

2012-01-01

Natural Rights and Equality: The Case of Injustice in the Senate

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NATURAL RIGHTS AND EQUALITY;
THE CASE OF INJUSTICE IN
THE SENATE

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Adrian Acosta

2012

Dedication

To my parents: Joaquin and Evangelina Acosta

“All is best though we oft’ doubt
What the unsearchable dispose
Of highest wisdom brings about,
And ever best found in the close.”

-John Milton

NATURAL RIGHTS AND EQUALITY;
THE CASE OF INJUSTICE IN
THE SENATE

by

ADRIAN ACOSTA, B.A and M.A

THESIS

Presented to the Faculty of the Graduate School of

The University of Texas at El Paso

in Partial Fulfillment

of the Requirements

for the Degree of

MASTER OF ARTS

Department of Political Science

THE UNIVERSITY OF TEXAS AT EL PASO

May 2012

Acknowledgements

To my brother, Robert Acosta, for showing me the meaning of strength. You have been my role model and inspiration throughout my whole life. I appreciate all that you have done for me.

To my nephews, Adrian and Andy, for inspiring me to be greater than I am. I know there are times when we do not agree, but I take pride in everything you boys do. Not just that but it is through both of you that I was able to see the world in a new light. Thank you.

To my Grandma Rivas, for demonstrating the meaning of perseverance. Grandma, you inspire me by your faith and strength. It is because of you that I know any hardship in my life can be overcome with dignity, grace, and class.

To my sister Veronica Carmona, for giving me the three biggest blessings anyone can ask for. I hope that I can be as good of a role model for them as you were for me. You are a strong woman, thank you for your love and support.

To my Goddaughter, take advantage of your youth and your blessings. I will be there every step of the way.

To my friends and cousins that have been there throughout the years and have supported me on my many ventures. You all have helped me find myself and more importantly gave me a much needed release from my school work. Most especially I would like to thank: Felix Valenzuela and Oscar Lara. Aristotle *Nicomachean Ethics* Book VIII.

Thank you Dr. Boehmer and Dr. Martin for being on my thesis committee. Your advice and leadership helped me improve my writing and to see things that I had not noticed before. I appreciate your guidance and patience.

Most importantly I would like to thank Dr. Webking, for being more than a mentor but also a friend. My four years of undergrad and my two years of graduate studies could not have been done without your support. You have shown me the true definition of being a teacher and a mentor. I hope that one day that I can do half as much for my students as you did for me. Thank you from leading me from the shadows on the wall and into the light. *Republic* Book VI.

Abstract

This thesis seeks to demonstrate that the Senate, as it is composed, goes against America's basic ideas of equality. First it examines the foundation of America's ideas of justice and natural rights. This is done by examining both Hobbes and Locke and how they helped influence America's ideals and, more specifically, how equality became a natural right. After that, it takes on whether or not these ideas are still valid to this very day. The thesis proceeds by examining the documents that helped form America and the system of government that got instituted after the second constitutional convention. Subsequently, it goes over the reasons why the Senate goes against the fundamental principles of the country. Contemporary court cases will then help shed light on how the Senate is viewed in the court system and how it is applied throughout the country. Finally, the thesis concludes that even though the Senate does go against America's ideas of justice but it was a necessary injustice for the vast majority of the country that had to be dealt with in order to have one nation. So in essence, even though the Senate is an unjust institution in our government, not having it the way that it is composed would have led to a greater injustice of not having a strong successful nation.

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Chapter I: What is the City but the People?¹

“We hold these truths to be self-evident that all men are created equal, they are endowed by their creator with certain inalienable rights which among them are life, liberty, and the pursuit of happiness,” Thomas Jefferson (1776).

Thomas Jefferson said these immortal words in 1776 while in the mist of the Revolutionary War which gave the world a “new birth of freedom.” The Declaration of Independence did not create a new government; it only abolished an old government. The main reason for the separation from the British Empire was about principles that the colonists believed in; principles that America still believes in up to this very day: the self-evident truth that people are created equal and that they should be allowed to pursue happiness effectively. The Declaration of Independence sets up the ideas to which our Constitution should adhere, because, after all, America should not abuse its power the way that England abused its power to the colonists. These ideas are reflected in different parts of the Constitution. Ideas of liberty are mirrored in the Bill of Rights: the right to remain silent, right to a speedy trial, and the right to a trial by jury. Freedom to pursue happiness is also reflected in the Bill of Rights: freedom of speech, freedom of religion, and freedom to bear arms. But the foundation behind each and every single one of these freedoms is the idea of equality: “the self-evident” truth.

The idea of equality has evolved throughout the different ages of America. Although it was not stated in the original constitution, it is clear that the Americans have believed in the equality of human beings since the conception of the country. The Fourteenth Amendment is perhaps the brightest example of equality in America today. This amendment grants that all men and women within the United States are given equal protection under the laws. The amendment

¹ See *Coriolanus*, by William Shakespeare. Act III, Scene 1, Line 99.

essentially recognizes that all adult citizens of the United States, are equal to each other in all aspects under the law. Equality in America is having equal representation and being able to have a say in the government. Equality is also reflected though when America goes to vote every year. It is during election time that the idea of “one man one vote” is reflected throughout the nation. Each person has the right to elect his or her own representatives in the legislature. No matter one’s wealth, ethnicity, or intelligence each person is allowed only one vote to elect a government official. So at the end of Election Day, each person has equal say in who should be representative in local, state, and national government.

However, there is one aspect of the national government that seems to go against the idea of equality and “one person, one vote.” In Congress, some people have more of a say in the national government than others. Although the House of Representatives divides its districts based on the population, the same cannot be said for the Senate. The Senate does not divide districts based on population evenly; it divides its districts based on the arbitrary lines of rivers, canyons, and even human construction. Everyone in California has the same number of Senators as the people in New Hampshire and Montana. This appears to go against the idea of “one person one vote” and equality because if one was to combine New Hampshire and Montana together they still would not have half the population of California, but they have twice as many Senators. Hence, the idea of perfect equality seems to be contradicted by how the Senate is apportioned in the United States.

The research question that is addressed is: does the institution of the Senate contradict some of the basic tenets of the United States? In order to answer this question a few more questions need to be proposed. First: where did Americans get their ideas of equality? Are these ideas of equality valid? Did the founders themselves believe in these ideas that were being

purported by the colonists? If they did believe in these ideas then why was the Constitution constructed to have a branch of government that goes against some of these basic ideas? Finally, is this justice?

The hypothesis of this thesis is that, the Senate does go against the fundamental ideas of justice that pronounced in the founding of America. It is through natural rights and natural law that the founders were able to get there ideas of justice and equality. The founders and the framers of the Constitution did believe that these ideas were good and valid. The reason for them constructing the Senate in the way that it is because they were trying to avoid an even greater injustice. The United States was only able to become the nation that it is today because the states were united and were one nation. If compromises were not made then, greater injustices would have been conceived, and America would not be what it is today.

To first determine what the founders of the country believed about Natural Rights we need to examine the originators of the ideas of Natural Rights. One needs to examine Hobbes and Locke and how they relate to the Declaration of Independence and the American regime. “What is government itself but the greatest of all reflections on human nature? If men were angels no government would be necessary” (Hamilton, Madison, and Jay 316). Men are not angels according to James Madison, but also according to another founding father, men “are endowed by their creator with certain unalienable natural rights that among these, are life, liberty, and the pursuit of happiness” (Jefferson 235). So if one is to put these two statements together then one can say that men are not angels yet they are perfectly free to pursue whatever it is that makes them happy. So in order to examine government, it is necessary to see the nature of man outside of government and how come government originated.

Since the State of Nature is what eventually leads to the creation of the first governments, it is necessary to look at the conflict that is caused in a place where there are no rules and society does not protect an individual-- a place that is pre-government. Hobbes and Locke deal with that conflict and label that place the State of Nature. Locke's view on the State of Nature is less dire than that of Hobbes, and this allows him to draw different conclusions about the type of government that is necessary to get a society out of the State of Nature. This difference, though, allows one to give more credit to Locke in the creation of American government: Locke's view on the State of Nature and his philosophy has been directly reflected in the American regime more so than Hobbes. It is through Locke that America has its foundations for Natural Rights and Natural Laws.

Thomas Hobbes was one of the originators of Natural Rights and America even got some of its ideas about Natural Rights from Hobbes. Thomas Hobbes' philosophy starts off with the idea that all that exists is matter. He is materialist in the purist form. Anything that is not matter is but a construct of human imagination. Hobbes says that "The cause of Sense, is the Externall Body, or Object, which presseth the organ proper to each Sense, either immediately, as in the Tast and Touch; or mediately, as in Seeing, Hearing, and Smelling." (Hobbes). Hobbes being a materialist is important to his political philosophy because he is breaking apart from the ancient school of political philosophy. Berns says Hobbes' goal is "to put moral and political philosophy, for the first time, on a scientific basis," (Berns 1987, 396). The ancient school of political philosophy had a belief in a higher good and thus based their governments around that idea. Most of these schools of thought revolved around an idea of moral philosophy. For example, St. Augustine built his civil government around Christianity. Fortin (1987) says, "Christianity had staked its claim to superiority on its ability to make men better and, in the eyes of nonbelievers, it

could be said to stand or fall by that claim,” (198). This moral claim did not seem to have a positive impact in Rome. Hobbes immediately parts from the claims of moral political philosophy and instead bases his idea of political philosophy on the idea that all that there is in this world is matter. If all that there is, is truly just matter, then it would seem to imply that discussions of justice and “natural laws” would be useless. However, Hobbes does reason that there is an idea of natural laws that exist even if there is no such thing as a highest good.

In Hobbes’ introduction to *The Leviathan* he discusses how government is like a human body: each part of the government is there to serve certain purposes to keep up its own well-being. Hobbes says, “The Magistrates... artificiall Joynts,” “reward and Punishment... are the nerves, that do the same in the Body Naturall” (Hobbes 1985, 1). It is through this analogy that Hobbes decides to describe the nature of government. Hobbes even explicates this example even more by saying that “all which qualities called Sensible, are in the object that causeth them, bus so many severall motions of the matter, by which it presseth our organs diversly” (1). “Motions of the matter” is the key to Hobbes’ philosophy, there is no morality, there is no justice, it is all just matter and motion. Anything that a human being cannot understand or imagine is caused by decaying sense.² Hobbes characterizes ideas such as God and a greater good as decaying sense. So if one was to create a government that was based on ideas of God and eternity then it would begin with an idea that is false. This could possibly lead to chaos in the government as time evolves.³ It is through this background that Hobbes is able to give the readers his political philosophy.

² Compare this idea to Plato’s discussion of the Divided Line, in Plato’s *Republic*. Things are but on the lower realm entity on the Divided Line. Ideas on the other hand are the most real according to Plato.

³ See the arguments against slavery in the Constitutional convention. See the arguments about starting off a nation with an idea of injustice.

In describing the life of a human body it is best to start at the beginning, at the conception of man. Hence this is where Hobbes begins his discussion of government, by describing a place that is pre-government: the State of Nature. Thomas Hobbes says that “the life of man [is], solitary, poore, nasty, brutish and short,” in the State of Nature (186). According to Hobbes, if one is in the State of Nature then one is in the state of war. In his own words he says, “During the time men live without a common Power to keep them all in awe they are in that condition which is called warre” (185). The reason for this is because Hobbes believes like Jefferson in the fact that men are equal. The idea of equality does not presuppose a higher idea of justice, in Hobbes’ political philosophy. Hence it does seem that ideas are also real to Hobbes, but it seems to take place because of logic and reason, and not intuition and feeling. It is just a fact-- it is the *condition of man* (Hobbes).

If there is equality but no greater good then it is up to man to decide what is “right” and “wrong.” Taking this idea one step further would conclude that no one is obliged to tell anybody how they should run their lives, especially since Hobbes states that there is no “Summum Bonum” (160). Justice in Hobbes’ view is just a matter of preference, and the right of nature allows one the right to anything. Furthermore, “the essential defect of the laws of nature, the dictates of reason, is that they bind men in their consciences only, and the actions and wills of men are determined not by conscience or reason but by fear of punishment and hopes of reward.” (Strauss 1987, 404). This is what causes conflict and the war of men amongst men commences; “From equality of ability, ariseth equality of hope in attaining of our ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies” (Hobbes 184). Reason alone is not sufficient for men to secure their safety against violent death. If it was so then government would be unnecessary. According to Hobbes, men

realize that what is necessary is the establishment of rules to help secure their natural rights. If one tries to respect the natural rights of other men, then this would more than likely lead to ones down fall because other men would not be obliged to do the same; “one who obeys such rules only puts himself at the mercy of those who do not obey,” (Berns, 404).

Men eventually realize that in the State of Nature men cannot achieve happiness and this leads them to create a contract. The contract is “a mutual limiting of rights” (Melchert, 370). Men create a sovereign because in limiting their rights they need someone to enforce the contract to make sure that the laws are not broken, because if the contract is broken it may devolve back to the State of Nature. Berns says, “Security requires first of all the cooperation of many men, a multitude large and powerful enough both to make the breaking of covenants and invasion of each other’s rights very dangerous, and to provide defense against foreign enemies.” (404). This is the creation of the Social Contract according to Hobbes. It is a mutual limiting of rights so that one can secure their liberties more effectively. The Social Contract is the creation of government, and thus it is what brings human beings out of the State of Nature and into a sovereign state. The Social Contract essentially has two parts: the first is that they will enter into a covenant with all the other people in the nation and acknowledge the rules governing each of them, and the second part is deciding who should be ruling (Berns).

Hobbes says though that when one gives up rights in the Social Contract to the sovereign they relinquish most rights and must do whatever it is that the sovereign says. This is something that goes against the foundation of America, because in the Declaration of Independence Jefferson states that all people have a right to revolution. Furthermore, if one is to take the implications of Hobbes to the fullest extent it would almost automatically mean that the Senate is just because it was based on consent and now the state has the ability to do whatever it wants.

Locke on the other hand takes a very different approach in describing his idea of the State of Nature, which is more analogous to that of the America. Locke like Hobbes and Jefferson, believes that the State of Nature is a state of equality “wherein all the power and jurisdiction is reciprocal, no one having more than another,” (Locke 116). Equality is self-evident in the State of Nature, which means that it is not something that is constructed; it is something that is natural and granted to all humans by nature. Thus the existence of Natural Rights does not depend on any type of ideology; it is based upon reason and philosophy. Locke says, “There being nothing more evident, than that creatures of the same species and rank promiscuously born to all the same advantages of nature and the use of the same faculties, should also be equal one amongst another without subordination or subjection” (116). All humans according to Locke are born into the State of Nature with the same advantages as everyone else, and no one appointed as a natural leader over everyone else in the state.

It is at this point where Hobbes and Locke part ways in terms of what can be done in the State of Nature. Locke says that the State of Nature is not a state of license to whatever one likes. Locke has more rules in the State of Nature than Thomas Hobbes. Hobbes says that as long as something makes one happy than they are free to pursue it while Locke believes that there are limits to one’s liberty. Locke says, “He has not liberty to destroy himself, or so much as any creature in his possession but where some nobler use, than its bare preservation calls for it,” (117). Furthermore, Locke believes that in the State of Nature it is possible to have property, while Hobbes feels that it is counterintuitive to have property in the State of Nature because this will make one a target. This illustrates once again how Locke’s State of Nature is less dire than that of Hobbes. One is not in as much danger as in Hobbes’ State of Nature.

So while Hobbes gives a human being perfect freedom in the State of Nature, Locke does not, and Locke says that people in the State of Nature can use reason to determine what can and cannot be done. Locke states that “when his own preservation comes not in competition ought he, as much as he can, to preserve the rest of mankind,” (117). This line of reasoning shows a major departure from Hobbes because men must try to preserve other human beings in Locke’s State of Nature. The State of Nature is actually distinct from the state of war in Locke’s view and there is a possibility of peace in the State of Nature. Locke is juxtaposed to Hobbes, who just believes men are solely controlled by appetites and aversions. Hobbes believes that the state of war and the State of Nature are the same place, while Locke believes that these do not necessarily go together.

As one analyzes Locke’s State of Nature one can see how the “inconveniences” in the State of Nature can lead to a state of conflict and the creation of government. As mentioned earlier Locke says that man can use reason to determine what can and cannot be done in the State of Nature but he does not really give many details. He says that men should be able to use reason in order to determine what should be done but that this is dangerous because of the fact that everyone is a judge in the State of Nature; “for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one, over another, what any may do in prosecution of that law, everyone must needs have a right to do,” (Locke, 118). Locke acknowledges that people will not be prudent judges in determining what should be done to someone that abuses others in the State of Nature, because the State of Nature allows one to be their own judge: “self love will make men partial to themselves” (Locke 121). This self-love is what leads to the state of war that is very much like Hobbes’ view of the State of Nature, because people are no longer judging by reason but by selfishness. Locke says that it is up to humans to punish those who

break the laws of nature and harm another human being. The ones who break the laws are the ones who create the inconveniences that lead to the formation of government. When one breaks the laws of reason and nature then it is harder to be secure in one's life and one's property. It is out of necessity that men are led out of the State of Nature and into the state of government and sovereignty.

Locke argues for a government that is based on the power of the people because he acknowledges that rulers are also their judges on what is right and wrong. If there is an absolute sovereignty then the ruler will take their power for granted and abuse it. Locke believes that the people create a contract amongst themselves in order to secure themselves against the abuses of one another as well as a sovereign. Melchert (2007) says that people agree to give up certain liberties as long as others do the same and also that the power thus lies in majority rule since it is a contract between the people (383). Like Hobbes, Locke believes that a Social Contract needs to be formed in order to secure rights more effectively. It is through the consent of the people who are participating in the Social Contract that humans are led out of the State of Nature; "the liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the common wealth, nor under the dominion of any will" (Locke 126). Locke emphasizes that society is made by contracts and that man is not obligated to obey the sovereign if no consent was ever established; "men being, as has been said by nature, all free, equal and independent, no one can be put out of this estate and subjected to the political power of another, without his own consent," (Locke, 126).⁴

Locke's strict belief that government is only able to have just powers by the consent of the governed is what helps lay some of the foundation for America. Hobbes believes that when a

⁴ See *Crito* in *Four Texts on Socrates* and Plato's discussion of the Laws and the different ways that man is able to establish consent. It is not necessary to give up their rights by being in the State of Nature and deciding which country they are going to be a part of. It is through actions.

human beings relinquishes one's liberty to the sovereign then one must obey all of the rules from there on out. Locke on the other hand believes that the people still should be able to strongly influence the government to which they consent. According to Locke after the people consent to be governed then the regulations of society should be based on majority rule; "for when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which only by the will and determination of the majority," (Locke 163). This means that the people still are able to have control of their government even after they have consented to be governed. So in order to secure better freedom, a man gives up all that is necessary so that they can be governed by the majority of a community. If a human consents to be governed by a community then these people are giving up their rights to the majority of that community. Majority rule can be a problem because it is possible for the majority to take away the unalienable rights of other citizens.

Since the majority is still involved on what the government can and cannot do, the people have the right to revolution. This is why Locke believes that there is a right to revolution because the people can see the government as no longer being fit to secure their rights. America broke away from Britain using this principle "whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it" (Jefferson, 235). Locke states though that since governmental power lies in the people, then it must be a representative government that has executive and legislative powers in order to be effective (Melchert). A representative government is exactly the form of government that was instituted in America after the Constitutional convention; this is another reflection of Locke's influence. This illustrates how Locke's influence is more of a foundation for America than Hobbes. It is through Locke that America gets ideas of natural laws and natural rights. Even though according to Melchert, Locke

says that the power of the people should lie in majority rule, Locke does acknowledge that once when men get out of the State of Nature by forming government they are giving up some of their natural rights; “but by consent were all equal, till by the same consent they set rulers over themselves. So that their politic societies all began from a voluntary union, and the mutual agreement of men freely acting in choice of their governors, and forms of government” (Locke, 166). This implies that by agreeing to be governed we are giving up some our natural rights to the government, yet we also have the right to revolution if the government does not secure our basic natural rights. Locke is in more congruence with the ideas of America than Hobbes, so it is through this base that the, one can examine foundations of America and the idea of natural rights.

Thus Locke and Hobbes both provide the foundation for the America. Their belief in Natural Rights and Equality helped establish the beliefs that were used in the founding. Locke more so than Hobbes helped establish the beliefs that Americans hold today, especially with the right to revolution and the justice of a Republican form of government.

Chapter II: The Conception a Nation

*“A nation conceived in liberty and dedicated to the proposition that all men are created equal”
Abraham Lincoln.*

To understand the principles of the nation it is necessary to go back to the conception of the country. It is necessary to even go back before the Constitution was formed and see where the Constitution got the principles of the American government. It is necessary to go back to the time of the Revolutionary War and the documents that have helped shape America into what it is today. According to Abraham Lincoln, America was founded “four scores and seven years” before he wrote the Gettysburg Address, which is eighty-seven years back to 1776 when the Declaration of Independence was signed. This chapter shall examine the Declaration of Independence and show the importance of equality and consent that is established when America broke away from Great Britain. Furthermore, it will show the long list of causes that impelled America to separate from Britain and the reasons why equality is such a big factor when America was first conceived.

One of the acts that started the Revolutionary War was an act that was about the lack of proper representation in Government. John Dickinson, under the alias of *A Farmer*, writes that “with a good deal of surprise I have observed that little notice has been taken of an act of parliament, as injurious in its principle to the liberties of these colonies, as the Stamp Act was: I mean the act for suspending the legislation of New York” (Dickinson 1999, 4). Although few people realized that the suspension of the New York Legislature was so injurious, Dickinson felt that this was a large injustice to the colonies. The reason why it was so abhorrent according to Dickinson is because “it is a parliamentary assertion of the supreme authority of the British legislature over these colonies, in the point of taxation” (6). This act makes the colonies inferior to the British Legislature and takes away their voice in government. In essence it is making the

colonies less than equal to the people of Britain, because the colonists do not have representation in the British Legislature. This may have been a small act by the British Legislature, but it is an act that would set precedent for future acts of injustice. Dickinson concludes his first letter by saying, “*Concordia res parvae crescent*, Small things grow great by concord” (7).

As time progressed Dickinson, was shown to be correct. Dickinson writes, “For the cautions with which power is distributed among the several orders, imply, that each has that share which is proper for the general welfare, and therefore any further acquisition must be pernicious” (69). Dickinson is saying that the colonists are not being given the proper power in legislating for themselves. Britain has been denying them their right. He even says that “government is founded on opinion,” (70) which illustrates that the people must be allowed to voice their opinion in government. Furthermore, Dickinson is more urgent in this letter because he feels that Great Britain is taking away their rights and that this can set a precedent that will produce unwelcome results. He is now saying that something must be done because this will be injurious to the colonies if the improper representation is allowed to persist “indeed nations, in general, are apt not to think until they feel; and therefore nations in general have lost their liberty; for as violations of the rights of the governed, are commonly not only specious, but small at the beginning, they spread over the multitude,” (71). His urgency is because he feels that these problems will grow and the people in the colonies will lose their freedom. The letters that were written by Dickinson were urging the colonists to pay attention to the unjust acts that the British Government were committing against the colonists’ rights. It is because these laws passed by the British Legislature were making Americans less than equal to the British citizens. The idea of *taxation without representation* directly conflicts with the principle of equality. *Taxation without representation* no longer allows people the principle of self-government. So even before the

Declaration of Independence was written, there were ideas of equality and proper representation that were central to the colonies. These ideas of equality set up the Revolutionary War, yet the Senate today seems to go against these ideas of equality.

The Declaration of Independence is not a document that created the United States it is merely a document that breaks away the thirteen colonies from the British. Jefferson begins the Declaration of Independence by saying, “When in the course of human events, it becomes necessary to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and Nature’s God entitle them,” (Jefferson 235). When Jefferson says to dissolve the political bands, he is talking about the how American’s will no longer be ruled under the same government that rules the British. This emphasizes how America is not creating a government at the moment of the Declaration of Independence, but it is merely separating itself from a government that the colonists felt was being abusing their rights.

The second part of the sentence further demonstrates the colonists’ belief in equality amongst the separate nations. Jefferson articulates this by saying that after a nation dissolves the political bands, from another nation then it assumes a separate and equal station among the earth; it is now like any other nation in the world. The statement establishes that once when America is no longer part of the British Empire and it is now under the laws of America. This is a two-way street; first it means that Americans are no longer obligated to follow British Law, but it also means that America is no longer under British protection. This in turn means that America is in the State of Nature in regard to all of the other countries. America is now vulnerable to other countries and it is even going to war with the British, so this is a dangerous situation for the colonists. Jefferson enforces the idea of equality of Americans and the rest of the nations in this

statement. So even though this document is bringing American's out of British rule and into the State of Nature, it does seem apparent that equality amongst nations and humans does exist in the State of Nature. Natural Equality is outside of the political spectrum and is something that is granted to by the Laws of Nature and Nature's God. The significance of this is that there are ideas that government and society presuppose. The ideas central to the declaration are very similar to the ideas purported in Hobbes and Locke. It even seems that equality between human beings does not require a higher being. This is a reinforcement of the ideas of the State of Nature that were set forth by Thomas Hobbes. This is more Hobbesian because Locke believes that the rights come from God and Jefferson does not go Locke's route. There is perfect equality amongst humans and a higher being is not a necessary component for equality. Furthermore, it even seems to suggest as Hobbes suggests, that a sovereignty is analogous to a human being because of the fact that there is equality and no rules to obey when there is no contract that is agreed upon. In the first paragraph of the Declaration of Independence, Jefferson separates American's from the British but establishes that there is equality amongst nations and human beings when there is no political bond that unites them.

The next paragraph is more important in establishing, what are the natural rights that Americans believe in and furthermore how they are applied once when a government is constructed. Jefferson says, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" (Jefferson 235). Not just does Jefferson emphasize equality in the first paragraph when he is separating the nation from the British, but Jefferson reiterates the idea again and even says that it is "self-evident." So not just does Jefferson say that human beings are by nature equal, he says that it does not even need to be

proved that men are equal. It almost even seems to imply that man's equality does not even need logic to prove it or it is even possible the logic is clear to anyone who understands the true meanings of the words.⁵ In 1776, this idea almost seems absurd. Slavery still existed, and in many parts of the world there were class divisions in many countries that implicitly meant that men were not equal to one another. However, Jefferson is able to show that it is self-evident that all men are created equal just by the fact that he uses men to mean everybody. By grouping all of mankind into one idea of man, he shows that men are equal to each other, and this is how come it is self-evident to him that men are created equal.

Jefferson's next part of the Declaration further shows how come government is necessary. He says that men have the right to life, liberty, and the pursuit of happiness and "that to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed" (Jefferson 235). This means that man has the right to do whatever they want as long as they are pursuing their goal of happiness. This is from Hobbes' view of the State of Nature, because it is unlimited freedom that makes government become necessary according to Hobbes. This is an important departure from Locke's view of the State of Nature. As mentioned previously, there are limitations to what one can do in the State of Nature and that is how come there is a possibility of peace in the State of Nature according to Locke. Jefferson and Hobbes, however, argues in the Declaration of Independence that government is set up because of man's unlimited freedom. Government becomes necessary because in order to secure rights better the rule of law needs to be set up.

However, Jefferson does not say which government is necessary in order to secure these rights effectively. To Jefferson initially, the form of the government does not matter, but through

⁵ In Latin, like in English, there are different words to mean man and women: *vir and femina* respectively. Latin, however, does have a word to denote all men into one grouping: *Homo/Hominem*. English lacks such a word and the closest is mankind/man.

more in depth reading Jefferson does show that he has a preference for a republican form of government-- a representative form of government. He only seems to care that there is consent in the formation of a new government and that the government secures rights. Once again this would seem to be more in line with the Hobbesian view of government and the State of Nature. Hobbes does not care about the type of government that is set up either he only believes that a government must be formed through a Social Contract. Hence, if the principles of America are only that one needs to consent to be governed and that the form of the government does not matter, it would seem to follow that Senate would be a just institution in the United States. Granted, Jefferson does show that human beings are equal, but as soon as a government is set up it would follow men are giving up their rights so that they can be protected more and be more secure.

Nevertheless, the waters become even murkier after Jefferson says that a government must be formed through consent. Jefferson continues, "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness" (Jefferson 235). As previously mentioned, Hobbes does not believe that the people can rebel against their government. He believes that as soon as the Social Contract is formed one must obey government. Locke on the other hand takes the stand that the people should still be involved in their government and that is why a representative form of government is ideal for men. It still keeps the same ideas of natural rights, equality, and consent by allowing men to be active participants in government. Jefferson says that the only two necessary conditions for having a just government are consent and securing rights (Jefferson). Yet once when a government no

longer secures rights, the people have a right to rebel against the government and create a government that is more likely to secure their rights and allow them to pursue happiness. One of the rights according to Jefferson is equality; men are equal to each other. So there is a difficulty in the fact that men are equal to each other but Jefferson does not say that he has a preference for a certain form of government yet. In his statements it would seem to be one that promotes equality, secures rights, and is created in consent. It would appear that only a government that allows for equality would be necessary for Jefferson because if not then the people have a right to rebel. Hence, this argument would be more in favor of the Senate being an unjust institution because it does go against American's ideas of equality. The Senate does not allow for an equal say in government per person. There seems to be two contradictory statements next to each other in the Declaration of Independence in what type of government produces justice. This is the debate that will be further explored throughout the rest of the paper.

In Jefferson's list of grievances more light is shed upon which type of government is best for the people. The list of grievances support that a representative government is a more just form of government than monarchy. Jefferson states that the king "has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended he has utterly neglected to attend to them" (Jefferson 236). Thus Jefferson is saying that one of the reasons that King George is not acting just is because he has suspended the legislatures in passing laws. He has ignored what the people want and that is part of the reason why America is rebelling against the king. This suggests that Jefferson wants some type of republican energy in the government to be responsive to the people. Subsequently, there appears to be more elements that are necessary for a just government.

Furthermore, Jefferson implies that the best type of government is one that has representation. Jefferson's next grievance is that the King "has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only" (Jefferson 236). Jefferson is saying that a government must allow for the people to have representation in their legislative branch. Hence, there is another fact that must be taken into account when forming a government. The people must be involved in the shaping of their government and the laws that are passed in the legislature. This idea is reiterated again when Jefferson lists another grievance, which is perhaps the grievance that is taught in the history books the most; "For imposing Taxes on us without our Consent," (Jefferson 236). Consequently, a just government must be able to impose taxes and laws through the consent of their citizens. The history books say that this is the idea of *taxation without* representation. This is important because it helps demonstrate how come the Senate is such a foggy institution in American politics. People in the larger states are not given as much representation as in the smaller states. There is not proper representation for taxation or any other laws for that matter. Some people are able to have more of a say in the national legislature than others. Even though a just government just needs to be able to secure rights and has the consent of the people, Jefferson's grievances go further and show that a just government also needs to be responsive to the people and give them their equal say in the legislature. Out of the twenty-seven grievances that are listed in the Declaration of Independence, twelve of them deal with a lack of representation and a lack of consent to be governed. This exemplifies how important it was for the colonists to have proper representation when they broke away from the British government.

In the very last letter that Jefferson ever wrote he explicates his feelings on equality and government. Jefferson in the letter reasons that slavery is an injustice to all mankind. It should be obvious that slavery is an injustice even because of the fact that All men are created equal. Jefferson says, “The signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government” (Jefferson 585). Here he says that it is ignorance and superstition that force humans to believe that slavery is good for people. Self-government should be necessary in any society that believes that men are created equal. Man should be able to act for themselves and secure their liberties for themselves and not be forced to obey someone else because of ignorance or a superstition. Jefferson proceeds, “All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God” (Jefferson 585). This statement is important for two reasons. First, Jefferson makes it apparent that there is no way to tell which man should rule over the earth. God or nature did not give anyone a natural way to tell which men should be rulers and which one’s should work for them. Secondly, it establishes that according to Jefferson, the rights of man include equality amongst one another; equality is a natural right. It is through science and enlightenment that most people can now see that men are created equal and that no one has the right to tell anyone what to do. Nature establishes that man should be entitled to self-government and how come slavery is unjust.⁶

One can try to make the argument that just because something is natural does not necessarily mean that it is just. This is true but according to Jefferson, the natural right and

⁶ Also compare these ideas to Aristotle’s *Politics* where he argues that for the times that slavery can be a just institution.

natural law of equality does equate with justice. In Jefferson's original rough draft of the Declaration of Independence he states in his grievances that the King "has waged cruel war against nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him" (Jefferson 239). Jefferson makes it apparent that even though the original colonies did have slavery, this was a violation of something "sacred." The reason why that slavery was a violation of something sacred was because it went against men's natural rights of liberty and to make their own choice. Hence this shows that even though there was slavery when the nation was formed, it is still apparent to the founders of the nation that slavery goes against the ideas that were set up when instituting America as one government.

The American founding was based on the premise of equality. Dickinson's letters helped articulate why the revolution was necessary. Jefferson took those points further and used them to break away from the British government. Jefferson's ideas of Natural Rights and natural law are grounded in both Hobbes and Locke. Jefferson takes more of a secular approach to Natural Rights like Hobbes does and this allows for human beings to be born with more freedom. However, Jefferson would agree with Lock on the type of government that is best for the nation – a republican government that is founded on the principles of equality.

Chapter III: The Balance of Security and Liberty

The Declaration of Independence establishes the ideas that America was founded on. It allows one to see America's ideas of natural rights and how come equality and liberty are so important in the nation. The ideas that are set forth in the Declaration of Independence are put into practice in the Constitution in the United State of America. As mentioned before, the Declaration of Independence only separates the United States from Great Britain, but the Constitution actually is what brings thirteen separate colonies together under one government. It is in the Constitution that America puts into practice the natural rights that Thomas Jefferson speaks of, and it is the system that holds America together as country to this very day. Hence, it would follow that equality between human beings would be instituted throughout every level of this document. But at least in one particular branch of government, this is not so, for the Senate goes against some of the basic ideas that helped set up the foundation for the country. So in this chapter, one examines the arguments that were made during the Constitutional convention and in the *Federalist Papers* about the structure of the Senate.

When creating the Constitution the founders found themselves in a peculiar predicament. They were in a situation where they had a chance to form a nation built upon justice while taking into account the tendency of human nature to act selfish. The spirit of the founders can be summed up in Hamilton's statement in *Federalist 1*, "It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force" (Hamilton, Madison, and Jay 33). So not just were the founders in a unique situation that allowed them to find a new nation, but they were

also aware of their place in history. They were trying to answer a question that up until that point had not yet been answered. They were trying to figure out whether or not men can really found a good government based on rational choice. Hamilton states that up until this point in history the question had not yet been answered. It was up to the founders to try and see if they could answer this question once and for all. This is how come the deliberations that went into deciding each political institution of the country was so important. It was so important that James Madison wrote what was said during the debates for the Constitution, and it is there that one will examine the arguments made for the setup of the Senate.

During the Constitutional convention, there was much argument about the setup of the Senate. Madison at the beginning of the summer knows that this will be the biggest problem for the convention; “The great difficulty lies in the affair of Representation; and if this could be adjusted, all other would be surmountable” (Madison 147). Madison knows that the smaller states are going to want to have an equal vote as they did in the Articles of Confederation, but he argues that they should want to be part of the larger nation. It is here when Madison right away addresses the problem that is going to be at hand: equal representation or proportional representation. If there is proportional representation then there should be no threat to the country, but if there is equal representation then there can be an immediate threat to the document that they are trying to create. “If they should be entitled to vote according to their proportions of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole” (148). Allowing a minority to wield power over the people could produce amazing injustices and force the nation to collapse upon itself. This is the problem that is at hand during the convention.

During the debates James Wilson asks an important question, which is what leads to an argument that is perpetuated throughout the whole summer. Wilson asks what are the legislatures going to be legislating for; are they going to be legislating for states or are they going to be legislating for men: “Can we forget for whom we are forming a Government? Is it for men, or for the imaginary beings called *States*? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that one third compose the greater number of states” (Madison, 221)? This is an important question because this gives one the framework for the government that is being set up. If the government is created for one people then the legislature should be designed so that the peoples’ voices are heard in the government.⁷ If it is designed for the states then it would be the states that would be more important in making this decision. This question sets up the question of whether or not states are going to be considered entities in the new country. In the *Notes of the Federal Convention* there are arguments both ways in favor of having a government that is instituted for states and a government that is instituted for people. But it is only arguments that deal with the Senate that say the government should be based on the states. Furthermore, it must be noted that the delegates were trying to form a stronger government because the Articles of Confederation had failed the states. *A league of friendship* was not sufficient to produce a strong government for states, so this is how come the Constitution was being constructed.

The reason why the Senate is so important is because the Senate has some powers that the members of the House of Representatives does not possess. Madison even says that the senators

⁷ Compare these ideas to what is found in Machiavelli’s *Discourses on Livy* Book I, Chapter 58, Paragraph 3. “I conclude, thus, against the common opinion that says that peoples, when they are princes, are varying mutable, and ungrateful as I affirm that these sins are not otherwise in them than in particular princes. Someone accusing peoples and princes together might be able to say the truth, but in expecting princes he would be deceived; for a people that commands and is well ordered will be stable, prudent and grateful no otherwise than a prince, or better than a prince, even one esteemed wise.” (Machiavelli, 1996, 117).

should be of a different character than the House of Representatives. Madison says that they are “requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages” (Hamilton, Madison, and Jay 376). Even though both the House and the Senate are legislative branches of the United States, the Senate is considered to be the stronger house in Congress. The Senate approves of Supreme Court nominations, the Senate can approve treaties, and most of all the Senate has the power to filibuster. These powers are all powers that the House of Representatives lacks. The ability to filibuster is a power that is designed to protect a minority of people, because if a law would go in place that would hurt the minority of people then the Senators can just perpetually talk and slow down the legislative process.

Even though, the government is going to be based on the people, there is a legitimate fear of majority opinion during the Constitutional Convention. Many of the delegates in the Constitutional convention believed that there needed to be a protection against majority rule; it is essential to have a power rested in the hands of the few to protect themselves from the power of the majority. This idea is not new, it even goes back to the ancient political philosophers. In Plato’s (1998) *Crito*, Socrates advises his friend not to pay attention to the will of the majority because their opinion is based on chance and does not have any bearing on what is justice.⁸ Even considerably recently, one can see how the will of the many has harmed the will of the few. Jim Crow Laws and the concentration camps set up for Japanese-Americans during World War II are examples of the dangers of the many. This illustrates why the majority should be checked by few. However what is new is the fact that the delegates are saying that it is the small states that are going to be harmed by the will of the big states. It is not an argument based on the will of majority factions but it is an argument based on the will of larger states against smaller states;

⁸ Compare this to the previous footnote on Machiavelli’s *Discourses on Livy*

“on another occasion, the large States were described by him as the Aristocratic States, ready to oppress the small. Now the Small are the House of Lords requiring a negative to defend them agst [sic] the more numerous commons,” (Madison, 223). Hence when the delegates make the argument that the will of the few needs to check the will of the many, they are not making it in the form of people and ideas but on what is the will of the states.

The colonists were trying to break away from the British system. Specifically they were trying to tear themselves away from the Lords and royalty which disconnected the people from self-government. However, they did believe that the check that the House of Lords provided for the House of Commons was good; “is it not the case in the British Constitution of which so many gentleman united in applauding? Have not the House of Lords, who form so small a proportion of the nation a negative on the laws, as a necessary defence of their peculiar rights agst [sic] the encroachmts [sic] of the Commons” (Madison 223). This check allowed for the minority to be protected against mob rule. The House of Commons and the House of Lords would create a monetary check on both houses of government and thus any laws that would have been created would have had both interests in favor of such a proposal. The problem with this, though, was that Great Britain had an aristocracy set up within their institution of government. In order for the colonists to have something that was similar, it would have been necessary to create some type of aristocratic class and then base their government off of that. They felt that the large states would oppress the small states. Accordingly, this illustrates how when the delegates were discussing how to build the institution of the Senate, some delegates like Patterson and even Benjamin Franklin were focused on the Constitution being constructed for the states rather than the Constitution being constructed for the people. Mr. Wilson himself felt that having a government constructed based on the principle of the states would not be an injustice to the

government; “he though the States necessary and valuable parts of a good system,” (Madison 222).

But it is also illustrated that the arguments that are in favor of states’ rights are points of view that are based upon selfishness and not necessarily justice. Granted, these delegates were representatives of small states and they were coming from the Articles of Confederation that gave each state an equal vote throughout the whole government. Mr. Bedford says that the only ideas that the delegates have looked at have been the delegates prospects and not necessarily justice and what leads them to become a better nation. Madison quotes him as saying, “They think no doubt that they have right on their side but interest had blinded their eyes,” (Madison 229). He then goes on to point out some of the states and delegates that do not seem to be acting in the best interest of justice. Furthermore he brings up on how having an injustice in the system can lead to a nations down fall. Bedford says, “Will it be said that an inequality of power will not result from an inequality of votes. Given the opportunity, and ambition will not fail to abuse it,” (229).

Madison expresses concern for the fact that there is a dichotomy between virtue and safety. He says, “If the small States really wish for a Government armed with powers necessary to secure their liberties, and to enforce obedience on the larger members as well as on themselves he could not help thinking them extremely mistaken in their means. He reminded them of the consequences of laying the existing confederation on improper principles” (Madison, 293). Thus Madison is showing that if the small states want to be protected properly then they should not force the larger states to acquiesce to their requests. Furthermore, Madison also “conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States, and the minority of the people of the U.S. or do displeasing these by

justly gratifying the larger States and the majority of the people” (Madison 239). Madison then goes on to argue that if they have justice plus the majority of the people on the Constitution’s side, then there should be nothing to fear but by having those two things against the Constitution would bring about many problems. He says that the Constitution needs to bear the test of time, and by having the majority of the people against it plus injustice with equal representation then this document probably would not last. Moreover, Madison had confidence that the smaller states would eventually consent to their side; “if the principal States comprehending a majority should concur in a just and judicious plan, he had the firmest hopes, that all the other States would by degrees accede to it” (Madison 240). Madison had the confidence that justice and the majority would win out in constructing the Constitution.

Hamilton shows the absurdity of claiming that there should be equal representation for the states. First he illustrates that states are nothing but a group of men together. It is a whole number of men that make up the states. And that by someone claiming the principle that one should hold on to the states rights over that of men they are being “preposterous or absurd than to sacrifice the former to the latter” (Madison 215). States’ rights are the rights of the people because it is the people who make up the states. Hamilton rhetorically asks a couple of questions, “Will the men composing the small States be less free than those composing the larger... but will the people of Del: *be less free*, if each citizen has an equal vote with each citizen of Pennsylvania” (Madison 215). So Hamilton shows that America should form its government based on proportional representation because it does not make people less free and it keeps the idea of equality between human beings.

There is a strong possibility of there being turmoil if there is improper representation in the Senate. As said, this is an inherent injustice according to Madison and it should be avoided.

Besides the small states are not making an argument based on justice but based on selfish interests. So an injustice can easily lead to abuses because if given the opportunity people will try their best to abuse power because people are inherently selfish. Madison even lists the problems that can come with having equal representation of the states “the minority could negative the will of the majority of the people. 2. They could extort to measures by making them a condition of their assent to other necessary means. 3. They could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate” (Madison). He goes on and continues to show ways that the minority can abuse the majority. And as history has shown anytime people are given the power they are likely to abuse it, so this must be avoided. Madison even articulates the problems of a minority abusing the majority in *Federalist 10*. Madison says, “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” (Hamilton, Madison, and Jay 80). Madison in *Federalist 10* wants to make sure that it is impossible for a minority faction to control government but by having equal representation it is making it possible that a minority faction can control the government.

This train of thought is further reflected when one reads other *Federalist Papers*. The Federalists do not look optimistically upon human nature and they take their view of human nature from modern political philosophy. Machiavelli was one of the very first to point out that government’s job should not be the perfecting of human beings in the political community; “for a man who wants to make a profession of good in all regards must come to ruin among so many who are not good” (Machiavelli, 61). Machiavelli tells the prince to accept that human nature is not what the ancients imagined it to be. The federalists heed his advice throughout many different passages in *The Federalist Papers*. When the *anti-federalists* were arguing that the

United States could be at peace if it were thirteen different colonies semi-united in a confederation rather than one unified nation, Hamilton responds by saying, “to presume a want of motives for such contests, as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious” (Hamilton 26). Men are ambitious in that they will stop at nothing to get something that they want. Men are vindictive and cannot be trusted. People are avaricious and are not willing to make sacrifices for the common good. So it is necessary to form a government that is based on the principles of modern philosophy.

This is one of the reasons that there are two chambers in the legislative branch of government in the first place. The government that is created has inner checks in order to make sure that people with great ambition and who desire power will not be able to abuse that power if they come to be elected. Madison discusses these checks in *Federalist 51*. Madison agrees with Machiavelli and modern political philosophy when he takes human nature into account: “if men were angels, no government would be necessary. If angels were to govern neither external nor external controls on government would be necessary” (316). Madison believes that a government needs to control the people and after that a government needs to be able to “control itself” (316). Machiavelli would in essence say that a government should just eliminate anyone who may pose a threat to the perpetuation of the institution, but Madison’s system of checks and balances does not make that necessary. Madison believes that the government that he created allows sufficient checks to make sure that no one gains too much power in order to pose a threat to the nation. “Ambition must be made to counteract ambition. The interest of the man must be connected with the Constitutional rights of the place” (316). According to Madison, the strongest branch of government is the legislative branch, and he deals with this power by dividing it into two separate parts. “In republican government, the legislative authority necessarily predominates.

The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit” (Hamilton et. al 316). This is the reason why it is necessary to have two houses in the legislative branch of government. It allows the legislatures to think differently and to act differently but still represent the same people. As previously mentioned, senators are seen to have a different character than the representatives, and this will allow them to check that first branch of government. Madison believes that the different tenures and modes of elections would allow the legislatures to think about issues in a different light; hence “the different governments will control each other; at the same time that each will be controuled by itself” (317). Madison and the framers use ambition as a positive. The separate duties of government make sure that anyone who wants to be in government will be forced to compete and even compromise with other people. A single interest that goes against the community would be extremely difficult to form in the political community. Also by having the Senate, there is a higher likelihood that the passions of the people will be checked. That is why the Senate was formed: to protect against the fervor of the people.

The necessity of having a check on the government was also discussed during the Constitutional Convention. Governor Morris felt that it was necessary to have the 2nd chamber of the legislative branch to be able to check the 1st branch. He says that the qualities that are necessary to check the legislative branch are abilities and virtue. But he says that even more is necessary, “the checking branch must have a personal interest in checking the other branch, one interest must be opposed to another interest. Vies as they exist must be turned agst each other. It must have a great personal property; it must have the aristocratic spirit; it must love to lord it

thro' pride, pride is indeed the great principle that actuates both the rich and the poor" (Madison 233). During this part of the Constitutional Convention Morris says that the two chambers must have a different type of interest so that they can have the incentive to make sure that the other branch does not control the people. Pinkney on the other hand believed that more powers should be given to the states and the representation of the states. But also he believed that the states should be able to take care of their own property. Madison says that Pinkney "wished to have a good National Government and at the same time to leave a considerable share of power in the States... He differed from gentlemen who thought that a choice by the people would be a better guard against bad measures, than by the Legislatures" (Madison, 78). However, it can be possible by having one branch that is based on state interests and another branch based on the people's interests then these two chambers can check each other appropriately. They do this by approaching legislation from a different perspective. The leaders will do what is necessary to get elected and therefore depending on different groups of people will allow them to make different decisions. It is necessary for the Senators to have a different mindset than the Representatives.

The problem that is brought up, though, is that so far, the government has been basing itself on principles and ideas of justice. However, this suggestion would seem to go against these principles and ideas, so maybe they were not just trying to build a government that was based on broad principles of justice, but rather they were trying to build a government that worked even if it went against these principles. The question that was asked at the beginning of the *Federalist Papers* was whether or not man can create good government through reflection and choice, so are broad principles of justice and equality necessary to form a *good government*, or is it just necessary to have a government that is created in consent and that is perpetuated throughout the years. It is important to emphasize this distinction because Madison believes that the government

would fail the people if they build a government institution that is not cohesive with their ideas of justice. Madison and some of the other delegates think that the government would be destroyed and essentially leave the people in chaos.

Finally, Morris' last suggestion is that it would be necessary to have a good check on the legislative branch was to make sure that the second part of the legislative branch is independent from the first branch; "the aristocratic body, should be as independent and as firm as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate" (Madison 233). Hence, Morris does want this branch to be independent of the people because he does not want the same passions controlling this body as he it does the other body of the legislative branch. However, Morris characterizes the Senate as being an aristocratic branch of government, but the other delegates would not agree. As Madison previously mentioned, this branch of government is one that is more distinguished and is guided more by reasons than by passion; this is more of the general consensus. These senators would have more of a distinguished character to them. Even Morris does not necessarily believe that the monetary interest should have so much force in the government, because it could end up dominating the whole government. "The Rich will take advantage of their passions and make these the instruments for oppressing them. The Result of the Contest will be a violent aristocracy, or a more violent despotism" (Madison, 235). The Senators are still just representatives of all the people but yet can still have a different way of perceiving issues. The Senators can think prudently and act in the best interest of the country or even act in long term interests because of the advantages that they have through their tenure.

The passions of the people as already addressed are not looked upon with much confidence. Even in the *Federalist Papers* Publius says, "Had every Athenian citizen been

a Socrates, every Athenian assembly would still have been a mob” (Hamilton, Madison, and Jay). Thus it would appear maybe they do want some type of independence from the passions of the people. In the State of Nature, there is equality but it is ruled by the passions and wants of individuals and it was necessary to break away from it. So this is why they have a guard against these passions. As Martin Diamond puts it in *The History of Political Philosophy*; “to create some representatives who will resist the wrong desires of the people to which other representatives are supinely yielding or which they are demagogically arousing” (Diamond 671).

A system that is set up for the states would tear apart the government. Even though there are many delegates who are defending the states, there are few delegates that really argue for the states. As it is, the Articles of Confederation had already failed the United States of America. Shay’s Rebellion proved that the Confederacy was too weak. There are many problems that arise when creating a political community. In the *Federalist Papers* Hamilton has to argue against having a confederate system. Martin argues for state sovereignty, but that is because he is worried about the consequences of taking away the state government for the citizens. Martin believes “that to resort to the Citizens at large for their sanction to a new government will be throwing them back to the State of Nature: that the dissolution of the State Governments is involved in the nature of the process” (Madison 202). Also Martin believes that it helps lead to the happiness of the people who reside in the states; “that an equal vote in each State was essential to the federal idea, and was founded in justice and freedom, not merely in policy” (202). Thus state sovereignty does help contribute to the happiness of the people within the United States. Even Hamilton somewhat agrees that it contributes to the happiness of the people “He admitted that common residence within the same State would produce a certain degree of attachment and that this principle might have a certain influence in public affairs... however that

this might by some precautions be in a great measure excluded: and that no material inconvenience could result from it” (Madison 216). Hamilton does agree that the people have an attachment to their state but that not giving them an equal vote would not produce any harm.

Hamilton argues against state sovereignty by saying that by the anti-federalists wanting state sovereignty they are allowing for more problems to exist because of the fact that people in differing nations tend to be enemies. Hamilton says, “The causes of hostility among the nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society: Of this description are the love of power or the desire of preeminence and dominion -- the jealousy of power, or the desire of equality” (Hamilton et. al. 26). According to Publius, the people with these selfish passions hurt the political community. Kings do not think about what is best for their kingdom but think of what is best for their reputation. The acceptance of selfish motives is a move away from the ancient political thought because undying devotion to the public good is a necessary condition for the just city to exist in Plato’s *Republic*. According to Harvey Mansfield’s analysis on the *Discourses on Livy*, “the implication is that devotion to the common good is like to devotion to one’s father... Such devotion falls short at disrespect for either difference or similarity” (Mansfield 410). Human beings cannot be trusted to do what is best for the political community even if the human being is the ruler himself: “the favourites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquility to personal advantage, or personal gratification” (Hamilton 26). So the insistence of having a confederate system of government would not work according to the writers of the *Federalist Papers* because men are selfish; and since there would be so many states this multiplies the risk of there being a conflict between two states or even other countries.

Hamilton even makes these points during the convention: “Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels” (Madison 216). By having a confederate system it makes it more likely for there to be war between the colonies and even Europe; it is important to be united as one nation under one system of government. It is even more beneficial for the small states to be part of the larger nation. Madison says that there will either be a whole nation or thirteen separate nations; “in the first case the smaller States would have everything to fear from the larger. In the last they would have nothing to fear” (Madison 207). Hence it should be important for the smaller states to try to find a system where they are incorporated with the larger states and part of a nation.

Furthermore, it was also agreed upon that the big states needed the small states as much as the small states needed the big states. They could not just form separate governments. Madison summarizes Mr. Randolph’s words by saying, “He was far from thinking the large states could subsist of themselves any more than the small; an avulsion would involve the whole in ruin, and he was determined to pursue such a scheme of Government as would secure us agst such a calamity” (Madison 236). Hence, all of the states needed each other, and it was necessary for each part of the nation to be together. This again shows that even though America had some broad principles in terms of what is justice and equality, it may have been necessary to go against those principles for the nation.

There is only one argument that large states have a similar interest amongst its people. Mr. Bedford says, “The three large States have a common interest to bring them together in commerce” (Madison 229). Bedford illustrates that there can be a united interests between people in large states versus people in small states. There is a monetary interests of the people

that will unite them against the large states. However, Bedford goes further and still shows how come this a more of a state argument than an argument that is based on the ideas of the people. “But whether a combination as we suppose, or a competition as others suppose, shall take place among them, in either case, the smaller States must be ruined” (Madison 229). This depicts once again that this is more of an argument made based on states’ rights than people’s rights he is not talking about the people within the district but the states themselves. Bedford even goes further and shows how an argument for equal representation in the Senate is actually an argument for confederacy rather than a nation. He argues, “the little states are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation... It was a natural consequence; which ought to be avoided by enlarging the federal powers not annihilating the federal system” (Madison 230). So first the compromise that the small states are calling for is seen more as a system that supports a confederate constitution. By having a body that is based on states it is making the government a confederate system rather than a nation. Secondly, Bedford says that the convention was formed to create a strong federal government a government that is for the people of the United States and not a government that is for the states. In saying that the convention is building a federal government, Bedford is saying that they are building one for the people and not the states. The government that is being created is going to represent all of the people in the United States. Even though Bedford does show how the people in the large states can agree on certain issues he perhaps gives the most ammunition in showing that the government should be built on the people of the United States. And in doing so he makes that argument that the government should be based on equality between the people and not the states. Thus the government that was being formed was a government that was for the people of the

United States of America and not a government that was formed for the states within the United States of America.

Benjamin Franklin says that if both houses are structured by proportional representation then the small states would be forced to abide by the will of the large states. He says that if everyone is considered equal then this would be a danger to all of small states; “The diversity of opinions turns to two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both and makes a good joint. In like manner here both sides must part with some of their demands in order that they may join in the same accommodating position” (Madison, 227). This is an argument that is in favor of the United States Senate being set up for the states and not for the people. Of course, Franklin seems to be on the side favoring compromise, but in this case he is showing that the Senate must be in favor of the states because we already have one house that is favor of the people. Franklin is saying that one house of Congress should be in favor of state representation, which is still an idea that goes against equality of human beings and the perception of justice and natural rights. Other delegates say that the House of Representatives already gives justice for the people. The House of Representatives already gives equality to the people so they do not have to be taken into account when constructing the Senate. So since human rights are already being taken care of, then it would be just to take into account states’ rights in this second house of the legislative branch. Madison even says this in the *Federalist Papers*, “In this spirit it may be remarked that the equal vote allowed to Each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States an instrument for preserving that residuary sovereignty”

(Hamilton, Madison, and Jay 378). So this is an admission by Madison that the Senate itself is a way to let the states keep some of their sovereignty.

Madison says that having a house that is not proportional representation for the people would be a fundamental injustice in the creation of the new nation. A nation that is built upon a fundamental injustice would lead to the nation's downfall. So Madison, who is considered the father of America's constitution, was not in favor of having the states have an equal say in the government. He felt that the government that was being created was a government for the people of the United States. This was not a government that was created for the states. It was not a league of nations or a league of friendship. The government was going to be a government that oversaw all of the people that lived within the United States of America. Furthermore, the United States had already just rebelled against a country because there was unequal representation (Madison). Mr. Dayton says, "It should have been shewn that the evils we have experienced have proceeded from the equality now objected to" (Madison 228). So if they rebelled because of unequal representation no less than two decades prior, then it would seem that this new country would not last. There would be a perpetual injustice looming as long as there is this set up to the country (Madison). Furthermore, other delegates felt the same way that Madison did. Mr. King also agrees that building the Senate on the idea of States rights is a fundamental injustice and will undercut the very fabric that helped build America. According to Madison, King had many objections about the "phantom of state sovereignty"; "he could not therefore but repeat his amazement that when a just govern [sic] founded on a fair representation of the people of America was within our reach, we should renounce the blessing, from an attachment to the ideal and importance of States: that should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than to sit down under a Govt [sic] founded on a vicious

principle of representation, and which must be as short lived as it would be unjust,” (Madison 228). Hence, Mr. King is articulating the problems and the injustice of the Senate perfectly. There is a nation that is founded on the ideas of the equality of human beings and individual sovereignty but by constructing a Senate based on entities that are not even considered to be “real” and taking away equality from the people, the United States is violating its own principles. So in violating their own principles of justice then the country will be short lived, because there would be a glaring weakness in the armor of the Constitution.

The larger states with higher populations oversee the majority of the people who live in the country (Madison). However, the hidden implication in this logic is that people are going to be divided on issues that deal with the size of one state. Madison argues “that the States were divided into different interests not by their difference of size” (Madison, 224). Thus Madison is showing that the states are not going to have a divided interest because of how big one state but they are going to have divided interests based on the certain interests of the people in different parts of the country. One can even use a modern day example to see how this logic follows through. If someone was to make an argument saying that the states should not have equal votes because of the divided interests in the size of a state, it would be equivalent to saying that California is going to have the same interests of Texas. These are two of the largest states in the nation and it is their large size which makes their legislatures decide which bills should be approved or not. This is not so, however, California and Texas do not have the same voting record and as a whole do not elect the same type of people into Congress. California is considered to be one of the most liberal states in the nation and Texas is considered to be one of the most conservative states. There are other factors that make people elect representatives that

deal nothing with the size. So if someone is trying to protect the minority interests of people, dividing the Senate and the house based on the size of a state would not accomplish much.

Madison emphasizes that the states have distinct interests from each other and that they should not be worried about the size of the state being an interest that controls the national government. Madison rhetorically asks, “Did any such common interest exist? In point of situation they could not have been more effectually separated from each other by the most jealous citizen of the most jealous state. In point of manners, Religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other state” (Madison 206). These large states did not have much in common with each other at all. Madison argues that there are no real interests that connect them. Madison saw that the main interests that people would be divided on was not on how big a state is but on what are the important issues that the country is dealing with at any point in time. During the convention, that issue was slavery. Madison says that the issues that is going to divide the country is going to be slavery: “but by other circumstances; the most material of which resulted partly from climate, but principally from effects of their having or not having slaves” (Madison 225). In essence, Madison predicted that the issue that was going to divide the country dealt with slavery and not size of the states. Madison saw that there was going to be a division between the Northern States and the Southern States, not on the big states and the small states. This is interesting though because of the fact that slavery did exist in the Northern States even though it was declining there. Madison felt that the division between the country was so big that it would probably be best to have one house of Congress proportioned in favor of free states and another house proportioned in favor of slave states; “The one which had occurred was that instead of proportioning the votes of the States in both branches, to their respective numbers of

inhabitants computing the slaves in the ratio of 5 to 3, they should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole no [sic] counting the slaves as if free” (Madison 225). This argument illustrates that Madison wants to legislate based on people in the country and not on states. He is taking people’s interests and is saying that, that is what is more important. The people’s interests of slave states vs. free states is more important than the states interests of big states vs. small states. This is important though because Madison wants a system of government that is not built upon any fundamental injustices. Yet it is almost agreed upon that slavery is a fundamental injustice. So by Madison making the suggestion that America should create an institution that is proportioned based on slavery, it would also contradict what he says about making the Senate in favor of equal representation. Either way if one was to accept what Madison wanted or what was eventually agreed upon, the nation would have been built upon a fundamental injustice. Even though there the states were making a government that was for the people of the United States of America, proportional representation did not win out.

Although it is clear that the United States was forming a government that was for the people rather than a confederacy that was for the states of the nation, the Senate was not able to have proportional representation. America, where in the conception of the country it was believed that it was *self-evident* that all men were created equal, America had to put those ideas aside for the idea of the nation. Compromise was necessary, overall just trumps the narrow idea of equality. There was a bigger idea of justice at hand when the nation was created. The necessity for compromise was discussed on both the *Federalist Papers* and the *Notes in the Federal Convention*. Mr. Gerry said, “an accommodation must take place,” (Madison 291). But perhaps Mr. Wilson puts it the best after Madison says that the interests that will divide the

nation are slavery and it will divide it between the North and South. Mr. Wilson says, “If equality in the 2nd branch was an error that time would correct, he should be less anxious to exclude it being sensible that perfection was unattainable in any plan” (295). Granted Wilson goes on to say that there would be lots of injustice and there would be a perpetual error by having the states have an equal vote but he does come back around at the end of his argument. At the end Madison explains that Wilson more than anything else “was anxious for uniting all the States under one Government. He knew there were some respectable men who preferred three confederacies, united by offensive and defensive alliances” (Madison 296). However, the end of Wilson’s speech seems to go back around that the country could not have “bad first principles” (296). Wilson is conflicted on what is more important to him, whether it is the idea of the nation or whether it is the justice that lies in having an equal proportion.

The compromise was necessary as Madison says in the *Federalist Papers*. In *Federalist* 62 Madison notes the necessity of compromise when forming the nation. He gives this as the reason that the nation ended up with having equal representation per state in one chamber and proportional representation in another chamber of Congress. Madison says, “It is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but ‘of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable.’” (Hamilton, Madison, and Jay 377). Hence, Madison says the Senate is not something that is based upon the ideas and principles that America has it is a result of compromise by the states and the rest of the people in the United States. The delegates had to put aside their theoretical beliefs about justice. It is something that was necessary in order to have one nation rather than two or three different nations: “A common government, with powers equal to its objects, is called for by voice, and

still more loudly by the political situation of America” (377). He explicitly says that America is going by different principles with the formation of the Senate, but it is because America is trying to form one government over all the people who reside in the nation. In order to do that, some of the people who believed in the equality of people and proportional representation had to concede something in order to get one nation. The formation of America was hence about compromise more than anything else. It was about having one nation over all of the states. It was about going away from the confederate system and forming a federal system for all the people who reside in the United States of America. Justice and the pursuit of happiness trumps mechanical equality. These ideas were stronger to the formation of the United States.

Chapter IV: The Perpetuation of Political Institutions

Natural Rights and equality are not just arguments that were used in the past and that are no longer applicable to modern scholarship. Today there are still debates about whether or not Natural Rights exist and if human beings are indeed endowed with rights that cannot be infringed upon. So if Natural Rights and equality are still relevant today, then it would seem that a government that was formed based on these ideas would not last if it went against some of its basic principles in their government institutions. This is the basic fear that Madison had during the convention. However, America has lasted over two and a quarter centuries and the one time that it did fall apart, from 1861-65, was an argument based on natural rights but it was not about the inequality of the Senate. How are natural rights argued for today? Does the Senate truly go against the ideas of equal protection under the laws of the United States? Why has America been able to last regardless of the fact that it goes against the idea of equality in one of its institutions? Despite the fact Americans have believed in the idea of equality and Natural Rights since the conception of the country, the Senate still continues to be an injustice in the American regime, but Americans have been able to fall back on the idea of the nation and the perpetuation of political institutions to keep the country going and moving forward.

One of the arguments against the existence of natural rights is that if these rights are natural then they should not vary from place to place and that they should actually be intuitive to human beings. Some believe that in order for natural rights to exist there needs to be a perpetual idea of justice. Leo Strauss acknowledges this argument when he says, “Natural right claims to be a right that is discernible by human reason and is universally acknowledged; but history (including anthropology) teaches us that no such right exist; instead of the supposed uniformity we find an indefinite variety of notions of right or justice” (Strauss, 9). So according to Strauss

many people do not believe that Natural Rights exist because of all of the different notions of justice that human beings have had throughout the history of nations. If Natural Rights are natural, then the assumption is that they are easily discoverable and that all nations should acknowledge them as true. Nazi Germany's idea of justice is vastly different from America's idea of justice. Even, the basic natural right of life was taken away from many people in Germany during World War II. Granted, the natural right of liberty was also abused by Americans multiple times: slavery, and World War II. This argument is one that has lasted for awhile according to Strauss; "this argument has shown an amazing vitality throughout the ages" (Strauss 97). The problem with the argument though is that the assumptions that lie behind it do not necessitate what they are trying to prove, "They merely seem to prove that different societies have different notions of justice or of the principles of justice" (Strauss 97).

Strauss argues that Natural Rights are not intuitive; "Natural right had to be discovered, and there was political life prior to this discovery" (Strauss, 81). Strauss believes that nature itself had to be discovered through the work of philosophy. If there is no philosophy then there are no natural rights. This does not mean that philosophy is sufficient to produce natural right but that philosophy is a necessary condition for a country to acknowledge natural rights.

Natural Rights do exist in the modern world but it is not a given, obvious, or even agreed to, although Jefferson says that it is "self-evident." Leo Strauss makes quite a profound argument in *Natural Rights and History* when he makes an argument in favor of natural rights. He says that in order to understand natural rights one must first understand how we gain knowledge. Strauss argues, "Natural Right had to be discovered, and there was political life prior to that discovery" (Strauss, 81). This means that if one believes that there are natural rights they had to be discovered by political life. This does not mean that political life is sufficient to produce natural

rights but that the belief in natural rights is sufficient to know that one is living in a political framework. Strauss reasons accordingly, that if there are natural rights then there are some divine codes that all men must follow somehow. But the only way people could know about the divine codes is by practicing philosophy; “Philosophy is distinguished from myth came into being when nature was discovered, or the first philosopher was the first man who discovered nature” (Strauss 82). According to Strauss, law must exist in order for one to be philosophical because philosophy allows an individual to doubt authority and to question the beliefs of the community. Strauss says, “Philosophy cannot emerge... if authority as such is not doubted or as long as at least any general statement of any being whatsoever is accepted as trust” (Strauss, 84). Therefore, this shows how political society can exist without philosophy, but philosophy cannot exist without a political society.

If philosophy is a necessary condition for knowing about Natural Rights, then it is at least partially through philosophy that one is able to understand Natural Rights. Strauss goes on to say that the discovery of Natural Rights was only possible by stepping outside of *the cave*; “it was demanded that the superhuman origin of all alleged superhuman information must be proved by examination in the light, nor, for example, of traditional criteria used for distinguishing between true and false oracles,” (Strauss, 88). This means that Natural Rights had to be discovered separate from the commons’ conventional wisdom. This idea has been discussed in many different eras of philosophy, the commons do not always know what is good and just. In *Crito* Socrates advises Crito not to follow public opinion because the commons knowledge is just based on random chance (Plato 1998). Garrett Hardin says, that “Individuals locked into the logic of the commons are free only to bring on universal ruin (Hardin, 56). Conventionalism

does not know what is best for society nor does it know ideas of higher justice and natural rights. So this helps account for how come there are differing meanings of justice.

One of the first cases to make a ruling showing the injustice of the Senate was *Gray vs. Sanders*. In this court case the citizens were suing Georgia because of their county unit system; “Georgia's county-unit system as a basis for counting votes in a Democratic primary election for the nomination of a United States Senator and statewide officers,” (*Gray v. Sanders*). Georgia’s election for Senators was very similar to that of the US system. There was proportional representation in one chamber and there was equal representation for each county in the other chamber. The Supreme Court ruled that this system of election was unconstitutional. They reasoned thusly, “How then can one person be given twice or ten times the voting power of another person in a state-wide election merely because he lives in a rural area or because he lives in the smallest rural county?” (*Gray vs. Sanders*). One can say the exact same thing for the states in electing senators. Living in a smaller state allows one to carry much more weight per vote than someone from a larger state.

Georgia even tried to use analogies to the US government to prove that their system of electing Senators was constitutional. The state argues that there are disparities in the US system in voting equality, but the US Supreme Court says that they were “the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality, but implied nothing about the use of an analogous system by a State in a statewide election” (*Gray vs. Sanders*). Therefore the courts are saying that there is something inherently wrong with the US system of distributing votes but that was because of the historical predicament that the founders were in. Granted in that one excerpt the court was basing its reasoning on the Electoral College, but the court still makes the same point when they make their arguments about the county-unit

system in Georgia. So the court admits that times are different today and that the old system was because of the predicament that they found themselves in. The court finally concludes, “The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing - one person, one vote” (*Gray vs. Sanders*). Hence, this is the court case that gave rise to the idea of *one person one vote* but the judges are only interpreting what was there in the Constitution. Hence the reason why that this is considered unconstitutional is because of the historical precedent that was being established since the Declaration of Independence that there is one vote per person. This also agrees with the earlier analysis of the Declaration of Independence. It was said that the Declaration only says that for a government to be just it needs to be created in consent and secure the rights of the people. However, this analysis implies that for a government to be just it is necessary to have equal representation which is one person one vote. Thus, in this instance the Supreme Court is doing two things; first it establishes the principle of *one person-one vote*; secondly it is validating the Senate because of the historical foundations for the institution. It does not rule that the Senate is unconstitutional it rules that the principle when applied to the states is invalid because they do not have the same circumstances that formed the Senate in the first place.

Reynolds vs. Sims is another example of how the Senate stands in contrast to America's ideas. In 1963, Alabama tried to reapportion their districts and to make their House and Senate much like the Senate. Their House of Representatives was like the House, which had proportional representation throughout each district based upon population. The Senate was like America's Senate but instead of having States with two votes each, the second chamber in Alabama's Congress gave one vote to each county. “The Senate was to be composed of 67

members, one for each county” (*Reynolds v. Sims*). Chief Justice Warren delivered the court’s opinion that proves that this plan violates the 14th amendment.

Reynolds vs. Sims shows that the Senate is an anomaly in the United States political system. Chief Justice Warren establishes immediately that the principles of “one person one vote” are valid. He cites *Gray v. Sanders* saying that there cannot be unequal votes just because people live in a county that is smaller. Further Warren states, “Wesberry clearly established that the fundamental principle of representative governing in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State” (*Reynolds vs. Sims*). If one is to change the name of state to that of nation it would show that the Senate is an unjust body of government that goes against what was trying to be established when the country was conceived. Warren says, “Legislators represent people, not trees or acres. Legislators are elected by voters not farms or cities or economic interests... and, if a State should provide that the votes of citizens in one part of the state should be given two times or five time, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted” (*Reynolds v. Sims*). Once again this illustrates how the Senate is such an anomaly in the US system. The courts have ruled over and over again that having a legislature that is analogous to the US system is a system that is flawed and inherently unconstitutional. The US Senate and the Electoral College is the only exception.

Warren further argues that “the fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity... Representation schemes once fair and equitable become archaic and outdated” (*Reynolds v. Sims*). Thus, Warren is making it

apparent that some systems change and that the government needs to adapt with it. However, there has been no update to the way that senators are apportioned amongst the states.

Consequently, the Senate is still an unjust body in the United States government today. The courts only say that it is an exception, at most. And none of them say that the Senate was found under just principles. However, county units did not create the state, the state pre-existed the counties. This is juxtaposed to the fact that the States actually created the nation as well, so the smaller units gave power to the larger unit. Nonetheless, the principles about equality still hold to be true.

Despite it being apparent that the Senate is an unjust body of the US government because it goes against the belief in equality, the US government has lasted for over two centuries. Even though Madison and other legislators saw that the Senate was going to be a problem and an anomaly in the US government, it has been perpetuated throughout the ages. How has America was able to last despite the fact that one of its institutions of government was seen as unjust?

The answer can be found at a time when America was falling apart: at a time when the nation was about to collapse. The Senate was not the only injustice that surrounded the creation of the Constitution. At the time when the Constitution was created, slavery was seen as an injustice even though many of those people who saw it as an injustice owned slaves themselves. This problem tore apart the nation and brought it down before a US Representative from Illinois was able to bring the nation together.

The reason is because the nation was able to persevere is based upon a question that was posed earlier by Alexander Hamilton. Earlier, when discussing the *Federalist Papers*, it was asked whether or not man can create good government by reflection and choice. Lincoln throughout his lifetime sees that question get asked and eventually towards the end of his life he

answers that question. Lincoln once said, “We find ourselves under the government of a system of political institutions, conducing more essentially to the ends of civil and religious liberty, than any of which the history of former times tells us” during his speech to the *Young Men’s Lyceum* (Lincoln 1987, 12). He said these words prior to the battle at Gettysburg, and even before he took as the President of the United States. Even though it was agreed upon that the Senate was not necessarily conducive to equality throughout the nation, Lincoln still feels that the government that was created allows for the most liberty and freedom than any other prior government. It may not be necessary for a government to have perfect equality just as long as the government secures rights and liberties. As previously mentioned, Madison felt that senators would act differently because of the different mode of election plus the longer tenure. A senator would not necessarily be a representative for the passions of the people in their state, but a senator would be national legislator thinking in terms of a bigger picture. Madison says, “Against the force of the immediate representatives of the people nothing will be able to maintain even the Constitutional authority of the Senate but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves” (Hamilton et. al. 390). Thus, by being disconnected from the people plus having a six-year term will allow senators to think in terms of the public good and not just be concerned with the immediate passions of the people. These two traits allow them to be more than just state representatives but for senators to be national legislatures.

In this speech Lincoln talks about the dangers of mob rule and how it leads to injustices and loss of liberty. Lincoln says, “If the laws be continually despised and disregarded, if their rights to be secure in their person and property, are held by no better tenure than the caprice of a mob the alienation of their affections from the Government is the natural consequence” (Lincoln

16, 1987). Lincoln is saying that one of the main threats to the America government are people who are willing to act outside the rule of law. If this persists, then according to Lincoln anyone can be harmed and it would lead to the collapse of America. He almost even seems to imply that this mob rule can possibly lead people back into the State of Nature. Lincoln says that the way to prevent the destruction of the rule of law is to abide by the rule of law; “Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution, never to violate in the least particular, the laws of the country; and never to tolerate their violation by others” (16). Thus Lincoln is saying that Americans need to abide by the rule of law in order to prevent the collapse of America. It might be necessary to put up with some inconveniences as long as the rule of law is preserved. Even though the Senate does have an inherent injustice within the way the votes are proportioned out, the idea of America is bigger than the idea of perfect equality in both legislative branches. This even points back to the Declaration of Independence, when Jefferson says, that it is only through “a long train of abuses” when it is necessary to separate one nation from another. The rule of law must persevere and America must persevere.

But America did go through a civil war, where the man who praised the rule of law so highly was the President of the United States during that time. What was so different about having a mob rule versus having slavery; after all slavery was instituted in the Constitution? Once again Lincoln points to some of these answers. Lincoln believed that “a house divided against itself cannot stand. I believe this government cannot endure permanently half *slave* and half *free*” (Lincoln 1992, 89). According to this there is already something inherently different about the institution of slavery and the institution of the Senate even though both are injustices. According to Lincoln, slavery is tearing apart the nation in reality, as in contrast to the Senate,

which went against the theoretical constructs of the nation. Lincoln says that slavery is abandoning the rights of some of the people who live in the United States, “this point is made in order to deprive the negro, in every possible even of the benefit of that provision of the United States Constitution, which declares that: ‘The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States,’” (Lincoln 1992, 92). Lincoln is showing that the government is not securing the rights of all the people who are residing in the country. There is a complete deprivation of ones’ liberty with the institution of slavery. Slavery violates every single natural right that is listed the Declaration of Independence. It also violates the natural law of equality because it makes one human being subjugated to the rule of another without any consent given. So even though American people were able to put up with the violation equality by having the institution of the Senate being set up, the institution of slavery was much worse, and that is why it did lead to a very real civil war. It was not just something that could have happened in theory but it was something that happened in reality.

This violation of natural rights and natural law was something that was necessary to wage a war over. It was perhaps a principle that was bigger than the United States, because the construction of the Senate shows the necessity for having compromise and showing that the idea of a nation was bigger than some theoretical concepts. Yet according to Lincoln there is still a necessity of the nation, that perpetuating the government and answering Hamilton’s question that was posed in *Federalist 1* is still something that must be done. Lincoln believed that the answer to the question was in jeopardy. Even though he thought that a just government was formed, it was still to be answered on whether or not a nation could last; “They succeeded. The experiment is successful; and thousands have won their deathless names in making it so. But the game is caught... new reapers will arise... they will seek the gratification of their ruling passion as others

have so done before them” (Lincoln 1987, 12). The founders’ experiment has worked but now since there is an opportunity some people will take advantage of it and try to bring the country down. He says that a great man would not just be satisfied with a gubernatorial seat or being the President of the United States; “Towering genius disdains a beaten path... it scorns to tread in the footsteps of any predecessor however illustrious. It thirsts and burns for distinction; and if possible will have it at the expense of emancipating slaves or enslaving freemen” (Lincoln 19). Lincoln warns about the men with the highest ambitions saying that they have the power and will to make the nation either free or enslaved. But Lincoln still advocates the union of the nation because he realizes the importance of perpetuating a political institution; “it will require the people to be united with each other, attached to the government and laws, and generally intelligent, to successfully frustrate his designs. Distinction will be his paramount object, and although he would as willingly, perhaps more so acquire it by doing good as harm” (Lincoln 19). Allowing the nation to persevere and not collapse would bring more recognition according to Lincoln. It would even bring the man who did this act more greatness. So once again the idea of the nation is greater than perhaps these theoretical principles that were being discussed during the convention. The perpetuation of a nation is worth more than perfect proportion in the Senate. Slavery had to be dealt with because it was a fundamental injustice that was worth fighting for but Lincoln did not deem that it was necessary to destroy the nation. Rather he felt it was necessary to have it perpetuated so that the institutions that were created during the convention can live on. The institution of the Senate does go against natural law because it makes some votes more valuable than others, but it was a necessary compromise in order to secure a nation; “a nation conceived in liberty” (Lincoln 1987, 284). A new stronger central government would better protect the natural right of man than the existing government or the alternatives forms of

government. It was essential for the nation to stay together and that “this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth,” (Lincoln, 285).

References

- Aristotle. The Politics. Trans. Carnes Lord. Chicago: University of Chicago Press, 1985.
- Berns, Lawrence. "Thomas Hobbes." History of Political Philosophy. Ed. Joseph Cropsey and Leo Strauss. Chicago: University of Chicago Press, 1987.
- Dickinson, John. "Letters From a Farmer in Pennsylvania." Empire and Nation. Ed. Forrest McDonald. Indianapolis: Liberty Fund, 1999. Print
- Diamond, Martin. "The Federalist." History of Political Philosophy. Ed. Joseph Cropsey and Leo Strauss. Chicago: University of Chicago Press, 1987.
- Fortin, Ernest L. "St. Augustine." History of Political Philosophy. Ed. Joseph Cropsey and Leo Strauss. Chicago: University of Chicago Press, 1987.
- Gray v. Sanders. 372 U.S. 368. Supreme Court of the United States. 1963.
- Hamilton, Jay, and James Madison. The Federalist Papers. New York: New American Library 1999.
- Hobbes, Thomas. The Leviathan. New York: Penguin Books, 1985.
- Jefferson, Thomas. The Portable Thomas Jefferson. Ed. M. D. Peterson. New York: Penguin, 1987.
- Lincoln, Abraham. "Gettysburg Address." The Political Thought of Abraham Lincoln. Ed. Richard N. Current. New York: The Macmillan Publishing Company, 1987.
- Lincoln, Abraham. "House Divided Speech at Springfield, Illinois." The Portable Abraham Lincoln. Ed. Andrew Delbanco. New York: Penguin, 1992.
- Locke, John. Two Treatises of Government. North Clarendon, VT: Everyman, 1993.
- Machiavelli, Niccolo. The Prince. Trans. Mansfield, Harvey C. Chicago: University of Chicago Press, 1998.
- Machiavelli, Niccolo. Discourses on Livy. Trans. Mansfield, Harvey C. Chicago: University of Chicago Press, 1998.
- Madison, James. Notes on the Convention. New York: Norton, 1966.
- Mansfield, Harvey C. Machiavelli's New Modes and Orders A study on The Discourses on Livy. Chicago: University of Chicago Press, 2001.
- Melchert, Norman. The Great Conversation. 5th ed. New York: Oxford, 2007.

Milton, John. Complete Poems and Major Prose of John Milton. Ed. Hughes, Merrit Y. Indianapolis: Hackett Publishing Co, 2003.

Plato. The Four Texts on Socrates. Trans: West, Thomas G., and Grace Starry West. Ithaca, New York: Cornell University Press, 1998.

Plato. The Republic. Trans. Bloom, Allan. United States: Basic Books. 1991.

Reynolds v. Sims. 377 U.S. 533. Supreme Court of the United States. 1964.

Shakespeare, William. Richard II. Waltham, Massachusetts: Blaisdell Publishing Company, 1966.

Strauss, Leo. Natural Rights and Natural Law. Chicago: Chicago, 1988.

Shakespeare, William. Coriolanus. New York: Pelican, 1999.

Vita

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