

revenue officer to enter our houses, search, insult, and seize at pleasure. We are told by a gentleman of too much virtue and real probity to suspect he has a design to deceive—"that the whole constitution is a declaration of rights"—but mankind must think for themselves, and to many very judicious and discerning characters, the whole constitution with very few exceptions appears a perversion of the rights of particular states, and of private citizens.—But the gentleman goes on to tell us, "that the primary object is the general government, and that the rights of individuals are only incidentally mentioned, and that there was a clear impropriety in being very particular about them."² But, asking pardon for dissenting from such respectable authority, who has been led into several mistakes, more from his predilection in favour of certain modes of government, than from a want of understanding or veracity. The rights of individuals ought to be the primary object of all government, and cannot be too securely guarded by the most explicit declarations in their favor. This has been the opinion of the Hampdens, the Pym, and many other illustrious names, that have stood forth in defence of English liberties; and even the Italian master in politicks, the subtle and renowned Machiavel acknowledges, that no republic ever yet stood on a stable foundation without satisfying the common people.³ . . .

1. In February 1761, following the death of George II, the surveyor general of customs in Massachusetts requested that the superior court issue new writs of assistance that would permit customs officers to search for smuggled goods. (The court had been issuing such writs since 1755.) Boston merchants protested and hired James Otis as one of their lawyers to question the legality of the writs. Otis argued that the writs were void because they violated the fundamental principles of law. In December 1761 the Superior Court of Massachusetts, of which Thomas Hutchinson was chief justice, ordered that the writs be issued. In 1766 a Boston mob helped a merchant resist the sheriff who had a writ of assistance.

2. On 23 January the Massachusetts Convention debated the extent of Congress' powers outlined in Article I, section 8. See speeches by Antifederalist General Samuel Thompson of Topsham, Maine, and a response by former Governor James Bowdoin (RCS:BoR, II, 281–82).

3. See "A Discourse on Remodeling the Government of Florence," in Allan Gilbert, trans., *Machiavelli: The Chief Works and Others* (3 vols., Durham, N.C., 1965), I, 110. This "Discourse" was written about 1520.

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New York American Magazine, 1 March 1788¹

GOVERNMENT

The constitution of Virginia, like that of Connecticut, stands on the true principles of a Republican Representative Government. It is not shackled with a Bill of Rights, and every part of it, is at any time, alterable by an ordinary legislature.² When I say *every part* of the constitution

is alterable, I would except the right of elections, for the representatives have not power to prolong the period of their own delegation. This is not numbered among the rights of legislation, and deserves a separate consideration. This right is not vested in the legislature—it is in the people at large—it cannot be alienated without changing the form of government. Nay the right of election is not only the *basis*, but the *whole frame* or essence of a republican constitution—it is not merely *one*, but it is the *only* legislative or constitutional act, which the people at large can with propriety exercise.

The simple principle for which I contend is this—“That in a representative democracy, the delegates chosen for legislators ought, at all times, to be competent to every possible act of legislation *under that form of government*; but not to *change that form*.”^[7] Besides it is contrary to all our ideas of *deputation* or *agency for others*, that the person acting should have the power of extending the period of agency beyond the time specified in his commission. The representative of a people is, as to his powers, in the situation of an Attorney, whose letters commission him to do every thing which his constituent could do, where he on the spot; but for a limited time only. At the expiration of that time his powers cease; and a representative has no more right to extend that period, than a plenipotentiary has to renew his commission. The British Parliament, by prolonging the period of their existence from one to three, and from three to seven years, committed an unjust act—an act however which has been confirmed by the acquiescence of the nation, and thus received the highest constitutional sanction. I am sensible that the Americans are much concerned for the liberties of the British nation; and the act for making Parliaments septennial is often mentioned as an arbitrary oppressive act, destructive of English liberty.^(a) The English are doubtless obliged to us for our tender concern for their happiness—yet for myself I entertain no such ideas—The English have generally understood and advocated their rights as well as any nation, and I am confident that the nation enjoys as much happiness and freedom, and much more tranquility, under septennial Parliaments, than they would with annual elections. Corruption to obtain offices will ever attend wealth; it is generated with it—grows up with it—and will, always fill a country with violent factions and illegal practices. Such are the habits of the people, that money will have a principal influence in carrying elections; and such vast sums are necessary for the purpose, that if elections were annual, none but a few of the wealthiest men could defray the expense—the land-holders of moderate estates would not offer themselves as candidates—and thus in fact annual elections, with the present habits of the people, would actually diminish the in-