

WHAT KIND OF POLITICAL COMMUNITY DOES THE U. S. CONSTITUTION FORM?

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Dedication

I had the pleasure of giving a lecture last summer on the Declaration of Independence and its relevance to Americans today. Reflections on the U. S. Constitution seemed like a natural follow-up and I thank Mr. MacDonald and St. John's College for giving me this opportunity. Before I begin my remarks I take note of someone who sat among us last year, but is not with us today. I should like to dedicate these musings on the Constitution to Don MacIver who was a long-time friend, supporter, and student of the College as well as a former President of St. John's College in Annapolis. I hope my remarks are worthy of this fine man.

Aristotle argues in the *Politics* that every community is constituted for the sake of some good and that the political community is for noble actions and not merely for the sake of living together.¹ The United States Constitution was ratified in 1789, thirteen years after the 1776 declaration of independence from the British. The new nation began as a confederation of states, but efforts to reconstitute the nation began when the confederation was deemed inadequate. Participants in a constitutional convention drafted a new document that they circulated to the states for debate and ratification. Aristotle's assertions about the good and noble actions prompt the question, what kind of political community does the U. S. Constitution form?

The United States has three identifiable political communities: colonial America under the auspices of the British, a confederation of states, and a nation governed by the current United States Constitution. I will briefly discuss the first two before turning to consideration of the Constitution and responding to the question posed. Aristotle's *Politics* and Tocqueville's *Democracy in America* and key writings of various American statesmen provide guidance in seeking answers. These authors allow us to step out of the present to pursue the inquiry.

Settlement in America was spurred by two sources: colonists seeking religious freedom and economic opportunities, and European nations establishing a presence in new lands. Monarchy was the predominant form of government in the European nations and these monarchical practices carried over into the settlements. The separation by an ocean from the mother countries required that the colonists engage in governing themselves, but to greater and lesser degrees they remained submissive to their countries of origin.

In the opening paragraphs of the *Politics*, Aristotle defines the city as a community or partnership that is constituted for the sake of some good.² Although he distinguishes the city from the household (where private conduct takes place), the natural development of the city begins in this first partnership or community, the household. This partnership is formed by a male and a female who produce children, thus forming a family; the family is constituted by nature to meet the needs of daily life. Several households form a village to meet the nondaily needs, and several villages form a city, the *polis*. Aristotle explains that human beings, by nature, are political and social creatures. Because human beings are naturally drawn to form political communities, such communities serve as a fulfillment or a sort of completion of human life. The private and the public thus come together in the political community.³

The *polis*, Aristotle explains, exists by nature and for the sake of living well. He further argues that human beings are the best of animals when completed or part of this larger whole—living in a political community—but when separated from law and justice they are the worst of all. Justice is thus introduced into politics, the political community, and into the lives of citizens.⁴ The colonists in America recognized this as well; the Mayflower Compact is among the first of such efforts to incorporate law and justice. The Plymouth settlers drafted a compact that bound them into a body politic for better ordering and preservation, to enact and frame just and equal laws, acts, and constitutions for the general good of the colony.⁵

The Mayflower Compact began a centuries-long tradition in America of written documents that served as the basis of governing and organizing the community. Dating from the colonial era, the British drafted charters, letters-patent, and instructions for the colonists to

establish laws and governmental bodies, protect property rights, and facilitate interaction among the inhabitants. The colonists themselves in a collaborative fashion penned covenants, compacts, agreements, ordinances, codes, and oaths to govern their communities and their conduct.⁶

Alexis de Tocqueville, the Frenchman who visited the United States in the 1830's and subsequently wrote the two-volume work *Democracy in America*, looked to colonial America, in particular in New England, as the time when townships served as the primary *venue* where colonists began the practice of self-government in earnest. The institution of the township was crucial to nurturing the growth of freedom because of what it permitted and required and because of its limited scope. "Interests, passions, duties, and rights came to be grouped around the township's individuality and strongly attached to it. In the heart of the township one sees a real, active altogether democratic and republican political life reigning."⁷

We can offer a tentative assessment of the political community that formed in colonial America. The colonies were settled independently of each other and there were significant differences between the New England, the Middle, and the Southern colonies. Although there were features of democratic and republican political life present, as Tocqueville notes, the colonists remained subject to a British government that exerted political and judicial rule. Because of the increasingly contentious relations with Britain, the colonies began to work in a coordinated fashion to respond to the British acts that would be labeled as tyrannical in the Declaration of Independence. The colonists instituted Committees of Correspondence as a means to share information, to protest, and to coordinate responses to British actions. They also established a Continental Congress in 1774 to respond to the British Acts against Massachusetts. Recall the Boston Tea Party and the punitive response by the British against Massachusetts that abrogated the colonial governing body. A second Continental Congress met in 1775 after the battles of Lexington and Concord. This Congress subsequently drafted the Declaration of Independence.⁸

Because of these competing forms of governance, this first political community did not have a distinct identity and purpose. There was the monarchical overlay of the British, the growing democratic influences within the colonies in the townships, and the representative democratic practices in the formation of the Continental Congress. There were different answers to who or what was the sovereign authority. The Continental Congress had among its purposes speaking with a singular voice to respond to what many colonists argued was British aggression and denial of fundamental rights. The British saw their actions as reasserting the colonial relationship that had existed since the founding of the colonies; their posture was both protector and beneficiary against the backdrop of their monarchical and parliamentary government. The colonists sought representation in the parliamentary body that governed them and recognition of their rights, but to no avail. Aristotle explains in Book V of the *Politics* that such conflicts can lead to revolution, specifically factional conflict due to inequality.⁹ He explains that "where there is no proportion among those who are unequal; in general it is equality they seek when they engage in factional conflict."¹⁰ The outbreak of hostilities between the colonists and the British and intransigence on the part of the British to respond to the efforts made through the Continental Congress to resolve their differences spurred the colonists to move toward declaring independence from the British. The colonists and the British engaged in the factional conflict

that Aristotle gives as a reason for revolution. This conflict sets up what will be the end of the first political community.

In the month prior to declaring independence from the British, the Second Continental Congress called upon the thirteen colonial assemblies to craft constitutions. Its request included the charge to “adopt such a government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of the constituents in particular, and America in general.”¹¹ There is a similarity between how Americans drafted these state constitutions and subsequently drafted the U.S. Constitution. Massachusetts is the leading example. John Adams in 1775 recommended that the people must “erect the whole Building with their own hands upon the broadest foundation. That this could be done only by conventions of representatives chosen by the People.” These efforts by the colonial assemblies, which were incorporated into the states after independence, are important steps in America’s subsequent political development.

The monarchical and parliamentary governance exerted by the British was gone, but the colonial foundations, such as the New England Township, remained. Tocqueville included in his discussion of the township a description of the county that developed in other areas. “The county becomes the great administrative center and forms the intermediate power between the government and plain citizens,” he explained. He then offers another insightful assessment of these governing bodies closest to the people. “The township and county are not constituted in the same manner everywhere; but one can say that the organization of the township and the county in the United States rests on this same idea everywhere: that each is the best judge of whatever relates only to himself, and is in the best position to provide for his particular needs.”¹² The township, county, and former colonies turned states were present in America, but upon declaring independence from Britain a government for the whole of the new United States was required. This was imperative as the nation was fighting to maintain its independence while finding its footing as a new nation. The Continental Congress acted as a governing body for the nation after independence. Representatives drafted the Articles of Confederation and circulated them to the states for ratification and renamed the congress the Confederation Congress. The second political community in the United States is the confederation of states that unified and formed the new nation.

Aristotle offers insight into this second political community in Book 4 of the *Politics*, where he distinguishes between the best regime and the regime that is possible. “[I]t is perhaps impossible for many to obtain the best, so neither the one that is superior simply nor the one that is the best that circumstances allow should be overlooked by the good legislator and the political ruler in the true sense.” He defines regime as “an arrangement in cities connected with the offices, establishing the manner in which they have been distributed, what the authoritative element of the regime is, and what the end of the community is in each case.”¹³ The arrangement that was put in place in the confederation of states relied upon the offices in the states, counties, and townships that preexisted and gave a minimal grant of authority to the Congress to regulate affairs for the nation. The relationship between the states was characterized as “a firm league of friendship” with each state retaining its sovereignty, freedom and independence. The Articles did not have an executive power and had limited judicial functions, but it did give the Confederation Congress the power to regulate trade and settle disputes between the states, and to engage in foreign policy.¹⁴ The authoritative element was largely within the states. The end of the regime

was to unify the nation, but having just gained independence from one all-powerful authority (the British Monarchy and Empire), the citizens of the new United States were fearful of giving too much power to a central government; thus, the Confederation government had limited authority. The confederation of states that was instituted in America after 1776 was the best regime that the circumstances allowed.

It was not long before the weaknesses of the confederated government became apparent, and by the mid 1780's James Madison and others initiated efforts to assemble representatives from the states to address and remedy the deficiencies. The discussion of whether the nation needed to be reconstituted began years before the convening of the 1787 Constitutional Convention in Philadelphia. Tocqueville depicts the transition as follows: "new in the history of societies is to see a great people, warned by its lawgivers that the wheels of the government are stopping, turn its regard on itself without haste and without fear, sound the depth of the ill, contain itself for two entire years in order to discover the remedy at leisure, and when the remedy is pointed out, submit voluntarily to it without its costing humanity one tear or drop of blood."¹⁵ What Tocqueville describes is the effort that results in the termination of the confederation of states and the initiation of the third political community in the United States as defined by a new Constitution.

The Constitution as drafted in 1787 did not initiate a second revolution, but it was nonetheless a dramatic shift from the Articles of Confederation. An observation that Aristotle makes in Book V of the *Politics* gives insight into one of the reasons for the change from Articles to Constitution. "Dissimilarity of stock is also conducive to factional conflict, until a cooperative spirit develops."¹⁶ The translator of the *Politics* adds an explanatory note: "literally, 'until they draw breath together,' like horses in harness." This notion is applicable to the 1776 revolution and the 1787 changes in the political communities in the United States. The cooperative spirit between the colonies and the British disintegrated rapidly in the late 1760's and the resolution of the growing inequality between the two was America declaring independence. The cooperative spirit between the states and the Confederation Congress declined rapidly with looming trade wars between the states and a weak national government that had had difficulty securing troops for the revolutionary war and subsequently sufficient funding to pay off the nation's debts. Instead of a decisive break in 1787 as there had been with the British, there was a recasting of the governing relations between the citizens, the states, and the national government that begins with the Constitution.

Though Tocqueville describes a voluntary submission to this new government, the debates were fierce between advocates supporting the new constitution and others who believed the solution was in modifying the Articles of Confederation. These arguments were presented to the public in the form of the Federalist and Anti-Federalist debates, but a full discussion of their positions is beyond the scope of this current inquiry.¹⁷

Before further exploring the formation of the third political community, my reasons for the factual recitation of these events is not only to show the development of the various political communities in America, but also to underscore the long-standing practice since the 1600's of fellow citizens coming together, debating principles and practices of governance, and subsequently drafting documents to declare publicly the resolution. The Declaration of

Independence was the most revolutionary of these documents in the history of America, but it was consistent with the long-standing tradition of deliberation and presentation of a written document to announce the intention of forming a new political community. The Constitution was almost as revolutionary, but for different reasons.

The connection between the Declaration of Independence and the Constitution is made clear by the following statement: “Governments do not make ideals, but ideals make governments.” Calvin Coolidge, 30th President of the United States said this in his 1926 Speech on the Occasion of the 150th Anniversary of the Declaration of Independence. Coolidge describes the ideals, the immortal truths of the Declaration of Independence, as follows: “Three very definite propositions were set out in its preamble regarding the nature of mankind and therefore of government. These were the doctrine that all men are created equal, that they are endowed with certain inalienable rights, and that therefore the source of the just powers of government must be derived from the consent of the governed.” These ideas and principles were intended as the foundation of a new nation, but as Coolidge further observes, “until the idea is developed and the plan made there can be no action.”¹⁸ Securing independence was part of the plan as was subsequently instituting a government to secure the rights as expressed in the Declaration of Independence.

The governing structure of the Articles of Confederation, namely, the states remaining sovereign, was the best possible at the time as discussed above, but the Constitution had the potential to fulfill what the Declaration intended, to create a “more perfect union,” to use the words of the Constitution’s preamble. Coolidge explains: “It was in the contemplation of these truths that the fathers made their declaration and adopted their Constitution.”¹⁹ To draw on the words of another former President, Abraham Lincoln, he asserts that the prosperity of the United States is not the result of an accident. It has a philosophic cause, the principles of liberty and equality that find their expression in the Declaration of Independence and are the foundation of the Constitution and the Union. “The assertion of that *principle*, at that *time*, was the word ‘*fitly spoken*’ which has proven an ‘apple of gold’ to us,” he wrote. “The *Union*, and the *Constitution*, are the *picture* of *silver*, subsequently framed around it. The picture was made for the apple—not the apple for the picture.”²⁰ The two documents that were in keeping with the tradition of discussion and debate forged a unique path in America.

What has come to be known as the Constitutional Convention was held in Philadelphia from May through September 1787. The delegates met with the initial goal of revising the Articles of Confederation, but at its conclusion a new Constitution was presented to the people for their consideration and, if acceptable to them, ratification—thus fulfilling the Declaration’s requirement of consent of the governed.

The Constitution begins with a preamble.

*We The People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.*²¹

There are seven Articles with most having multiple Sections and Clauses. I limit this discussion to the Constitution and do not include mention of the Bill of Rights or any of the other Amendments. The first three Articles establish the branches of government: the Congress, the Executive, and the Judiciary. Article four addresses the relations between the states, territory belonging to the United States, and the national government. Article five explains how to amend the Constitution. Article six addresses outstanding debts and engagements, treaties, and oaths required of national and state representatives and officers (both executive and judicial) to support the Constitution. Article seven states in one sentence the requirement of the ratification of the Conventions of nine States as sufficient to establish the proposed Constitution as the governing charter of those States so ratifying. The document is dated September 17, 1787 and signed by those who participated in drafting it and was subsequently ratified by conventions in the state called for the purpose.

Our task is to discover the kind of political community that the U. S. Constitution forms. The starting point to gain insight into the political foundation of the community is to examine some of the prominent features that set the Constitution apart: the republican form of government, the separation of powers, the bicameral legislature, and federalism. These features establish and define the interaction between the government and the citizens and also between the citizens themselves. Whether higher, nobler actions are possible depends in part on the relation between citizen and government and on the type of government.

Establishing a republican form of government was a decisive break with the prior two political communities. In his 1839 speech on the Jubilee of the U.S. Constitution, John Quincy Adams, sixth President of the United States, explains.

The Signers of the Declaration of independence themselves, were the persons who had first fallen into the error of believing that a confederacy of independent states would serve as a substitute for the repudiated government of Great Britain. Experience had demonstrated their mistake, and the condition of the country was a shriek of terror at its awful magnitude. They did retrace their steps – not to extinguish the federative feature in which their union had been formed: nothing could be wider from their intention – but to restore the order of things conformably to the principles of the Declaration of Independence, and as they had been arranged in the first plans for a confederation.

Adams continues and makes clear in what manner the people were directly participating in this new republican government.

To make the people of the Union the constituent body, and the reservation of the rights of the states subordinate to the Constitution. Hence the delegation of power was not from each state retaining its sovereignty, and all rights not expressly delegated by the states, but from the people of each and of all the states, to the United States in Congress assembled, representing at once the whole people and all the states of the Union.²²

The language in the Declaration is very clear with respect to the people: “one people dissolving the bands,” “we hold these truths,” and “we the representatives.” The Preamble of the new Constitution begins, “we the people,” thus initiating the new republican government.

Publius, the pseudonym used by the authors of *The Federalist Papers*, explains that “we may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior.”²³ The basic foundation of the republican form of government in the United States is in the people, the same people who separated from Britain, who pronounced self-evident truths, who either elected representatives or were representatives themselves, and finally who articulated their vision of a more perfect union as designed in the Constitution.

There are advantages to a republican form of government. For example it serves as a check on faction, one of the great threats to free government, as Publius explains.²⁴ In contrast to pure, raw democracy, a republic “refine(s) and enlarge(s) the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.” A republican form of government brings together the many and the few. The many, the people, participate in governance by electing their representatives, the few, and these representatives are from the people.

Aristotle praises the participation of the many in the *Politics*.

The many, of whom none is individually an excellent man, nevertheless can when joined together be better—not as individuals but all together—than those [who are best] For because they are many, each can have a part of virtue and prudence, and on their joining together, the multitude, with its many feet and hands and having many senses, becomes like a single human being, and so also with respect to character and mind.²⁵

Publius and Aristotle see the many from two different perspectives: the former disperses them into smaller groups as a check on factions, the latter sees them coming together and refining their opinions and behavior. These views are not in opposition to each other. Publius explains.

In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in others words, a will independent of the society itself.²⁶

We can join the arguments about the many made by Publius and Aristotle in this manner: justice and the general good can define the similar character and mind of the single human being that Aristotle explains forms out of the many. They are still individual human beings, but they are made one, “like a single human being,” because they share these higher aspirations.

Whereas the people are joined together in a nation and serve as the sovereign authority of the government, the structure of the government is one that is marked by the separation of

powers. The three distinct branches as outlined in the first three Articles are co-equal branches of the government. The accumulation of all powers in the same hands, Publius explains, is the definition of tyranny. He cites the 17th century political philosopher Montesquieu, who argued that “when the legislative and executive powers are united in the same person or body of magistrates . . . there can be no liberty.”²⁷

There is an additional separation of sorts in the Constitution found in the bicameral legislature. Publius asserts that in a republican government the legislative authority is predominant.²⁸ The Legislative branch is split into the House of Representatives and the Senate. The House is based on population and its members are elected by a popular vote of the people every two years; the Senate is based on equal state representation, two Senators per state, and its members were originally chosen by State Legislatures for a six year term (described as indirectly elected by the people in *Federalist* 39). The 17th Amendment changed the election of Senators to a popular vote like House members, but each State still retains two Senators despite population differences. The longer terms in the Senate were intended to foster deliberation whereas the shorter terms in the House were intended to reflect the more immediate will of the people because of their frequent appearances before the voters when standing for election.

These two postures, national and state, highlight the last of the unique constitutional features that I am discussing: federalism. In a passage quoted above, John Quincy Adams said that the new Constitution did not extinguish the federative feature which formed the union after declaring independence; the state governments remained intact while the government encompassing the United States was reconstituted under the 1787 Constitution. Though the citizens and the states acknowledged the supremacy of the Constitution, they maintained a degree of independence that allowed them to regulate their internal affairs. Also, the Constitution is a limited government of enumerated powers, with the Tenth Amendment holding that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The ratification of the Constitution depends upon both the citizens and the states. Publius explains, “on one hand, . . . the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose [ratifying conventions]; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong.”²⁹

These four features of the Constitution—the republican form of government, the separation of powers, the bicameral legislature, and federalism—underscore the efforts by the drafters of the Constitution to institute a government that represents the citizenry, secures their rights, and allows for their participation in governance at a local, state, and national level. Publius sums up the challenge: “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.”³⁰ Recall the charge of the Declaration of Independence, “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”³¹ It was not a foregone conclusion that this Constitution was to become the law of the land. Publius concluded his final argument in the last essay with this observation. “A NATION, without a NATIONAL GOVERNMENT, is, in my view an awful spectacle. The establishment of a Constitution, in time of profound peace, by the

voluntary consent of a whole people, is a PRODIGY, to the completion of which I look forward with trembling anxiety.”³² The Confederation Congress read the Constitution three days after it was signed, debated it, and then issued a call for state ratifying conventions.³³ This methodical effort demonstrates the care taken to establish a new form of government, from the initial debates, to the drafting of a new Constitution, to submission to the people for their consent.

While much of what has been discussed with respect to the Constitution is not found explicitly in Aristotle’s *Politics*, raising the question of whether noble actions are possible in the political community, as he proposes, spurs consideration of the citizen. Aristotle defines the citizen generally as “one who shares in ruling and being ruled” and “whoever is entitled to participate in an office involving deliberation or decision.”³⁴ The common element in these seemingly disparate definitions is the activity: in the former, the activity of ruling both oneself and others; in the latter, the rational activity that allows for the possibility of political organization and good governance.

This formulation of good human being and good citizen takes on different forms in each of the three American political communities previously identified. I suggested above that there was no distinct purpose or identity in colonial America because of the divided loyalty. To be a good citizen meant to be a good subject of the British crown; to be a good human being for many meant to adhere to the principles that brought them to the shores of America and to build a community consistent with those principles. Those principles were part of a larger framework of rights that developed in the American intellectual tradition. John Dickinson, who wrote “Letters from a Farmer in Pennsylvania” in 1767-1768, gives an example of such development: “Let these *truths* be indelibly impressed on our minds—that we cannot be HAPPY, WITHOUT being FREE—that we cannot be free, *without being secure in our property*, that we cannot be secure in our property, *if, without our consent, others may, as by right, take it away*—that *taxes imposed on us by parliament*, do thus take it away”³⁵ The growing disconnect between the British and American positions did not allow for a seamless understanding and practice of good human being and good citizen.

The Declaration of Independence plays a significant role in identifying why the separation from Britain was necessary, but more importantly, in stating the rights, principles, and ideals that any future American government was to secure. The possibility of the good human being and good citizen is also directly related to a correlation between the Declaration of Independence and the Constitution. The necessary conditions in the second political community for the good human being and good citizen to come to fruition were not present under the government of the Articles of Confederation. John Quincy Adams explains that “the substitution of state sovereignty instead of the constituent sovereignty of the people, as the foundation of the Revolution and of the Union,” was a departure from the principles of the Declaration of Independence. Adams is speaking directly to the defects of the government that was established under the Articles of Confederation; one cannot be a good citizen and a good human being in a nation that is defective.

The third political community governed by the Constitution has the structure to allow for the possibility of the good human being and good citizen. The goal was to form a more perfect union that relies on the sovereign authority of the people with the aim of securing the rights of

the citizens and effecting their safety and happiness as called for in the Declaration. Aristotle states that justice is a thing belonging to the city and it orders and arranges the political community.³⁶ The features of the Constitution as designed promote justice and a just people. Establishing justice was the second item listed in the Preamble, “in order to form a more perfect Union, establish Justice.” To repeat once more, Publius proclaims that justice is the end of government and the end of civil society.³⁷ The good human being and good citizen are possible in this third political community. Whether it happens depends upon citizens acting virtuously and governing themselves and government resisting tyranny. Publius argues that a dependence on the people is the primary control on the government, but the auxiliary precautions of distributing power and checking it were among the goals in the constitutional design as well as securing the rights of the citizens by breaking society into parts to avoid faction so as to prevent some from depriving others of their rights.³⁸

Before continuing, it is necessary to address the existence of slavery and the denial of even the most basic rights and dignity to a segment of the population. This is particularly necessary given the statement of self-evident truths in the Declaration and the ratification of the Constitution that was to secure the rights of the people.

Slavery had been present in the colonies for more than one hundred years in America, brought to colonial settlements by the British, the Dutch, and other European powers. Jefferson’s draft of the Declaration of Independence included the following in the list of abuses by the king:

He [the King] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of infidel powers, is the warfare of the Christian King of Great Britain. Determined to keep open a market where Men should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or restrain this execrable commerce. . . .

This passage was omitted from the final draft, but Jefferson attempted to make clear that efforts to end slavery were prohibited by the powers that brought it to the colonies. Jefferson “blamed the removal of the passage [from the Declaration] on delegates from South Carolina and Georgia and Northern delegates who represented merchants who were at the time actively involved in the Trans-Atlantic slave trade.”³⁹

There is no mention of slavery in the Constitution, but there are three relevant clauses that speak implicitly about it. The provision in Article I, section 2 apportions by states representatives and taxes by adding the whole number of free persons and 3/5 of all other persons. This provision ensured that those slave states that denied fundamental rights to some could not benefit through representation from their numbers. The ban on importation of persons after 1808 was done with the belief that it would lead to the end of the institution. “Cut off the stream, and the pond will dry up, was the common notion at the time.”⁴⁰ And Article IV, section 2 provides that a person “held to Service or Labour in one State” who escapes into another must be returned to the person to whom the service or labor was due. These three clauses were clear compromises with slavery, but they must be counterbalanced both by the implication in the non-

importation clause that the Congress could (and in fact did) ban the importation of slaves after 1808.⁴¹ They must also be counterbalanced by the Republican Guarantee in Article IV, section 4. The clause required the United States to guarantee to each state a republican form of government, which is to say, one grounded in the consent of the governed, an idea articulated in the Declaration of Independence wholly incompatible with slavery.⁴² These are but a few examples to demonstrate that the drafters of the Constitution did as much as they possibly could at the time to check slavery and the forces that supported it in order to achieve a Union. Had they attempted to implement an outright ban on slavery, there likely would have been no new Union, the Articles of Confederation would have remained in place, the internal dissension would have only grown worse, subjecting the new nation to conquest by European powers and destroying any hope of ending slavery in the slave states.

The effort to condemn this practice in the Declaration failed, but the recognition that all human beings are created equal and that they are endowed by their creator with unalienable rights stayed. Frederick Douglass, Martin Luther King, Jr., and many others have looked to this language to bolster their demands that the country live up to its ideals. The second political community under the Articles of Confederation recognized the sovereignty of the states to regulate their internal affairs within their borders as they had prior to declaring independence. Any state could end or continue slavery under the Articles; states in the north did outlaw it, but it persisted in the southern states. When the Constitution was drafted, though there was a shift of power to a new national government there was no authority to dictate the internal affairs of the states, as Lincoln affirmed in the First Inaugural Address in 1861, when he noted that he had no lawful right to interfere with the institution of slavery in the States where it exists.⁴³ That the end of slavery came only after a civil war shows how deep-seated the institution was in the ways and habits of some of the people for more than 200 years.

Aristotle, too, speaks of slavery in the *Politics*, but his discussion of habituation in the *Nicomachean Ethics* provides a different insight into the long fight to end slavery. Virtue is one of the primary topics in the *Ethics* and Aristotle divides his discussion into moral and intellectual virtues and explains that moral virtues result from habit. My reason for raising this point about habituation is to highlight that long-standing practices, both good and bad, from the colonial era were not to be changed instantly. Just like the colonists in their New England townships over subsequent generations became increasingly habituated to self-governance, the practice of slavery in the south made for a different formation. Tocqueville observes, "Slavery has not created interests contrary to those of the North; but it has modified the character of the inhabitants of the South and given them different habits."⁴⁴ Aristotle connects habituation to politics with the statement in the *Ethics* that "the legislator makes the citizens good by habituating them."⁴⁵ This reference to habituation is by no means meant to excuse the horror of slavery, but to appreciate the role of government in shaping and forming the character of the citizenry. John Jay, one of the contributors to the *Federalist Papers* wrote in 1777 "it is well known that errors, either in opinion or practice, long entertained or indulged, are difficult to eradicate, and particularly so when they have become, as it were, incorporated in the civil institutions and domestic economy of a whole people."⁴⁶ The long-standing practice of slavery in the south and the laws that supported and reinforced it contributed to the degradation of the slave and the denial of his humanity. This was done by those who looked to profit from the

enslavement of human beings. It was protected by unjust laws within the states and until such laws were overturned the habituation of which Aristotle speaks is only reinforced.

We can also discuss slavery in light of the good human being and good citizen question with respect to both slave and owner. A slave cannot be a citizen, much less a good citizen until he has been freed, can rule himself, and is able to participate in governance. Dismissing those who owned slaves as men who are not good is not a foregone conclusion. If in their capacity as human being and citizen they ruled others who did not consent to being ruled, one must inquire into their efforts to end slavery, the specific conditions of the slaves, and their participation in prolonging or hindering the institution. There were many in America who supported slavery and worked to continue the institution. For those who worsened the condition of slaves such as Chief Justice Tawney in his decision in *Dred Scott* or the drafters of the Fugitive Slave Law, they extended and worsened the plight of the slave. I hold the position that they were neither good human beings nor good citizens. Their posture was tyrannical in their enslavement of others which indicates that they could not govern themselves and thus were not good human beings; their denial of the principles of the Declaration of Independence and participation in prolonging slavery meant they were working contrary to the intentions of the third political community and thus were not good citizens. In sharp contrast are those who were unable to ban it outright, but worked to contain it through constitutional provisions, legislation, and restricting it to the southern states. We must take their efforts to end slavery seriously, even if they were not able to accomplish it when drafting the Constitution, and allow that they are worthy of being recognized as good human beings and good citizens.

In conclusion, we can return to the question posed in the title, what kind of political community does the U. S. Constitution form? Aristotle launched the discussion of the political community with a challenge of sorts. Are we merely living together or is noble action possible? The *polis* has its origins in the household and the village, but what makes it markedly different from its origins is the presence of justice. The political good is justice. Human beings, who are by nature political creatures, when separated from justice are the worst of all. Justice is more than an ideal, it is essential in the city. Aristotle argues that the virtue of justice and military or political virtue are necessary for the city to be administered.⁴⁷ It is especially relevant in the type of government that is present in America, a democratic republic. Aristotle notes that “freedom” is the basic premise of the democratic sort of regime and the second defining principle is “to live as one wants.”⁴⁸ Justice circumscribes the scope that allows democratic citizens to be free and live as one wants without utter chaos or anarchy.

Aristotle speaks of noble actions, but how do we define noble action? In the Glossary to the edition of the *Politics* that I use, the translator refers the reader to the definition of fine (*kalos* in Greek), which is defined as morally or physically beautiful, noble, fine, and right.

For our immediate purpose, I suggest that noble actions are characterized by virtue. First President of the United States George Washington told the nation in his Farewell Address, “Tis substantially true, that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free Government.”⁴⁹ If we accept that virtue in the form of noble actions is a necessary spring of popular government, then noble actions are not to be deemed as something done by a few or only on occasion, but they must

occur with regularity and frequency. This, too, supports the “freedom” and “living as one wants” that Aristotle identifies with democratic regimes. Most Americans agree that we cherish these practices, so Washington’s call for virtue and morality is all the more necessary. Virtue lays the foundation to inform our noble actions so that we can live in freedom and as we want. The kind of political community that the U. S. Constitution forms is a just community and the noble actions of the citizenry reflect the principles of the Declaration. We must, however, recall Publius’s words, “But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”⁵⁰ While justice may be the end of government and a good, noble, and virtuous people desirable, it must be cultivated with recognition that we may fall short or with perseverance, succeed.

While Aristotle looked to the *polis*, we part company and look to what informs the United States political community and its citizens and find it is the Declaration of Independence and the governing structure provided by the Constitution. The Declaration was revolutionary and influenced the political development in the United States, at both the state and national levels. It articulated what was developing among the colonists when they came to the shores of America in the first political community in the colonial era, but veered off course in the second political community under the Confederation, and was finally instituted in the third political community with the drafting of the 1787 Constitution.

The intention of forming a more perfect union as stated in the Preamble begins with establishing Justice and follows with the requirements of governing a nation: regulating internal and foreign affairs, and promoting the welfare and securing the liberty of those currently living and for future generations. The political community was thus formulated: the ideals and principles of the Declaration and the structure of the Constitution as informed by the republican form of government, the separation of powers, the bicameral legislature, and federalism lay the foundation for a just political community. The citizens gave their consent to this government and remain the sovereign authority as held in the Declaration.

Why does this inquiry matter? This study of the U. S. Constitution is as current today as it was when the framers initiated the debate that culminated in putting the nation on a new footing. We are plagued with deep divisions in the country, but reading works such as Aristotle’s *Politics* and taking seriously the governing structure and constitutional development provide welcome opportunities to seek remedies for these divisions. I spoke previously about the centuries-long tradition of debate that brought adversaries together. The Constitution unifies us in the sense that it provides a framework for this to occur. It provides a vehicle for deliberation among the branches and the people. It does not guarantee unanimity for that would risk tyranny, but it affords an opportunity for Publius’s desire of justice and the general good to prevail.

Finally, we must ask the question, are we in the same political community that grew out of the 1787 Constitution? Yes and no. Though there have been twenty-seven Amendments to the Constitution with a few making fundamental changes to the structural design such as the direct election of Senators and the direct taxation (sixteenth & seventeenth Amendments), the greater challenges have been from events such as the Civil War, the Progressive movement, Roosevelt’s New Deal, and activist Courts. These topics are beyond the scope of our current inquiry, but their

mention is necessary and may explain why we have such discord in our modern day political discourse. Discord and disagreement are nothing new to this nation. There were British loyalists who argued against declaring independence and the vote in Congress in 1776 had to be postponed until there was sufficient support. There were those who looked to modify the Articles of Confederation so that the nation would retain a confederate structure. The ratification of the U.S. Constitution was at times a pitched battle. Rather than wring our hands, we should embrace the debate fully and a good starting point is understanding the political community formed by the 1787 Constitution.

Notes

1. Aristotle, *Politics*, trans. Carnes Lord, 2nd ed. (Chicago: University of Chicago Press, 2013), 1252a, 1281a.
2. Aristotle, *Politics*, 1252a.
3. Aristotle, *Politics*, Book I, chapter 2.
4. Aristotle, *Politics*, Book I, chapter 2.
5. "Mayflower Compact, 1620," The Avalon Project: Documents in Law, History, and Diplomacy, http://avalon.law.yale.edu/17th_century/mayflower.asp.
6. Donald S. Lutz, ed., *Colonial Origins of the American Constitution: A Documentary History* (Indianapolis: Liberty Fund, 1998), xxi.
7. Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 40.
8. Peter Charles Hoffer, *The Brave New World: A History of Early America* (Baltimore: Johns Hopkins University Press, 2006), 444-453.
9. Aristotle, *Politics*, V.1.
10. Aristotle, *Politics*, 1301b25.
11. William B. Allen and Gordon Lloyd, eds., *The Essential Antifederalist*, 2nd ed. (Lanham, MD: Rowman and Littlefield Publishers, 2002), 1. The language of safety and happiness also appears in the Declaration of Independence.
12. Tocqueville, *Democracy in America*, 76, 77.
13. Aristotle, *Politics*, 1288b 25, 1289a15.
14. "Articles of Confederation," National Archives, America's Founding Documents. <https://www.archives.gov/historical-docs/articles-of-confederation>. Hoffer, *Brave New World*, 460-62.
15. Tocqueville, *Democracy in America*, 106.
16. Aristotle, *Politics*, 1303a 25, p135 footnote 15.
17. *The Federalist Papers* were published during the ratification debates of the U. S. Constitution. They were essays that explained and defended the Constitution and published

widely in the United States. The 85 essays are published in their entirety in various editions. The Anti-Federalists wrote essays that raised concerns about and arguments against the proposed Constitution. *The Essential Antifederalist* contains a good selection of the Anti-Federalists essays.

18. Calvin Coolidge, “The Inspiration of the Declaration of Independence” (speech, Philadelphia, PA, July 5, 1926), <https://www.coolidgefoundation.org/resources/speeches-as-president-1923-1929-7/>.

19. Coolidge, “The Inspiration of the Declaration of Independence.”

20. Abraham Lincoln, Fragmentary Writing, <http://liberty1.org/lincoln.htm>.

21. “U. S. Constitution,” National Archives, America’s Founding Documents. <https://www.archives.gov/founding-docs/constitution>.

22. John Quincy Adams, “The Jubilee of the Constitution: A Discourse” (speech, New York, NY, April 30, 1839), <https://lonang.com/library/reference/jqadams-jubilee-constitution-1839/>.

23. “*The Federalist Papers*,” The Avalon Project: Documents in Law, History, and Diplomacy, http://avalon.law.yale.edu/18th_century/fed01.asp, #39.

24. *Federalist Papers*, #10.

25. Aristotle, *Politics*, 1281b - 1281b15. See also 1286a25.

26. *Federalist Papers*, #51.

27. *Federalist Papers*, # 47.

28. *Federalist Papers*, #51.

29. *Federalist Papers*, #39.

30. *Federalist Papers*, #51.

31. “Declaration of Independence,” National Archives, America’s Founding Documents. <https://www.archives.gov/founding-docs/declaration>.

32. *Federalist Papers*, #85.

33. Allen and Lloyd, eds., *The Essential Antifederalist*, Timeline, xxxii-xxvi.

34. Aristotle, *Politics*, 1275b, 1284a.

35. Jack P. Greene, ed., *Colonies to Nation 1763 – 1789: A Documentary History of the American Revolution*. (New York: W. W. Norton, 1975), Letter XII, 133.

36. Aristotle, *Politics*, 1253a 35.

37. *Federalist Papers*, #51.

38. *Federalist Papers*, #51, #10.

39. “(1776) The Deleted Passage of the Declaration of Independence,” BlackPast, <https://www.blackpast.org/african-american-history/declaration-independence-and-debate-over-slavery/>.

40. Frederick Douglass, “The Constitution of the United States: Is It Pro-Slavery or Anti-slavery?” (speech, Glasgow, Scotland, March 26, 1860), https://www.blackpast.org/major_speeches/1860-frederick-douglass-constitution-united-states-it-pro-slavery-or-anti-slavery.

41. John C. Eastman, “The Declaration of Independence as Viewed from the States” in *The Declaration of Independence: Origins and Impact*, ed. Scott Gerber (Washington, D.C.: CQ Press, 2002), 96-117.

42. John C. Eastman, “The Declaration of Independence as Viewed from the States.”

43. Abraham Lincoln, “First Inaugural Address” (speech, Washington, D.C., March 4, 1861), <http://www.abrahamlincolnonline.org/lincoln/speeches/speech.htm>.

44. Tocqueville, *Democracy in America*, 359.

45. Aristotle, *Ethics*, trans. Terence Irwin. (Indianapolis, IN: Hackett Publishing Company, 1985), 1103b.

46. John Jay, “Jay to the English Anti-Slavery Society,” June 21, 1788, in Henry Phelps Johnston, ed., *The Correspondence and Public Papers of John Jay*, Vol. 3 (New York: Da Capo Press, 1971), 340—44, quoted in J. Rowe, “Why Didn’t the Founders Abolish Slavery?”, <https://www.intellectuالتakeout.org/article/why-didnt-founders-abolish-slavery>.

47 Aristotle, *Politics*, 1282b15, 1253a1, 1253a30, 1283a20.

48 Aristotle, *Politics*, 1282b15, 1317a40, 1317b10.

49. William B Allen, ed., *George Washington: A Collection* (Indianapolis: Liberty Classics, 1988), 521.

50. *Federalist Papers*, #51.

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