



PEARSON

PRENTICE HALL

George Washington's Will (Mt. Vernon, 1799)

The powerful text of George Washington's will displays the distinctive writing style that Washington had developed over the years. The contents of the will reveal much about Washington's character and his views concerning the diverse and valuable property, real and chattel, that he had acquired over the course of his lifetime. Perhaps the most notable of the will's provisions are his instructions for freeing his slaves and for supporting thereafter the helpless children and the elderly and infirm adults among them.

Upon the decease of my wife, it is my Will & desire that all the Slaves which I hold in my own right, shall receive their freedom. To emancipate them during her life, would, tho' earnestly wished by me, be attended with such insuperable difficulties on account of their intermixture by Marriages with the dower Negroes, as to excite the most painful sensations, if not disagreeable consequences from the latter, while both descriptions are in the occupancy of the same Proprietor; it not being in my power, under the tenure by which the Dower Negroes are held, to manumit them. And whereas among those who will recieve freedom according to this devise, there may be some, who from old age or bodily infirmities, and others who on account of their infancy, that will be unable to support themselves; it is my Will and desire that all who come under the first & second description shall be comfortably cloathed & fed by my heirs while they live; and that such of the latter description as have no parents living, or if living are unable, or unwilling to provide for them, shall be bound by the Court until they shall arrive at the age of twenty five years; and in cases where no record can be produced, whereby their ages can be ascertained, the judgment of the Court, upon its own view of the subject, shall be adequate and final. The Negros thus bound, are (by their Masters or Mistresses) to be taught to read & write; and to be brought up to some useful occupation, agreeably to the Laws of the Commonwealth of Virginia, providing for the support of Orphan and other poor Children. and I do hereby expressly forbid the Sale, or transportation out of the said Commonwealth, of any Slave I may die possessed of, under any pretence whatsoever. And I do moreover most pointedly, and most solemnly enjoin it upon my Executors hereafter named, or the Survivors of them, to see that this clause respecting Slaves, and every part thereof be religiously fulfilled at the Epoch at which it is directed to take place; without evasion, neglect or delay, after the Crops which may then be on the ground are harvested, particularly as it respects the aged and infirm; seeing that a regular and permanent fund be established for their support so long as there are subjects requiring it; not trusting to the uncertain provision to be made by individuals. And to my Mulatto man William (calling himself William Lee) I give immediate freedom; or if he should prefer it (on account of the accidents which have befallen him, and which have rendered him incapable of walking or of any active employment) to remain in the situation he now is, it shall be optional in him to do so: In either case however, I allow him an annuity of thirty dollars during his natural life, which shall be independent of the victuals and cloaths he has been accustomed to receive, if he chuses the last alternative; but in full, with his freedom, if he prefers the first; & this I give him as a testimony of my sense of his attachment to me, and for his faithful services during the Revolutionary War.

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"The Middle Passage", from Olaudah Equiano's Interesting Narrative

This account of the "middle passage" comes from one of the first writings by an ex-slave and the originator of the slave narrative. Equiano was born in Nigeria and was kidnapped into slavery at the age of eleven. After a time in the West Indies, he was sold to a Virginia planter before becoming the slave of a merchant. Years later he was able to buy his freedom and at the age of 44, he wrote "The Interesting Narrative of the Life of Olaudah Equiano, or Gustavus Vassa, The African. Written by Himself." Equiano became an abolitionist and made the expedition to settle the colony of ex-slaves at Sierra Leone.

... The first object which saluted my eyes when I arrived on the coast was the sea, and a slave ship, which was then riding at anchor, and waiting for its cargo. These filled me with astonishment, which was soon converted into terror when I was carried on board. I was immediately handled and tossed up to see if I were sound by some of the crew; and I was now persuaded that I had gotten into a world of bad spirits, and that they were going to kill me. Their complexions too differing so much from ours, their long hair, and the language they spoke, (which was very different from any I had ever heard) united to confirm me in this belief. Indeed such were the horrors of my views and fears at the moment, that, if ten thousand worlds had been my own, I would have freely parted with them all to have exchanged my condition with that of the meanest slave in my own country. When I looked round the ship too and saw a large furnace of copper boiling, and a multitude of black people of every description chained together, every one of their countenances expressing dejection and sorrow, I no longer doubted of my fate; and, quite overpowered with horror and anguish, I fell motionless on the deck and fainted. When I recovered a little I found some black people about me, who I believe were some of those who brought me on board, and had been receiving their pay; they talked to me in order to cheer me, but all in vain. I asked them if we were not to be eaten by those white men with horrible looks, red faces, and loose hair. They told me I was not; and one of the crew brought me a small portion of spirituous liquor in a wine glass; but, being afraid of him, I would not take it out of his hand. One of the blacks therefore took it from him and gave it to me, and I took a little down my palate, which, instead of reviving me, as they thought it would, threw me into the greatest consternation at the strange feeling it produced, having never tasted any such liquor before. Soon after this the blacks who brought me on board went off, and left me abandoned to despair. I now saw myself deprived of all chance of returning to my native country or even the least glimpse of hope of gaining the shore, which I now considered as friendly; and I even wished for my former slavery in preference to my present situation, which was filled with horrors of every kind, still heightened by my ignorance of what I was to undergo. I was not long suffered to indulge my grief; I was soon put down under the decks, and there I received such a salutation in my nostrils as I had never experienced in my life: so that, with the loathsomeness of the stench, and crying together, I became so sick and low that I was not able to eat, nor had I the least desire to taste anything. I now wished for the last friend, death, to relieve me; but soon, to my grief, two of the white men offered me eatables; and, on my refusing to eat, one of them held me fast by the hands, and laid me across I think the windlass, and tied my feet, while the other flogged me severely. I had never experienced anything of this kind before; and although, not being used to the water, I naturally feared that element the first time I saw it, yet nevertheless, could I have got over the nettings, I would have jumped over the side, but I could not; and, besides, the crew used to watch us very closely

who were not chained down to the decks, lest we should leap into the water: and I have seen some of these poor African prisoners most severely cut for attempting to do so, and hourly whipped for not eating. This indeed was often the case with myself. In a little time after, amongst the poor chained men, I found some of my own nation, which in a small degree gave ease to my mind. I inquired of these what was to be done with us; they gave me to understand we were to be carried to these white people's country to work for them. I then was a little revived, and thought, if it were no worse than working, my situation was not so desperate: but still I feared I should be put to death, the white people looked and acted, as I thought, in so savage a manner; for I had never seen among any people such instances of brutal cruelty; and this not only shewn towards us blacks, but also to some of the whites themselves. One white man in particular I saw when we were permitted to be on deck, flogged so unmercifully with a large rope near the foremast, that he died in consequence of it; and they tossed him over the side as they would have done a brute. This made me fear these people the more; and I expected nothing less than to be treated in the same manner. I could not help expressing my fears and apprehensions to some of my countrymen: I asked them if these people had no country, but lived in this hollow place (the ship): they told me they did not, but came from a distant one. "Then," said I, "how comes it in all our country we never heard of them?" They told me because they lived so very far off. I then asked where were their women? had they any like themselves? "and why," said I, "do we not see them?" they answered, because they were left behind. . . .

The stench of the hold while we were on the coast was so intolerably loathsome, that it was dangerous to remain there for any time, and some of us had been permitted to stay on the deck for the fresh air; but now that the whole ship's cargo were confined together, it became absolutely pestilential. The closeness of the place, and the heat of the climate, added to the number in the ship, which was so crowded that each had scarcely room to turn himself, almost suffocated us. This produced copious perspirations, so that the air soon became unfit for respiration, from a variety of loathsome smells, and brought on a sickness among the slaves, of which many died, thus falling victims to the improvident avarice, as I may call it, of their purchasers. This wretched situation was again aggravated by the galling of the chains, now become insupportable; and the filth of the necessary tubs, into which the children often fell, and were almost suffocated. The shrieks of the women, and the groans of the dying, rendered the whole a scene of horror almost inconceivable. Happily perhaps for myself I was soon reduced so low here that it was thought necessary to keep me almost always on deck; and from my extreme youth I was not put in fetters. In this situation I expected every hour to share the fate of my companions, some of whom were almost daily brought upon deck at the point of death, which I began to hope would soon put an end to my miseries. Often did I think many of the inhabitants of the deep much more happy than myself. I envied them the freedom they enjoyed, and as often wished I could change my condition for theirs. Every circumstance I met with served only to render my state more painful, and heighten my apprehensions, and my opinion of the cruelty of the whites. One day they had taken a number of fishes; and when they had killed and satisfied themselves with as many as they thought fit, to our astonishment who were on the deck, rather than give any of them to us to eat as we expected, they tossed the remaining fish into the sea again, although we begged and prayed for some as well as we could, but in vain; and some of my countrymen, being pressed by hunger, took an opportunity, when they thought no one saw them, of trying to get a little privately; but they were discovered, and the attempt procured them some very severe floggings. . . .

. . . I and some few more slaves, that were not saleable amongst the rest, from very much fretting, were shipped off in a sloop for North America. . . . While I was in this plantation [in Virginia] the gentleman, to whom I suppose the estate belonged, being unwell, I was one day sent for to his dwelling house to fan him; when I came into the room where he was I was very much affrighted at some things I saw, and the more so as I had seen a black woman slave as I came through the house, who was cooking the dinner, and the poor creature was cruelly loaded with various kinds of iron machines; she had one particularly on her head, which locked her mouth so fast that she could scarcely speak; and could not

eat nor drink. I was much astonished and shocked at this contrivance, which I afterwards learned was called the iron muzzle . . .

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Alexander Hamilton, "An Opinion on the Constitutionality of an Act to Establish a Bank"

In 1791, Congress passed a bill pushed by Secretary of the Treasury Alexander Hamilton to establish a national bank of the United States. President Washington considered vetoing the bill on the grounds that it was unconstitutional. Before making a decision, Washington asked members of his cabinet to write out their views on the issue. Hamilton took only three days to craft his response. His argument carried the day over opponents of the bank, especially Secretary of State Thomas Jefferson and James Madison, then a member of the House of Representatives.

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and Attorney General [Edmund Randolph and Thomas Jefferson] concerning the constitutionality of the bill for establishing a National Bank proceeds according to the order of the President [George Washington] to submit the reasons which have induced him to entertain a different opinion.

It will naturally have been anticipated that, in performing this task he would feel uncommon solicitude. Personal considerations alone arising from the reflection that the measure originated with him would be sufficient to produce it: The sense which he has manifested of the great importance of such an institution to the successful administration of the department under his particular care; and an expectation of serious ill consequences to result from a failure of the measure, do not permit him to be without anxiety on public accounts. But the chief solicitude arises from a firm persuasion, that principles of construction like those espoused by the Secretary of State and the Attorney General would be fatal to the just & indispensable authority of the United States.

In entering upon the argument it ought to be premised, that the objections of the Secretary of State and Attorney General are founded on a general denial of the authority of the United States to erect corporations. The latter indeed expressly admits, that if there be any thing in the bill which is not warranted by the constitution, it is the clause of incorporation.

Now it appears to the Secretary of the Treasury, that this general principle is inherent in the very definition of Government and essential to every step of the progress to be made by that of the United States; namely—that every power vested in a Government is in its nature sovereign, and includes by force of the term, a right to employ all the means requisite, and fairly applicable to the attainment of the ends of such power; and which are not precluded by restrictions & exceptions specified in the constitution; or not immoral, or not contrary to the essential ends of political society.

This principle in its application to Government in general would be admitted as an axiom. And it will be incumbent upon those, who may incline to deny it, to prove a distinction; and to shew that a rule which in the general system of things is essential to the preservation of the social order is inapplicable to the United States.

The circumstances that the powers of sovereignty are in this country divided between the National and State Governments, does not afford the distinction required. It does not follow from this, that each of the portions of powers delegated to the one or to the other is not sovereign with regard to its proper objects. It will only follow from it, that each has sovereign power as to certain things, and not as to other things. To deny that the Government of the United States has sovereign power as to its declared purposes & trusts, because its power does not extend to all cases, would be equally to deny, that the State Governments have sovereign power in any case; because their power does not extend to every case. The tenth section of the first article of the constitution exhibits a long list of very important things which they may not do. And thus the United States

would furnish the singular spectacle of a political society without sovereignty, or of a people governed without government.

If it would be necessary to bring proof to a proposition so clear as that which affirms that the powers of the federal government, as to its objects, are sovereign, there is a clause of its constitution which would be decisive. It is that which declares, that the constitution and the laws of the United States made in pursuance of it, and all treaties made or which shall be made under their authority shall be the supreme law of the land. The power which can create the Supreme law of the land, in any case, is doubtless sovereign as to such case.

This general & indisputable principle puts at once an end to the abstract question-Whether the United States have power to erect a corporation? that is to say, to give a legal or artificial capacity to one or more persons, distinct from the natural. For it is unquestionably incident to sovereign power to erect corporations, and consequently to that of the United States, in relation to the objects intrusted to the management of the government. The difference is this-where the authority of the government is general, it can create corporations in all cases; where it is confined to certain branches of legislation, it can create corporations only in those cases.

Here then as far as concerns the reasonings of the Secretary of State & the Attorney General, the affirmative of the constitutionality of the bill might be permitted to rest. It will occur to the President that the principle here advanced has been untouched by either of them. . . .

It is not denied, that there are implied, as well as express powers, and that the former are as effectually delegated as the latter. And for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated resulting powers. It will not be doubted that if the United States should make a conquest of any of the territories of its neighbours, they would possess sovereign jurisdiction over the conquered territory. This would rather be a result from the whole mass of the powers of the government & from the nature of political society, than a consequence of either of the powers specially enumerated.

But be this as it may, it furnishes a striking illustration of the general doctrine contended for it. It shews an extensive case, in which a power of erecting corporations is either implied in, or would result from some or all of the powers, vested in the National Government. The jurisdiction acquired over such conquered territory would certainly be competent to every species of legislation.

To return-It is conceded, that implied powers are to be considered as delegated equally with express ones.

Then it follows, that as a power of erecting a corporation may as well be implied as any other thing; it may as well be employed as an instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be, in this as in every other case, whether the mean to be employed, or in this instance the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by congress, for superintending the police of the city of Philadelphia because they are not authorised to regulate the police of that city; but one may be erected in relation to the collection of the taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian Tribes, because it is the province of the federal government to regulate those objects & because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best & greatest advantage.

A strange fallacy seems to have crept into the manner of thinking & reasoning upon the subject. Imagination appears to have been unusually busy concerning it. An incorporation seems to have been regarded as some great, independent, substantive thing-as a political end of peculiar magnitude & moment; whereas it is truly to be considered as a quality, capacity, or mean to an end. Thus a mercantile company is formed with a certain capital for the purpose of carrying on a particular branch of business. Here the business to be prosecuted is the end; the association in order to form the requisite capital is the primary mean. Suppose that an incorporation were added to this; it would only be to add a new quality to that association; to give it an artificial capacity by which it would be enabled to prosecute the business with more safety & convenience.

That the importance of the power of incorporation has been exaggerated, leading to erroneous conclusions, will further appear from tracing it to its origin. The roman law is the source of it, according to which a voluntary association of individuals at any time or for any purpose was capable of producing it. In England,

whence our notions of it are immediately borrowed, it forms a part of the executive authority, & the exercise of it has been often delegated by that authority. Whence therefore the ground of the supposition, that it lies beyond the reach of all those very important portions of sovereign power, legislative as well as executive, which belong to the government of the United States?

To this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the Government, it is objected that none but necessary & proper means are to be employed, & the Secretary of State [Jefferson] maintains, that no means are to be considered as necessary, but those without which the grant of the power would be nugatory. Nay so far does he go in his restrictive interpretation of the word, as even to make the case of necessity which shall warrant the constitutional exercise of the power to depend on casual & temporary circumstances, an idea which alone refutes the construction. The expediency of exercising a particular power, at a particular time, must indeed depend on circumstance but the constitutional right of exercising it must be uniform & invariable-the same to day, as to morrow.

All the arguments therefore against the constitutionality of the bill derived from the accidental existence of certain State-banks: institutions which happen to exist to day, & for ought that concerns the government of the United States, may disappear to morrow, must not only be rejected as fallacious, but must be viewed as demonstrative, that there is a radical source of error in the reasoning.

It is essential to the being of the National government, that so erroneous a conception of the meaning of the word necessary, should be exploded.

It is certain, that neither the grammatical, or popular sense of the term requires that construction. According to both, necessary often means no more than needful, requisite, incidental, useful, or conducive to. It is a common mode of expression to say, that it is necessary for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted, by the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense.

And it is the true one in which it is to be understood as used in the constitution. The whole turn of the clause containing it, indicates that it was the intent of the convention, by that clause to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are-"to make all laws, necessary & proper for carrying into execution the foregoing powers & all other powers vested by the constitution in the government of the United States, or in any department or officer thereof." To understand the word as the Secretary of State does, would be to depart from its obvious & popular sense, and to give it a restrictive operation; an idea never before entertained. It would be to give it the same force as if the word absolutely or indispensably had been prefixed to it.

Such a construction would beget endless uncertainty & embarrassment. The cases must be palpable & extreme in which it could be pronounced with certainty, that a measure was absolutely necessary, or one without which the exercise of a given power would be nugatory. There are few measures of any government, which would stand so severe a test. To insist upon it, would be to make the criterion of the exercise of any implied power a case of extreme necessity; which is rather a rule to justify the overleaping of the bounds of constitutional authority, than to govern the ordinary exercise of it.

It may be truly said of every government, as well as of that of the United States, that it has only a right, to pass such laws as are necessary & proper to accomplish the objects intrusted to it. For no government has a right to do merely what it pleases. Hence by a process of reasoning similar to that of the Secretary of State, it might be proved, that neither of the State governments has a right to incorporate a bank. It might be shewn, that all the public business of the State, could be performed without a bank, and inferring thence that it was unnecessary it might be argued that it could not be done, because it is against the rule which has been just mentioned. A like mode of reasoning would prove, that there was no power to incorporate the Inhabitants of a town, with a few to a more perfect police: For it is certain, that an incorporation may be dispensed with, though it is better to have one. It is to be remembered, that there is no express power in any State constitution to erect corporations.

The degree in which a measure is necessary, can never be a test of the legal right to adopt it. That must ever be a matter of opinion; and can only be a test of expediency. The relation between the measure and the end, between the nature of the mean employed towards the execution of a power and the object of that power,

must be the criterion of constitutionality not the more or less of necessity or utility. . . .

This restrictive interpretation of the word necessary is also contrary to this sound maxim of construction namely, that the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defence & ought to be construed liberally, in advancement of the public good. This rule does not depend on the particular form of a government or on the particular demarkation of the boundaries of its powers, but on the nature and objects of government itself. The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent and complexity, that there must, of necessity, be great latitude of discretion in the selection & application of those means. Hence consequently, the necessity & propriety of exercising the authorities intrusted to a government on principles of liberal construction. . . .

The truth is that difficulties on this point are inherent in the nature of the federal constitution. They result inevitably from a division of the legislative power. The consequence of this division is, that there will be cases clearly within the power of the National Government; others clearly without its power; and a third class, which will leave room for controversy & difference of opinion, & concerning which a reasonable latitude of judgment must be allowed.

But the doctrine which is contended for is not chargeable with the consequence imputed to it. It does not affirm that the National government is sovereign in all respects, but that it is sovereign to a certain extent: that is, to the extent of the objects of its specified powers.

It leaves therefore a criterion of what is constitutional, and of what is not so. This criterion is the end to which the measure relates as a mean. If the end be clearly comprehended within any of the specified powers, & if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the constitution-it may safely be deemed to come within the compass of the national authority. There is also this further criterion which may materially assist the decision. Does the proposed measure abridge a preexisting right of any State, or of any individual? If it does not, there is a strong presumption in favour of its constitutionality; & slighter relations to any declared object of the constitution may be permitted to turn the scale. . . .

A hope is entertained, that it has by this time been made to appear, to the satisfaction of the President, that a bank has a natural relation to the power of collecting taxes; to that of borrowing money; to that of regulating trade; to that of providing for the common defence: and that as the bill under consideration contemplates the government in the light of a joint proprietor of the stock of the bank, it brings the case within the provision of the clause of the constitution which immediately respects the property of the United States.

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PRENTICE HALL

Seneca Chiefs Petition Washington for Return of Their Land, 1790

The Seneca, one of the six nations of the Iroquois Confederacy, allied with the British during the American Revolution. As part of westward expansion, much of their land was taken after the war. The following letter, by three Seneca chiefs; Big Tree, Corn-Planter, and Half-Town, implores the great father, George Washington, to return their land to them.

SOURCE: Samuel Gardner Drake, *Biography and History of the Indians of North America* (Boston: O.L. Perkins, 1834).

Letter to President Washington, 1790

Big Tree, Corn-Planter, and Half-Town (Seneca)

Father: The voice of the Seneca nations speaks to you; the great counsellor, in whose heart the wise men of all the *thirteen fires* [13 U.S.] have placed their wisdom. It may be very small in your ears, and we, therefore, entreat you to hearken with attention; for we are able to speak of things which are to us very great.

When your army entered the country of the Six Nations, we called you the *town destroyer*; to this day, when your name is heard, our women look behind them and turn pale, and our children cling close to the necks of their mothers.

When our chiefs returned from Fort Stanwix, and laid before our council what had been done there, our nation was surprised to hear how great a country you had compelled them to give up to you, without your paying to us any thing for it. Every one said, that your hearts were yet swelled with resentment against us for what had happened during the war, but that one day you would consider it with more kindness. We asked each other, *What have we done to deserve such severe chastisement?*

Father: when you kindled your 13 fires separately, the wise men assembled at them told us that you were all brothers; the children of one great father, who regarded the red people as his children. They called us brothers, and invited us to his protection. They told us that he resided beyond the great water where the sun first rises; and that he was a king whose power no people could resist, and that his goodness was as bright as the sun. What they said went to our hearts. We accepted the invitation, and promised to obey him. What the Seneca nation promises, they faithfully perform. When you refused obedience to that king, he commanded us to assist his beloved men in making you sober. In obeying him, we did no more than yourselves had led us to promise. We were deceived; but your people teaching us to confide in that king, had helped to deceive us; and we now appeal to your breast. *Is all the blame ours?*

Father: when we saw that we had been deceived, and heard the invitation which you gave us to draw near to the fire you had kindled, and talk with you concerning peace, we made haste towards it. You told us you could crush us to nothing; and you demanded from us a great country, as the price of

that peace which you had offered to us: *as if our want of strength had destroyed our rights*. Our chiefs had felt your power, and were unable to contend against you, and they therefore gave up that country. What they agreed to has bound our nation, but your anger against us must by this time be cooled, and although our strength is not increased, nor your power become less, we ask you to consider calmly—*Were the terms dictated to us by your commissioners reasonable and just? ...*

Father: you have said that we were in your hand, and that by closing it you could crush us to nothing. Are you determined to crush us? If you are, tell us so; that those of our nation who have become your children, and have determined to die so, may know what to do. In this case, one chief has said, he would ask you to put him out of his pain. Another, who will not think of dying by the hand of his father, or his brother, has said he will retire to the Chataughque, eat of the fatal root, and sleep with his fathers in peace.

All the land we have been speaking of belonged to the Six Nations. No part of it ever belonged to the king of England, and he could not give it to you.

Hear us once more. At Fort Stanwix we agreed to deliver up those of our people who should do you any wrong, and that you might try them and punish them according to your law. We delivered up two men accordingly. But instead of trying them according to your law, the lowest of your people took them from your magistrate, and put them immediately to death. It is just to punish the murder with death; but the Senecas will not deliver up their people to men who disregard the treaties of their own nation.

1. *What does this letter tell us about the condition of the Seneca after the Revolution?*
2. *How effective is this letter in arguing the case for the Seneca? Cite specific examples.*

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James Madison, Federalist No. 10

The Federalist Papers were published in support of ratification of the Constitution by James Madison, Alexander Hamilton, and John Jay under the pseudonym Publius. Federalist No. 10 is one of the most influential papers. It rebuts the Antifederalists' argument that a republic would soon crumble under the pressure of factional divisions. Madison outlined how a republican government could balance the needs of the minority and majority while preserving liberty and diversity.

... [I]t 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 results 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 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.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure, and the efficacy which it must derive from the union.

The two great points of difference between a democracy and a republic, are first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favourable to the election of proper guardians of the public wealth; and it is clearly decided in favour of the latter by two obvious considerations.

In the first place it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater opinion, and consequently a greater probability of a fit choice.

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 practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to

centre on men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic—is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied, that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber or oppress the rest? In an equal degree does the encreased variety of parties, comprised within the union, encrease this security. Does it, *in fine*, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: A religious sect, may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: A range of paper money, for an abolition of debts, for an equal division 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; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire sate.

In the extent an proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride, we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.

Publius.



PEARSON

PRENTICE HALL

Judith Sargent Murray Argues for Equality

Judith Sargent Murray was an outspoken feminist in post-revolutionary America, frequently writing under the pen name of "Constantia." Murray argued fervently for the equality of women, especially for the parity of their minds and intellect with those of men, which would have been particularly important in the age of Enlightenment. Murray uses God and the Bible as the basis for her argument in the following excerpt from an essay by Constantia.

SOURCE: *The Massachusetts Magazine* 2 (April and May, 1790).

...Yes, ye lordly, ye haughty sex, our souls are by nature *equal* to yours; the same breath of God animates, enlivens, and invigorates us; and that we are not fallen lower than yourselves, let those witness who have greatly towered above the various discouragements by which they have been so heavily oppressed; and though I am unacquainted with the list of celebrated characters on either side, yet from the observations I have made in the contracted circle in which I have moved, I dare confidently believe, that from the commencement of time to the present day, there hath been as many females, as males, who, by the *mere force of natural powers*, have merited the crown of applause; who, *thus unassisted*, have seized the wreath of fame. I know there are who assert, that as the animal powers of the one sex are superiour, of course their mental faculties also must be stronger; thus attributing strength of mind to the transient organization of this earth born tenement. But if this reasoning is just, man must be content to yield the palm to many of the brute creation, since by not a few of his brethren of the field, he is far surpassed in bodily strength. Moreover, was this argument admitted, it would prove too much, for ocular demonstration evinceth, that there are many robust masculine ladies, and effeminate gentlemen. Yet I fancy that Mr. Pope, though clogged with an enervated body, and distinguished by a diminutive stature, could nevertheless lay claim to greatness of soul; and perhaps there are many other instances which might be adduced to combat so unphilosophical an opinion. Do we not often see, that when the clay built tabernacle is well nigh dissolved, when it is just ready to mingle with the parent soil, the immortal inhabitant aspires to, and even attaineth heights the most sublime, and which were before wholly unexplored. Besides, were we to grant that animal strength proved any thing, taking into consideration the accustomed impartiality of nature, we should be induced to imagine, that she had invested the female mind with superiour strength as an equivalent for the bodily powers of man. But waving this however palpable advantage, for *equality only*, we wish to contend.

I am aware that there are many passages in the sacred oracles which seem to give the advantage to the other sex; but I consider all these as wholly metaphorical. Thus David was a man after God's own heart, yet see him enervated by his licentious passions! behold him following Uriah to the death, and show me wherein could consist the immaculate Being's complacency. Listen to the curses which Job bestoweth upon the day of his nativity, and tell me where is his perfection, where his patience—*literally* it existed not. David and Job were types of him who was to come; and the superiority of man, as exhibited in scripture, being also emblematical, all arguments deduced from thence, of course fall to the ground. The exquisite delicacy of the female mind proclaimeth the exactness of its texture, while its nice sense of honour announceth its innate, its native grandeur. And indeed, in one respect, the

preeminence seems to be tacitly allowed us, for after an education which limits and confines, and employments and recreations which naturally tend to enervate the body, and debilitate the mind; after we have from early youth been adorned with ribbons, and other gewgaws, dressed out like the ancient victims previous to a sacrifice, being taught by the care of our parents in collecting the most showy materials that the ornamenting our exterior ought to be the principal object of our attention; after, I say, fifteen years thus spent, we are introduced into the world, amid the united adulation of every beholder. Praise is sweet to the soul; we are immediately intoxicated by large draughts of flattery, which being plentifully administered, is to the pride of our hearts the most acceptable incense. It is expected that with the other sex we should commence immediate war, and that we should triumph over the machinations of the most artful. We must be constantly upon our guard; prudence and discretion must be our characteristic; and we must rise superior to, and obtain a complete victory over those who have been long adding to the native strength of their minds, by an unremitted study of men and books, and who have, moreover, conceived from the loose characters which they have been portrayed in the extensive variety of their reading, a most contemptible opinion of the sex. Thus unequal, we are, notwithstanding, forced to the combat, and the infamy which is consequent upon the smallest deviation in our conduct, proclaims the high idea which was formed of our native strength; and thus, indirectly at least, is the preference acknowledged to be our due. And if we are allowed an equality of acquirement, let serious studies equally employ our minds, and we will bid our souls arise to equal strength. We will meet upon even ground, the despot man; we will rush with alacrity to the combat, and, crowned by success, we shall then answer the exalted expectations which are formed. Though sensibility, soft compassion, and gentle commiseration, are inmates in the female bosom, yet against every deep laid art, altogether fearless of the event, we will set them in array; for assuredly the wreath of victory will encircle the spotless brow. If we meet an equal, a sensible friend, we will reward him with the hand of amity, and through life we will be assiduous to promote his happiness; but from every deep laid scheme for our ruin, retiring into ourselves, amid the flowery paths of science, we will indulge in all the refined and sentimental pleasures of contemplation. And should it still be urged, that the studies thus inlisted upon would interfere with our more peculiar department, I must further reply, that *early hours*, and close application, will do wonders; and to her who is from the first dawn of reason taught to fill up time rationally, both the requisites will be easy. I grant that niggard fortune is too generally unfriendly to the mind; and that much of that valuable treasure, time, is necessarily expended upon the wants of the body; but it should be remembered, that in embarrassed circumstances our companions have as little leisure for literary improvement, as is afforded to us; for most certainly their provident care is at least as requisite as our exertions. Nay, we have even more leisure for sedentary pleasures, as our avocations are more retired, much less laborious, and, as hath been observed, by no means require that avidity of attention which is proper to the employments of the other sex. In high life, or, in other words, where the parties are in possession of affluence, the objection respecting time is wholly obviated, and of course falls to the ground; and it may also be repeated, that many of those hours which are at present swallowed up in fashion and scandal, might be redeemed, were we habituated to useful reflections. But in one respect, O ye arbiters of our fate! we confess that the superiority is indubitably yours; you are by nature formed for our protectors; we pretend not to vie with you in bodily strength; upon this point we will never contend for victory. Shield us then, we beseech you, from external evils, and in return we will transact *your* domestick affairs. Yes, *your*, for are you not equally interested in those matters with ourselves? Is not the elegance of neatness as agreeable to your sight as to ours; is not the well favoured viand equally delightful to your taste; and doth not your sense of hearing suffer as much, from the discordant sounds prevalent in an ill regulated family, produced by the voices of children and many *et ceteras*?

CONSTANTIA.

1. *What is the basis of Judith Sargent Murray's argument?*
2. *What does Murray's essay reveal about women's roles in post-revolutionary United States?*

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PEARSON

PRENTICE HALL

Northwest Ordinance, 1787

*With the Northwest Ordinance of 1787, Congress instituted what was to be the territorial model of government for the western United States until 1862. The Northwest Ordinance created a procedure for governing the territories and bringing them into statehood. Most importantly, the ordinance established the equality of new states with the original thirteen. The following is the act in its entirety. SOURCE: Francis Newton Thorpe, *The Federal and State Constitutions* (Washington, D.C.: Government Printing Office, 1909).*

The Northwest Ordinance

Be it ordained by the authority aforesaid, That there shall be appointed from time to time by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office.

There shall be appointed from time to time by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of

the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject however to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the general assembly: Provided. That, for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which, the number and proportion of representatives shall be regulated by the legislature: Provided. That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: Provided, also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly or legislature shall consist of the governor, legislative council, and a house of representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the Governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

ART. I. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them....

ART. 5. There shall be formed in the said territory, not less than three not more than five States....And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: Provided, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.