

CHAPTER 18

A MANDATED RESTRAINT

Man's natural inclination has always been to resent and attempt to throw off any chains put on him, whether by God, by man, by society, or even by their own consciences. People will seek, in varying degrees, what they perceive to be their own good—even at high cost to themselves or others.

The originators of these United States understood that impulse and sought tirelessly to ensure a new form of government that could minimize the impact of it. Their intuitive and novel solution was a triangular government in which all powers were specified and split into three equal but separate branches. (Collectively, the states constituted a fourth “branch,” in that they were also given a share in power, which the federal government could not legally usurp or encroach upon. Though smaller and distributed, their share is, in essence, greater since the Constitution assigned to them all powers not specifically given to any of the federal branches.)

The distinctive authority assigned to each branch has, from the start, been the source of bitter rivalries, conflicts and statutory challenges. As in our personal lives, the urge to gain more power than we have—or to cause others to lose their own—can have an irresistible pull on some. If men or factions failed to exercise self-restraint for the good of the whole then restraints must be mandated to provide a legal remedy that could ensure the necessary balance.

This solution, though not entirely unique in its conception, has proven brilliant time and again. Many flagrant and covert attempts have been made since then to defy those set boundaries, though few have been permanently successful.

We still see back-door coups attempted too frequently even in our time; our founding forefathers would advise us to keep a distrustful eye on such attempts and, if discovered, reject them in the courts or, failing that, at the ballot box.

DAY 233

THOMAS JEFFERSON

"It is the duty of the general government to guard its subordinate members from the encroachments of each other, even when they are made through error or inadvertence, and to cover its citizens from the exercise of powers not authorized by law."

Official Opinion, 1790

Today Secretary of State Jefferson might reason that:

Our government has a responsibility to keep its component parts from intruding on each others' powers (even if the intrusion is a mistake or oversight) and to protect its citizens from any use of power the Constitution doesn't sanction.

DAY 234

JAMES MADISON

"In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself."

The Federalist, No. 51 (as "Publius"), February 6, 1788

Today Mr. Madison might write:

To design a government run by men who will rule over other men, you first have to give that government authority to restrain those they rule. Next, you have to force it to restrain itself.

DAY 235

JOHN MARSHALL

"An unlimited power to tax involves, necessarily, a power to destroy because there is a limit beyond which no institution and no property can bear taxation."

Opinion, McCullough v. Maryland, 1819

Today Chief Justice Marshall might rule that:

Limitless authority to levy taxes amounts to giving [government] power to ruin lives since there's a practical ceiling above which no entity or property owner could afford to pay their tax bill.

DAY 236

THOMAS JEFFERSON

"A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities."

First Inaugural Address, March 4, 1801

Today President Jefferson might say:

A wise government—one that spends the people's money carefully—protects its citizens from hurting each other. That protection allows people to safely police their own interests and enrichment. Such a government would never take a worker's hard-earned groceries right from his family table. This is how good government, and our ultimate happiness, must work.

DAY 237

SAMUEL ADAMS

"The Constitution shall never be construed... to prevent the people of the United States who are peaceable citizens from keeping their own arms."

Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, 1786-87

Today Mr. Adams might say:

The Constitution must never be interpreted to mean that law-abiding citizens of the United States can be prohibited from having their own firearms.

DAY 238

JAMES MADISON

"The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust."

The Federalist, No. 57 (as "Publius"), February 19, 1788

Today Mr. Madison might write:

The goal of every civil constitution is, or should be, to find the most insightful leaders of the highest integrity to decide what's best for the whole country. The second goal is to take extreme measures to keep them honest as long as they're in office.