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A Republican Form of Government

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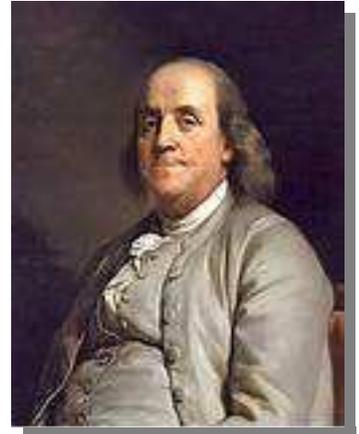
The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.
U.S. Constitution, Article 4, §4

When a woman who had been waiting outside the hall where the delegates had been working on the Constitution asked Benjamin Franklin what type of government they had given us, he is reported to have answered, “A *republic*, if you can keep it.” And as shown above, the Constitution itself demands that the federal government “guarantees” a *republican form of government* to every state. Naturally, this raises the question of what exactly *is* a republican form of government. My article “And to the Republic...” in the November 2010 Liberty Tree¹ considered this question with respect to the distinctions between democracies and republics, and found that republics are no more protective of the rights of the people than are democracies. That protection comes instead from the Constitution’s recognition that We the People have rights that must be respected — those unalienable rights identified in the Declaration of Independence as having been bestowed on every man by our Creator, including the right to “life, liberty and the pursuit of happiness.” “Too big to stand” in the November 2013 issue² looked at the problems involved in a republic when the ratios of representation become outrageously high, thereby reducing any person’s effective representation to virtually zero. This month, we’ll explore the problem of lack of representation from another angle.

According to the Supreme Court in *Duncan v. McCall*, 139 U.S. 449 (1891), “the distinguishing feature of [a republican form of government] is the right of the people to choose their own officers for governmental administration, and pass their own laws in vir-

tue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves;” (at page 461). The beginning of this quotation covers the aspect that most people would consider the distinguishing feature, but take special notice of the last part — representative bodies whose *legitimate acts may be said to be those of the people themselves*. This latter component is equally important to the republican form.

It’s crucial to understand that only the *legitimate* acts of legislatures rise to the level of being the people’s laws. And what makes them legitimate? The fact that they are done *in virtue of the power reposed in them*. In other words, that the power to enact them was conferred on the representative body in the first place. Of course, that’s the purpose of the constitutions, both state and federal. Through them, the people establish the limits of the legislative power they are willing to allow their *administrative agents* to exercise. If those agents stay within the powers granted, then their acts — thereby deemed legitimate — may be said to be those of the people themselves. Conversely, whenever those same agents exceed the limits of their granted authority, whether by exercising powers prohibited altogether or by exercising granted powers in a manner which is prohibited, their acts are illegitimate, and so



Benjamin Franklin (1706-1790), American statesman, author and scientist.

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1. www.libertyworksradiationetwork.com/jml/images/pdfs/libtree_nov_2010.pdf.

2. www.libertyworksradiationetwork.com/jml/images/pdfs/libtree_nov_2013.pdf.

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may *not* be said to be those of the people. In this latter case then, it could rightly be said that the republican form of government ceases to exist.

The will of the people

Looked at in this light, the ability to actually choose one's representatives almost pales in comparison, because it matters little that you get to choose who will administer the government, if once selected, they proceed to administer it according to their own will, rather than the will of the people who put them in office. This is another component to consider, aside from the issue of granted versus ungranted powers. Even if some act of the legislature is within the powers granted, and is exercised in an authorized manner, *it would still be illegitimate if the people did not want it to be done.*³

Congressmen – as our agents⁴ – have a fiduciary duty to manifest our will in their actions. That principle undergirds a republican form of government – they are put in office to represent *our* interests, not their own. Congress' job is to formalize the will of the people by enacting it into law. Chief Justice Earl Warren made this point in *Reynolds v. Sims*, 377 U.S. 533, 565 (1964): “Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will.” Therefore, when they substitute their own will for that of the people they are supposed to represent, they are acting illegitimately.

If you think about it, this dynamic should provide a two-pronged check on government action. Congress' actions are checked not only by the limited grants of authority in the Constitution, but also by the necessity for those actions to be desired by the people. At the

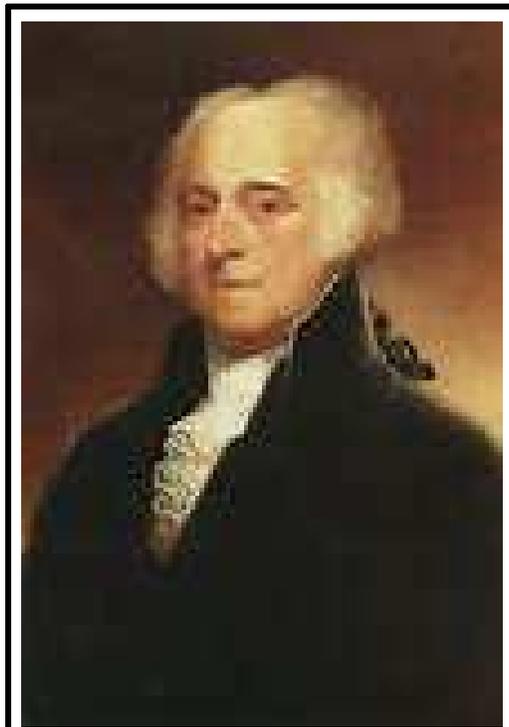
same time, the will of the people is also checked, because no matter what they may desire to have done, Congress is prohibited by the Constitution from doing anything beyond the granted powers.

Morality a necessary check to power

However, checks such as these depend for the most part on the fidelity and morality of all involved, and unfortunately that's been shown to be a pretty severe shortcoming. Many Patriots have heard of second President John Adams' admonition: “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”⁵

Looking at it in context helps to explain why:

“But should the people of America once become capable of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practising iniquity and extravagance, and displays in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”⁶



John Adams (1735 – 1826), second President of the United States, warned us about letting any but moral and religious people into public office. If only we had listened!

While Adams was probably referring to the whole of the people in the famous part of the quote, notice that the whole thing also applies quite well to those entrusted with the administration of the government. We can see first-hand the dangers he warned of. We live in

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3. One example of this might be the power to declare war. Even though Congress is authorized to declare war on other countries, that doesn't give them *carte blanche* to declare war on any country at any time for any reason, or even for no reason whatsoever. I would suggest then, that when Franklin Roosevelt embroiled the nation in World War II, (even before the “surprise attack” at Pearl Harbor) despite the fact that the people wanted to remain neutral, he was acting illegitimately.

4. See “Government? Agents!” at www.libertyworksradionetwork.com/jml/index.php/greg-blog/121-government-agents.

5. Address to the officers of the First Brigade of the Third Division of the Militia of Massachusetts, October 11, 1798; *Works of John Adams*, Vol. IX, pg. 289.

6. *Ibid.*

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a time when the government professes justice and moderation while practicing just the opposite, and displays the pretense of candor and sincerity, even while it engages in wholesale lying and plundering. And the longer it continues the closer we come to being a most miserable habitation. To my mind, Adams' reference to the government having no power to contend with "human passions unbridled by morality and religion" seems more like an indictment of the lack of workable checks on government power than a criticism about any lack of granted power.

Government – the troublesome servant

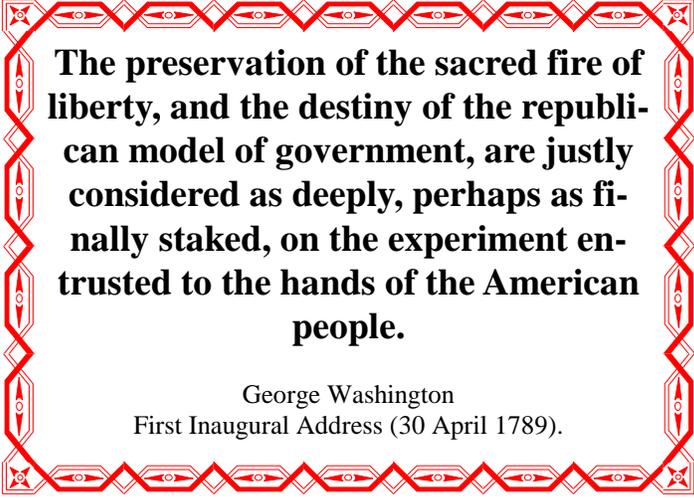
The amount of power granted to government (at all levels) is dangerous in the hands of all who wield it. As George Washington is claimed to have said, "Government is not reason, it is not eloquence, it is force; like fire, a troublesome servant and a fearful master. Never for a moment should it be left to irresponsible action."⁷ And when that power falls into the hands of one (or especially many) who have no fidelity to the Constitution nor to their fiduciary duty to their constituents, and have no fear of God's judgment to guide their earthly actions, then Adams' "most miserable habitation" is inevitable. The Constitution is wholly inadequate to protect the public against people of that character who manage to get themselves elected. Their avarice, ambition, revenge and gallantry will render it as useless as a net against a whale.

It's not that the Constitution doesn't make it illegal for such characters to subvert the machinery of government to their own personal interests (which is also to say the interests of those whose campaign contributions (that is, bribes) get them into office), it's just that, to paraphrase Jefferson as he put it in relation to the judiciary, it's not much of a scarecrow for them. Being immoral — and falsely believing God will not punish them come Judgment day — they are not concerned with doing wrong. Just like gun laws don't prevent criminals from getting guns, the Constitution can't prevent criminals from enacting illegitimate laws; it can only make it illegal. And since any prosecution and punishment is largely in the hands of other office-holding crooks, they have little to fear of earthly repercussions either.

Giving the people what they don't want

Getting back to the obligation of Congress to do the will of the people, it's instructive to think of it as the first step in the hierarchy of legitimate authority to act. Without the will of the people behind them, everything

7. There's some question as to whether old George ever actually said this, but that doesn't make it any less true.



The preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people.

George Washington
First Inaugural Address (30 April 1789).

the government does is oppressive. But, it's not enough that a majority wants something done. The equal right of all persons, the principle of equal protection under the law, and the equal fiduciary duty owed to every person by their government agents requires unanimous will. The fact that such unanimity is virtually impossible to achieve is no argument against it, however. It's simply a manifestation of the reason so few powers were granted to Congress in that short list found at Article 1, §8 of the Constitution. The same principle must apply to the state governments as well, even if the list of powers granted may be different. After all, isn't that the essence of the republican form of government we're supposed to be guaranteed?

That's something to think about for any law your legislature enacts. Does this law reflect the will of the people — that is, *all* the people? Was there a public clamor to have this particular thing done? If so, then the next thing to consider is the delegation of the authority to do it, and so on. But if not, then what gives the legislature the right to take the action?

Ridiculously low speed limits, seat belt laws, and sexual molestation of our wives, mothers, and children by TSA goons are just a few examples of laws that have significant opposition. Obviously, the will of those who oppose such laws is not being represented. Another good example is of course, ObamaCare. I've read a few articles that gloated about how recent polls showed that the Republicans were wrong about the majority of the people disapproving of ObamaCare. Although earlier polls showed that 51% disapproved, the later polls found that some of them disapproved because they didn't think the law did enough, and so, in reality *only* 43% of the people thought the law went too far! So, since only slightly less than half of the people didn't want the law, these idiots believe that the *minority's* will can

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simply be disregarded. (Of course, they also thought that way even before the new polls were conducted.)

Form over substance

The bottom line is that we may still have a republican form of government, but it is one in form only, and not in substance. The façade of the republican form remains, but the interior has been remodeled into an oligarchy. Those who've made their way into the channels of power have subverted the processes which would otherwise allow us the opportunity to boot them out. Not only do they determine the rules by which opposing candidates will be allowed to be placed on the ballot, they also control the modes of elections (such as the easily manipulated Diebold electronic voting systems), which gives them a virtual lock on retaining their positions. They appoint the judges who would hear any complaints against them, all the while using public money to feather their own nests. In doing all this, they have set themselves up as a ruling elite. And though they may not actually believe that they know what's best for us (but most probably do), they act as if they do. In short, they govern according to their own will and not the will of the people.

Political question

To top it off, the Supreme Court has ruled in every case in which the issue was raised, that the guarantee of a republican form is a "political issue," which means one that they will not touch. Instead, they claim "that the question of whether that guaranty of the Constitution has been disregarded presents no justiciable controversy, but involves the exercise by Congress of the authority vested in it by the Constitution."⁸

The court never really gives a clear picture of just how Congress would decide the issue, nor how they would implement their decision, or even what would precipitate their consideration of it in the first place. But then again, the point of proclaiming it a political issue is to simply brush it aside anyway. And so the guarantee becomes nothing more than words on paper, as we continue to sink into that "most miserable habitation."



Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extra-constitutional authority were anticipated and precluded by the explicit terms of the Tenth 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.'

Chief Justice Charles Evans Hughes, in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 528 (1935)

8. *State of Ohio, ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916).