly well with the persuadable delegates by avoiding charges that comparing the prerogatives of the president to those of the British monarch was irrelevant to the cause, as no American king was to be crowned.

But there is one more reason. The governor of New York, George Clinton, was the presiding officer at the convention and a staunch Antifederalist. He was also a member of the upstate Albany faction politically opposed to Hamilton. Clinton is the likely author of potent attacks on the Constitution in "Letters of Cato." Many historians believe that it was the publication of some of those letters that induced the Constitution's supporters to organize the effort that became The Federalist. The executive was one of Cato's particular concerns. In an essay published four months before Federalist 69, Cato labeled the president the "generalissimo of the nation," assailed the scope of the president's powers, compared those powers alarmingly with those of the king of Great Britain (especially the war power), and warned, "You must, however, my countrymen, beware that the advocates of this new system do not deceive you by a fallacious resemblance between it and your own state government [New York]….If you examine, you…will be convinced that this government is no more like a true picture of your own than an Angel of Darkness resembles an Angel of Light." Hamilton had no choice but to respond.

The result is a brief comparative overview, the particulars of which do not matter much today, as the king's prerogatives, already circumscribed then, are virtually non-existent now. The essay does provide an introduction to various powers of the president, most of which are in Article II of the Constitution. Hamilton will delve into greater detail of various of them over the course of Federalist 73 to 77.

The Framers saw Congress as the most dangerous branch, and the one most likely to encroach on the domain of the others. While there were dangers in an independent and powerful executive, the lessons from the Revolutionary War and life under the Articles showed the need for just such an officer. The turbulence of state governments with weak and dependent executives only proved the point. Most agreed that a strong, independent executive was needed. But, how strong?
What is significant for us is the dog that does not bark, the constitutional clauses that are not mentioned by Publius. Not long after the Constitution was approved, Hamilton used the occasion of Washington's Neutrality Proclamation in 1793 to advance a broad theory of implied executive powers. His position, vigorously challenged by Madison during the Pacificus-Helvidius debates, was that the president has all powers that are not denied to him under the Constitution either expressly or by unambiguous grant to another branch. That approach has been used by subsequent presidents to fuel the expansion of executive power.

Article II is rather short, and the president's powers few and specific. Beyond that, the boundaries are vague. It was broadly understood that George Washington would be the first president. The general recognition of his propriety and incorruptibility meant that he would have discretion to define the boundaries of the office. Indeed, Washington was expected to do so, and he was well aware of that responsibility. In addition to the oath of office, there are three clauses whose text suggests room for discretion. Those three, the executive power clause, the commander-in-chief clause, and the clause that the president "shall take Care that the Laws be faithfully executed," have proved to be generous reservoirs of necessary implied executive powers.

Publius spends little time on the commander-in-chief clause, and essentially none on the others. He portrays the role of the president as if he would be confined to leading the troops in military engagements. While Washington, with Hamilton as his aide, actually dressed in military regalia and mounted up to lead troops during the Whiskey Rebellion, they soon delegated that project to General "Light Horse Harry" Lee. That is the least likely role of the president today. Indeed, even during the ratification debates, that was a questionable view not usually advocated, as it frightened republicans by

blurring the line between civilian control and military command and was thought likely to lead to the election of "military chieftains."

The executive power clause is the principal source for the president's implied or inherent powers, those that the president's detractors would disparagingly call royal or prerogative powers. The textual significance is that, while Article I says that, "All legislative powers herein granted shall be vested in a Congress …," Article II declares that, "The executive power shall be vested in a President …"[italics added]. That affirmative grant to the president has to mean something, and –unlike Article I regarding Congress–it has to mean more than the powers mentioned later in the text. The question ever since has been, "Just what does it mean?" Presidents have massaged that ambiguity and the flexibility of the other elastic clauses mentioned to act unilaterally, as necessity demands, usually in military affairs, foreign relations, and national security matters. Executive unilateralism came under particular scrutiny by Congress, the courts, the academy, and the media during the Bush(43) administration, though interest in that topic has slackened since the election of 2008–perhaps not coincidentally.

Not surprisingly, as advocate for the Constitution's adoption, Hamilton does not spend time defending, or even recognizing, the theory of implied executive powers that he embraced soon thereafter. The enumeration of specific limited presidential powers and Hamilton's soothing interpretations in Federalist 69 do not give due credit to the possible sweep of the executive office. His next essay presents a more forthright defense of the need for an energetic executive.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com

Archive for the 'Federalist No. 70' Category

August 3, 2010 – Federalist Paper No. 70 – Janine Turner

Tuesday, August 3rd, 2010

Howdy from really hot Texas! Federalist Paper No. 70 is a rich read. Within its pages lay a thought provoking instructive that once again finds its measures readily applicable to today.

Big government. This is a phrase that I had always heard, and new instinctively was a negative, but I never really understood its premise until I delved into the Federalist Papers. What a mint of invaluable information and directives are the essays of the Federalist. I do hope that our forum here, and time together as Americans, reading and blogging about the Federalist Papers have perhaps diffused the awareness of them amongst our great land.

Our founding fathers believed in a small federal government encumbered by checks and balances. Alexander Hamilton makes the case by quoting examples of how deceitful enterprises rise from an executive branch that is not singular. When accountability rests on the few instead of the singular, evasion becomes the norm.

"But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility…"

Alexander Hamilton further denotes:

"It often becomes impossible, amidst mutual accusations, to determine on whom the blame, or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author."

This is one of the reasons why Americans throw up their hands in disgust and walk away from the duties beholden to a citizen of a Republic. Where does one begin to know the truth of an issue? Where does one begin to know who really is the culprit?

Yes, our Executive Branch is represented by a singular person, but the bureaucracy surrounding it, the lawyers, the administration instructing it, have become a huge machine. Transparency has become close to nil. The Executive Branch has become a branch governed by the"councils," a process of which Alexander Hamilton both denounces and warns. This plurality of our modern day Executive Branch befuddles the citizens. How does one take action?

"The people remain altogether at a loss to determine by whose influence their interests have been committed to hands so manifestly improper."

Alexander Hamilton states that it is plurality that most threatens a Republic and robs her citizens of, "the two greatest securities they can have for the faithful exercise of any delegated power." These two securities of a Republic are: public opinion and discovery.

"The plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power. First. The restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment, in cases which admit of it."

The office of President of the United States is a thankless job and certainly the President is still help accountable today for the state of the union. Yet, because the Executive Branch is so big and because laws are being made by bureaucrats behind the scenes, and not by the Legislative branch, enterprising schemes take place such in ways that render American citizens without the adequate resources to respond and take action.

As Alexander Hamilton astutely observes:

“An artful cabal in that council, would be able to distract and to enervate the whole system of administration.”

All of this intrigue begs the question: what are we, the genius of the people” to do? Where do we begin and how will we make a difference? Alexander Hamilton even asks the question:

“Who is there that will take the trouble, or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task..”

Our forefathers were most certainly examples of men who were zealous enough to undertake the unpromising task. They were willing to lose “their lives, their fortune and their sacred honor” to combat the intrigues and unscrupulous behavior of the British Empire. They fought to secure liberty and justice for all American citizens.

America today has within its bosom men and women who are willing to, “incur the odium,” in order to preserve our Republic and all for which she stands: honor, dignity, freedom. Obviously, our men and women of uniform have risked and lost their lives throughout our history to maintain our rights and continue to do so today.

However, these men and women also start with you, you who are reading the Federalist Papers, you who are writing on our blog, you the Professors and scholars who are dedicating your time to Constitute America, you who are willing to stand up, seek the truths and speak your opinions. You are, “the majesty of the people.” On you, our Republic rests.

America stands because of the diligence of your actions, because you are, “a citizen zealous enough to undertake the unpromising task.”

God Bless,

Janine Turner

August 3, 2010

Posted in Constitutional Essays by Janine, Federalist No. 70 | No Comments »

August 3, 2010 – Federalist No. 69 & 70 – Cathy Gillespie

Tuesday, August 3rd, 2010

Greetings from Long Beach Island New Jersey! What fun I’ve been having reading the Federalist Papers on the beach! And what interesting looks I get from passersby who take the time to glance at the cover of my book.

Federalist Papers 68-77 are especially interesting to me personally, as I have been fascinated by the Presidency for as long as I can remember. My first "political" experience was writing to President Nixon when I was in grade school, telling him I was praying for him during his struggles. In Junior high, I begged my father to take me to SMU, in Dallas near where I grew up, to stand in a rope line in order to catch a glimpse of President Gerald Ford. I voted for the first time in 1980, proudly casting my ballot for Ronald Reagan. My first college course in political science at Texas A&M was taught by an expert in the Presidency, and although regretfully I can't remember his name, I loved the course so much, I switched my major from business to political science that semester!

During the last decade, I got an even closer look at the Presidency through my husband's work with President George W. Bush, and opportunities our family had to interact with him. I had always admired President Bush's steady leadership, and his unwavering commitment to certain values and principles, most notably keeping America safe. But getting to know him personally, I admired the way he carried the office of the Presidency. When you are President, you are always President, whether relaxing in a small group or at public events. President Bush respected the office, and lived every day in a way that could make our country proud.

Thank you to Professor Joerg Knipprath for your enlightening and thorough essays on Federalist Papers No. 69 (The Real Character of the Executive) and 70 (The Executive Department Further Considered). The historical background you provide gives a useful prism from which to view these two papers that explore the President's powers versus those of the British Monarch and the New York Governor, and the decision of the founders to have a unified executive, versus two or more heading that branch.

In Federalist No. 69 Publius makes a convincing argument that the United States Presidency, while powerful enough to head the country, is not as powerful as the King, or even the New York Governor (with the exception of the power to make treaties). This is a fascinating comparison, and reveals the founders' thought process on why the Presidency of our country is vested with certain powers and limited in others.

Some of the President's powers originally outlined by the founders have waned, while others have increased. The President's term in office still remains at four years, but is now limited to two terms by the twenty-second Amendment.

The President's power to

"nominate, and, WITH THE ADVICE AND CONSENT OF THE SENATE, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers of the United States established by law, and whose appointments are not otherwise provided for by the Constitution,"

has been expanded over the years by the President's ability to create "Czar" positions. These "Czar" positions sound eerily similar to the power Publius ascribes to the King, and denies the President having:

"*The king of Great Britain is emphatically and truly styled the fountain of honor. He not only appoints to all offices, but can create offices."*

Time Magazine provides an interesting history of "Czars" in the United States at this link: http://www.time.com/time/politics/article/0,8599,1925564,00.html

Time states the first Czar existed in President Woodrow Wilson's cabinet during World War I, when Wilson appointed Bernard Baruch to head the War Industries board, and was known as the Industry Czar. This must have been the proverbial camel's nose under the tent, as the use of "Czars" has mushroomed from that point forward.

In Federalist No. 70, Publius defends the decision of the founders to have a single executive in the office of the Presidency head the executive branch, versus two or more individuals. The benefits of a unified executive make an extraordinary amount of sense, especially in protecting the people's liberty through transparency, and accountability. As difficult as it was to pinpoint blame in Watergate, for example, imagine how much more difficult it might have been had there been two Chief Executives. Professor Knipprath quotes Harry Truman's famous line, "the buck stops here," and that indeed is one of the most important attributes of the United States Presidency.

The founders' grasp of history, as they detail the failures of past plural executives, such as the Achaens, or the dissensions between the Consuls and the military Tribunes in Roman history once again illuminates their arguments. And their grasp of human nature is equally as profound –

"Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity."

"Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character."

Our United States Presidency is a unique institution, crafted thoughtfully and skillfully by our founding fathers!

On to Federalist #71!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 69, Federalist No. 70 | No Comments »

August 3, 2010 – Federalist No. 70 – The Executive Department Further Considered, From the New York Packet (Hamilton) – Guest Blogger: Joerg Knipprath, Professor of Law at Southwestern Law School

Tuesday, August 3rd, 2010

Federalist 70 is the heart of Hamilton's investigation of the nature of executive power. Publius returns to "energy," a theme that he has addressed frequently in his essays as a necessary attribute of government generally, and the Union in particular. As executive power is the essence of government, energy is the essence of executive power. Energy in the executive produces vigor in the administration of law and expeditiousness in response to necessity. Too much energy, however, can threaten republican government and personal liberty. The secret is to find the constitutional version of Aristotle's golden mean.

The Antifederalists had a lavish panorama of historical examples to illustrate the dangers of energetic executives. They proposed a multiple executive, instead, examples of which were spread throughout history, while others were close at hand in the states. Multiple executives are of several types. One, such as the consuls and tribunes of Rome or the kings of Sparta, are of equal dignity and can veto each other's acts. Another, more favored by the states and based on the republican variant of the old British model, involves a governor-and-council structure.

There are others, not mentioned in Federalist 70. One is the modern British cabinet model, where ministers hold their portfolio independent of the "prime" minister through election by the party. Formally, they are the monarch's ministers, but today this is a quaint fiction, as the monarch reigns as head of state, but does not rule. An American version of this can be found in the governments of many states, where various executive officials are elected independent of the governor. Those officials, like the California Attorney General, Secretary of State, and others, derive their powers directly from the state constitution and election by the people, not from appointment by the chief executive.

As anyone who has worked on a committee or sat in a meeting knows, the more people there are, the less of substance gets done, and the exponentially longer it takes to do so. Veterans of faculty meetings can bear particularly melancholy witness to those truths. Hamilton urges that multiplicity is welcome in the legislative department, where deliberation and the "wisdom of the multitude" are valuable to reach a "right" decision and to protect the rights of the minority. Indeed, haste in the passage of laws will result in badly-written legislation with unintended or—if the law is so long and complex that it has not even been read—unknown consequences, as well as in laws that may be against the people's wishes.

In the executive, however, delays and indecision are damaging. As a member of General Washington's staff, Hamilton personally must have been keenly aware of the incapacity of the Continental Congress and even the Board of War, its agency, to direct the war effort reliably and effectively. A multiple executive also courts the evils of faction, undermining stability. At the same time, a successful cabal among multiple executives can magnify their danger to liberty.

It is crucial, then, that the executive be unitary, to provide the requisite energy and vigor to accomplish the objectives of government expeditiously and without endangering the respect for law that haphazard and desultory administration brings. There are other benefits from a unitary executive, ones that, at the

same time, provide the most effective protections of liberty. Those are transparency and accountability. It has been said that success has many parents, but failure is an orphan. Having a single decision-maker shines the light of responsibility on him: "The buck stops here." The best protection against abuse by an overly-energetic executive is, predictably, the vigilance of the people expressed at the next election. But they cannot exercise that vigilance when multiple parties are pointing fingers at each other the way that members of Congress do when policies they have been championing become political liabilities. Nor can responsibility readily be gauged when politically tough issues are shunted onto appointed commissions, such as "deficit commissions," whose "recommendations" are treated as binding.

Another limit on the executive comes through formal restraints. Some are institutional, such as fixed terms and removal through impeachment. Others are more in line with the "auxiliary precautions" Publius defends in Federalist 51 in connection with separation and balancing of powers. Examples are the qualified nature of the veto and the Senate's role in approving treaties, in both of which the President is engaged in making law. With the exception of the appointment power, however, there are no formal limits on his explicit executive functions.

The objectives of executive government that Hamilton cites are instructive: Protecting against foreign attacks, securing liberty against domestic subversion, protecting property against riots and insurrection, and administering the law in an impartial and constant manner. In this classic political minimalism, one notes the absence of the trappings of the modern administrative Leviathan that has taken over functions best left to other institutions.

Despite the assertions in Federalist 70, the nature of the executive branch was ambiguous when the government convened. Hamilton, a fan of the British political system, contributed to that uncertainty. As Treasury Secretary, he envisioned the cabinet as an approximation of the British system, with the President as chief of state and as someone who presided over the administration of policies determined by rather willful cabinet officials exercising independent authority. Due to his close connection as Treasury Secretary to Congressional policy-making (and his long personal relationship with George Washington), Hamilton envisioned himself as the prime minister in this arrangement. There was some constitutional plausibility to this conception of a moderate multiple executive, as the Constitution provides that Congress can create a limited appointment power in "heads of departments" and sets up the Senate in some ways like the governor-and-council system. The Senate not only votes to approve appointments and treaties, it technically has an "advice and consent" role that could be read as requiring formal Senate participation *before* the president nominates an officer or makes a treaty.

Several developments arrested any significant movement in that direction. Textually, the Constitution vests the executive power entirely in the President, subject only to specified limitations, a point Hamilton himself urged further in his 1793 *Pacificus* essays during the debates over the Neutrality Proclamation. Politically, Hamilton left the Cabinet in 1795, reducing his influence, a trend that was accelerated when his patron, President Washington, left two years later. Even while Hamilton was in the Cabinet, Washington was not the type of person content to play a passive role. He favored a vigorous presidency, and it was clear that, while he listened carefully to his officials, he made the decisions. The Senate-as-council role was buried when Washington, after one soured attempt at consultation before treaty negotiations in 1789, refused to set foot in the building again. Washington's presidency was intended to help define the ambiguous contours of the president's powers, and he set the office firmly on the course of the unitary executive.

As a functional constitutional matter, the issue was settled over the course of the debate over the president's power to fire executive officials at will. A presidential removal power is not specified in the Constitution, so it has to be implied from other powers. Though Hamilton wanted a strong executive, he appears to have favored the view that the president's power to remove officials can only come from his power to appoint. As the latter requires Senatorial consent, so must the former, a position Hamilton endorses in Federalist 77. The reason for his support of what at first blush appears to be a dilution of executive unity is that he liked the British style of government. Presidents could come and go, but, if a new president could not unilaterally remove members of the Cabinet, those members gained political independence. Effectively, that made them the policy-makers and administrators as long as they maintained the confidence of the Senate. With that qualification, Hamilton favored a strong, independent executive branch.

The removal power occupied the first Congress's attention. The matter was resolved by artful language in a statute that implied that the President had the inherent executive power to remove the secretary of state. While this was a victory for the unitary executive argument, there remained ambiguities. President Andrew Jackson won a clear political victory in favor of the unitary executive doctrine by removing the secretary of the treasury when the latter disobeyed a presidential order, even though Congress had given the secretary the discretion to act as he did. Analogous to Hamilton's implied executive powers theory of the *Pacificus* letters, Jackson argued that the appointment and removal powers were both executive powers that, unless expressly limited by the Constitution, belonged to the President as head of the unitary executive branch.

As the removal controversy demonstrates, the unitary executive broadly implicates separation of powers that finds concrete expression in provisions of the Constitution. If those provisions are elastic, such as the executive power clause, the "take care" clause, or the commander-in-chief clause, the line between execution of policy and legislation of policy can become blurred. The need to find limits is matched by the difficulty of doing so. Much depends in specific cases on formal precedent (legislative, executive, and judicial) and customary constitutional practice shaped by broad popular acceptance. For example, the unitary executive theory underlies doctrines of executive immunity and executive privilege. Those concepts are not expressly addressed in the Constitution but are obviously connected to an energetic executive branch and the unitary executive that animates it. Though the Supreme Court did not address executive privilege until 1974, it arose early in the Washington administration, when the President set a precedent followed by almost all his successors. In implied powers cases, the need for action often determines the outcome, and foreign relations, military affairs, national security, and emergencies define their own scope of action.

Despite Jackson's victory and a long history in support of the unitary executive, controversy still flares occasionally. A recent challenge to the unitary executive theory has involved presidential "signing statements." These have long been used as expressions of reservation about the constitutionality of a proposed law. Critics argue that the president can veto the bill, if he believes it to be unconstitutional. If the Congress overrides the veto, is the president then bound to enforce the bill? He is obligated to take care that the laws be faithfully executed, but there is also the long tradition of executive discretion in the enforcement of laws. Moreover, if the law invades a presidential power or is otherwise unconstitutional, the president can refuse to enforce this statute.

Laws, however, are often many-layered creations. Why should the president have to veto the whole effort just to avoid enforcing one objectionable part? A signing statement can help. In fact, the signing statement puts everyone on notice about the president's intentions. They are constitutional because the president as head of the executive branch is independently responsible under the Constitution for the actions of the whole branch in the enforcement of laws.

The unitary nature of the executive also has been challenged by some who cite to the existence of a vast array of "independent" administrative agencies as contrary evidence. Since the 1930s, the Supreme Court has upheld Congress's power to limit the President's removal power in regards to officers of independent agencies. Using the unitary executive theory, presidents since Franklin Roosevelt have formally rejected the assertion these agencies are beyond the President's removal power. Such agencies are performing executive functions and are not otherwise recognized under the Constitution as a fourth branch of government. One may wonder, though, whether any dilution of the unitary executive paradigm is really the problem. The sheer growth of government (of which administrative agencies are the most significant part) is probably more responsible for the dearth of transparency and accountability citizens endure.

Critics of the administrative state see this exception from the application of the general rules for separation and balance of powers as more evidence that these agencies are unconstitutional. The still-growing reach of the regulatory state assures that the issue will not go away. As the matter involves fundamental and shifting boundaries between the legislative and executive domains, it is thoroughly political and admits of no definitive settlement. But the broad theory of the Constitution has been settled in favor of the unitary executive that Hamilton defends in Federalist 70 and his later writings.

An expert on constitutional law, Prof. Joerg W. Knipprath has been interviewed by print and broadcast media on a number of related topics ranging from recent U.S. Supreme Court decisions to presidential succession. He has written opinion pieces and articles on business and securities law as well as constitutional issues, and has focused his more recent research on the effect of judicial review on the evolution of constitutional law. Prof. Knipprath has also spoken on business law and contemporary constitutional issues before professional and community forums. His website is http://www.tokenconservative.com

Archive for the 'Federalist No. 71' Category

August 5, 2010 – Federalist Papers No. 71 & 72 – Janine Turner

Thursday, August 5th, 2010

Howdy from, cooler because we had a mighty storm, Texas!

Federalist Papers No. 71 and 72 are fascinating as they represent Alexander Hamilton's perspectives regarding the Constitutional lack of term limits for the office of the Presidency. Even with the lack of limits, it is amazing, upon reflection, that only one of our Presidents ever surpassed two terms and even then, it was due to the Great Depression and World War II. George Washington seems to have, once again, paved the way. By stepping down after two terms, he set the pace.

I don't consider the readings of Federalist Papers No. 71 and 72 redundant, however. There are always pearls of wisdom within these hallowed pages. Federalist Paper No. 71 makes an interesting statement regarding maintaining the balance of the constitution.

"The tendency of the legislative authority to absorb every other, has been fully displayed and illustrated by examples in some preceding numbers. In governments purely republican, this tendency is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity. They often appear disposed to exert an imperious control over the other departments; and as they commonly have the people on their side, they always act with such momentum as to make it very difficult for the other members of the government to maintain the balance of the Constitution."

This is a thought-provoking paragraph especially when I size it up to the relevancy of today. Our forefathers were greatly concerned about the power of the legislature. Yet, it appears that the legislature, the people's representative branch, is being diminished by a more powerful executive branch and competing with the judicial branch – a branch that is more and more regularly legislating from the bench instead of merely interpreting the law.

Thus, the question is: how is the "balance of the Constitution" faring?

There is another statement that I find intriguing in Federalist Paper No. 71. It is stimulating in its simplicity.

"What but that he might be unequal to the task which the constitution assigns him."

This is the maxim for all representatives of all branches to remember. Their mission, their task, is to serve their terms in relation to what the constitution assigns them.

The Constitution is to be their conscience.

The Constitution is the conscience of America.

One of the most important elements of the Constitution is the balance of power. If a representative in any branch of the government, whether elected or administrative, is not abiding by this preeminent principle of the Constitution then that representative is disregarding the constitution for his/her own benefit – which would be for none other than that all encompassing vice – power.

As for Federalist Paper No. 72, Alexander Hamilton prophesies a modem of operandi that is ever present within every changing of the guard in our country and is not always to our best interest.

"To reverse and undo what has been done by a predecessor, is very often considered by a successor as the best proof he can give of his own capacity and desert;"

Rare is the President who can say, "My predecessor did this very well, to him I give due credit and continue its course."

Ego – the undoing of greatness.

To close, I underscore a statement of Alexander Hamilton's, from Federalist Paper No. 72, that is both pertinent and amusing.

"Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?"

Hamilton had a sense of humor, yet this passage is painted with profundity. The peace of the community is best served when a former President leaves the country in the hands of the new one – for his legacy as President will be either be reduced or redeemed by history not by "wandering among the people like a discontented ghost."

God Bless,

Janine Turner

August 5, 2010

Posted in Constitutional Essays by Janine, Federalist No. 71, Federalist No. 72 | 3 Comments »

August 5, 2010 – Federalist No. 71 and 72 – Cathy Gillespie

Thursday, August 5th, 2010

Greetings from Mt. Vernon, Virginia!

Once again, I write from ground that belonged to our first President of the United States, and once again, George Washington is a leader, by example, on the item under discussion!

Federalist Papers 71 and 72 deal with the President's Term in Office, and the idea of Presidential Term Limits.

Through the four year Presidential term, the framers strike the perfect balance – enough time for a President to enact his priorities, yet not endanger the liberty of the people:

"As, on the one hand, a duration of four years will contribute to the firmness of the Executive in a sufficient degree to render it a very valuable ingredient in the composition; so, on the other, it is not enough to justify any alarm for the public liberty."

The debate about Presidential term limits in Federalist No. 72 is a serious one, and one in which the brilliant amendment process ultimately prevailed. Hamilton argues that the imposition of term limits takes away the incentive for the President to do his or her best for the people:

"One ill effect of the exclusion would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of OBTAINING, by MERITING, a continuance of them."

For many years, tradition began by President Washington held that Presidents stepped down after two terms. Once this tradition was broken by President Franklin D. Roosevelt, momentum gathered to codify what had previously been informally honored.

Eight years is a very long time for an individual to be subject to the stresses and daily intensity of the office of President of the United States. Even though the world moved at a slower pace two centuries ago, the stress of the office was and still is, immense. We have all observed the photos of the youthful President on inauguration day, and eight years later, wondered at the grey hair and added lines on his face.

In the book, ***The Real George Washington***, by Parry Allison Skousen (a present given to me by my friend and Constituting America Co-Chair Janine Turner), President Washington is quoted at the end of his eight years in a letter to John Jay:

"Indeed, the troubles and perplexities, ….added to the weight of years which have passed over me, have worn away my mind more than my body."

An observer is quoted in the book as describing Washington after eight years in office this way, *"The innumerable vexations he has met with….have very sensibly impaired the vigor of his constitution and given him an aged appearance."*

Since the ratification of the 22cnd amendment, Presidents Eisenhower, Nixon, Reagan, Clinton and George W. Bush were all elected for two terms, and limited by the 22cnd amendment from running for a third. The above description of President Washington after eight years in office could have easily applied to any of these Presidents. The office of the Presidency has a way of aging its occupant, and eight years is a sufficient time for any man or woman to bear the responsibility.

Hamilton had also worried that too many ex-Presidents would be a distraction to the country:

"Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?"

Contrary to Hamilton's prediction, in modern times, our country and world have benefitted from the wisdom and stature of ex-Presidents. Former Presidents George H.W. Bush and Clinton headed a

Tsunami Relief Fund, President Clinton champions many humanitarian efforts and charities, Former Presidents George W. Bush and Clinton head a Haiti Relief Fund, and Former President Jimmy Carter has greatly raised the profile and success of Habit for Humanity, among other causes.

However, no former President has conducted himself with more dignity, grace and class than Former President George W. Bush. Former President Bush, referenced almost daily by the current White House as the source of all the country's problems, has quietly and respectfully stood by, and let our current President lead. He has refrained from criticism of any elected officials, all the while working steadily to develop the Bush Institute, the arm of his Presidential Library dedicated to the promotion of freedom throughout the world.

Term limits for Presidents have ensured that our country not fall into a "monarchy mentality," and that at least every eight years, those at the highest levels of government leave to make way for new leaders to serve.

Despite Hamilton's ominous warnings, term limits for Presidents finally came to the United States Constitution through the process set up by the framers for change: the amendment process. The founding fathers were brilliant men, whose insights continue to light our path today, but they knew they were not perfect, and could not always predict the future.

That is the beauty of our United States Constitution. When the people see a need for change, the demand is urgent enough, and felt commonly enough to bring about the 2/3's for proposal and 3 /4's necessary for ratification, there is a structure and process in place to legitimately and peacefully make a change. The 22cnd Amendment is one of those changes that has bettered our system of government.

Posted in Constitutional Essays by Cathy, Federalist No. 71, Federalist No. 72 | No Comments »

August 4, 2010 – Federalist Paper No. 71 – The Duration in Office of the Executive, From the New York Packet (Hamilton) – Guest Blogger: Kyle Scott, PhD, Professor in the Political Science Department and Honors College at the University of Houston

Wednesday, August 4th, 2010

Federalist #71 continues with a discussion of the President, particularly the length of the presidential term in office. Hamilton lays out the concerns over term length at the beginning: if the term is too long the President will not do what is best for the nation but what is best for himself, and if too short, the President will have no incentive to do the job well, but merely bide his time until the end of term, but he will also be susceptible to undue influence from the people and congress if his term is not long enough. What might be surprising to some readers is that the concern is over how long the term should be where the real discussion should be on term limits. With the ability of incumbents to entrench themselves in office, it might not matter if the term is 2 years or 8 years; if the President keeps getting reelected the term in office could go on indefinitely thus bringing about the first set of negative consequences established by Hamilton. Remember, it was not until 1951 with the ratification of the 22nd Amendment that the President was limited to two terms.

However narrow-sighted *#71* might appear at first blush, we should always remember that Hamilton warned in *#1* that in writing he will keep his motives within the "depository of his own breast," which means we should always be on the lookout for multiple lessons. One lesson in particular I find fascinating in *#71* is his criticism of democracy. *#71* is not just about how long a President should serve before coming up for reelection, but rather the competing preferences of rule by the elite or rule by the people.

In the second paragraph Hamilton mocks those who suggest the President should be moved by popular opinion. "But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion." The President should strive for the public good while keeping in mind that the public may not always know what is in its own good.

Hamilton would be abhorred by Bill Clinton's "governing by the polls" in which he would pursue policies based on their popularity. Hamilton would also find it comical that we judge the quality of a sitting President by how well he does in public opinion polls. Presidents should be above such matters. Whether it is going to war in Iraq or looking to reform healthcare, Hamilton suggests that the President should not be influenced by popular opinion. While he was a member of parliament, Edmund Burke held a similar position when he said, "It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living.

These he does not derive from your pleasure; nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion."

The opinion of the people should not guide the elected President, thus, the President should have mechanisms in place to shield him from the public's backlash, which is why the length of the term is so important to Hamilton. If the term is too short, the President would only do what was popular.

It was not just the people who the President should be insulated from, but congress as well. If he were in office for too short of a term, the President would fall to the whim of congress and thus violate the separation of powers model borrowed from Montesquieu. But, insulating the President from congress was another way of insulating the President from the undue influence—no matter how indirect—of the people.

We should not be shocked by what we read in *#71*, for it is well-established that Hamilton was in favor of a strong executive. But, Hamilton's executive is not what the Constitution gave us, nor is Hamilton's view the predominant view. Many of the Anti-Federalists, not to mention Madison and Jefferson, were in favor of a more populist position. *#71*, as much as any of the others, reinforces my claim that we cannot read the *Federalist* as authored by one Publius just as we cannot think of the founders as one group.

Hamilton recognized the capriciousness of the people. He recognized that the people could be petty and have a short-memory, thus something like presidential authority should be institutionally defined and insulated from popular influence. I do appreciate his suspicion of the popular opinion even if he did overestimate the wisdom of the President.

Kyle Scott, PhD teaches in the Political Science Department and Honors College at the University of Houston. His published research deals with constitutional interpretation and its relevance for contemporary politics. His most recent book, The Price of Politics, critically assesses the Supreme Court's eminent domain decisions and explains the importance of property rights.

Archive for the 'Federalist No. 72' Category

August 5, 2010 – Federalist Papers No. 71 & 72 – Janine Turner

Thursday, August 5th, 2010

Howdy from, cooler because we had a mighty storm, Texas!

Federalist Papers No. 71 and 72 are fascinating as they represent Alexander Hamilton's perspectives regarding the Constitutional lack of term limits for the office of the Presidency. Even with the lack of limits, it is amazing, upon reflection, that only one of our Presidents ever surpassed two terms and even then, it was due to the Great Depression and World War II. George Washington seems to have, once again, paved the way. By stepping down after two terms, he set the pace.

I don't consider the readings of Federalist Papers No. 71 and 72 redundant, however. There are always pearls of wisdom within these hallowed pages. Federalist Paper No. 71 makes an interesting statement regarding maintaining the balance of the constitution.

"The tendency of the legislative authority to absorb every other, has been fully displayed and illustrated by examples in some preceding numbers. In governments purely republican, this tendency is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity. They often appear disposed to exert an imperious control over the other departments; and as they commonly have the people on their side, they always act with such momentum as to make it very difficult for the other members of the government to maintain the balance of the Constitution."

This is a thought-provoking paragraph especially when I size it up to the relevancy of today. Our forefathers were greatly concerned about the power of the legislature. Yet, it appears that the legislature, the people's representative branch, is being diminished by a more powerful executive branch and competing with the judicial branch – a branch that is more and more regularly legislating from the bench instead of merely interpreting the law.

Thus, the question is: how is the “balance of the Constitution” faring?

There is another statement that I find intriguing in Federalist Paper No. 71. It is stimulating in its simplicity.

“What but that he might be unequal to the task which the constitution assigns him.”

This is the maxim for all representatives of all branches to remember. Their mission, their task, is to serve their terms in relation to what the constitution assigns them.

The Constitution is to be their conscience.

The Constitution is the conscience of America.

One of the most important elements of the Constitution is the balance of power. If a representative in any branch of the government, whether elected or administrative, is not abiding by this preeminent principle of the Constitution then that representative is disregarding the constitution for his/her own benefit – which would be for none other than that all encompassing vice – power.

As for Federalist Paper No. 72, Alexander Hamilton prophesies a modem of operandi that is ever present within every changing of the guard in our country and is not always to our best interest.

“To reverse and undo what has been done by a predecessor, is very often considered by a successor as the best proof he can give of his own capacity and desert;”

Rare is the President who can say, “My predecessor did this very well, to him I give due credit and continue its course.”

Ego – the undoing of greatness.

To close, I underscore a statement of Alexander Hamilton’s, from Federalist Paper No. 72, that is both pertinent and amusing.

“Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?”

Hamilton had a sense of humor, yet this passage is painted with profundity. The peace of the community is best served when a former President leaves the country in the hands of the new one – for his legacy as President will be either be reduced or redeemed by history not by “wandering among the people like a discontented ghost.”

God Bless,

Janine Turner

August 5, 2010

Posted in Constitutional Essays by Janine, Federalist No. 71, Federalist No. 72 | 3 Comments »

August 5, 2010 – Federalist No. 71 and 72 – Cathy Gillespie

Thursday, August 5th, 2010

Greetings from Mt. Vernon, Virginia!

Once again, I write from ground that belonged to our first President of the United States, and once again, George Washington is a leader, by example, on the item under discussion!

Federalist Papers 71 and 72 deal with the President's Term in Office, and the idea of Presidential Term Limits.

Through the four year Presidential term, the framers strike the perfect balance – enough time for a President to enact his priorities, yet not endanger the liberty of the people:

"As, on the one hand, a duration of four years will contribute to the firmness of the Executive in a sufficient degree to render it a very valuable ingredient in the composition; so, on the other, it is not enough to justify any alarm for the public liberty."

The debate about Presidential term limits in Federalist No. 72 is a serious one, and one in which the brilliant amendment process ultimately prevailed. Hamilton argues that the imposition of term limits takes away the incentive for the President to do his or her best for the people:

"One ill effect of the exclusion would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of OBTAINING, by MERITING, a continuance of them."

For many years, tradition began by President Washington held that Presidents stepped down after two terms. Once this tradition was broken by President Franklin D. Roosevelt, momentum gathered to codify what had previously been informally honored.

Eight years is a very long time for an individual to be subject to the stresses and daily intensity of the office of President of the United States. Even though the world moved at a slower pace two centuries ago, the stress of the office was and still is, immense. We have all observed the photos of the youthful President on inauguration day, and eight years later, wondered at the grey hair and added lines on his face.

In the book, ***The Real George Washington***, by Parry Allison Skousen (a present given to me by my friend and Constituting America Co-Chair Janine Turner), President Washington is quoted at the end of his eight years in a letter to John Jay:

"Indeed, the troubles and perplexities, ….added to the weight of years which have passed over me, have worn away my mind more than my body."

An observer is quoted in the book as describing Washington after eight years in office this way, *"The innumerable vexations he has met with….have very sensibly impaired the vigor of his constitution and given him an aged appearance."*

Since the ratification of the 22cnd amendment, Presidents Eisenhower, Nixon, Reagan, Clinton and George W. Bush were all elected for two terms, and limited by the 22cnd amendment from running for a third. The above description of President Washington after eight years in office could have easily applied to any of these Presidents. The office of the Presidency has a way of aging its occupant, and eight years is a sufficient time for any man or woman to bear the responsibility.

Hamilton had also worried that too many ex-Presidents would be a distraction to the country:

"Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?"

Contrary to Hamilton's prediction, in modern times, our country and world have benefitted from the wisdom and stature of ex-Presidents. Former Presidents George H.W. Bush and Clinton headed a Tsunami Relief Fund, President Clinton champions many humanitarian efforts and charities, Former Presidents George W. Bush and Clinton head a Haiti Relief Fund, and Former President Jimmy Carter has greatly raised the profile and success of Habit for Humanity, among other causes.

However, no former President has conducted himself with more dignity, grace and class than Former President George W. Bush. Former President Bush, referenced almost daily by the current White House as the source of all the country's problems, has quietly and respectfully stood by, and let our current President lead. He has refrained from criticism of any elected officials, all the while working steadily to develop the Bush Institute, the arm of his Presidential Library dedicated to the promotion of freedom throughout the world.

Term limits for Presidents have ensured that our country not fall into a "monarchy mentality," and that at least every eight years, those at the highest levels of government leave to make way for new leaders to serve.

Despite Hamilton's ominous warnings, term limits for Presidents finally came to the United States Constitution through the process set up by the framers for change: the amendment process. The founding fathers were brilliant men, whose insights continue to light our path today, but they knew they were not perfect, and could not always predict the future.

That is the beauty of our United States Constitution. When the people see a need for change, the demand is urgent enough, and felt commonly enough to bring about the 2/3's for proposal and 3 /4's necessary for ratification, there is a structure and process in place to legitimately and peacefully make a change. The 22cnd Amendment is one of those changes that has bettered our system of government.

Posted in Constitutional Essays by Cathy, Federalist No. 71, Federalist No. 72 | No Comments »

August 5, 2010 – Federalist No. 72 – The Same Subject Continued, and Re-Eligibility of the Executive Considered, From the New York Packet (Hamilton) – Guest Blogger: Kelly Shackelford, President/CEO of the Liberty Institute

Thursday, August 5th, 2010

Federalist No. 71 and 72 deal with the Office of the Executive, specifically how long the President remains in office and his re-eligibility to continue to serve in the same capacity. While Federalist 71 takes an in-depth look at the four-year duration of the Presidential term, Federalist 72 addresses the question of a sitting President's re-eligibility, or ability to be re-elected to subsequent terms.

In Federalist 72, Publius, in this case Alexander Hamilton, cites the two factors that the Framers of the Constitution believed should determine whether a President is eligible for re-election, and defends the Framers' rejection of either temporary or perpetual term limits for a President.

According to Hamilton, the only two factors that should be weighed in considering the ability of a President to be re-elected are the quality of his performance as President and the approval of the voters. The four years of a President's term should give the voters enough time to judge the abilities of a President, and the prospect of being re-elected should give the President the motivation to do a good job. In other words, Hamilton argued that the voters themselves should be the only judges of a President's eligibility by refusing to re-elect him when his performance is no longer satisfactory.

In arguing that the voters should be the only limits on the extension of a man's Presidency, Hamilton cites five disadvantages of excluding a sitting President from re-eligibility. The first disadvantage is that a President who is excluded from seeking office again is hampered not only in his ability to work but also in his desire to act in such a way that the voters would re-elect him given the opportunity, described by Publius as "dimunition of the inducements to good behavior." The "lame-duck" President's motivations to act uprightly and for the benefit of the people are severely diminished.

The second disadvantage of imposing term limits in the Executive that Hamilton pointed out in Federalist 72 is that a President with no chance of being re-elected may be tempted to usurp his office for personal gain, with an eye to the day when he will no longer serve as President. Worse, an ambitious man, forbidden to seek re-election, could resort to violence in an attempt to prolong his time in the Presidency.

Hamilton's third and fourth disadvantages of term limits both relate to the experience that a person gains while serving as President. In short, good experience in serving as President is valuable and should not be lightly thrown aside. The good of the country demands that the people capitalize on the leadership of those who already have the experience gained from years of leading the nation. Additionally, during

times of war or crisis, continuity of leadership in the Executive may be particularly important to the safety of the nation.

Finally, Hamilton's fifth argument against term limits is that they create constitutionally-sanctioned instability. When a new President is elected, the change in administrations creates transitional instability as the new administration must gain the experience already possessed by the outgoing administration. Moreover, the new President, seeing his election as the people's endorsement of his ideas over his predecessors, takes responsibility for nominating many of those in charge of day-to-day operations, naturally generating instability during the transition of leadership. Consequently, Hamilton argued that one key factor in the stability of our government is the length of time that the President serves; instead of being viewed as a threat to liberty, a voter-approved extension of a President's service is a benefit because of the increased experience of the administration.

While arguing against term limits, Hamilton points out two possible advantages to having Presidential term limits: "greater independence in the magistrate" (executive office) and "greater security to the people." The greater independence of the executive office turns out to be easily manipulated, as a President, excluded from re-eligibility, could choose to relinquish the office to a hand-picked successor, effectively remaining a powerful voice in the administration. Additionally, a President who anticipates leaving his office of President may be less interested in fighting over important issues and making political enemies than preserving friendships and allies.

As to the people's security, while Hamilton recognizes that the influence of a overly-charismatic President can be lessened by term limits, Hamilton points out that forcing a truly good leader out of office may be regarded as a hindrance to security and a "danger to liberty." Taken to an extreme, it could even cause the people to reject the Constitution in favor of the leader, removing *all* constitutional protections granted to the people.

Since George Washington, the first President under the Constitution, stepped down after two terms in office, Americans have commonly accepted two terms as a sufficient amount of time in office for any President. Only a few Presidents have sought a third term, and only one has been successful: Franklin D. Roosevelt, our thirty-second President. Serving throughout the Great Depression and most of World War II, President Roosevelt was elected four times to the office of the President, but passed away in 1945, months after beginning his fourth term. His Presidency was unique in that the people sought the continuity of his leadership through two disasters, and supported him as President for what would have totaled sixteen years.

Following President Roosevelt's four terms in office, the American people decided that the advantages of term limits in limiting the power of any one President outweighs the five disadvantages that Alexander Hamilton laid out in Federalist 72. In 1947, Congress passed the Twenty-second Amendment to the U.S. Constitution, limiting a President to two terms in office. The Amendment was ratified in 1951, and only two states, Oklahoma and Massachusetts, opposed the Amendment.

Today, very little debate exists over the Twenty-second Amendment and executive term limits, though various members of Congress occasionally propose legislation to repeal the Amendment. Even now, two hundred years after President Washington stepped down after his second term, Americans generally accept the two-term limit as an adequate amount of time for a President to serve.

Kelly Shackelford, President/CEO of Liberty Institute, is a constitutional scholar who has argued before the U.S. Supreme Court and other courts across the country and has testified before both houses of the U.S. Congress. Jennifer Grisham is director of media at Liberty Institute. The Institute fights for First Amendment and Constitutional freedoms in the courts and legislature, has won significant landmark victories on religious liberty, and currently represents over 4 million veterans and all the major veterans' groups in the famous Mojave Desert Memorial Cross case. For more, visit www.Libertyinstitute.org

Archive for the 'Federalist No. 73' Category

August 6, 2010 – Federalist No. 73 – Cathy Gillespie

Friday, August 6th, 2010

Federalist No. 73 begins the examination of the powers of the Presidency, with a discussion of the President's role in the legislative process, specifically, the veto. In writing about the veto power, Publius travels back to Article I of the United States Constitution, the section of the Constitution dedicated to the legislative branch. Nowhere in Article II, the section of the Constitution dedicated to the Executive branch, is the veto power mentioned.

*"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.***"–Article I, Section 7, Clause 2 of the United States Constitution**

*"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.***"–Article I, Section 7, Clause 3 of the United States Constitution**

Article II, the portion of the Constitution describing the executive branch function, states the President's obligation to provide the Congress information through the State of the Union, recommend proposals for their consideration, convene both Houses in extraordinary circumstances, or adjourn both Houses in the case of disagreement between them with respect to the time of adjournment:

"He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper…."–**Article II, Section 3**

The Presidential veto is one of the most important checks and balances in our system of government. By requiring 2/3's vote in both Houses to override a presidential veto, the Constitution ensures that controversial bills must have overwhelming support of the people, through their representatives in Congress, to become law.

It is interesting that the President's important power of the veto, never mentioned by the name "veto" in the United States Constitution, is located in Article I, the article describing powers of the legislative branch. The President, as head of the executive branch, has the power to ***execute***, or carry out the laws of the United States, through the various Departments and agencies. But through Article I, Section 7, Clauses 2 and 3, he also has the power to ***enact*** legislation in two ways:

1. Sign the bill ***OR***

2. Refuse to sign or return the bill within 10 days (not counting Sundays), when the Congress is in session.

The President has the power to disapprove legislation in two ways:

1. Return the bill "with objections," (his veto) ***OR***

2. Fail to return or sign the bill within the ten day window during which an Adjournment occurs (known as a pocket veto).

The legislative process and veto power of the President was so important to the framers that they devoted unusual specificity to this subject, detailing the number of days the President has to make his decision to sign, return, or not act, even exempting Sundays in the 10 day period!!! The 2/3's required to override the presidential veto is also a well thought out measure addressed in Federalist No. 73:

"It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority."

Professor Rowley brings up the issue of the line item veto, within the context of the "qualified veto." I have been a supporter of the line item veto for many years, ever since President Reagan called for this power in his State of the Union in 1986:

"And tonight, I ask you to give me what 43 Governors have — give me a line-item veto this year. (Applause.) Give me the authority to veto waste, and I'll take the responsibility, I'll make the cuts, I'll take the heat."

President Clinton finally received the power of the line item veto, but the Supreme Court has since ruled it unconstitutional. It seems that the only way for the president to have the power of the line item veto would be with a constitutional amendment. And given the forethought the framers put into devising the structure of the veto, as well as the specificity they devoted describing the process, a constitutional amendment would be the most appropriate way to grant the president this power.

Governors across America have found the line-item veto to be an invaluable tool in cutting spending. And with the Congress's propensity to pass 3,500 page pork-laden bills, I believe the line item veto would be a useful tool for the president to have. I respect Professor Rowley's arguments against it, however, and am thankful for this forum in which we can discuss policy options in a civil and respectful manner. Thank you also to Professor Rowley for your ongoing blog comments, and your reminder of the inspiration of George Washington, his crossing of the Delaware, and his appeal to the spirit of Americans!

Thank you to all of you for your well thought out blog comments! Each of you sheds a little more light on the issues at hand with the insights you share!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 73 | No Comments »

August 6, 2010 – Federalist Paper No. 73 – Janine Turner

Friday, August 6th, 2010

Howdy from Texas! Are we not the luckiest people in the world to have these precious Federalist Papers archived and at our disposal? Is it not remarkable that our founding fathers wrote 85 essays for print in their local newspapers explaining the Constitution? Are we not so very fortunate to have this guidebook to the United States Constitution? Is it not worth recognizing that our founding father's believed in the genius of the people and viewed them with the respect that prompted them to write these papers?

Is it not worth mentioning that the people wanted to know about it, read about it and demanded it?

Why do many of our representatives not want to coherently lay out the laws for us today? Is it that they do not believe in the genius of the people? Is it that they do not care to be truly open and forthright due to intrigue and manipulative measures? Is it because they do not read the laws and thus do not have the wherewithal to write about them? Or is it that they would rather spin the web by witnessing with words?

The written word is not permeable. The written word requires time and thought and tenacity and truth. The written word does not lie.

Speaking of the written word, today's reading of Alexander Hamilton's Federalist Paper No. 73 exhibits our founding father's savvy. What our founding fathers truly understood, in an astonishing way, was

human nature. They studied the temptations that befell the psyche of men and recognized the vulnerabilities that weaken even the best-intentioned individual.

Alexander Hamilton gives a mesmerizing breakdown in regard to a scenario where a President may be wary do the right thing in certain circumstances because he fears the perception of it. Having thought of this potentiality the founders of the Constitution gives the President a way to both make the right choice and save face.

"A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason, it may in practice be found more effectual."

Brilliant.

Alexander Hamilton also sums up the rationale for the Constitution's checks and balances, the cement of its foundation, in one concise, astute and profound paragraph.

"When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared."

This is the crux of the creed.

Man is subjected to the pull of evil vices – power, greed, shortsightedness, impatience, imprudence.

The Constitution is the conscience of America, Americans and its leaders.

The Constitution is the governor upon the men who govern.

God Bless,

Janine Turner

August 6, 2010

Posted in Constitutional Essays by Janine, Federalist No. 73 | No Comments »

August 6, 2010 – Federalist Paper No. 73 – The Provision for the Support of the Executive, and the Veto Power, From the New York Packet (Hamilton) – Guest

Blogger: Charles K. Rowley, Ph.D., Duncan Black Professor of Economics at George Mason University and General Director of The Locke Institute in Fairfax, Virginia

Friday, August 6th, 2010

Federalist # 73 continues with a discussion of the President, dealing particularly with the independence of the executive branch of government and the relevance of the veto power. As readers will know, Hamilton, more than any other Founding Father, believes in the importance of centralized authority within the federal system, even to the extent of flirting with monarchy. Although he is writing as PUBLIUS, and reflects to a certain degree, the views of his colleagues, John Jay and James Madison, let me forewarn readers of concerns that most particularly should exercise our minds when reviewing the powers of any centralized presidential authority.

"In constraining any system of government, and fixing the several checks and controls of the constitution, every man ought to be supposed a knave, and to have no better end in all his actions, than private interest" (David Hume, 1752). "It is better to keep the wolf out the fold, than to trust to drawing his teeth and claws after he shall have entered" (Thomas Jefferson 1782). "The very principle of constitutional government requires it to be assumed that political power will be abused to promote the particular purposes of the holder; not because it always is so, but because such is the natural tendency of things, to guard against which is the especial use of free institutions" (John Stuart Mill 1861). So we have been warned!

Now let us review Hamilton's reasoning in Federalist # 73 in the light of subsequent experience. As to the issue of support, I have no problem. Hamilton correctly defends Article II, Section 1, clause 7 of the proposed constitution confirming that the President's compensation for his services shall neither be increased nor diminished during the period for which he has been elected, and shall constitute his sole emolument from the United States or any individual state. This protection and constraint is essential to avoid excessive pressure being placed on the President by Congress to pursue goals that others are determined to achieve. What could not be foreseen, in the late eighteenth-century, is the degree to which the promise of high post-presidential monetary returns may influence the behavior in office of any sitting president. Presidential libraries, for example, play a significant role in determining the evaluated legacy of any president. Such libraries are exorbitantly expensive to establish and to maintain. And no United States president, in recent times, has died in relative poverty – this in sharp contrast to many prime ministers in parliamentary systems of government.

Hamilton's discussion of Article 1, Section 7 of the proposed constitution is much more interesting. For here Hamilton balances the strengths and weaknesses of the proposed qualified negative (or veto) power of the President with respect to acts or resolutions of the two houses of the legislature. In defending this power, Hamilton walks a tight-rope between his belief in strong central authority and his recognition that all political power must be checked and balanced if a republic is long to survive.

In rejecting outright any notion that the president should serve devoid of veto power, Hamilton displays – not without considerable justice in the light of subsequent events – his grave misgivings about the potential for bad behavior of any legislative branch of government. Instinctively, he recognizes that a largely self-serving legislature would succumb to the temptation to impose its will upon a defenseless

president in the absence of presidential armor. The question, for Hamilton, is only whether that armor should be absolute or qualified.

At this point, in my judgment, Hamilton blinks when confronting the likely true nature of a president's political role. Surely he acknowledges some force in the argument that it is 'not to be presumed a single man would possess more virtue and wisdom than a number of men; and that unless this perception should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body.' However, he dismisses this concern on the ground that the more significant danger emanates from the predatory ambitions of the legislature. At the time, the Founders had in mind the name of George Washington, as their most preferred first president. And few would deny that George Washington was a man of wisdom, impeccable personal integrity, and high honor. But would one feel as comfortable in making those suppositions about a Ulysses S. Grant, an Andrew Jackson, a Franklin Roosevelt, or a Richard Nixon? I do not think so.

In any event, thankfully, Hamilton comes down in favor of a qualified-over an absolute-veto, albeit by faulty analysis, and almost certainly because he is writing as PUBLIUS and not as Hamilton. Hamilton's concern is not at all over the prospect that an absolute-veto power would be sorely abused – which surely would have proved to be the case – but rather that such a power might be under-utilized by presidents whose scruples might hold them back from exercising powers of such a magnitude. History advises us that *homo politicus* pervades the executive branch of government just as much as he pervades the legislative branch. Presidents would have deployed absolute-veto power quite unscrupulously, as if to the manner born.

The central issue in Federalist # 73 thus centers on the degree to which the veto power is to be qualified. Hamilton defends the requirement of a two-third majority in each house of the legislature to override a presidential veto and to pass a vetoed-bill into law. This super-majority, of course, is arbitrary, but, in principle can be justified.

In viewing the legislative process from an economic perspective, it is useful to reflect upon two expected costs of any kind of collective choice. On the one side, are aggregated expected external costs that collective actions may impose on individual electors. Expected external costs decline as the requisite vote super-majority increases. On the other side, are the expected costs of reaching legislative decisions. These costs increase as the requisite vote-majority increases. A rational vote-mechanism will try to minimize the joint expected external and decision-making costs. Evidently, as the salience of an issue rises, so the super-majority vote-requirement should increase. If, in general, presidents contemplate the veto more with respect to major than to minor bills, then the qualified majority rule is economically justified, because expected external costs are higher in such a situation.

The debate over Hamilton's defense of the qualified-negative naturally focused on analogies with the British monarchy, with many commentators noting that the unjustifiable rights and privileges of the British monarch should vehemently be denied to any United States president. For the most part, Hamilton claimed that the veto power was defensive in nature, allowing the president to defend the People against excessive legislative zeal, not to allow the president to impose his own will on the People. Such arguments prevailed in the ratification process.

With hindsight, however, Hamilton was wrong in this assessment. The qualified-veto power has provided presidents with considerable opportunities to exercise a third-chamber role in the legislature. The knowledge, *ex ante*, that a president will veto an unacceptable bill, forces the legislature to logroll with the president when formulating major bills, in order to anticipate and to frustrate the application of a veto. Increasingly, unscrupulous presidents have taken advantage of this recognition to shift from defense into aggression in the legislative process not always, by any means, to the advantage of the People.

As the regulatory authority of the executive branch increased – most notably since the Civil War – so the legislative powers of the presidency have advanced, to the extent that, arguably, they now exceed those enjoyed by any British monarch even at the peak of the Divine Right principle. Health care reform, fiscal stimulus, cap and trade, card-check, and immigration policies have been driven and fashioned, since January 2009, much less by the Democrat-controlled Congress, than by the administration of President Obama. These policy initiatives, in many respects, may turn out to be inimical to the underlying interests of the People.

Predictably, public officials imbued with power constantly ask for more. That is the true nature of *homo politicus*. Instinctively, therefore, the People – who by nature cherish their lives, liberties and properties – should recoil instinctively from any attempt to extend such power. The line-item veto is just such an example.

The line-item veto, or partial veto, is the power of an executive authority to nullify or cancel specific provisions of a bill – usually a budget appropriations bill – without vetoing the entire legislative package. Such line-item vetoes are usually qualified by legislative override provisions. In 1986, President Ronald Reagan, in his State of the Union Address, asked the Congress for such an authority: "Give me the authority to veto waste, and I'll take the responsibility, I'll make the cuts, I'll take the heat." The Congress refused this overture, not least because the Democrat-majority in the House of Representatives sensibly anticipated that much more than waste would be vetoed by this president on the social side of the budget.

In 1995, President Bill Clinton repeated this request in his State of the Union address. An unwise Congress granted his request in the Line Item Veto Act of 1996. President Clinton deployed this power 82 times in 11 budget bills, until the United States Supreme Court correctly determined, in 1998, that unilateral amendment or repeal of only parts of a statute violate the Presentment Clause of the Constitution. Ambitious presidents ceaselessly search for such additional authority. President George W. Bush once again requested a line-item veto power in 2006, this time setting out a complex process designed to avoid the Supreme Court ruling. Fortunately, the loss of any Republican-majority in Congress intervened to deny him this dangerous privilege.

The executive branch currently enjoys excessive power in the United States political process, threatening the replacement of the separation of powers by the imposition of an Imperial Presidency. The People will be wise indeed to constrain, rather than to extend, the powers of the executive branch – not least by revisiting the expansive interpretations of the General Welfare and the Commerce clauses by the Supreme Court – if our precious constitutional republic is long to survive repeated attempts to subvert its original design.

Charles K. Rowley, Ph.D. is Duncan Black Professor of Economics at George Mason University and General Director of The Locke Institute in Fairfax, Virginia. He is co-author (with Nathanael Smith) of *Economic Contractions in the United States: A Failure of Government*. The Locke Institute (#). He blogs- at #.

Archive for the 'Federalist No. 74' Category

August 15, 2010 – Federalist Paper No. 74 – Janine Turner

Sunday, August 15th, 2010

Howdy from Texas. I thank you for joining us! I have been absolutely swamped prepping pre-production for Constituting America's RV road trip across the country!! Our winners are going to revealed throughout the next few weeks as we travel to the winners home states and film them for our documentary! Our first winner is revealed today.

He is Jacob Wood from California. He won Best Song High School. Jacob is very talented. Our judge, John Rich, chose his entry as the winner. Jacob is a talented songwriter, musician and has a wonderful voice!! Please check his out his song on our site and if all goes according to my mission, you will soon hear his song on the radio!!

Thus, with all the prep for our cross-country tour, I have been unable to keep up with our Federalist Paper's daily read. Today, however, as I am on the plane to California, I am attempting to catch up on my reading and blogging.

Federalist Paper No. 74, by Alexander Hamilton, once again resonates the importance of being most vigilantly informed about the candidates we choose as President. Yes, we have a masterful system of checks and balances, but there are powers inherent in the office of Presidency and to those we must take note.

Knowledge is power. As I continue to read these papers. I am continually impressed by the fact that we must know our Constitution and understand the distinct powers that are given to our representatives. This is the only want that they may be kept in check and the majesty of the people protected.

The power of pardoning is one to be taken seriously. Thus, knowing the deeply rooted intentions of our President is essential, as he has the power to pardon anyone. We are so far removed from tyranny, and intrigue from foreign countries, that we grow lazy regarding the potential far-reaching and destructive powers a pardon may present.

Yes, at times, solitary wisdom may prevail over a mob of passions. Yet, power in one is always dangerous. Our Constitution goes to great lengths to prohibit powers from being invested in either one or the few. However, in the instance of pardoning, the power is solely in the President.

History of our country has proven that this power has been treated with respect and dignity most of the time. However, there have been times when people who are most undeserving of a pardon have been

pardoned. Up to now, they may have been benign in regard to how they affect our Republic but they may not always be.

We must thoroughly vet our candidates. Some day, a Presidential pardon may override the genius of the people and our Republic may be jeopardized.

God Bless,

Janine Turner

August 13, 2010

Posted in Constitutional Essays by Janine, Federalist No. 74 | No Comments »

August 9, 2010 – Federalist No. 74 – The Command of the Military and Naval Forces, and the Pardoning Power of the Executive, from the New York Packet (Hamilton) – Guest Blogger: Allison Hayward, Vice President of Policy at the Center for Competitive Politics

Monday, August 9th, 2010

Federalist Paper 74 appeared on March 25, 1788 – readers should recall that this is roughly 6 months after the Constitution has been sent to the states for ratification. Only one day earlier, on March 24, Rhode Island in a popular referendum rejected the Constitution by a margin of about 10 to 1(Rhode Island eventually ratified the Constitution via convention in 1790, by a vote of 34-32). At this point, only six states had ratified the document.

So we can forgive Hamilton for sounding just a tad defensive in this essay.

As noted previously, Hamilton is a strong defender of executive power, so he is ready and eager to explain to readers the important principles informing his view. He has two tasks – first, reassuring readers that the powers of the Presidency are not extreme, and the nation's executive will not become a monarch. Second, that to the extent the President has power to act unilaterally, it is in situations where government by committee would be intolerable. There's a tension between these two tasks that is evident from Hamilton's first sentence:

"THE President of the United States is to be "commander-in-chief of the army and navy of the United States, and of the militia of the several States WHEN CALLED INTO THE ACTUAL SERVICE of the United States." The propriety of this provision is so evident in itself, and it is, at the same time, so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it."

But is the power as commander-in-chief really "so evident in itself?" The commander-in-chief power has been invoked in recent years to justify unilateral warmaking power by the Executive. Critics of that argument note that in fact the power to declare war belongs to Congress, and is thus not solely within the President's ambit.

In modern times, there are many foreign entanglements that involve our armed forces but aren't "wars." To be sure, the President's ability to send American troops into combat would not mean much without a standing army — an institution the Federalists promised would not come to pass. What powers should the President have in these limited engagements — today? Should Congress be able to undo Presidential deployments, or condition them on Congressional approval, such as in the War Powers Act? When the President and Congress disagree, who decides which side wins? Do we really want the Supreme Court involved?

Hamilton also raises and defends the Presidential power of the pardon. Hamilton argues that the pardon is necessary to temper the severity of criminal law, and the President is the best positioned individual to grant it – and be held accountable to the people for having done so. In language that probably seems a little odd to us today, Hamilton observes that the pardon will help preserve domestic tranquility, even in cases of treason:

"On the other hand, when the sedition had proceeded from causes which had inflamed the resentments of the major party, they might often be found obstinate and inexorable, when policy demanded a conduct of forbearance and clemency. But the principal argument for reposing the power of pardoning in this case to the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments, when a welltimed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall."

Again, this is a striking passage that should remind us all of the tenuousness of the new nation, and the feeling among the founders that this experiment could quite easily go wrong. I was reminded of this when looking over the ratification timeline in preparing this blog. I had forgotten that as a precondition to entering the nation, Vermont had to enter into a peace treaty with New York.

To me, that sounds like a premise for a comedy, perhaps with Ben and Jerry declaring independence from the United States and commissioning a new national anthem from Phish. But at the founding, tensions between states were no laughing matter. The legacy of violence and mistrust was real. In fact the first use of the pardon was for participants in the Whiskey Rebellion, for Washington perhaps sensed the need for just such a "welltimed offer of pardon" to "restore the tranquillity of the commonwealth."

The Presidential pardon in modern times has had a mixed record. The Department of Justice typically makes clemency recommendations to the President, but the President is not bound to follow them. President Gerald Ford's pardon of Richard Nixon (before indictment or conviction for anything) may have spared the nation an ugly incident, but also may have cost Ford his reelection in 1976.

Critics accused President Clinton of rewarded a campaign supporter by pardoning fugitive financier Marc Rich. Classes of individuals have been pardoned too, most notably all Confederate soldiers, and all Vietnam draft dodgers. Hamilton correctly observed that the pardon, as an aspect of law enforcement, could mollify and temper the force of criminal law.

But it is less clear to what degree Hamilton could see – or wanted to acknowledge – the Presidential pardon as a political favor.

Allison Hayward is the Vice President of Policy at the Center for Competitive Politics

Archive for the 'Federalist No. 75' Category

August 15, 2010 – Federalist Paper No. 75 – Janine Turner

Sunday, August 15th, 2010

Howdy from the Constituting America RV! We are on the road from California to Arizona!! We filmed Jacob Wood and he is a truly special young man. Check out his music on our site and our behind the scene footage and photos.

I am determined to catch up on the Federalist Papers as I have yet to fall behind until I was in pre-production for our Cross Country RV Road Trip!!

Alexander Hamilton and our Constitutional forefathers had such a remarkable insight into the human psyche and even better, a realization as to how important a role it played into the art of politics. Inalienable rights, they taught us, are given by God, not government and the powers of government are being delegated to men, who are not angels. They understood the fallibilities and temptations of men and these weaknesses were the driving force in their insistence on separation of powers.

Hence, the C0nstitutional designations regarding the negotiating of treaties.

Alexander Hamilton states in Federalist Paper No. 75,

"But that a man raised from the station of private citizen, to the rank of chief magistrate, possessed of but a moderate or slender fortune, and looking forward to a period not very remote, when he may probably be obliged to return the station from which he was taken, might sometimes be under temptations to sacrifice duty to interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state for the acquisition of wealth."

Checks and balances. Temptations never die, whatever the age. We fool ourselves if we think our representatives are immune to them. Human nature is eternally flawed and even though we are not under the rule of a monarchy our Republic is still, and always will be at risk.

Alexander Hamilton states it best,

"The history of human conduct does not warrant the exalted opinion of human virtue, which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would the president of the United States"

God Bless,

Janine Turner

August 15, 2010

Posted in Constitutional Essays by Janine, Federalist No. 75 | No Comments »

August 10, 2010 – Federalist No 75 – The Treaty Making Power of the Executive, For the Independent Journal (Hamilton) – Guest Blogger: Nathaniel Stewart, attorney and fellow at the Ashbrook Center for Public Affairs

Tuesday, August 10th, 2010

In Federalist #75, Alexander Hamilton explains and defends the power of the President to make treaties with foreign nations "by and with the Advice and Consent of the Senate." The treaty-making power granted in Article II section 2 involves, as Hamilton observes, another example of an "intermixture of powers," a power shared by the President and the smaller house of Congress.

Hamilton acknowledges four arguments levied against this particular arrangement and addresses them each in turn. First, there are those who would vest the power in the President alone. Second, there are some who called for the power to reside only in the Senate. Still others called for the House of Representatives to hold a share of the treaty power. And finally, having answered these objections, Hamilton explains why treaties may be approved by only "two-thirds of the Senators present," rather than two-thirds of the whole body.

Hamilton begins with the initial explanation that the power to make treaties does not readily fit within either the legislative or administrative functions of government. Here, Hamilton reminds his audience of the precise functions of these two branches of government, and distills them neatly: "The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of society; while the execution of the laws and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate."

But the power to negotiate a treaty, Hamilton argues, does not involve enacting a new law or enforcing an old one. Treaties are not laws, they are *contracts*. They enjoy "the force of law" derived from "the obligation of good faith," but they are not laws as between a sovereign and its subject, or rules which must be obeyed. Rather, a treaty is a contract between two sovereigns, and thus, the treaty-making power is a distinct and peculiar function, neither purely legislative nor wholly administrative. This provides the foundation for Hamilton's contention that the treaty power be shared between the branches, rather than vested in only one.

Turning then to the contention that the President alone should wield this power, Hamilton repeats the common refrain that history proves power to be all too tempting for men to resist. The hereditary monarch, he notes, has too much at stake – given the length of his lifelong reign – to risk being corrupted by a foreign nation. But such is not the case with a man elected for a mere four years; a man who may have risen to the rank of President from a more modest station, and for whom a foreign allegiance might then prove quite valuable when his term of office has expired. To entrust this great authority in such an elected official would be "utterly unsafe and improper," lest he be "tempted to betray the interests of the state to the acquisition of wealth."

But this does not mean that the power should rest with only the Senate, for this would deprive the President of too much authority in foreign relations and negotiations. The President is to enjoy "the confidence and respect" of other nations, and the Senate, as a legislative body, is unlikely to command such foreign confidence. Thus, the country would lose the benefit of the President's unique position among the nations were he to be excluded from the treaty process. For Hamilton it is then clear that the "greater prospect of security" for the country lies in the joint sharing of the treaty-making power.

Despite the prudence of this "intermixture" between the Senate and the President, Hamilton resists the call to include the House of Representatives in the treaty power. Treaties, he argues, require a set of qualities which cannot be expected from such a large and "fluctuating" body of representatives. Treaties require "accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character, decision, *secrecy*, and dispatch." The design of the House of Representatives is not conducive to these qualities and would only muddy the waters at potentially critical and inopportune moments of decision. While we might wonder today whether even the Senate possesses the requisite "uniform sensibility" that Hamilton envisioned, one would be hard pressed to quibble with his foresight in resisting the call to extend the treaty-power to the ever-ephemeral House of Representatives.

Finally, the author takes up the challenge that treaties ought to be ratified by two-thirds of the whole Senate, rather than merely "two-thirds of those present." Anytime a super-majority, like two-thirds, is required for an approval, the matter is increasingly beholden to the will of a select minority, rather than that of the majority. Hamilton rightly recognized that the treaty-making power would be no exception. Requiring two-thirds majority of the entire body to affirm a treaty risked the possibility that a minority of Senators could defeat the measure simply by not appearing to vote on it. On the other hand, such gamesmanship would be discouraged and unrewarded by allowing the treaty to pass with the support of only a super-majority of those present.

The treaty-making power is a shared power. Not a legislative function, nor an executive's role, a treaty represents a bond between two sovereign powers, likely the culmination of a negotiation, a settling of terms. It is for this reason that Presidents must enjoy enough power to broker the terms of the agreement, while a discrete and noble body of another branch ensures that such power is only invoked in the best interests of the nation and its security.

Nathaniel Stewart is an attorney in Washington, DC, and a fellow at the Ashbrook Center for Public Affairs

Archive for the 'Federalist No. 76' Category

August 15, 2010 – Federalist Paper No. 76 – Janine Turner

Sunday, August 15th, 2010

Howdy from Arizona! We just pulled into a bus stop to get gas and our Constituting America RV Bus caught a lot of people's attention! They love the Constitution in Arizona.

Federalist Paper No. 76 enthralls me. Once again the relevancy is amazing! Who says the Constitution is not relevant today or the Federalist Papers are antiquated?

I dare say, they have not read them or they would never dream of uttering such words!

In relation to the appointment of officers the wisdom of Alexander Hamilton is timely.

"Hence, in every exercise of the power of appointing to offices, by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties."

Relevant? I say, yes! The following phrase is fascinating.

"In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station."

Alexander Hamilton's political savvy is revealed in the following phrase.

"In the last, the coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and you shall have the one you wish for that." This will be the usual condition of the bargain."

This phrase of Alexander Hamilton is revealing and relevant.

"And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations."

Rare are the men who put country before self-interests.

God Bless,

Janine Turner

August 15, 2010

Posted in Constitutional Essays by Janine, Federalist No. 76 | No Comments »

August 11, 2010 – Federalist No .76 – Cathy Gillespie

Wednesday, August 11th, 2010

Federalist No. 76 examines the appointing power of the Executive Branch. One of our blog commenters, Jimmy Green, summed up this paper well today:

"To keep the Executive somewhat honest the legislative branch must consent on appointments."

This same subject was discussed in Federalist 66, in the context of powers of the Senate:

"It will be the office of the President to NOMINATE, and, with the advice and consent of the Senate, to APPOINT. ***There will, of course, be no exertion of CHOICE on the part of the Senate****. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves CHOOSE, they can only ratify or reject the choice of the President. They might even entertain a preference to some other person, at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected. Thus it could hardly happen, that the majority of the Senate would feel any other complacency towards the object of an appointment* ***than such as the appearances of merit might inspire***, and the proofs of the want of it destroy."

Publius is saying that the Senate's role in the Presidential appointment process is to decide if the President's nominee is fit for the position nominated, on a merit basis, i.e. is the person qualified to serve in the position for which he or she is nominated?

How is this relevant today? With our newest Supreme Court Justice Elena Kagan's confirmation in the news, it's easy to answer that question!

Historically, there have been two views regarding the role of the Senate in the Presidential nomination process of Supreme Court Justices. The two quotes below are excellent examples of each view:

Senator Orrin Hatch stated in 1993:

"If a nominee is experienced in the law, highly intelligent, of good character and temperament, and — most important — gives clear and convincing evidence that he or she understands and respects the proper role of the judiciary in our system of government, the mere fact that I might have selected a different nominee will not lead me to oppose the President's nominee."

Senator Barak Obama stated in 2006:

"There's been a lot of discussion in the country about how the Senate should approach the confirmation process. There's some who believe that the President, having won the election, should have complete authority to appoint the nominee, and that the Senate should only examine whether or not the Justice is intellectually capable and is nice to his wife, or she is nice to her husband. That, once you get beyond issues of intellect and personal character, then there shouldn't be further question as to whether the Judge should be confirmed. I disagree with the view. I believe that the Constitution calls for the Senate to advise and consent, that, meaningful advice and consent includes an examination of a judge's philosophy, ideology, and record."

Which of the above views have prevailed over the past few years? Examining the partisan breakdown of recent Supreme Court nominations provides at least a partial answer to that question.

President Clinton's Supreme Court nominee, Ruth Bader Ginsburg, was confirmed in 1993 by a vote of 96-3, supported by 41 of 44 Senate Republicans, 93%.

President Clinton's Supreme Court nominee, Stephen Breyer, was confirmed in 1994 by a vote of 87-9, supported by 33 of 42 Senate Republicans, 78%.

President Bush's Supreme Court nominee, John Roberts, was confirmed in 2005 by a vote of 78-22, supported by 22 out of 44 Democrats, 50%.

President Bush's Supreme Court nominee, Samuel Alito, was confirmed in 2006 by a vote or 58-42, supported by 4 out of 44 Democrats, 9%. One Senate Republican voted against Alito.

Were Justice Roberts and Justice Alito less qualified than Justice Breyer and Justice Ginsberg, or was an ideological standard applied by the Senators who chose to vote against Justice Roberts' and Alito's nominations?

President Obama's Supreme Court nominee, Sonia Sotomayor, was confirmed in 2009 by a vote of 68-31, supported by 9 out of 40 Republicans, 22%.

Last week President Obama's Supreme Court nominee, Elena Kagain, was confirmed by a vote of 63-37, supported by 5 out of 41 Republicans, 12%. One Democrat voted against Kagan.

This Senate.gov weblink:
http://www.senate.gov/pagelayout/reference/nominations/Nominations.htm provides an interesting look at our country's history of Supreme Court nominations. Scrolling through these votes, a more partisan voting trend has emerged in very recent years. While Judge Bork was an anomaly, three Justices in the Reagan years were confirmed unanimously: Scalia, O'Connor and Kennedy, with Kennedy being the last Justice to be confirmed unanimously, in 1987. The attitude of the Senate regarding their role in the appointments process seems to have shifted into partisanship over the last 20+years.

<u>What is the Senate's proper role in the Presidential Appointment process?</u>

Publius answers that question this way:

"To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration."

Partisanship in the nomination process is difficult to dial back once allowed to seep in. Is it in our Nation's best interest for the Senate to adopt the attitude articulated by Senator Hatch in 1993 or the views articulated by President Obama in 2006?

I believe the founders intended the Senate to advise and consent based on their assessment of a nominee's qualifications more than ideology. However, unless both parties can show evidence of

dropping the partisan, ideological criteria for evaluating the President's nominees – any President's nominees – it is certainly not in the interest of one party to evaluate nominees based on qualifications while the other party uses an ideological measuring stick.

"We the people," must educate ourselves regarding our founders' intentions, formulate our opinion, and make our voice heard through our vote. As Janine Turner, my good friend and Constituting America founder and co-chair likes to say, "Your vote is your voice." Use it!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 76 | No Comments »

August 11, 2010 – Federalist No. 76 – The Appointing Power of the Executive, From the New York Packet (Hamilton) – Guest Blogger: Gary McCaleb, Senior Counsel with the Alliance Defense Fund

Wednesday, August 11th, 2010

As a constitutional attorney asked to chat a bit about Federalist No. 76, I certainly did not expect to use knowledge gained as a U.S. Navy sailor in the 1970s from a book published in 1890 about history from the 1660s to help me explain a constitutional commentary drafted in 1788—but I will.

Federalist No. 76 recognizes that every government needs a stable of civil servants, who in turn must be secured for service with reasonable dispatch and with some assurance of quality. The paper plays off a consistent theme of our founding era—to balance each grant of authority (and concomitant power) with some restraint on the authority.

In a nutshell, Hamilton takes the familiar balancing of powers among the executive, judicial, and legislative branches down a notch as he considers how to expeditiously staff the government with high quality persons, while restraining the appointment power lest it be used by the President to untoward ends.

Hamilton broadly considers the benefits and risks of vesting the appointment power in a single person; or in a larger group of representatives, or in some mix of the two. The idea of a purely democratic appointment system he rejected out of hand—the distances and slow communications of the time precluded that option. And while there is great efficiency in granting one person the power to appoint, that vests too great a power to shape the government in the image of one man.

The Constitution, Hamilton notes, splits the difference—the President has complete discretion to nominate, subject only to the "advice and consent" of the Senate. This secures the efficiency of centralizing these key selections, while providing a modicum of restraint via the Senate's review.

As Hamilton predicted—and subsequent practice confirms—the Senate seldom shoots down a Presidential nominee, for many reasons: Most nominations are simply uncontroversial, so review is

superfluous. And often, nominees intended to advance an agenda don't always do so once in office; uncertainty about future performance complicates the review. Worse, for the controversial nominations, the Senate cannot be sure that refusing consent won't lead to an even less palatable nominee the next time around.

Thus, Hamilton must answer the question: "To what purpose then require the co-operation of the Senate?" His answer: "[T]hat the necessity of their concurrence would have a powerful, though, in general, a silent operation." In short, Hamilton sees the potential for Senatorial brouhaha, or even denial of consent, as a political risk that by its very presence tempers the discretion of the Chief Executive.

What Hamilton propounds in political terms sounds like a peaceful application of classic concept of naval warfare—an idea called the "fleet in being."

That concept was popularized in a seminal work on global military strategy, Alfred Thayer Mahan's *The Influence of Sea Power upon History,* 1660-1783, published in 1890. In assessing how sea power impacted the matters of man, Mahan found that political and military decisions could be profoundly impacted by the mere presence of a small but competent naval force.

The classic example arose in World War I, when the small German High Sea Fleet did little but sit in port—yet the constant threat that it may sally forth and salvo forced the British to commit significant combat resources to contain the German fleet in its harbor. As warfare modernized and combined arms became the norm, the "fleet in being" was renamed "force in being," and the principle applied more widely.

Thus, the mere fact that the Senate must review the nominations serves as some check to the President's fearsomely strong nomination power—even if the votes against the President "never leave port," so to speak.

Senate review means that with each nomination that proves dubious, contentious, or both, the President must spend his political capital. When the highest profile nominations come, he must weigh the risk of pushing his agenda with the risk of having his ambitions die in the fire of a dissenting Senate, or expending the last of his capital in the fight. Given the politicization and profile of the most important nominations (so much so that a new verb—"borking"—came into the American lexicon), the wise President will pull back from fringe politics.

The balance is imperfect, but that was likely intentional—to grant greater review power would have frustrated every administration's efforts to staff the government. While this undoubtedly permits a degree of undue partisanship in the process, the ultimate impact is mitigated by the higher level separation of powers. In sum, the system performed very much as predicted, which affirms the wisdom of our Founders in drafting the Constitution.

Gary McCaleb is senior counsel with the Alliance Defense Fund, a legal alliance that employs a unique combination of strategy, training, funding, and litigation to protect and preserve religious liberty, the sanctity of life, marriage, and the family.

Archive for the 'Federalist No. 77' Category

August 15, 2010 – Federalist Paper No. 77 – Janine Turner

Monday, August 16th, 2010

Howdy from Arizona! As I read Alexander Hamilton's Federalist Paper No. 77, I have such an appreciation and gratitude for our founding fathers and revolutionary heroes, great and small. They fought for our independence and dignity of soul. Their bravery was no less when they had the fortitude to gather at the Constitutional Convention and construct a document that furthered the principals of the Declaration of Independence. The following paragraph by Alexander Hamilton in Federalist Paper No. 77 reveals the genius of their collective vision.

"Does it also combine the requisites to safety, in a republican sense, a due dependence on the people, a due responsibility? The answer to this question has been anticipated in the investigation of its other characteristics, and is satisfactorily deducible from these circumstances; from the election of the President once in four years by persons immediately chosen by the people for that purpose; and from his being at all times liable to impeachment, trial, dismission from office, incapacity to serve in any other, and to forfeiture of life and estate by subsequent prosecution in the common course of law. But these precautions, great as they are, are not the only ones which the plan of the convention has provided in favor of the public security. In the only instances in which the abuse of the executive authority was materially to be feared, the Chief Magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people?"

Our founding fathers fiercely desired our President and our representatives to be held accountable and that they represent the people with the solemnity and dignity that the office deserves.

God Bless,

Janine Turner

August 15, 2010

Posted in Constitutional Essays by Janine, Federalist No. 77 | No Comments »

August 12, 2010 – Federalist No. 77- Cathy Gillespie

Thursday, August 12th, 2010

Greetings from Arizona! What a beautiful state and friendly people. We stopped to get gas, and several people wanted to know more about Constituting America – we ended up having fascinating conversations with them, about the importance of the Constitution, and their love for our country.

I haven't blogged since I arrived in California on Friday, so I would like to take a moment to catch you up on our Constituting America We The People 9.17 Road Trip!

We spent Friday with Jacob Wood. If you haven't listened to Jacob's prize winning song, "What the Constitution Means to Me," please go to www.constitutingamerica.org and listen!

Jacob is an outstanding young man! We filmed him all day in preparation for a music video we will release in the next few weeks. We loved getting to know Jacob! We also got to speak with his Pastor, and his parents who shared with us some wonderful stories about him. Look for our Behind the Scenes Video in the coming weeks to learn more about Jacob!

Saturday we prepared for our departure, and today we took off from Los Angeles, headed to Arizona!

As we drove along looking the impressive desert vistas, I read Federalist Paper No. 77, only interrupted by Janine reminding me to look out the window and take in the views!

Federalist No. 77, **The Appointing Power Continued and Other Powers of the Executive Considered,** continues to explore the President's power to nominate, and how the Senate's role affects the balance of power between the White House and the legislative branch. Hamilton even takes time to explore the ramifications if the U.S. House shared in the Advice and Consent role. Near the end of the essay, the remaining powers of the President outlined in Article II, Section 3 of the Constitution are quickly mentioned:

"The only remaining powers of the Executive are comprehended in giving information to Congress of the state of the Union; in recommending to their consideration such measures as he shall judge expedient; in convening them, or either branch, upon extraordinary occasions; in adjourning them when they cannot themselves agree upon the time of adjournment; in receiving ambassadors and other public ministers; in faithfully executing the laws; and in commissioning all the officers of the United States."

The requirement in the Constitution that the President deliver a State of the Union address to Congress:

"He shall from time to time give to the Congress Information of the State of the Union,"

is one of the few specific requirements of the President in the Constitution. Most of the powers given to the President may be utilized at his discretion, but the State of the Union is required. I am surprised Publius did not spend more time on Article II, Section 3. I find the State of the Union requirement of the President fascinating, as a validation of the President's unique bird's eye view of the country, and as a confirmation of the importance the framers placed on the legislative branch of government, by requiring a report be made to them.

Dr. Matthew Spalding, in the ***Heritage Guide to the Constitution***, gives an interesting history of State of the Union speeches, on page 217. Presidents Washington and Adams delivered their State of the Union speeches orally, as was the expectation by the framers. Thomas Jefferson, however, broke with tradition and delivered his State of the Union speech in written form, read aloud by the clerks in Congress. Jefferson felt an in person delivery was "too pompous." President Wilson was the first after John Adams to deliver his State of the Union orally, and every President since President Franklin D. Roosevelt has followed that tradition. President Coolidge's State of the Union address was the first broadcast by radio in 1923, and Harry Truman's 1947 State of the Union address was the first broadcast by television.

I have had the privilege of attending several State of the Union Speeches, including one by President Reagan, one by President Clinton, one by President George H.W. Bush, and one by President George W. Bush. All I witnessed were an impressive display of the three branches of government, personified by the individuals filling the U.S. House Chamber:

The members of Congress: U.S. House of Representative Members and U.S. Senators, fill the Chamber. The Speaker of the House is seated behind the President, as is the Vice President, who serves as the President pro tempore of the Senate. The Supreme Court Justices line the front row.

One of the more famous State of the Union speeches occurred when President Obama rebuked the Supreme Court for their Citizens United vs. Federal Election Commission decision:

"with all due deference to separation of powers, last week the Supreme Court reversed a century of law to open the floodgates for special interests – including foreign corporations – to spend without limit in our elections. Well I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people, and that's why I'd urge Democrats and Republicans to pass a bill that corrects some of these problems."

Many have debated if it was appropriate for President Obama to criticize the Judiciary Branch so strongly in such a forum, with the Justices seated directly in front of him. The appropriateness of Justice Alito's reaction, of mouthing "not true," has also been debated and discussed. I believe that when attacked, a person has a right to defend himself. Justice Alito was perfectly within his bounds mouthing "not true." It is unfortunate it was necessary.

Just as President Obama should not have attacked the Supreme Court in his 2010 State of the Union, Representative Joe Wilson should not have shouted out "You lie!" in President Obama's first State of the Union in 2009. When decorum is breached in the State of the Union, or anywhere, sadly standards degenerate on all sides.

The intricate layers of checks and balances in the United States Constitution is amazing. They are buried in the nooks and crannies of the Constitution, and the State of the Union requirement is an example of this. The simple requirement of a State of the Union speech puts yet another check and balance into play, and give and take between the branches goes on!

Looking forward to Federalist No. 78, the Judiciary Department! AND looking forward to telling you about the next We the People 9.17 winner we are unveiling tomorrow in Arizona!!

Good night and God Bless,

Cathy Gillespie

Posted in Constitutional Essays by Cathy, Federalist No. 77 | No Comments »

August 12, 2010 – Federalist No. 77 – The Appointing Power Continued and Other Powers of the Executive Considered, From the New York Packet (Hamilton) – Guest Blogger: Steven H. Aden, Senior Legal Counsel with the Alliance Defense Fund

Thursday, August 12th, 2010

Federalist 77 "complete[s] a survey of the structure and powers of the executive department," which, Hamilton urged, "combines, as far as republican principles will admit, all the requisites to energy" the Federal Executive would require to fulfill the duties of his office. Anticipating the skepticism of his audience, the pre-eminent Federalist added one "remaining inquiry": "Does it also combine the prerequisites to safety, in a republican sense – a due dependence on the people, a due responsibility?" Not to worry, Hamilton soothed: "In the only instances in which the abuse of the executive authority was materially to be feared [i.e., appointments], the Chief Magistrate of the United States [i.e., the President] would, by that plan, be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people?"

Hamilton's rhetorical caution with his Empire State audience may have stemmed from the depth of contention the issue of appointments had engendered in the Constitutional Convention. The final compromise settled on language that reflected the desire to maintain a strong separation between the powers of the Executive and Legislative branches.

The late Justice Byron White, writing in *Buckley v. Valeo* (1976), in which the Supreme Court held that Congress had violated the Appointments Clause by constituting the Federal Election Commission with a majority of commissioners appointed by Congress instead of the President, explained the importance of the clause to the Federal system and ultimately the approval of the Federal Constitution:

The decision to give the President the exclusive power to initiate appointments was thoughtful and deliberate. The Framers were attempting to structure three departments of government so that each would have affirmative powers strong enough to resist the encroachment of the others. A fundamental tenet was that the same persons should not both legislate and administer the laws.

The Convention proposed, in alternative versions, that both Houses of Congress should appoint judicial officers, then that the Senate should do so. Judicial and Executive officers were finally lumped together under the Appointments Clause, with the presumption being that the Judiciary being (in Hamilton's phrase) "the least dangerous branch (Federalist 78)," Congress' oversight of the President's power of appointing federal judges would suffice for checks and balances over that branch.

Time and experience have revealed both the wisdom of the balance the Framers struck by the Appointments Clause and their myopic failure to foresee the real dangers posed by a life-tenured federal judiciary. As to the latter, check Judge Vaughn Walker's opinion in the Proposition 8 case last week, cavalierly tossing aside millennia of moral teaching on marriage as "irrational" and "discriminatory." As to the former, Executive nominations have rarely been voted down, perhaps demonstrating the

"steady administration" inherent in a system in which "the circumstances attending an appointment…would naturally become matters of notoriety," as Hamilton put it in Federalist 77. One truly "notorious" exception was that of Senator John Tower, a powerhouse of American politics who was denied an appointment as Secretary of Defense 1989 due to a confluence of political and personal factors that seemed to bear out the wisdom of conferring the power of "salutary restraint" on Congress over presidential nominations. The Left thought he had too many ties to defense contractors, and the Right condemned his extramarital infidelities, heavy drinking, and pro-abortion views. Presuming a relative equipoise of power in the Senate (absent today), when both sides of the aisle have reasons to deny an appointment, it suggests that – as "Publius" predicted – the Executive is obliged to nominate moderate candidates to guide federal policy and programs, keeping the ship of state (in theory) more or less on course.

As to the hysterical political theater the Supreme Court confirmation process has become, that of course began with the nomination of eminent jurist Robert Bork to the Supreme Court in 1987, whom Senate partisans voted down in part because of his perceived role in arrogating too much authority to the Executive Branch. That story begins much earlier, but I will tell it as a kind of morality play whose lesson is that in the *pas-de-trois* dance for power between the three "co-equal" branches, "what goes around comes around," and the consequences for overreaching may be severe.

Among President Richard Nixon's manifold abuses of power, none inflamed his political enemies more than the "Saturday Night Massacre" of October 1973. Nixon had appointed a Special Prosecutor for the Watergate Scandal, Archibald Cox, as a result of a promise his Attorney General, Elliot Richardson, had made to the Senate Judiciary Committee. When Cox subpoenaed Nixon's Oval Office tapes, Nixon ordered Richardson to fire him. After all, Nixon reasoned, Cox was an "inferior officer," whose tenure was at the pleasure of the Administration. Richardson refused to fire Cox, though, and resigned in protest. Nixon then ordered the Deputy Attorney General to fire Cox, and he likewise refused and resigned. Nixon turned to next-in-line Robert Bork, then Solicitor General. Bork was of the opinion that as a creature of the Executive, the special prosecutor was an "inferior officer" who served at Nixon's pleasure, and he accordingly fired him. In the brouhaha that ensued, Congress re-asserted its power over the Executive Branch by passing the Independent Counsel Act, restricting the authority of the Executive over congressionally authorized investigations.

On October 23, 1987, the Senate rejected Judge Bork's confirmation after a heated public debate over his political positions. Among the chief objections was that by backing Nixon's authority, Bork had shown himself, in the words of the New York Times, "an advocate of disproportionate powers for the executive branch of Government, almost executive supremacy." A decade later, Independent Counsel Ken Starr's investigations into President Clinton's improprieties led in turn to the Supreme Court's unanimous decision in *Paula Jones v. William Clinton* that the separation of powers doctrine did not absolve a sitting President from having to respond to charges of sexual harassment by a low-level state employee. *Jones v. Clinton* may have marked the low ebb of Presidential power (though it was perhaps also the high water mark for the rule of law). Over two decades and both Republican and Democratic administrations, the Legislative and Judicial branches had taken advantage of the character flaws of Chief Executives to substantially reduce the President's authority. Conversely, the power of the unaccountable Supreme Court and the uncontrollable Congress appears to be on the rise. One hopes that the American people will soon find ways to exert a "salutary restraint" on these branches as well, and begin to return constitutional authority to the People, with whom it truly resides.

Steven H. Aden is senior legal counsel with the Alliance Defense Fund, a legal alliance that employs a unique combination of strategy, training, funding, and litigation to protect and preserve religious liberty, the sanctity of life, marriage, and the family.

Archive for the 'Federalist No. 78' Category

August 16, 2010 – Federalist Paper No. 78 & 79 – Janine Turner

Monday, August 16th, 2010

Howdy from Arizona! We are Constituting America across the great states of America via our Constituting America RV in celebration of our winners of our We the People 9.17 Contest. We are filming a documentary and a reality television show! Check out our winners and their works on our site. They are going to be unveiled as we travel from state to state.

Arizona is a rather appropriate place to be during the discussion of Federalist Papers 78 & 79 because it is almost certain that the new immigration lawsuit that the United States government filed against the state of Arizona will end up in the Supreme Court.

As I read Federalist Papers 78 & 79, I am intrigued by Alexander Hamilton's following statement regarding the judicial branch of the United States government.

"A constitution is in fact, and must be, regarded by the judges as a fundamental law."

If this is the requisite then how is it that the Supreme Court recently upheld the fundamental right to bear arms in Chicago, a basic right for all Americans stipulated in the 2nd Amendment of the United States Constitution, by only ONE vote. This is truly astonishing.

One of the primary reasons that the Supreme Court exists is to make sure that the laws that are legislated and executed by the other two branches of the government are constitutional. Thus, how is it that upholding the 2nd Amendment could ever be in question? No matter what lofty interpretation the suit in Chicago may have received by the four Supreme Court dissenters, it is flawed by their blatant lack of respect for their constitutional restraints.

"A constitution is in fact, and must be, regarded by the judges as a fundamental law."

This begs the question: is the Supreme Court, and other courts across America, overstepping their Constitutional bounds and legislating from the bench? This was never the intention of our founding fathers and they do not have this right in the Constitution.

Alexander Hamilton explains the dangers:

"The judiciary is beyond comparison the weakest of the three departments of power [1]; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that

quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." [2] And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments;"

1. Is our judiciary the weakest of the three departments of power? If it is not, then the general liberty of the people are endangered by the Supreme Court and other courts across America. Is this not evidenced by the Supreme Court's recent reluctance to uphold the basic fundamental right to bear arms? By one vote, the people of Chicago almost lost this right.

2. We Americans have every thing to fear from the Supreme Court's union with the other two branches of government. Publius wrote the warning in this Federalist Paper 78.

"And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments;"

Publius further implores the warning:

"The complete independence of the courts of justice is peculiarly essential in a limited constitution…whose duty it is to declare all acts contrary to the manifest tenor of the constitution void."

"The manifest tenor of the constitution."

We, as American's, must hear the Constitution's music. We must understand the melody and heed the conductor, which is the Constitution. If we have this song in our hearts we will protect and defend its majesty.

And we will make sure that our government does so too.

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God Bless,

Janine Turner

August 16, 2010

Posted in Constitutional Essays by Janine, Federalist No. 78, Federalist No. 79 | 2 Comments »

August 13, 2010 – Federalist No. 78 – The Judiciary Department, From McLEAN'S Edition, New York (Hamilton) – Guest Blogger: Brian Faughnan, Managing Editor of LibertyCentral.org

Friday, August 13th, 2010

In Federalist No. 78, Alexander Hamilton explores the proper role of the American judiciary, as laid out in the proposed Constitution. At the time, it was widely recognized that a major defect in the Articles of Confederation was the lack of a federal judiciary. And as Hamilton points out, the only real dispute is about the "manner of constituting" this proposed judiciary and "to its extent."

Hamilton then lays out a recipe for an independent judiciary to which we should all pay particular attention today. In light of recent Supreme Court nominations, as well as the different states' battles over methods of judicial selection, it is critical to understand the key elements our Founders considered necessary for creating and maintaining a judiciary that respects its independent, yet limited, role.

Hamilton supports the lifetime appointment of federal judges, subject, of course, to "good behavior," because he understands that a properly-functioning and independent judiciary "will always be the least dangerous to the political rights of the Constitution." To Hamilton, lifetime appointment was a critical component of an independent federal judiciary:

Alexander Hamilton, in *Federalist No. 78,* argued that a judiciary appointed for life constituted the citadel of the public justice and public security because to subject the judiciary to periodic appointments or elections might lead judges to decide cases to curry popular favor, instead of objectively applying the law.

John L. Dodd et al., *The Case for Judicial Appointments*, The Federalist Society, Judicial Appointments White Paper Task Force (2003), *available* at http://www.fed-soc.org/publications/pubid.89/pub_detail.asp.

Placing even more faith in the restraint of an independent judiciary, Hamilton also writes that "the judiciary is beyond comparison the weakest of the three departments of power." To support this, he points out that judges can't control spending or decisions relating to war; these are better left to the Executive. He also highlights that judges can't direct "the strength or…wealth of the society," another example of why the judiciary couldn't possibly be "dangerous." One key part of Hamilton's analysis is that, while courts have a duty to declare unconstitutional pieces of legislation void, their power is *never* to be interpreted as great than that of the legislature.

So, if judges are supposed to be so innocuous, what accounts for the long-standing debate about judicial activism?

The reason for this is fairly complex, but it can be boiled down to one particularly important observation. As Attorney General Ed Meese recognized, "the Constitution enabled the government to control the governed, but also obliged it to control itself." Meese recognized that the judiciary's departure from interpreting the original intent of the Constitution has fundamentally disabled that branch from controlling itself. In Meese's words, "A jurisprudence seriously aimed at the explication of

original intention would produce defensible principles of government that would not be tainted by ideological predilection." In other words, original intent leads to controlled judges.

The American Left has almost uniformly adopted Justice Powell's view that "the judiciary may be the ***most important instrument for social, economic and political change.***" To them, the judiciary's "independence" hinges on creating affirmative rights when it sees fit, rather than defending those negative liberties that our Constitution recognizes. No longer do we follow Hamilton's model of a constrained, independent judiciary. Instead, we see a judiciary that bows to the goals of special interested groups and creates its own rules of the game. For liberals, the Constitution is no longer a rigid boundary around a judge's decision-making; it is merely a tool that can be warped and bended to reach a desired social, economic, or political goal.

It was this departure from Hamilton's recipe that left Americans with the legacy of a radical out-of-control judiciary. The branch that *should* be the weakest of the three now too often attempts to overpower the political branches whenever it wants to do so.

The good news is that Hamilton and his fellow Federalist Paper authors, James Madison and John Jay, left us with a guide for having a judiciary that is, truly, the "least dangerous branch." The answer is self-constrained judges with respect for the parameters of the Constitution.

Brian Faughnan is the Managing Editor of LibertyCentral.org

Archive for the 'Federalist No. 79' Category

August 16, 2010 – Federalist Paper No. 78 & 79 – Janine Turner

Monday, August 16th, 2010

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Janine Turner

August 16, 2010

Posted in Constitutional Essays by Janine, Federalist No. 78, Federalist No. 79 | 2 Comments »

August 16, 2010 – Federalist No. 79 – The Judiciary Department Continued, From McLEAN'S Edition, New York (Hamilton) – Guest Blogger: Kevin Theriot, Senior Counsel with the Alliance Defense Fund

Monday, August 16th, 2010

A crucial aspect of our republican form of government is an independent judicial branch that cannot be cowed by either of the two other branches. Lifetime tenure – addressed in Federalist #78 – prohibits the president from revoking a judicial appointment should he later come to regret it. And a set salary, which cannot be diminished, keeps the legislature from starving a judge off the bench. This is the topic of Federalist #79.

For the most part, this Paper is relatively straightforward and unremarkable. The subject matter is not particularly complicated. If judges are to be as unbiased as possible, they cannot be tempted to adjust their decisions to conform with the views of the current majority in Congress – lest they have their salary cut.

But at least one remarkable aspect of #79 is the evidence it provides of the foresight of the Founding Fathers. In explaining why the amount of judicial compensation is left to the discretion of Congress, Hamilton notes that the value of money changes over time, and "[w]hat might be extravagant to-day, might in half a century become penurious and inadequate." Quite an obvious consideration, but it demonstrates that the authors of the Constitution knew the policies they were establishing had ramifications for years to come and acted accordingly.

This important principle was reiterated about 30 years later by Justice Marshall in *M'Culloch v. State of Maryland*, 17 U.S. 316 (1819), which determined that Congress has the right to charter a national bank, even though the power to do so is not specifically enumerated in the Constitution. Justice Marshall reasoned that, so long as it is not *prohibited* by the Constitution, Congress has the discretion to use such means as needed to further the powers they do have, such as collecting taxes and regulating commerce.

This provision is made in a constitution, *intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.* To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur.

Id. at 41 (emphasis added).

Perhaps this willingness to think in terms of decades, centuries, and ages, instead of just the next year or two, is why our form of government has survived relatively unchanged for over 200 years. The Founders' foresight is in marked contrast to recent acts of our legislature that are more concerned about appeasing the current constituency rather than doing what's best for the nation. Our leaders would do well to heed the Founders' example and do what is right – long term, as well as short term – instead of what is expedient.

Kevin Theriot is senior counsel with the Alliance Defense Fund, a legal alliance that employs a unique combination of strategy, training, funding, and litigation to protect and preserve religious liberty, the sanctity of life, marriage, and the family.

Archive for the 'Federalist No. 80' Category

August 22, 2010 – Federalist Paper No. 80 – Janine Turner

Sunday, August 22nd, 2010

Howdy from Nebraska! We have been traveling across America in our Constituting America RV, filming our winners! We have filmed Jacob Wood in California, (check out his new video on the website – it is produced by Constituting America and directed by me and edited by me and my daughter, Juliette!) Next, we traveled to Arizona where we filmed Jorey Cohen (check out the photos on the website – scroll down). We then traveled to Colorado and filmed Joseph Valencia and onward to the bottom of the Rockies, the great Continental Divide, to film Halley Moak! Check out our website for updates.

We are trying to keep the site up to date as we travel in the RV – as much as the phone service and electrical outlets will allow. The electrical outlets keep popping! It is rather crazy to be on this tiny RV with six people traveling thousands of miles across the country – literally all across the country – up, down, everywhere. However, when times are exhausting, the absolutely darling children who are our winners light up the whole process.

I pray to God to guide us, as we are servants of His and of America. This is how I feel. This is my purpose – to be of service. As I travel across our great country I am reminded how beautiful it is and I love America and Americans. We are blessed!

Regarding Federalist Paper No. 80. – all can says is "wow!" I wish I had all of the time in the world to study it but I am filming, directing, editing and traveling so I am a wee bit busy. As I

read the paper I realize how huge our country has become since its inception and how large our government has become. I have to question whether it is still the "weakest" branch of the government. When Juliette, Cathy and I visited the Supreme Court recently, the guide talked about how John Jay left his position as Supreme Court Chief Justice, to become governor of New York.

Today, we consider this decision with incredulous wonder. Why would he leave the Supreme Court to become governor of New York? It is because at that time, the office of governor was more powerful than that of a Supreme Court Justice – and this was the intention of the Constitution.

In modern times, the office of Supreme Court Justice is considered one of the highest in the land and one of awe.

The only way this misplacement of powers may be revisited is by becoming aware of the true intention of the court. Knowledge is power.

In Federalist Paper No. 80, Alexander Hamilton writes of the importance of the uniformity of reason within a nation, hence, the importance of the Constitution. A nation must have a reference point, a synchronicity of laws. Without this, there is no center, no focus. It is on this very point that I believe the writing of our United States Constitution was just as monumental of a miracle as our victory in the Revolutionary war. Unity is important in all endeavors but most importantly in worthy endeavors.

In Federalist Paper No. 80, Alexander Hamilton expresses his opinion:

"The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

Alexander Hamilton thoughts and words in his fourth point of Federalist Paper No. 80 is mesmerizing:

"The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it."

Two phrases stand out in this phrase,

"The peace of the WHOLE ought not to be left at the disposal of a PART."

And

"And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it."

With the difficult times that we are facing as a nation, a focus upon the true intentions of our founding principles is paramount.

Understanding the intrinsic values of our foundation as a country will be the only thing that will sustain us in times of attack, whether external or internal, physically or culturally.

I thank you for joining us. Please read the Constitution with your children, family and friends and for that matter, anyone you encounter.

God bless,

Janine Turner

August 16, 2010

Posted in Constitutional Essays by Janine, Federalist No. 80 | 1 Comment »

August 17, 2010 – Federalist No. 80 – The Powers of the Judiciary, From McLean's Edition, New York (Hamilton) – Guest Blogger: Horace Cooper, Director of the Center for Law and Regulation at the Institute for Liberty

Tuesday, August 17th, 2010

Federalist Paper 80 was printed in the *Independent Journal* in New York on June 21, 1788. Hamilton sets out to outline the jurisdiction of the Federal judiciary as outlined in the new Constitution. He explains that federal jurisdiction involves "all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands and grants of different States; and between a State or the citizens thereof and foreign states, citizens, and subjects."

In his view in order to best evaluate the "the proper extent of the federal judicature" it is necessary to understand the appropriate role of federal judges. Hamilton outlines five instances which constitute "appropriate" areas of responsibility for federal judges: first, litigation that arise as a result of conflict over the laws passed by Congress or the United States Constitution, second litigation resulting from disputes with the President and his administration while carrying out Congressional statutes, third any disputes in which the United States government is a party, fourth disputes between states and/or foreign nationals, fifth litigation involving the high seas which are of maritime origin, and lastly any disputes which state judges might be thought to be partial or biased.

Hamilton rightly observes that a key ingredient in the operation of a federal system is a judicial system with the authority to oversee disputes arising from the federal power. He cites the obvious example of 13 different courts assessing the same set of facts and reaching different outcomes as a key reason that the states should not have this power. Hamilton calls such an outcome a "hydra in government, from which nothing but contradiction and confusion can proceed."

One area that Hamilton mentions that should receive further explanation for federal jurisdiction are instances involving disputes between two states, between one state and citizens of another and between citizens of different states. Suggesting that there are disputes that lead to war and insurrection, Hamilton cites the Imperial Chamber the High Court in Germany created in the latter part of the 15th century by the Holy Roman Empire for the "vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire." It is perhaps a curious choice as an example by Hamilton because the Imperial Chamber was notoriously slow in carrying out its deliberations. Lawsuits involving territories often took more than 100 years before rulings were issued. In fact, when the Court was finally dissolved in 1806 there were cases pending that were over 300 years in age. Compared to the Imperial Chamber, the American judicial system travels at the speed of light.

This seemingly simple exposition of the appropriate jurisdiction masks a sophisticated understanding that exists in the United States — we are a system of dual jurisdictions. Thus there are significant areas of litigation that — not only would Hamilton not have mentioned — is primarily left to state courts to address.

One of the earliest examples of the dispute between Federal and state authority arose in 1818 in a case called *United States v. Bevans*, 16 U.S. (3 Wheat.) 336 (1818). The case involved a federal prosecution of a murder that took place on board a military combat ship the Independence that was anchored in the Boston harbor in Massachusetts. In this case, the defense successfully argued that this case should not be tried in Federal Court under admiralty law because the ship was docked in the state of Massachusetts. In its ruling for the defense the Supreme Court explained, "The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction… It is difficult to compare the two sections together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our constitution had not in view any cession of territory; or, which is essentially the same, of general jurisdiction." The Supreme Court notably upheld the very distinctions that Hamilton outlined in Federalist #80.

Horace Cooper is the director of the Center for Law and Regulation at the Institute for Liberty

Archive for the 'Federalist No. 81' Category

August 23, 2010 – Federalist Paper No. 81 – Janine Turner

Monday, August 23rd, 2010

Howdy from Wisconsin! We filmed beautiful Evita Duffy, our Best Artwork winner, in Wisconsin yesterday and now we are traveling, in our Constituting America RV, to Illinois to film our Best Essay winner! Wow. Lost of miles on the road!! We get many honks from drivers as they pass us on the road –

fellow Constitutionalists! Our transportation, FYI, is provided by Voyager Executive Sedan, (www.takeavoyage.com).

Please check out the striking photos, photographed by the awesomely talented Doug DeMark, on our website, check out our videos, the winners works, and be sure to watch our New Music Video of Jacob Wood.

These efforts would not be possible without all of you who have been our patriotic donors.

Federalist Paper No. 81: Alexander Hamilton was a force with which to be reckoned. On his contributions – his drive, determination and brilliant foresight – rests our Constitution and its manifestation. He knew we would need a national constitution even during the Revolutionary war. He had an uncanny way of seeing the big picture. His visionary mind, coupled with the other brilliance of our forefathers, built America.

How is our vision today? Myopia is the mire of a Republic and its democratic faculties. How do the actions we take today, both as citizens and in our government, affect the future of our country? Sacrifice is the one word that best describes our revolutionary forefathers, foremothers, and colonial citizens.

Today, we must also sacrifice, in order to preserve our great country and we must also have vision. Crucial are the efforts and decisions we make as the genius of the people, the roots of the government.

As I travel America the beautiful, and see all of the small rural towns, I realize, that we should

Posted in Constitutional Essays by Janine, Federalist No. 81 | Comments Off

August 18, 2010 – Federalist No. 81 – The Judiciary Continued, and the Distribution of the Judicial Authority, From McLean's Edition, New York – Guest Blogger: Jeffrey Reed is a professional orchestra conductor, holds a degree from the Louis B. Brandeis School of Law, and has taught constitutional law at Western Kentucky University in Bowling Green, Kentucky

Wednesday, August 18th, 2010

It's easy to think that the *Federalist Papers*, written 222 years ago, are dusty, outdated ramblings of men in wigs. The truth is, its issues still arise today. In his fourth of five essays on the judiciary, Hamilton addressed concerns that the proposed Supreme Court might become the supreme branch of government because it had the power to interpret laws passed by Congress in any way it thought proper. Opponents feared that the court's decisions would not be subject to revision by Congress.

Hamilton pointed out that nothing in the Constitution empowered the federal courts to "construe the laws according to the Constitution." He said that "the general theory of a limited Constitution" meant the courts must overturn a law if it violated the Constitution. Hamilton called it a "phantom" to expect that the Supreme Court would become the supreme power. True, the Court may get it wrong from time to time, but it could never rise to an alarming level of judicial activism. And, anyway, the legislative branch could overrule an objectionable court decision through subsequent legislative acts.

Unfortunately, history has proved Hamilton at least partially wrong. The Supreme Court has done quite a bit more than strike down unconstitutional laws or misinterpret others. Take segregated schools, as an example. In *Brown v. Board of Education* (1954), the Supreme Court held that separate but equal public schools violated the Fourteenth Amendment Equal Protection Clause. No one but a racist would argue that *Brown's* public policy outcome was not the right one. Students should not be assigned to a school because of race. The question, however, is whether the Supreme Court's decision was a proper exercise of its powers, or a case of judges making law.

Authors Woods and Gutzman in *Who Killed the Constitution?*, point out that Justices Frankfurter and Jackson conceded that they could not find anything in the original purpose of the Fourteenth Amendment that warranted the Court's decision in *Brown*. Jackson said that the Court should just admit that it was "declaring new law for a new day." At least according to these jurists, *Brown* was definitely not a case of simply declaring a law unconstitutional.

In *Brown II* (1955), the Court decided how to solve the problem of segregated schools declared unconstitutional in the first *Brown* case. The Court ruled that segregated state schools should be ended "with all deliberate speed." But how?

North Carolina's answer was to make school assignments based on residence, not race. In *Swann v. Charlotte-Mecklenburg Board of Education* (1971), the Court held that racially identifiable schools could not exist. Students must be bussed according to race to achieve integration in the schools. In other words, if a school was clearly black, white children would be bussed to that school to balance the racial inequity, even if the school's neighborhood was identifiably black.

Unfortunately, the *Swann* court ignored the plain language of the 1964 Civil Rights Act, where Congress defined "desegregation" as "the assignment of students to public schools…without regard to their race [and] shall not mean the assignment of students to public schools *in order to overcome racial imbalance*." [Italics mine]

To be clear, integrated schools are desirable. But was it within the Supreme Court's constitutional power to achieve that end through racially-based bussing? If Hamilton was right, and we need not fear the Court construing laws according to its own whim, then the Court acted unconstitutionally. Congress clearly acted to prevent bussing according to race when it passed the Civil Rights Act. Hamilton warned us that Congress could always overcome an objectionable court opinion by passing laws. But that's exactly what Congress seemed to be doing. The Court ignored Congress' definition of desegregation, preferring instead its own definition.

Isn't this much ado about nothing? After all, the Court arguably accomplished the right result, only faster than Congress could do. It does matter. The issue goes to the heart of our republican form of government. The United States is not an oligarchy, where power is vested in a small group—in this case, the United States Supreme Court. Such forms of government are dangerous and have resulted in disastrous consequences. In fact, author George Orwell warned of such danger in his novel *1984*. No, the United States is a republic, where officials are representatives of the people, who must govern according to the limits of the Constitution. That includes the United States Supreme Court.

Jeffrey Reed, a professional orchestra conductor, holds a degree from the Louis B. Brandeis School of Law. Before beginning his music career, he practiced law and taught constitutional law at Western Kentucky University in Bowling Green, Kentucky, where he resides.

Archive for the 'Federalist No. 82' Category

August 28, 2010 – Federalist Paper No. 82 & 83 – Janine Turner

Saturday, August 28th, 2010

"By increasing the obstacles to success, it discourages attempts to seduce the integrity of either."

Alexander Hamilton Federalist Paper No. 83

Howdy from North Carolina! We just finished filming our We the People 9.17 Contest winner, Katie Strawinski, who won the Best Short Film Category. We filmed her at her school in Georgia and watched her in action as she filmed her football game as the school's official video photographer. Be sure to check out her short film on our site. She is very talented. Her work was selected by Michael Flaherty, President of Walden Media.

Even though we are officially finished with our "90 in 90," I realized that I had not written an essay for Federalist Papers No. 82 & 83 because we have been wildly preoccupied on this road trip across America. Thus, I am writing about them today as we journey through North Carolina.

As I read these particular papers, I think about our nation's youth. Our judicial system is a wonder. It is very easy to take things for granted, such as trial by jury, and forget the many reasons that why this system of government is vitally important – one of the reasons being a fortification against tyranny.

Alexander Hamilton says it best:

"The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation; and it would be altogether superfluous to examine to what extent it deserves to be esteemed useful or essential in a representative republic, or how much more merit it may be entitled to, as a defense against the oppressions of an hereditary monarch, than as a barrier to the tyranny of popular magistrates in a popular government."

Our Constitution and our legal system are designed to keep those in power in check.

"Willful abuses of a public authority, to the oppression of the subject, and every species of official extortion, are offenses against the government, or which the persons who commit them may be indicted and punished according to the circumstances of the case. The strongest argument in its favor is, that it is a security against corruption."

Alexander Hamilton comments on the necessity of a Constitution, which is a boundary for all potential miscreants of power.

"It may be added that these encroachments have generally originated with the men who endeavor to persuade the people they are the warmest defenders of popular liberty, but who have rarely suffered constitutional obstacles to arrest them in a favorite career."

Another statement of Alexander Hamilton's from Federalist Paper No. 83 reveals our forefather's intention to honor each state's uniqueness and their desire to remain sovereign.

"It may be asked, Why could not a reference have been made to the constitution of this State, taking that, which is allowed by me to be a good one, as a standard for the United States? I answer that it is not very probable the other States would entertain the same opinion of our institutions as we do ourselves. It is natural to suppose that they are hitherto more attached to their own, and that each would struggle for the preference."

Only by knowledge of such wisdoms such as these may we have the power to preserve our liberties – awareness, acceptance, action.

God Bless,

Janine Turner

August 28, 2010

Posted in Constitutional Essays by Janine, Federalist No. 82, Federalist No. 83 | 3 Comments »

August 19, 2010 – Federalist No. 82 –The Judiciary Continued, From McLEAN's Edition, New York (Hamilton) – Guest Blogger: Robert Lowry Clinton, Professor and Chair of the Department of Political Science at Southern Illinois University Carbondale

Wednesday, August 18th, 2010

In Federalist 82, Alexander Hamilton continues his defense of the federal judicial arrangements proposed in the Constitution, focusing here upon the relation between the national and state judicial systems. In brief, Hamilton argues that the jurisdiction of the national and state courts is concurrent with respect to any issue not strictly forbidden to the states by the Constitution or laws. To understand the doctrine of concurrent jurisdiction, a brief look at the power structure elaborated in the Constitution will be helpful.

The Constitution establishes three main branches of government. In Article I, Section 8, specific lawmaking powers are assigned to Congress. In Article II, Sections 2 and 3, executive powers are assigned to the President. Judicial power is assigned to the Supreme Court (and lower federal courts that Congress chooses to establish) in Article III, Section 2. The judicial power is precisely stated to be the power to decide cases and controversies arising under the Constitution, laws and treaties of the United States.

After establishing and assigning powers to the national government, the Constitution then places some limits on how national power can be exercised. This is done first in Article I, Section 9, where the government is denied the power to pass *ex post facto* laws or bills of attainder, for example. Article I, Section 10 places a similar set of limitations on the state governments. After the Constitution was adopted, the First Congress proposed twelve amendments, ten of which were adopted. These amendments, now referred to as the Bill of Rights, were designed to impose additional limits on the national government.

The final article in the Bill of Rights is the Tenth Amendment. This provision is declaratory, meaning that it simply states what was already implicit in the Constitution. It reserves to the states all powers not assigned to the nation (e.g., in Articles I, II, or III) or denied to the states (e.g., in Article I, Section 10). Some powers granted to the nation are obviously allowed to the states as well (e.g., taxation, general law enforcement, and application of law by courts). These are called "concurrent" powers.

Hamilton's argument in Federalist 82 is simply that one of the concurrent powers shared by both the state and national judiciaries is the power to apply federal law in cases properly arising in the courts. This means that state courts are empowered to decide federal questions (whether constitutional or statutory) in the first instance, subject to appeal to the U. S. Supreme Court or to inferior federal courts that Congress chooses to establish. This reading of the Constitution is necessitated by the fact that the Constitution itself established no inferior federal courts at all and severely restricted the Supreme Court's trial jurisdiction to a narrow range of cases.

This reading of the Constitution is also necessitated by the very nature of judicial power. According to Hamilton, "The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the State governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union where it was not expressly prohibited."

When concurrent powers exercised by both the state and national governments conflict, Article VI of the Constitution grants supremacy to the nation, stating that "This Constitution, the Laws Pursuant to it, and federal Treaties are the Supreme Law of the Land, anything in the constitution or laws of a state to the contrary notwithstanding." Thus state judges are instructed to invalidate conflicting state laws. If they fail to do this, Article III, Section 2, which extends national judicial power to all cases arising under the Constitution, empowers the federal courts to overrule the state courts.

In the Judiciary Act of 1789, Section 25, the First Congress enacted Hamilton's understanding of concurrent jurisdiction explicitly, authorizing the United States Supreme Court to *reverse or affirm* any judgment of a state's highest court in which a national law is invalidated or in which a state law is upheld against a federal constitutional challenge. In other words, if a state court invalidates a national law, then the Supreme Court is authorized to reverse or affirm that state court decision. This means that the concurrent jurisdiction of the state and national courts extends even to federal constitutional issues.

The bottom line in Hamilton's argument about concurrent jurisdiction is that there is no strict separation of national and state judicial authority under the Constitution. The Founders envisioned a more flexible arrangement that allows courts to draw upon all legitimate legal authorities and sources in order to resolve disputes peacefully. That is the essence of the judicial function.

Robert Lowry Clinton is professor and chair of the Department of Political Science at Southern Illinois University Carbondale.

Archive for the 'Federalist No. 83' Category

August 28, 2010 – Federalist Paper No. 82 & 83 – Janine Turner

Saturday, August 28th, 2010

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Another statement of Alexander Hamilton's from Federalist Paper No. 83 reveals our forefather's intention to honor each state's uniqueness and their desire to remain sovereign.

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God Bless,

Janine Turner

August 28, 2010

Posted in Constitutional Essays by Janine, Federalist No. 82, Federalist No. 83 | 3 Comments »

August 20, 2010 – Federalist No. 83 – The Judiciary Continued in Relation to Trial by Jury, From McLEAN'S Edition, New York (Hamilton) – Guest Blogger: Kelly Shackelford, President/CEO of the Liberty Institute

Friday, August 20th, 2010

Federalist 83, written by Alexander Hamilton and published in July of 1788, singles out opposition to the new Constitution due to the lack of a clause requiring jury trials in civil cases. At the time, some opponents claimed that the Constitution's notable silence on the issue meant that the use of a jury was

abolished in civil cases, while extreme opponents argued that trial by jury in criminal cases was prohibited, which is quickly corrected in Federalist 83. In this Paper, Hamilton shows the difficulty of inserting a phrase affirming juries in civil cases into the Constitution and that a jury is not beneficial in every situation.

From the beginning, the Constitution mandated jury trials in criminal cases (Article II, Section 2: "The trial of all Crimes… shall be by Jury…"), though it was silent on civil cases. There was no significant opposition to this, as it was commonly agreed that juries in criminal cases provided, at the very least, an important "safeguard to liberty," since they protect citizens against arbitrary rulings and "judicial despotism."

However, opponents of the Constitution used old legal maxims in an attempt to prove that the Constitution's silence implied prohibition of juries in civil cases. One phrase that Hamilton mentions is: "'The expression of one thing is the exclusion of another.'" Hamilton pointed out that the phrase was taken out of context and that applying it to this particular situation forgets the common sense our judicial system was built upon. This common sense, as understood in the legal system, would say that giving a constitutional mandate for a jury trial in criminal proceedings does not deprive the people (or the legislative power) of the ability to call for a jury in civil cases.

Following Hamilton's refutation of the assertion that the Constitution abolishes jury trials in civil cases, he shifts to his main arguments. The most important point Hamilton makes about the non-necessity of a clause regarding trial by jury in civil cases is that the Constitution does not alter the way states use the institution of the jury. Even today, each state has its own court system, and different courts to deal with certain kinds of issues (for example, the state of Texas has two Supreme Courts – one for civil cases and one for criminal, while other states just have one Supreme Court). While some of the states' court systems bore similarities, they were all distinctly different. Until the Constitution, each state had run independently and developed systems of state government. This was important because prior to the ratification of the Constitution, the U.S. was governed by the Articles of Confederation which gave the federal government almost no authority except in issues of foreign relations and war. While the need for a stronger federal government was apparent, tensions arose over the tradeoff between decreased states rights' and increased federal powers.

Even so, two states offered propositions affirming jury trials in civil cases for addition to the Constitution. The first proposition, brought by Pennsylvania, reads: "'Trial by jury shall be as heretofore.'" However, before the Constitution, the federal government had no judicial power, so to say that the institution of trial by jury should remain as it was previously meant precisely nothing.

The proposition from the Massachusetts convention says, "'In civil actions between citizens of different States, every issue of fact, arising in *actions at common law*, may be tried by a jury if the parties, or either of them request it.'" According to Hamilton, this suggestion infers that among civil cases only those dealing with common law merit a jury trial. Hamilton notes that if that was not Massachusetts' intention and the convention believes there to be other cases which call for a jury but chose not to incorporate, then it proves his point on the difficulty of addressing the issue in the Constitution.

Propositions like these demonstrated the difficulty of inserting into the Constitution a clause providing for jury trials in civil proceedings that would have broad approval. Since each state had its own legal

system, states would be forced to change in order to comply with the Constitution or, put simply, confusion would erupt. If a clause was added, it would probably codify the court system of one state, while many of the other states would have to change their systems extensively to be in compliance, which would surely inspire "jealousy and disgust."

Hamilton, though, does not merely encourage opponents to support the Constitution as is because it is so difficult to insert a jury clause on civil cases; he argues that a jury isn't always needed, and is sometimes even detrimental. In some cases, intricate knowledge of the law is required to make a good decision, such as those that call into question foreign relations and equity, or fairness in the law. Ultimately, juries cannot be expected to have an in-depth understanding of complex areas of the law and apply it correctly. And since juries consist of citizens who lose time from their jobs, they also cannot be expected to sit on a jury for an extended period of time. While juries are crucial in criminal cases, Hamilton finds that in civil cases their only benefit comes in "circumstances foreign to the preservation of liberty."

All citizens now have the right to a jury trial, though they can waive the jury. Some civil cases never have a jury trial, because juries are only needed in cases where the facts are in dispute. The Seventh Amendment to the Constitution affirms citizens' right to a jury trial in cases of common law, which modified and clarified the existing system.

Today, we can look back to our founding documents, such as the Constitution, and see how the Framers diligently strove to preserve the liberty that a jury trial system provides. Only a handful of countries guarantee their citizens the right to a jury in all cases, including civil proceedings. The rest prefer that only judges make decisions, which lends itself to elitism and, as Hamilton noted, to corruption. The American system put forth in the Constitution truly seeks to protect everyday citizens and keeps the power in the hands of the people, which is yet another reason this country is so free.

Kelly Shackelford, President/CEO of Liberty Institute, is a constitutional scholar who has argued before the U.S. Supreme Court and other courts across the country and has testified before both houses of the U.S. Congress. Jennifer Grisham is director of media at Liberty Institute. The Institute fights for First Amendment and Constitutional freedoms in the courts and legislature, has won significant landmark victories on religious liberty, and currently represents over 4 million veterans and all the major veterans' groups in the famous Mojave Desert Memorial Cross case. For more, visit www.LibertyInstitute.org.

Archive for the 'Federalist No. 84' Category

August 23, 2010 – Federalist Paper No. 84 – Janine Turner

Monday, August 23rd, 2010

Howdy from Indiana! We filmed Spencer Kollsak yesterday in Illinois. He is absolutely darling, very bright and we thoroughly enjoyed meeting him and his family. We filmed in front of the oldest log cabin in Illinois, which we thought was very fitting for Illinois, since it is the home of President Abraham Lincoln. Our footage is BEAUTIFUL from all over the country. Our documentaries are going to be

awesome in its message, its diversity and its photography. Juliette and I are going to edit the documentaries. It is going to be a huge job but most worthwhile!

We are now on our way to Alabama with a stop through Nashville.

I just read Federalist Paper No. 84. I can't believe we are on Federalist Paper No. 84!!!! What a journey this has been – amazing, inspiring, educational, and passionately patriotic!

In Federalist Paper No. 84, Alexander Hamilton wraps up the last remaining details regarding the Constitution.

They may be last but they are by no means the least, as a matter of fact, Alexander Hamilton expresses what he believes to be the most important elements.

Alexander Hamilton states in Federalist Paper No. 84:

"The establishment of the writ of habeas corpus, the prohibition of ex-post-facto laws, and of TITLES OF NOBILITY, TO WHICH WE HAVE NO CORRESPONDING PROVISION IN OUR CONSTITUTION, are perhaps greater securities to liberty and republicanism than any it contains."

When one denounces the Constitution as irrelevant or antiquated, they need only look at Federalist Paper No. 84 and these three basics of Republicanism.

Habeas Corpus: the civil right to obtain a writ of habeas corpus as protection against illegal imprisonment.

A violation of this basic right is a major tactic of a dictator, a principle of tyranny. The dictator imprisons anyone he wishes for any reason and in this way he stifles opposition, maintains control and dwarfs inspiration, creativity and advancement of mankind. Fear is the great silencer of life and intimidator of spirit.

The subsequent preserver of freedom is the prohibition of ex-post facto laws. The prohibition of ex-post facto laws is a vital principle of liberty. It protects Americans from the threat of reprisal of punishment. Dictators use this to perpetually punish or create ways to twist the laws and entrap a citizen in the mire of concentrated confinement.

Nobility, which is the secret wish of any man due to the weakness of human nature which falls prey to the call of power, would then and certainly now, murder liberty and the Republican form of government, if he could do so.

We are so used to our protection from these threats that we know not of the dire straits we would have to contend with if we did not have them. Does this make it not relevant to today? No. It actually makes it very relevant to today, as it protects us against the potential usurper of our liberties. How easily we forget. Yet, we need only look to the recent horrors of Communism, Hitler or modern day dictators, for example, to see the consequences of the violation of these, our brilliant Constitutional, rights.

Knowledge is power. These words from our Constitution and the Federalist Papers call to us. They preserve and protect us. We need only pay heed. Are Americans listening?

Spread the word. America as we know it, depends upon it.

God Bless,

Janine Turner

August 23, 2010

Posted in Constitutional Essays by Janine, Federalist No. 84 | 1 Comment »

August 23, 2010 – Federalist No. 84 – Certain General and Miscellaneous Objections to the Constitution Considered and Answered, From McLean's Edition, New York (Hamilton) – Guest Blogger: Dr. Matthew Spalding, Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation

Monday, August 23rd, 2010

Today, many speak of the Bill of Rights as if it is the whole Constitution, but that is not correct. The first ten amendments to the Constitution have taken on a very different meaning than what was envisioned. In fact, the Constitutional Convention considered and unanimously rejected a motion to draw up such a bill of rights for the constitution its delegates were framing.

In *Federalist* 84, Alexander Hamilton answers the objection that the proposed Constitution did not include a Bill of Rights. But in this penultimate essay, we learn a key principle of the Constitution and realize why the framers' intentions and the original meaning of the Bill of Rights is perfectly consistent with the Constitution as a document that limits government in order to secure the rights proclaimed in the Declaration of Independence.

Hamilton begins by pointing out that the Constitution itself contained several related provisions protecting rights, such as the clauses against ex post facto laws, religious tests, and the impairment of contracts. In creating a limited government by which rights were to be secured and the people free to govern themselves, the Constitution, as Hamilton insisted, is itself a bill of rights.

The more important reason for not including a bill of rights at the national level of government had to do with the difference between the state and federal constitutions. Since states had broader reserved powers, bills of rights in state constitutions made sense: They were necessary to guard individual rights against very powerful state governments. But the federal government only possessed those limited powers that were delegated to it in the Constitution. As such, the federal government did not possess the power to address basic individual rights, so there was no need for a federal bill of rights—indeed, one might be dangerous. Such a bill of rights, Hamilton argued, "would contain various exceptions to powers which are not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?"

Put another way, why state in a bill of rights that Congress shall make no law abridging free speech if Congress in the Constitution has no power to do so in the first place? And does a bill of rights that forbids the federal government from acting in certain areas imply that the government has the power to act in other areas? If that were the case, as Madison earlier warned, then the government was "no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions."

Nevertheless, the lack of a bill of rights similar to those found in most state constitutions became an important rallying cry for the Anti- Federalists during the ratification debate, compelling the advocates of the Constitution to agree to add one in the first session of Congress. So Madison, who along with Hamilton had opposed a bill of rights, drafted the language himself to make sure these early amendments did not impair the Constitution's original design.

The twofold theory of the Constitution can be seen especially in the Ninth and Tenth Amendments: The purpose of the Constitution is to protect *rights* that stem not from the government but from the people themselves, and the *powers* of the national government are limited to those delegated to it by the people in the Constitution. They also address the confusion that might arise in misreading the other amendments to imply unlimited federal powers (Hamilton and Madison's chief concern). While the Ninth Amendment notes that the listing of rights in the Constitution does not deny or disparage others retained by the people, the Tenth Amendment states explicitly that all government powers except for those specific powers that are granted by the Constitution to the federal government belong to the states or the people.

The original purpose of the Bill of Rights—stated by both the Federalists and the Anti-Federalists—was to limit the federal government. Today, the Bill of Rights mainly serves to secure rights *against* the state governments—the exact reverse of the role these amendments were intended to play in our constitutional system.

The Bill of Rights is indeed a distinctive and impressive mark of our liberty. Unlike the citizens of many other countries, Americans are protected from their government in the exercise of fundamental equal rights. But there should be no mistake that it is first and foremost the constitutional structure of limited government—the great theme of *The Federalist* and the point of *Federalist* 84—that secures our unalienable rights and the blessings of liberty.

Matthew Spalding is the Director of the B. Kenneth Simon Center for American Studies at The Heritage Foundation.

Archive for the 'Federalist No. 85' Category

August 24, 2010 – Federalist Paper No. 85 – Janine Turner

Tuesday, August 24th, 2010

Federalist Paper No. 85! We did it!! Alexander Hamilton's words express our endeavor best:

“Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted.”

What a journey we have been on for the past four months!

I have learned so much from not only our United States Constitution and the Federalist Papers, but from our gracious and talented scholars, Cathy Gillespie, and YOU, our loyal bloggers.

Wisdom beyond words prevails from the Federalist Papers and their warnings beckon our most urgent involvement. A rekindled knowledge of Publius’ belief in the “genius of the people” reminds us of the necessity of our voice, our actions and our constant seeking of the truth.

Alexander Hamilton says it best:

“The unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men.”

It is our duty to get involved in the preservation of our Republic. Times heed not the lazy participant, leaving America to the few. Patriots must prohibit the silent slippery slope that always precedes tyranny.

The Federalist Papers, the issues they faced and the duties required of the people of the 18th century are as pertinent today as they were then. Alexander Hamilton states:

“This is a duty from which nothing can give him a dispensation. This is one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act.”

At this potential crucial turning of our country and with the need to prevent such a turning, we must join in unity as our Revolutionary forefathers and Constitutional forefathers did. A country divided – falls. We must always remember that we are all Americans. A people who share one of the greatest countries on earth founded on Godly principles and a goodness of spirit that birthed a “majesty of the people.” Thus, we must be true to our principles, yet never wedge such a divide as to crater our country.

Alexander Hamilton, once again, brilliantly states the mission for his constituents and for his posterity:

“Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation.”

I love America. I love her goodness, even her failures – for it is through her failures that we have continued to grow and mature into the thoughtful, conscientious, and consistently creative people that we are. It is our United States Constitution that has given us the platform to both preserve and amend our laws of government. It is through our tribulations that we have triumphed. It is because of God and subsequently the “genius of the people,” that we have defined our own destiny.

As we walk through these challenges times, let us not forget the onslaught of troubles our ancestors both experienced and tackled. They excelled through storms, famine, persecution, indecision and war. At these times they called upon a higher power and He led them to a new level of human dignity and spiritual enlightenment.

We, too, are capable of these things. We need only our faith in God, our fellow citizens and knowledge of the United States Constitution to rise above the mire of mediocrity that we find ourselves today. By a willingness and a desire to preserve our country, our beautiful land and liberty, for ourselves and our prosperity, we will soar on eagles' wings. We are no less the heroes our forefathers were. We need only to hear the call and heed its needs.

Knowledge is to power what actions are to results. We are the people. We are the roots that feed the branches of government. The tree will not survive without us. May we keep our rights alive. Our Constitution and our Bill of Rights are more relevant today than ever. They protect us from the tyranny that at any time may overtake us and succeed. The enemy is in the field and they may not use the traditional tactics. Sly are their methods of operation.

Let us put the lanterns in the North Church. Let us be the "alarm," the Paul Revere, that sounds the warning: One if by laziness, Two if by ignorance. We must know our rights; our children must know their rights. Spread the word. We are borne of true grit and determination. In our genes lies the innate knowing of righteousness. We were founded on such callings, from the Mayflower to Bunker Hill to Independence Hall, from the Civil War to World War II to 9/11. Let us never forget. Let us always be grateful for the men and women who have sacrificed to keep our flame of independence alive and let us carry that torch today.

"The unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men."

God Bless and I thank you for joining us on this remarkable journey, our "90 in 90 – History Holds the Key to the Future."

Janine Turner

August 24, 2010

Posted in Constitutional Essays by Janine, Federalist No. 85 | 4 Comments »

August 24, 2010 – Federalist No. 85 – Some Final Thoughts, From McLean's Edition, New York (Hamilton) – Guest Blogger Charles K. Rowley, Ph.D., Duncan Black Professor of Economics at George Mason University and General Director of The Locke Institute in Fairfax, Virginia

Tuesday, August 24th, 2010

In writing about Federalist No. 85 – the final paper in a lengthy series of defenses of the proposed Constitution for the United States of America – it is entirely appropriate that I have just returned from a several day visit to Colonial Williamsburg. For that historic site epitomizes better perhaps than any other location in America – even perhaps than Philadelphia – the Spirit of Revolution and Reform that swept through the 13 colonies immediately prior to July 4, 1776, and that governed the constitutional discourse, both immediately following victory over the British Empire, and in the wake of the evident failure of those Articles of Confederation that had led the former colonies on their first nervous lap on the road to a full Union.

To hear once again those now-treasured words of Patrick Henry, Thomas Jefferson, and George Washington, in the very location where they were heard for the very first time, within the context of torn loyalties and divided families, is to recognize that a rare constitutional moment occurred during those immediate pre-revolution years between the passage of the Stamp Act and the military engagements to the North at Lexington and Concord. To watch as dedicated 21st century young American visitors reenact key events, eagerly volunteering to serve in General Washington's miniscule, rag-tag army, in the face of almost certain death and, as bravely defiant Williamsburg citizens, jeering at the Traitor, Benedict Arnold, following his military investment of the capital city of independent Virginia, is to feel pride, even as an Englishman, in the Spirit that will take George Washington's army to its key victory over the British army of General Cornwallis at Yorktown, on October 19, 1781, and that eventually will make the United States exceptional in the eyes of the world.

So now it is May 28, 1788, almost 12 years since the Declaration of Independence, and 7 years since Yorktown. Alexander Hamilton, on this, day accepts the honor, and the enormous responsibility, of firing up that Constitutional Spirit in one concluding paper, in what has proved to be a lengthy, and occasionally rancorous, debate between the Federalists and the Anti-Federalists that he had formally initiated in Federalist No. 1, almost one full-year earlier, on October 27, 1787. Evidently, this is a moment that demands statesmanship of the highest order.

Will Alexander Hamilton fulfill that awesome destiny that he has shouldered so willingly? His task is delicately balanced between firing up the spirit of his readers by soaring rhetoric, while yet holding their feet to the glowing embers of political reality that evidently confront the emerging nation. For, this is not a fairy-tale, where everyone may expect to live happily ever after. On the other side of the fateful constitutional decision, there will be losers as well as winners, though not every one will yet know on which side of that divide he will eventually fall, or for how long he will so remain.

Hamilton rises brilliantly to his task, blending persuasive rhetoric with common-sense realism in a masterly contribution full of insights for those who would lead their state governments to a final judgment, yet written with a clarity that would be greatly appreciated by the People. His opening words focus succinctly on the two remaining issues under serious contention:

"According to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion, two points, 'the analogy of the proposed government to your own state constitution,' and 'the additional security, which its adoption will afford to republican government, to liberty and to property."

Even these issues, Hamilton recognizes, have been fully anticipated and discussed in the progress of the debate. He dispenses with these remaining concerns in two paragraphs that you can quickly embrace and which I shall here bypass.

The remainder of Federalist No. 85 focuses attention on what I shall call the 'constitutional spirit' that ought to govern the People and their state representatives in deciding whether or not to endorse the draft constitution. At a time well before the emergence of public choice, and extrapolating from a history of failed constitutions, Hamilton asks each individual to appeal to his better angels in approaching the constitutional decision, to raise himself above the level of politics as it is, to a *meta*-level of rules that will delineate the very nature of the politics that must play out within its limitations:

"Let us now pause and ask ourselves whether, in the course of these papers, the proposed constitution has not been satisfactorily vindicated from the aspersions thrown upon it, and whether or not it has been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty, from which nothing can give him a dispensation. 'Tis one that he is called upon, nay constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country or to his posterity, an improper election of the part he is to act."

These are powerful words of persuasion. But Hamilton does not rely on rhetoric alone. He knows instinctively, well before a relevant public choice literature has emerged, that individuals require little prodding so to behave. If the constitution is adopted, together with the amendment process that it prescribes, it will be of long duration, it will survive, indeed, well beyond the life-span of any individual. Even though each individual may be well aware of where he stands at this time, what he expects to lose and to gain by his actions, he cannot foresee the future. He cannot know what will transpire for his offspring, and for their offspring, into an indefinite future. As such, the edge of narrow self-interest is naturally blunted, and a nudge rather than a shove is all that is required for man to rely upon his better angels in the constitutional moment that he immediately confronts.

So what now is left? The proposed constitution, as Hamilton well understands, is a compromise carefully constructed by a dedicated convention at Philadelphia. It will not be perceived as perfect, perhaps, by any man, surely not by many. The urge to make perfect in a naturally imperfect world must be contained, because unattainable perfection must always prove to be the deadly enemy of the feasible best. Hamilton addresses this issue transparently and to powerful effect, distinguishing between the writing of an entirely new proposed constitution and the amending of a constitution that has been agreed-upon. Writing again well in advance of public choice insights, Hamilton seizes on the essence of this difference:

"We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form the majority on one question may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole in such a manner as to satisfy all the parties to the compact; and hence also an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act."Hamilton does not have to remind his readers of the great fortune of the convention in Philadelphia in meeting in a building carefully protected from all external interference – the streets themselves were covered with straw to deaden the sound of passers-by – in meeting under the magisterial leadership of George Washington, in meeting under the brilliant intellectual guidance of James Madison, the Father of the Constitution, with the energetic presence of the First American, Benjamin Franklin. Such favorable circumstances surely would not be replicated in any second attempt. In their absence, chaos might well be expected to ensue.

So, Hamilton reminds his readers of how much simpler the Article V amendment process is designed to be, focusing as he anticipates, on one issue at a time, with qualified majority, rather than unanimity, its prescribed mechanism, and with the convention route available to bypass any danger of Congressional resistance to state initiatives. Hamilton is aware that 7 out of the 13 states are already committed to the great enterprise. His final paper is a brilliant and ultimately successful exercise to bag the remaining 6. The threat of anarchy, should the venture fail, proves to be sufficient to mollify dissent and to complete the Union.

Because this is the final Federalist Paper, and I have the advantage over Alexander Hamilton of being able to look back on the constitutional achievement of the Founders, let me close with some brief thoughts on what has transpired over the two centuries and more of its existence.

The Constitution itself is a triumph, a remarkable document forged by brilliant political philosophers. Foremost among the Founders was James Madison, who, prior to the Philadelphia convention, studied what was wrong with republics, old ones and new ones, how they failed and why they were failing. He studied what was wrong, and why they failed, so that he could create a republic that would not fail. For the most part, he was successful. The parchment of the constitution is as good as it could be.

It is now badly tattered, not because the Founders failed, but because their successors too often have twisted its meaning. The Founders for the most part were devout Christians who understood that man's creation operated under Divine guidance. The United States prospered and grew in freedom under *Divine Providence*. It has fallen on darker days as secular notions of *Manifest Destiny* have replaced those of the Divine.

The United States prospered and grew in freedom when the checks and balances of the Constitution each played their designated role in preserving a strictly limited government of enumerated powers, and when states rights were honored according to the Constitution. It has fallen on darker days as Congress has relinquished many of its powers to create an Imperial Presidency; and has stretched across the constitutional divide to seize powers that do not exist; and as the Congress and the Presidency, acting in concert, have crushed states' independence.

The United States prospered and grew in freedom when the Judiciary honored the words of the Constitution and construed the words of the parchment in accordance with original intent. It has fallen on darker days since the Judiciary has rendered the words of the parchment meaningless in an attempt to pursue social and economic agendas never contemplated for the federal government by the Founders.

That is why this project on *Constituting America* is so important at this time of grave uncertainty for the future of this nation. It is for the youth of America to reaffirm the *Spirit of America* that has been so sadly disregarded by its elders, and to return the United States to the *Divine Providence* that is the life-spring of its People's greatest achievements.

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Horace Cooper, Director of the Center for Law and Regulation at the Institute for Liberty

William C. Duncan, director of the Marriage Law Foundation

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