

INDIVIDUAL LIBERTY AND CONSTITUTIONAL ARCHITECTURE: THE FOUNDERS' PROMPT CORRECTION OF THEIR OWN MISTAKE

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Constitutional architecture includes federalism, separation of powers, checks and balances, and judicially enforceable guarantees of individual liberty. But this last element does not appear in the theory of *The Federalist Papers*. Indeed, it could not appear, because Publius had to defend the Convention's proposal, and that proposal did not contain what we now think of as the Bill of Rights.

Excepting only the protection of slavery, the lack of a Bill of Rights was the Convention's most conspicuous failure, and the defense of that omission is the most conspicuous failure of *The Federalist Papers*. It is not merely that the omission of a Bill of Rights is a failure from the perspective of our time. It was a failure from the perspective of the Founders' time. The nation immediately rejected the argument of *The Federalist Papers* on the issue of a Bill of Rights.

Indeed, Publius himself may be said to have rejected the argument. This article compares Hamilton in *The Federalist Papers* with Madison a year later in the First Congress, where Madison showed that the argument of *The Federalist Papers* was wrong. Federalism, separation of powers, and checks and balances are *important* protections for liberty, they are *necessary* protections for liberty, but they are not *sufficient* protections for liberty.

I. HAMILTON'S ARGUMENT

The principal response to the demand for a Bill of Rights is stated in *The Federalist Number 84*.¹ There were only eighty-five papers, and defense of the omission of a Bill of Rights is confined to only a part of the eighty-fourth. This paper is offered as a brief discussion of several "miscellaneous points" that

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1. THE FEDERALIST No. 84 (Alexander Hamilton)(Clinton Rossiter ed., 1961).

“did not fall naturally under any particular head or were forgotten in their proper places.”² Hamilton’s apparent tactic here is an implausible attempt to dismiss the whole issue as unimportant, presumably because he recognized the weakness of his other arguments.

On the merits, Hamilton had four points. He first stated, quite correctly, that the Constitution already had a Bill of Rights.³ He devoted three-quarters of a page to quoting the provisions: limitations on the law of treason⁴ and on abuse of the impeachment power;⁵ habeas corpus;⁶ no bills of attainder,⁷ ex post facto laws,⁸ or titles of nobility;⁹ local jury trial in criminal cases.¹⁰ To that list I would add the Contract Clause,¹¹ the Legal Tender Clause,¹² and the Privileges and Immunities Clause of Article IV.¹³ Hamilton omitted these, presumably because they applied only to the states and did not constrain the federal government.

Second, Hamilton said that a Bill of Rights is wholly inappro-

2. *Id.* at 510.

3. *Id.* As Hamilton pointed out: “I answer that the Constitution proposed by the convention contains, as well as the constitution of [New York], a number of such provisions,” referring to “provisions in favor of particular privileges and rights that, in substance, amount to” a Bill of Rights.

4. U.S. CONST. art. III, § 3, cl. 1 (“Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.”); U.S. CONST. art. III, § 3, cl. 2 (“[N]o Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the life of the Person attainted.”).

5. U.S. CONST. art. I, § 3, cl. 7 (“Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States . . .”).

6. U.S. CONST. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”).

7. U.S. CONST. art. I, § 9, cl. 3 (“No Bill of Attainder . . . shall be passed.”).

8. U.S. CONST. art. I, § 9, cl. 3 (“No . . . ex post facto Law shall be passed.”).

9. U.S. CONST. art. I, § 9, cl. 8 (“No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”).

10. U.S. CONST. art. III, § 2, cl. 3 (“The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”).

11. U.S. CONST. art. I, § 10, cl. 1 (“No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .”).

12. U.S. CONST. art. I, § 10, cl. 1 (“No State shall . . . coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts . . .”).

13. U.S. CONST. art. IV, § 2, cl. 1 (“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”).

priate to a Constitution based on the sovereignty of the people. There is a certain tension between the first and second points. The Constitution has a Bill of Rights, but it should not. Hamilton argued that a Bill of Rights is a concession from a King to his subjects, and that the people would have no need for a Bill of Rights against themselves: “[T]he people surrender nothing; and as they retain everything, they have no need of particular reservations.”¹⁴ If this argument had been valid, it would have equally followed that the people had no need for federalism, separation of powers, checks and balances, or any other constitutionally-enshrined protection against bad government.

This argument contrasts sharply with the basic theory of *The Federalist Papers*. In *The Federalist Number 10*, Madison argued that the majority faction violates the rights of citizens.¹⁵ In *The Federalist Number 48*, Madison noted that the state legislatures had flagrantly and repeatedly violated the various state constitutions and bills of rights.¹⁶ In *The Federalist Number 44*,

14. THE FEDERALIST No. 84, *supra* note 1, at 513. Hamilton elaborated this argument as follows:

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such was the *Petition of Right* assented to by Charles the First in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of Parliament called the Bill of Rights. It is evident, therefore, that according to their primitive signification, they have no application to constitutions, professedly founded upon the power of the people and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations. “WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.” Here is a better recognition of popular rights than volumes of aphorisms which make the principal figure in several of our State bills of rights and which would sound much better in a treatise of ethics than in a constitution of government.

Id. at 512-13.

15. THE FEDERALIST No. 10, at 80-81 (James Madison)(Clinton Rossiter ed., 1961). Madison described the dangers of faction as follows:

When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

16. Madison chose two of the larger states to illustrate his point:

Madison said that legislatures interfere with "personal rights," and that "one legislative interference is but the first link of a long chain of repetitions,"¹⁷ echoing language that the Declaration of Independence used to condemn King George III.¹⁸ Hamilton in *The Federalist Number 78* extolled constitutional rights and independent judges as protection against "serious oppressions of the minor party in the community."¹⁹ But a few days later, in *The Federalist Number 84*, Hamilton argued that a Bill of Rights had no place in a system of representative government.²⁰

The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution that the three great departments ought not to be intermixed. . . . "*But no barrier was provided between these several powers. The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which have accordingly, in many instances, decided rights which should have been left to judiciary controversy, and the direction of the executive, during the whole time of their session, is becoming habitual and familiar.*"

The other State which I shall have for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the Constitution, was "to inquire whether the Constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the Constitution." In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the Constitution had been flagrantly violated by the legislature in a variety of important instances.

THE FEDERALIST No. 48, at 310-12 (James Madison)(Clinton Rossiter ed., 1961)(quoting THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, at 128-29 (Richmond, J.W. Randolph 1853), *microformed on 19th Century Legal Treatises* (Research Publications))(emphasis in original).

17. THE FEDERALIST No. 44, at 282-83 (James Madison)(Clinton Rossiter ed., 1961):

The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding.

18. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776)("But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.").

19. THE FEDERALIST No. 78, at 469 (Alexander Hamilton)(Clinton Rossiter ed., 1961).

20. THE FEDERALIST No. 84, *supra* note 1, at 513 ("I go further and affirm that bills of

Third, and this is by far the most familiar of the Federalist arguments against a Bill of Rights, Hamilton said that the people do not need a Bill of Rights in a government of limited powers. In the famous statement that is so often quoted:

For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?²¹

He conceded that a Bill of Rights may be necessary in a state constitution, because states have plenary powers, a concession that bespeaks a lack of confidence in his argument that we do not need a Bill of Rights in a representative government. But certainly, he argued, a Bill of Rights is unnecessary to constrain a government of limited powers.

Fourth, Hamilton argued that even if the Constitution had a Bill of Rights, it would be meaningless.²² Hamilton was as eloquent as Lino Graglia at deriding and making fun of the language of bills of rights.²³ Hamilton said that a Bill of Rights would necessarily be so vague that only the legislature could interpret it. He asked how one could possibly know what liberty of the press may mean. This last argument is at least some evidence against arguments based on original intent or original understanding. Hamilton claimed that he had *no* understanding of bills of rights.

II. MADISON'S RESPONSE

It is familiar history that these four arguments were rejected. Several states attached demands for a bill of rights to their ratification resolutions; North Carolina refused to ratify at all until a Bill of Rights was added. It is less well known that Madison himself narrowly escaped defeat in his campaign for election to the First Congress, in part because of his continued doubts

rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution but would even be dangerous.”); *see also supra* note 14.

21. *Id.* at 513-14; *see also id.* at 513 (“[A bill of rights] would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted.”).

22. *Id.* at 514.

23. *See* Lino A. Graglia, *How Should Courts Interpret the Bill of Rights?*, 15 HARV. J.L. & PUB. POL’Y 149 (1992).

about the need for a religious liberty clause.²⁴ The Baptists in Madison's district were particularly insistent; they were not content to rely merely on the lack of express federal power to interfere with religion. Madison got the message.

Madison promptly proposed the Bill of Rights in the First Congress, and it was ratified within three years of the new government's formation. As Judge Buckley has already noted, the Constitution would not have been ratified without the promise of a Bill of Rights.²⁵ It seems clear from this history, therefore, that the Bill of Rights was a key element of the original constitutional bargain and not merely an afterthought.

In the First Congress, Madison developed the rest of our original constitutional theory. He introduced the Bill of Rights on June 8, 1789, in a great speech that has received insufficient attention. Madison argued that Publius was wrong. By 1789 he understood, or was willing to explain publicly, the connection between the risk of legislative abuse, the danger of faction, and the need for a Bill of Rights. Madison explicitly refuted Hamilton's second and third arguments, and implicitly rejected the fourth. The first argument—that the Constitution already had a partial Bill of Rights—required no refutation.

Hamilton's second argument had been that a Bill of Rights is unnecessary where the people are sovereign.²⁶ Madison argued the contrary—that where the people are sovereign, the people are the greatest danger to liberty and the Bill of Rights must be directed against them. According to Madison, a Bill of Rights

must be levelled against the legislative [branch], for it is the most powerful, and most likely to be abused, because it is under the least control. . . . But . . . the great danger lies rather in the abuse of the community than in the legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is . . . found . . . in the body of the people, operating by the majority against the minority.²⁷

Madison similarly dismantled Hamilton's third argument:

24. See THOMAS J. CURRY, *THE FIRST FREEDOMS: CHURCH AND STATE IN AMERICA TO THE PASSAGE OF THE FIRST AMENDMENT* 198-99 (1986).

25. James L. Buckley, *Liberty and Constitutional Architecture*, 16 HARV. J.L. & PUB. POL'Y 55, 55 (1993).

26. THE FEDERALIST No. 84, *supra* note 1, at 512-13.

27. 1 ANNALS OF CONG. 454-55 (Joseph Gales ed., 1834)(remarks of James Madison, June 8, 1789).

that the people did not need a Bill of Rights in a government of limited powers.²⁸ Madison essentially argued that powers and rights are not what we would call Hohfeldian opposites; rather, they are intersecting categories.²⁹ Madison could not cite to Hohfeld, but he put the same point in terms of means and ends. He noted that even limited powers may be implemented with abusive means.

[T]he powers of the General Government are circumscribed . . . ; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means [For example] [t]he General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose . . . ?³⁰

The insight here is that there is no need for a specific clause granting Congress power to authorize general warrants or suppress the press. These measures may be necessary and proper to implement other powers, unless such means are expressly prohibited in a Bill of Rights.

Finally, Hamilton had said that Bills of Rights do not really mean anything, and that they raise issues that must be left to political processes. Madison rejected both steps in this argument. He argued that bills of rights have meaning, and that they are efficacious, only if there is a mechanism for enforcement, and that that mechanism is the judiciary. Separation of powers provisions are mere “parchment barriers,” he had said in *The Federalist Number 48*, unless there is a mechanism to enforce the separation of powers.³¹ He used a similar phrase in introducing the Bill of Rights: Bills of rights are mere “paper barriers” unless there is a means of enforcement. For the federal Bill of Rights, the means of enforcement would be judicial review. Madison told the First Congress that “independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; . . . they will be naturally led to resist every encroachment upon rights expressly stipulated

28. THE FEDERALIST No. 84, *supra* note 1, at 513-14.

29. See Wesley N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16, 30 (1913). Hohfeld attempted to organize all legal relationships “in a scheme of ‘opposites’ and ‘correlatives.’” *Id.*

30. 1 ANNALS OF CONG., *supra* note 27, at 455-56.

31. THE FEDERALIST No. 48, *supra* note 16, at 308.

for . . . by the declaration of rights.”³² In another famous phrase, Madison said that judicial review will turn parchment barriers into “an impenetrable bulwark.”³³

Madison’s argument is thus founded on separation of powers. Independent judges would be charged with interpreting and enforcing constitutional rights and thus checking the tendency of the people and the other branches to violate these rights.

In addition to refuting Publius’s three arguments of the year before, Madison made two additional points of lasting importance. First, he saw that the states, and not just the federal government, could threaten personal liberty. He proposed to protect speech, press, conscience, and criminal jury trial from state violations, and he argued that this amendment was “the most valuable” of all his proposals.³⁴ He lost. The country was not ready for more federal rights against states, and that mistake was not corrected until after the Civil War.³⁵

Second, Madison conceded that it is impossible to enumerate all individual rights, and he acknowledged the resulting danger that if some are listed, the others might be lost. “[B]y enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration.”³⁶ His solution to this dilemma was the Ninth Amendment, providing for rights not enumerated. Madison’s argument for the Ninth Amendment was an individual liberty argument; it was not a federalism argument. His explanation of the amendment was that it meant what it seemed to mean.

III. THE CONSTITUTIONAL ARCHITECTURE OF INDIVIDUAL LIBERTY

I do not want to be misunderstood; I do not defend everything the judiciary has done in the name of the Bill of Rights. There have been judicial excesses and also judicial defaults.

32. 1 ANNALS OF CONG., *supra* note 27, at 457.

33. *Id.* (“Independent judges will be an impenetrable bulwark against every assumption of power in the legislative or executive . . .”).

34. *Id.* at 783-84 (remarks of James Madison, Aug. 17, 1789).

35. See U.S. CONST. amends. XIII-XV (creating sweeping new federal rights against the states).

36. 1 ANNALS OF CONG., *supra* note 27, at 456; cf. Terry Brennan, *Natural Rights and the Constitution: The Original “Original Intent,”* 15 HARV. J.L. & PUB. POL’Y 965 (1992) (arguing that the Founders intended natural law rights whether or not any rights were enumerated).

But I do reject the charge that judicial enforcement of the Bill of Rights has been generally illegitimate or excessive since 1937. The Bill of Rights is an essential part of our constitutional architecture, and active judicial enforcement was the intended mechanism for preserving those rights.

Geoffrey Miller has suggested that the Bill of Rights changed the original structure by conferring additional powers on the Supreme Court.³⁷ I agree with that. But what increased judicial power was not an amendment to Article III expressly conferring additional powers on the Court. Rather, it was a list of specific provisions about rights, rights that were to be enforced by the Court. The source of power in the Court came from the addition of rights in the people.

We are extraordinarily lucky that the Founders added basically the right set of rights. Experience with state constitutions has been more mixed. Many state constitutions were badly drafted to start with, the provisions were too detailed, some of the rights were just grabs by special interests, and the whole thing was and remains easily amended. So state constitutions are frequently amended to change the overly-detailed provisions, and many of their provisions are under-enforced, both to avoid the need for amendments and because elected judges are less independent than appointed judges. In general, the state constitutions have not generated the respect accorded the federal Constitution.

When I say the federal Founders put in the right rights, I mean that in this sense: some of the rights are protections of individuals in situations where they are isolated and powerless, such as criminal defendants. Most of the rest are protections of things that are of unusual importance to the individual, and as to which other forces in the society may be unusually tempted to intrude unnecessarily and with excessive costs to the individual, such as speech, religion, and the privacy of the person, house, papers, and effects. So it was not just that any addition to the Supreme Court's power would have corrected the defect in constitutional architecture. It was also that these were by and large the right additions.

I briefly note two more general points. First, there is a tendency in the rhetoric of the Federalist Society and its sympa-

37. See Geoffrey P. Miller, *Liberty and Constitutional Architecture: The Rights-Structure Paradigm*, 16 HARV. J.L. & PUB. POL'Y 87, 91 (1993).

thizers to appeal simultaneously to the virtues of original intent and the virtues of popular democracy. But the passages discussed in this article show that the Society cannot have it both ways, because the original intent embraced only limited democracy. The Founders viewed legislatures as far better than kings at guarding liberty, but even so, legislatures themselves threatened liberty. And at least Madison, whose silhouette the Federalist Society has adopted as part of its emblem, saw further: he saw that where the people were sovereign, the majority of the people was the greatest threat to liberty. With modern public choice theory we see further still; minority factions of the people are threats to liberty if they are well-organized and their victims are not. Madison noted the possibility of minority factions, but did not realize that they could prevail in a republican government.³⁸

Second, Publius had a seemingly schizophrenic view of human nature. Sometimes he seemed to think of people as virtuous protectors of their own liberty, and sometimes he seemed to think of people as self-interested abusers of power. One reason it was possible to have schizophrenic thoughts about human nature is that the Founders had subdivided a single group of people into two different roles and were thus thinking of them in two entirely different ways. The general populace was at the same time the government and the governed.

The Founders were on the cusp of a great transition from royal to popular government. Their differing views of human nature were possible in part because they sometimes thought of government as *The People*, the ones to be protected, at last running their own government, and they sometimes thought of government as *The Government*, an alien force much like the Crown. They could not always keep in mind which threats to liberty carried over from royal to popular government, and in what form they carried over. Popular government is a great protection against some royal abuses—excessive taxation, for example—and very little protection against others—such as suppression of unpopular speakers. The jury protected against royal abuse of the majority's rights, and the jury figures promi-

38. See THE FEDERALIST No. 10, *supra* note 15, at 80 ("If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.").

nently in our Bill of Rights,³⁹ but juries are almost worthless for protecting political minorities against political majorities. An armed population is a great protection against royal abuse, but it is quite unlikely to protect against abusive popular government. A majority with the right to vote will rarely have need to take up arms against its government. Thus a right to bear arms⁴⁰ under popular government is more likely to empower criminals and political extremists than to protect the majority's liberty against unresponsive government.

Finally, the Founders' schizophrenia was facilitated by thinking about different levels of government in different ways. The Bill of Rights was directed against the federal government—a new entity, unfamiliar and threatening. The Federalists saw clearly the dangers of state governments, but had difficulty seeing the danger in the federal government. The Anti-Federalists saw the opposite. They could not see the threat to liberty in their familiar state governments, but they could see very clearly the dangers of the new federal government.⁴¹ Because of the Anti-Federalist's clarity of vision with respect to this outside threat, the Constitution was amended to add the Bill of Rights.

The Reconstruction Amendments⁴² had similar origins. It was then clear that at least some states—the southern states—were a great threat to liberty. The reason the northern states demanded individual liberty provisions that bound the states is that they were thinking about southern abuses. Once again, those who demanded constitutional protection for liberty did not see themselves or *their* state governments as the problem.

39. See Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1182-99 (1991).

40. U.S. CONST. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.").

41. See, e.g., Ralph Ketcham, *Introduction to THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES* 17 (Ralph Ketcham ed., 1986).

The anti-federalists . . . had . . . a republican vision they thought far closer to the purpose of the American Revolution than the political and commercial ambition of the federalists. The anti-federalists looked to the Classical idealization of the small, pastoral republic where virtuous, self-reliant citizens managed their own affairs and shunned the power and glory of empire.

. . . .

To the anti-federalists this meant retaining as much as possible the vitality of local government where rulers and ruled could see, know, and understand each other.

42. U.S. CONST. amends. XIII-XV (prohibiting slavery or involuntary servitude; denial of privileges or immunities, due process, or equal protection; and racial restrictions on voting rights).

If one compares the Founders' view of human nature when they discussed the level of government they trusted (or, in 1868, the region of the country they trusted) to their view of human nature when they discussed the level of government they distrusted (or region of the country they distrusted), their view of human nature may seem schizophrenic. But with respect to the levels of government and the regions of the country that the two generations of Founders distrusted, we receive a clear vision of the downside of human nature and the dangers of government abuse, even in representative governments. From these two episodes of clear vision with respect to the dangers of outside governments, we receive our central protections of individual liberty for all citizens, against all levels of government, and in all regions of the country.