



What Is the Essence of American Liberty?

If we wish to assure that our children and grandchildren continue breathing the sweet air of liberty, then we must carefully identify the essential oils of which our Constitution — our freedom — is composed and preserve them at all cost. Then, we must anoint the body politic with this enlivening balm.

What are the head chords, heart chords, and base chords of the American republic? Which of all the fragrances did our Founding Fathers mix to concoct the sweetest, most aromatic bouquet ever devised by the political perfumers of history? The evidence is in the product itself, and the various component spices are readily recognizable by one with a trained and discriminating nose.



First, the head chord of American constitutional liberty is the *separation of powers*. From Aristotle to Polybius, from Montesquieu to Madison, the greatest political minds of all ages sing with one voice in praise of the necessity of the separation of powers in an enduring republic. Whether called “mixed government” or “checks and balances,” the principle is constant: powers must be kept distinct and each must be prevented from exercising too direct an influence over the others.

The authorities have unanimously recommended this arrangement for those seeking to establish a good government.

From Charles -Louis de Secondat, the Baron de Montesquieu:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

From the Greek historian, Polybius:

Lycurgus...did not make his constitution simple and uniform, but united in it all the good and distinctive features of the best governments, so that none of the principles should grow unduly and be perverted into its allied evil, but that the force of being neutralized by the that of the others, neither of them should prevail and outbalance another, but that the constitution should remain for long in a state of equilibrium like a well-trimmed boat....

And finally, from the father of our own constitution, James Madison:



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In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others.

Next, we turn to the heart chord, that is, the essential oil that is added to the head chord as the next step in creating the most pleasing government. That element is *federalism*. Again, we turn to the leading lights of political science.

Once again, from Montesquieu:

This form of government is a convention by which several petty states agree to become members of a larger one, which they intend to establish. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of further associations, till they arrive at such a degree of power as to be able to provide for the security of the whole body,

and:

A republic of this kind, able to withstand an external force, may support itself without any internal corruption. The form of this society prevents all manner of inconveniencies.

Scottish Enlightenment philosopher David Hume agrees with the notion that a federal system would prevent the public interest from being attacked by factions united by “intrigue, prejudice or passion.” States, the smaller republics, would retain most power while granting to the central authority only those limited and specific powers necessary to protect the whole of society.

In the *Federalist Papers*, Alexander Hamilton supports the American expression of this timeless principle:

The proposed Constitution, so far from implying an abolition of the State Governments, makes them constituent parts of the national sovereignty by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a Federal Government.

And his *Federalist Papers* collaborator, James Madison, cogently crystallized the point this way:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

Finally, if the perfume is to be long-lasting and memorable, the base chord must be added to the blend. Without this final ingredient, the scent would quickly dissipate and linger on only in memory.

The foundational additive in the enduring fragrance of American liberty is *popular sovereignty*. We, the people, are the ultimate and natural authority in our republic and it is only through our voluntary accession that government has any power whatsoever.

John Locke, whose powerful influence was felt by many of our own Founding Fathers and the documents they crafted to create our government, wrote in his *Two Treatises on Government*:

Every Man being, as has been shewed, *naturally free*, and nothing being able to put him into subjection to any Earthly Power, but only his own Consent.... (emphasis in the original)



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Again, from the illustrious Scot, David Hume:

When we consider how nearly equal all men are in their bodily force, and even in their mental powers and faculties, till cultivated by education, we must necessarily allow that nothing but their own consent could at first associate them together and subject them to any authority. The people, if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty and received laws from their equal and companion.

And, appropriately, the last word on the fundamental nature of the principle of popular sovereignty is from James Madison:

We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people;

and finally,

As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived....

There is nothing sweeter than the refreshing smell of freedom. For over two hundred years Americans have enjoyed the liberty and stability that is the product of the salubrious atmosphere of self-government. If this fresh fragrance is to endure, however, we must study the recipe handed down to us by the artisans of our constitution and require that all those who serve in the laboratory of our government to commit themselves to using only those ingredients, those essential chords, that time and experience have taught us produces the lasting perfume of liberty that is our birthright.



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