## Constitutions, Governments, and Charters

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Of Constitutions, Governments, & Charters.

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Thomas Paine

THE people of Pennsylvania are, at this time, earnestly occupied on the subject of calling a convention to revise their state constitution, and there can be but little doubt that a revision is necessary. It is a constitution, they say, for the emolument of lawyers.

It has happened that the constitutions of all the states were formed before any experience had been had, or could be had, on the representative system of government; and it would be a miracle in human affairs that mere theory without experience should start into perfection at once. The constitution of New-York was formed so early as the year 1777. The subject that occupied and engrossed the mind of the public at that time was the Revolutionary War, and the establishment of independence, and, in order to give effect to the declaration of independence by congress it was necessary that the states severally should make a practical beginning by establishing state constitutions, and trust to time and experience for improvement. — The general defect in all the constitutions is that they are modeled too much after the system, if it can be called a system, of the English government, which in practise is the most corrupt system in existence, for it is corruption systematised.

An idea also generally prevailed at that time of keeping, what were called, the legislative, the executive, and the judicial powers distinct and separated from each other. But this idea, whether correct or not, is always contradicted in practice; for where the consent of a governor, or executive is required to an act before it can become a law, or where he can by his negative prevent an act of the legislature becoming a law, he is effectually a part of the legislature, and possesses full one half of the powers of a whole legislature.

In this State (New-York) this power is vested in a select body of men composed of the executive, by which is to be understood the governor, the chancellor, and the judges, and called the council of revision. This is certainly better than vesting that power in an individual, if it is necessary to invest it any where. But is a direct contradiction to the maxim set up, that those powers ought to be kept separate; for here the executive and the judiciary are united into one power acting legislatively.

When we see maxims that fail in practice, we ought to go to the root and examine if the maxim be true. Now it does not signify how many nominal divisions, and sub-divisions, and classifications we make, for the fact is, there are but two powers in any government, the

power of willing or enacting the laws, and the power of executing them; for what is called the judiciary is a branch of executive power; it executes the laws; and what is called the executive is a superintending power to see that the laws are executed.

Errors in theory are, sooner or later, accompanied with errors in practice; and this leads me to another part of the subject, that of considering a constitution and a government relatively to each other.

A constitution is the act of the people in their original character of sovereignty. A government is a creature of the constitution: It is produced and brought into existence by it. A constitution defines and limits the powers of the government it creates. It therefore follows, as a natural and also a logical result, that the governmental exercise of any power not authorised by the constitution, is an assumed power, and therefore illegal.

There is no article in the constitution of this state, nor of any of the states, that invests the government in whole or in part with the power of granting charters or monopolies of any kind; the spirit of the times was then against all such speculations; and therefore the assuming to grant them is unconstitutional, and when obtained by bribery and corruption is criminal. It is also contrary to the intention and principle of annual elections. Legislatures are elected annually not only for the purpose of giving the people, in their elective character, the opportunity of shewing their approbation of those who have acted right, by re-electing them, and rejecting those who have acted wrong; but also for the purpose of correcting the wrong (where any wrong has been done) of a former legislature. But the very intention, essence, and principle of annual election would be destroyed, if any one legislature, during the year of its authority, had the power to place any of its acts beyond the reach of succeeding legislatures; yet this is always attempted to be done in those acts of a legislature called charters. Of what use is it to dismiss legislators for having done wrong, if the wrong is to continue on the authority of those who did it? Thus much for things that are wrong. I now come to speak of things that are right, and may be necessary.

Experience shews that matters will occasionally arise, especially in a new country, that will require the exercise of a power differently constituted to that of ordinary legislation; and therefore there ought to be in a constitution an article defining how that power shall be constituted and exercised. Perhaps the simplest method, that which I am going to mention, is the best; because it is still keeping strictly within the limits of annual elections, makes no new appointments necessary, and creates no additional expence — For example,

That all matters of a different quality to matters of ordinary legislation, such for instance, as sales or grants of public lands, acts of incorporation, public contracts with individuals or companies beyond a certain amount, shall be proposed in one legislature, and published in the form of a bill with the yeas and nays after the second reading; and in that state shall lie over to be taken up by the succeeding legislature; that is, there shall always be, on all such matters, one annual election take place between the time of bringing in the bill and the time of enacting it into a permanent law. It is the rapidity with which a self interested

speculation, or a fraud on the public property, can be carried through within the short space of one session, and before the people can be apprised of it, that renders it necessary that a precaution of this kind, unless a better can be devised, should be made an article of the constitution. Had such an article been originally in the constitution, the bribery and corruption employed to seduce and manager the members of the late legislature, in the affair of the Merchants' Bank, could not have taken place. It would not have been worth while to bribe men to do what they had not the power of doing. That legislature could only have proposed, but not have enacted the law; and the election then ensuing would, by discarding the proposers, have negatived the proposal without any further trouble.

This method has the appearance of doubling the value and importance of annual elections. — It is only by means of elections that the mind of the public can be collected to a point on any important subject; and as it is always the interest of a much greater number of people in a country to have a thing right than to have it wrong, the public sentiment is always worth attending to — It may sometimes err, but never intentionally, and never long. The experiment of the Merchants' Bank shews it is impossible to bribe a small body of men, but it is always impossible to bribe a whole nation; and therefore in all legislative matters that by requiring permanency differ from acts of ordinary legislation which are alterable or repealable at all times, it is safest that they pass through two legislatures, and a general election intervene between. The elections will always bring up the mind of the country on any important proposed bill; and thus the whole state will be its own council of revision. It has already passed its veto on the Merchants' Bank bill, notwithstanding the minor council of revision approved it.

COMMON SENSE.

New-Rochelle, June 21, 1805.