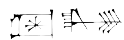


Liberty AND Order

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THE FIRST AMERICAN
PARTY STRUGGLE

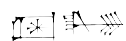
Edited and with a Preface
by Lance Banning



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Indianapolis

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To David, Paul, and the others

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Preface

Within three years of the inauguration of the new federal Constitution, America's revolutionary leaders divided bitterly over the policies most appropriate for the infant nation. Within five years, two clashing groups were winning thousands of ordinary voters to their side. Within a decade, the collision had resulted in a full-blown party war.

There has never been another struggle like it. These were the first true parties in the history of the world—the first, that is, to mobilize and organize a large proportion of a mass electorate for a national competition. More than that, these parties argued at a depth and fought with a ferocity that has never been repeated. The Federalists and the Jeffersonian Republicans—the friends of order and the friends of liberty as they sometimes called themselves—were both convinced that more than office, more than clashing interests, and more, indeed, than even national policy in the ordinary sense were fundamentally at stake in their quarrel. Their struggle, they believed, was over nothing less profound than the sort of future the United States would have, the sort of nation America was to be. Each regarded the other as a serious threat to what was not yet called the American way. And from their own perspectives, both were right.

This first great party battle is, of course, completely fascinating for its own sake. Between the framing of the Constitution and the War of 1812, the generation that had made the world's first democratic revolution set about to put its revolutionary vision into practice on a national stage. This generation was a set of public men whose like has never been seen again. Without significant exception, they believed that the American experiment might well determine whether liberty would spread throughout the world or prove that men were too imperfect to be trusted with a government based wholly on elections. In an age of monarchies and aristocracies, they were experimenting with a governmental system—both republican and federal—unprecedented in the world. They had a never-tested and, in several respects, a quite unfinished Constitution to complete. They represented vastly differ-

ent regions, and they had profoundly different visions of the nature of a sound republic. To understand why they divided and how they created the first modern parties is a captivating object in itself. It is the more worthwhile because not even in the years preceding Independence or during the debate about adoption of the Constitution have better democratic statesmen argued more profoundly over concepts that are at the core of the American political tradition: popular self-governance, federalism, constitutionalism, liberty, and the rest. Perhaps they still have much to teach about the system they bequeathed us, along with entertaining stories of our roots.

No single volume could pretend to be a comprehensive sourcebook on the first party struggle. This one does, however, aim to make it possible to understand the grounds and development of the dispute. For this reason, it is fuller on the earlier years of the struggle, when positions were being defined, than on the later years, when the arguments had become more repetitive and routine. It focuses tightly on the dispute between the parties, not on national questions such as slavery, which seldom entered directly into the first party conflict, or on the development of constitutional jurisprudence in the courts. Although it tries, at several points, to capture something of the flavor of the grassroots conflict, it is weighted, more than some might like, with the writings of major national leaders. But this was very much a conflict that descended from the top, as major national figures developed their disagreements, took them to the public, and reached out for links with local politicians. Debates in Congress were probably the most widely read political publications of these years.

This is not primarily a work for scholars, who will find more-authoritative versions of the texts in sources such as those identified in the bibliography. Rather, to make the materials as accessible as possible, spelling and punctuation have been modernized, obvious printing errors or slips of the pen have been silently corrected, and abbreviations have been spelled out when that seemed useful.

So far as seemed possible, nevertheless, the documents are left to speak for themselves. Every volume of this sort must start with an editor's decisions, the most important of which are those excluding valuable materials because they would not fit between two covers. This, however, is as much or more of an intrusion than I have wanted to make. Editorial introductions are limited to providing identifications or essential context. Elisions are clearly indicated and seldom extensive. In every case, as with the light modernization, they have been done with conscientious concern for the author's thought and intent.

Several graduate students, two family members, one secretary, and a few undergraduates at the University of Kentucky provided materials for the collection or carried out the tedious job of typing the transcripts. Thanks

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Lance Banning

PART I

Apprehensions

In his first address to the first session of the first federal Congress (contemporaries were sharply conscious of that litany of firsts) George Washington remarked that “The preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered as *deeply*, perhaps as *finally* staked on the experiment entrusted to the hands of the American people.” Some eighteen months before, in the first number of *The Federalist*, Alexander Hamilton had said, “It seems to have been reserved to the people of this country . . . 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.” By April 1789, when Washington delivered his inaugural address, supporters of the infant Constitution could be hopeful that the recent reconstruction of the federal system would permit the nation to fulfill its revolutionary aspirations. Washington was the unanimous selection of the first electoral college, and Washington’s extraordinary reputation was sufficient by itself to assure the new government a fair trial by the people. Only two of twenty-two new senators had opposed the Constitution. Only

ten of the newly chosen members of the House of Representatives had disapproved.

Nevertheless, as we are in the habit of forgetting, the victory of 1788 had been quite narrow. In Massachusetts and New York, majorities of voters had initially opposed the Constitution. Virginia had elected a convention that informed observers judged too close to call. In all these states, the Constitution would have been defeated, as it was in any case in North Carolina and Rhode Island, if its friends had not agreed that it might quickly be amended. Thus, when Washington addressed the first new Congress, no one could take anything for granted. The new regime, as one of its most able advocates observed, was utterly without example in the history of man; the members of the infant federal government were in a wilderness without a single precedent to guide them. The Constitution barely sketched the outlines of a working federal system. The problems that had wrecked the old Confederation remained to be resolved. Two of thirteen states were still outside the reconstructed Union. The apprehensions generated by that reconstruction had by no means disappeared. Indeed, those apprehensions, along with the fragility and novelty of the new federal system, would form the background and prepare the groundwork for the most profound political collision in our annals.

The Anti-Federalists

Letters from the Federal Farmer, No. 7

31 December 1787

Among the hundreds of pamphlets, newspaper articles, and published speeches opposing the new Constitution, a few were judged especially outstanding and have earned enduring fame. Among these, certainly, are the *Letters from the Federal Farmer*, which were widely read in pamphlet form after appearing initially in the Poughkeepsie *Country Journal* between November 1787 and January 1788. The seventh number developed one of the deepest concerns of many opponents of the Constitution: that the people could not be adequately represented in a single national legislature and, as power gravitated increasingly into federal hands, would end up being ruled by a few great men.

Most recent authorities reject the traditional identification of the “Federal Farmer” as Virginia’s Richard Henry Lee. Several suspect that the author may have been Melancton Smith, some of whose speeches in the New York ratifying convention contain close parallels to passages in the letters. But, whoever the author, his concern with an inadequate representation and the creation of a unitary or “consolidated” central government is necessary background for an understanding of the arguments that would divide the first American parties.

Dear Sir,

In viewing the various governments instituted by mankind, we see their whole force reducible to two principles— . . . force and persuasion. By the former men are compelled, by the latter they are drawn. We denominate a government despotic or free as the one or other principle prevails in it. Perhaps it is not possible for a government to be so despotic as not to operate persuasively on some of its subjects; nor is it in the nature of things, I conceive, for a government to be so free, or so supported by voluntary consent, as never to want force to compel obedience to the laws. In despotic governments one man, or a few men, independent of the people, generally make the laws,

command obedience, and enforce it by the sword: one-fourth part of the people are armed and obliged to endure the fatigues of soldiers to oppress the others and keep them subject to the laws. In free governments the people, or their representatives, make the laws; their execution is principally the effect of voluntary consent and aid; the people respect the magistrate, follow their private pursuits, and enjoy the fruits of their labor with very small deductions for the public use. The body of the people must evidently prefer the latter species of government; and it can be only those few who may be well paid for the part they take in enforcing despotism that can, for a moment, prefer the former. Our true object is to give full efficacy to one principle, to arm persuasion on every side, and to render force as little necessary as possible. Persuasion is never dangerous, not even in despotic governments; but military force, if often applied internally, can never fail to destroy the love and confidence, and break the spirits, of the people, and to render it totally impracticable and unnatural for him or them who govern . . . to hold their places by the peoples’ elections. . . .

The plan proposed will have a doubtful operation between the two principles; and whether it will preponderate towards persuasion or force is uncertain.

Government must exist—If the persuasive principle be feeble, force is infallibly the next resort. The moment the laws of Congress shall be disregarded they must languish, and the whole system be convulsed—that moment we must have recourse to this next resort, and all freedom vanish.

It being impracticable for the people to assemble to make laws, they must elect legislators and assign men to the different departments of the government. In the representative branch we must expect chiefly to collect the confidence of the people, and in it to find almost entirely the force of persuasion. In forming this branch, therefore, several important considerations must be attended to. It must possess abilities to discern the situation of the people and of public affairs, a disposition to sympathize with the people, and a capacity and inclination to make laws

congenial to their circumstances and condition; it must possess the confidence and have the voluntary support of the people. . . .

A fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected in such manner as they would be were the people all assembled. . . . [But] there is no substantial representation of the people provided for in [the new] government, in which the most essential powers, even as to the internal police of the country, are proposed to be lodged. . . . There ought to be *an increase of the numbers of representatives*: And . . . the elections of them ought to be better secured.

The representation is insubstantial and ought to be increased. In matters where there is much room for opinion, you will not expect me to establish my positions with mathematical certainty; you must only expect my observations to be candid and such as are well founded in the mind of the writer. I am in a field where doctors disagree; and as to genuine representation, though no feature in government can be more important, perhaps no one has been less understood, and no one has received so imperfect a consideration by political writers. The ephori in Sparta and the tribunes in Rome were but the shadow [of representation]; the representation in Great Britain is unequal and insecure. In America we have done more in establishing this important branch on its true principles than, perhaps, all the world besides; yet even here, I conceive, that very great improvements in representation may be made. In fixing this branch, the situation of the people must be surveyed and the number of representatives and forms of election apportioned to that situation. When we find a numerous people settled in a fertile and extensive country, possessing equality, and few or none of them oppressed with riches or wants, it ought to be the anxious care of the constitution and laws to arrest them from national depravity and to preserve them in their happy condition. A virtuous people make just laws, and good laws tend to preserve unchanged a virtuous people. A virtuous and happy people, by laws uncongenial to their characters, may easily be gradually changed into servile and depraved creatures. Where the people, or their representatives, make the laws, it is probable they will generally be fitted to the national character and circumstances, unless the representation be partial and the imperfect substitute of the people. [Although] the people may be electors, if the representation be so formed as to give one or more of the natural

classes of men in the society an undue ascendancy over the others, it is imperfect; the former will gradually become masters and the latter slaves. It is the first of all among the political balances to preserve in its proper station each of these classes. We talk of balances in the legislature and among the departments of government; we ought to carry them to the body of the people. . . . I have been sensibly struck with a sentence in the Marquis Beccaria's treatise: this sentence was quoted by Congress in 1774, and is as follows:—"In every society there is an effort continually tending to confer on one part the height of power and happiness and to reduce the others to the extreme of weakness and misery; the intent of good laws is to oppose this effort and to diffuse their influence universally and equally." Add to this Montesquieu's opinion that "in a free state every man who is supposed to be a free agent ought to be concerned in his own government; therefore, the legislative should reside in the whole body of the people, or their representatives." It is extremely clear that these writers had in view the several orders of men in society, which we call aristocratical, democratical, mercantile, mechanic, etc., and perceived the efforts they are constantly, from interested and ambitious views, disposed to make to elevate themselves and oppress others. Each order must have a share in the business of legislation actually and efficiently. It is deceiving a people to tell them they are electors and can choose their legislators if they cannot, in the nature of things, choose men from among themselves and genuinely like themselves. . . . To set this matter in a proper point of view, we must form some general ideas and descriptions of the different classes of men, as they may be divided by occupations and politically. The first class is the aristocratical. There are three kinds of aristocracy spoken of in this country. The first is a constitutional one, which does not exist in the United States in our common acceptation of the word. Montesquieu, it is true, observes, that where a part of the persons in a society, for want of property, age, or moral character, are excluded any share in the government, the others, who alone are the constitutional electors and elected, form this aristocracy; this, according to him, exists in each of the United States, where a considerable number of persons, as all convicted of crimes, under age, or not possessed of certain property, are excluded any share in the government. The second is an aristocratic faction: a junto of unprincipled men, often distinguished for their wealth or abilities, who combine together and make their

object their private interests and aggrandizement. . . . The third is the natural aristocracy; this term we use to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary; we may place men on one side of this line which others may place on the other, and in all disputes between the few and the many, a considerable number are wavering and uncertain themselves on which side they are or ought to be. In my idea of our natural aristocracy in the United States, I include about four or five thousand men; and among these I reckon those who have been placed in the offices of governors, of members of Congress, and state senators generally, in the principal officers of Congress, of the army and militia, the superior judges, the most eminent professional men, etc., and men of large property. The other persons and orders in the community form the natural democracy; this includes in general the yeomanry, the subordinate officers, civil and military, the fishermen, mechanics and traders, many of the merchants and professional men. It is easy to perceive that men of these two classes, the aristocratical and democratical, with views equally honest, have sentiments widely different, especially respecting public and private expenses, salaries, taxes, etc. Men of the first class associate more extensively, have a high sense of honor, possess abilities, ambition, and general knowledge; men of the second class are not so much used to combining great objects; they possess less ambition and a larger share of honesty; their dependence is principally on middling and small estates, industrious pursuits, and hard labor, while that of the former is principally on the emoluments of large estates and of the chief offices of government. Not only the efforts of these two great parties are to be balanced, but other interests and parties also, which do not always oppress each other merely for want of power and for fear of the consequences. Though they, in fact, mutually depend on each other, yet such are their general views that the merchants alone would never fail to make laws favorable to themselves and oppressive to the farmers, etc. The farmers alone would act on like principles. The former would tax the land, the latter the trade. The manufacturers are often disposed to contend for monopolies, buyers make every exertion to lower prices, and sellers to raise them; men who live by fees and salaries endeavor to raise them, and the part of the people who pay them endeavor to lower them; the public creditors to augment taxes and the people at large to lessen them. Thus, in

every period of society, and in all the transactions of men, we see parties verifying the observation made by the Marquis; and those classes which have not their sentinels in the government, in proportion to what they have to gain or lose, most infallibly [will] be ruined.

Efforts among parties are not merely confined to property; they contend for rank and distinctions; all their passions in turn are enlisted in political controversies. Men, elevated in society, are often disgusted with the changeableness of the democracy, and the latter are often agitated with the passions of jealousy and envy. The yeomanry possess a large share of property and strength, are nervous and firm in their opinions and habits. The mechanics of towns are ardent and changeable, honest and credulous; they are inconsiderable for numbers, weight and strength, not always sufficiently stable for the supporting free governments. The fishing interest partakes partly of the strength and stability of the landed and partly of the changeableness of the mechanic interest. As to merchants and traders, they are our agents in almost all money transactions, give activity to government, and possess a considerable share of influence in it. It has been observed by an able writer that frugal industrious merchants are generally advocates for liberty. It is an observation, I believe, well founded, that the schools produce but few advocates for republican forms of government; gentlemen of the law, divinity, physic, etc. probably form about a fourth part of the people; yet their political influence, perhaps, is equal to that of all other descriptions of men; if we may judge from the appointments to Congress, the legal characters will often, in a small representation, be the majority; but the more representatives are increased, the more of the farmers, merchants, etc. will be found to be brought into the government.

These general observations will enable you to discern what I intend by different classes and the general scope of my ideas when I contend for uniting and balancing their interests, feelings, opinions, and views in the legislature; we may not only so unite and balance these as to prevent a change in the government by the gradual exaltation of one part to the depression of others, but we may derive many other advantages from the combination and full representation. A small representation can never be well informed as to the circumstances of the people; the members of it must be too far removed from the people, in general, to sympathize with them, and too few to communicate with

them. A representation must be extremely imperfect where the representatives are not circumstanced to make the proper communications to their constituents, and where the constituents in turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions to their representatives. Where there is but one representative to 30,000 or 40,000 inhabitants, it appears to me, he can only mix and be acquainted with a few respectable characters among his constituents; even double the federal representation, and then there must be a very great distance between the representatives and the people in general represented. On the proposed plan, the state of Delaware, the city of Philadelphia, the state of Rhode Island, the province of Maine, the county of Suffolk in Massachusetts will have one representative each; there can be but little personal knowledge, or but few communications, between him and the people at large of either of those districts. It has been observed that mixing only with the respectable men, he will get the best information and ideas from them; he will also receive impressions favorable to their purposes particularly. Many plausible shifts have been made to divert the mind from dwelling on this defective representation. . . .

Could we get over all our difficulties respecting a balance of interests and party efforts to raise some and oppress others, the want of sympathy, information, and intercourse between the representatives and the people, an insuperable difficulty will still remain. I mean the constant liability of a small number of representatives to private combinations. The tyranny of the one or the licentiousness of the multitude are, in my mind, but small evils, compared with the factions of the few. It is a consideration well worth pursuing how far this house of representatives will be liable to be formed into private juntos, how far influenced by expectations of appointments and offices, how far liable to be managed by the president and senate, and how far the people will have confidence in them. . . .

“Brutus,” Essay II

1 November 1787

Addressed to “The People of the State of New York,” the essays of “Brutus” appeared in Thomas Greenleaf’s *New York Journal* between October 1787 and April 1788, contemporaneously with

the appearance of *The Federalist*, whose authors sometimes engaged “Brutus” in direct debates. As is true of the “Federal Farmer,” the authorship remains in doubt, although the candidate most often mentioned is Robert Yates, one of New York’s three delegates to the Constitutional Convention. The second number was among the most able explanations of the most common anti-Federalist fear of all.

. . . When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence.

If we may collect the sentiments of the people of America from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate. The mutual wants of men at first dictated the propriety of forming societies; and when they were established, protection and defense pointed out the necessity of instituting government. In a state of nature every individual pursues his own interest; in this pursuit it frequently happened that the possessions or enjoyments of one were sacrificed to the views and designs of another; thus the weak were a prey to the strong, the simple and unwary were subject to impositions from those who were more crafty and designing. In this state of things, every individual was insecure; common interest therefore directed that government should be established, in which the force of the whole community should be collected, and under such directions as to protect and defend everyone who composed it. The common good, therefore, is the end of civil government, and common consent the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order that what remained should be preserved. How great a proportion of natural freedom is necessary to be yielded by individuals, when they submit