

New Model Federalist No. 9 – On Citizenship

That citizens are the building blocks of a Republic – That these United States must grow but they ought no longer to conquer – That extending representation to new territories is the only just means of ruling them – That Puerto Rico ought to become a State – That the other territories and the District of Columbia ought to have voting representation in the House of Representatives – That the House of Representatives ought to be enlarged – That the Census ought to be carefully protected from interference and well provided for – That American Indian nations ought to have oversight of federal agencies that manage their distinct interests – That public authorities ought to give priority to protecting the right to vote – That the law ought to be upheld evenly – That our Union has long had an Anglo-Hispanic character

“I am glad to see one real American here.” —Robert E. Lee, greeting Ely Parker, a military aide to Ulysses Grant and a Seneca Indian, at Appomattox.

“We are all Americans.” —Parker’s reply to Lee, April 9th, 1865.

In our previous few essays, we addressed matters of economics, by which a republic is maintained; in the following two, we focus our attention on citizenship, by which it is built. It is by the consent of its citizens that a republic is created, and by their industry that it grows. They provide its power, its creativity, and its character; they are bound by oath to protect and preserve it. Those republics which have a great number of committed citizens are the mightiest countries; those which neglect or disenfranchise a part of their citizenry, or spurn opportunities to gain new citizens, are fundamentally weak.¹ To preserve both its enlightened character and its unparalleled might, our Republic must strive to retain the sincere affection of its citizens and to increase their number. The former may be achieved by representation in government and equality before the law, and the latter in three ways: new births, territorial expansion, and immigration.

The birth of new generations of Americans is always welcome, and it may be encouraged by government, yet it may not with any justice be compelled.² We shall address immigration in our next essay. Here we shall reflect upon our Union’s past acquisition of territory, and consider matters related to the consolidation of that acquisition through just and equitable citizenship.

That there have been severe injustices in regard to these matters in the history of these United States cannot be denied. Yet it is also evident that our Republic has striven to right its past wrongs; and in so striving it has made a moral progress, gradual but firm, that marks it out in the history of the world. Nonetheless, some failings still remain. In the overseas territories, some joined to our Union for a century or more, reside four million citizens who lack true federal representation, yet they have for decades been paid little attention by the residents of the fifty States. Within the boundaries of the continental United States, citizens who reside in the District of Columbia are not represented in Congress; tribal nations, though their individual members are accorded full representation as citizens of the United States, often hold little sway as a body politic over matters that affect their distinct interests; and rights already guaranteed by law to all the citizens of our Republic, which include the fundamental right to vote and the right to receive due process of law, are in various ways infringed upon.

¹ “The question with me is not whether you have a right to render your people miserable, but whether it is not your interest to make them happy?” Edmund Burke, Speech to Parliament on Conciliation with America, Mar. 22, 1775.

² One effective means of encouragement is the Child Tax Credit, which ought to be upheld and perhaps expanded.

We propose to correct these discrepancies; to ensure full political representation to all citizens, as is their right; and in so completing the process of Union, to secure to our Republic the full blessings of liberty and the might bestowed by the wholehearted devotion of its citizens,³ and to belie those who assert that ours is not a just and enlightened nation.

All things of mankind are in motion; they expand or contract, rise or fall.⁴ This maxim is particularly true for large countries, as Rome once was and these United States are now; and expansion, either in wealth, population, or territory, leads to a country's rise, whereas contraction brings about its fall. When Rome ceased to grow, it began to decline; the United States ought to strive to avoid this fate. Yet whereas Rome was founded in bygone times and, in accordance with bygone principle, grew itself by conquest, our Republic was born in the Age of Enlightenment and matured into an appreciation of those principles which its founding proclaimed; and among them is that a conqueror has no moral right to rule indefinitely those whom he has conquered by force of arms, no matter how just his cause.⁵ Not long ago, our Union respected this principle: it vanquished Germany and Japan in just war, but then returned their government to their people.

It may appear that we have created a paradox: that these United States must expand, but ought no longer to conquer; and, moreover, our Union holds territory today, which in the past it gained by conquest. Yet the history of Rome offers a clue to resolving this contradiction, and the history of our own Republic offers the solution.

Rome, unique in its time, held its conquests by extending its citizenship to the inhabitants of the lands it conquered. As they came to enjoy the same rights as the residents of Rome itself, they, too, worked to maintain its empire; it is no surprise, therefore, that the glory of Rome long endured, while that of other olden states soon dimmed. Centuries later, when the British Empire strived to equal that of Rome, the American States rebelled against it; and they revolted against Britain not because of some unbridgeable chasm between the two peoples, for then there was little difference between them, but because they were denied representation in Parliament. It was for similar cause that the rest of the British Empire departed in the centuries to follow:⁶ Britain established government over them by conquest, which bestowed no enduring moral right to rule, and sustained it without full citizenship and representation, thus never establishing such a right.⁷

³ "Recognize the fact that the rights of the humblest citizen are as worthy of protection as are those of the highest, and your problem will be solved; and, whatever may be in store for it in the future, whether prosperity, or adversity; whether it shall have foes without, or foes within, whether there shall be peace, or war; based upon the eternal principles of truth, justice and humanity, and with no class having any cause of complaint or grievance, your Republic will stand and flourish forever." Frederick Douglass, "Lessons of the Hour" Speech, Jan. 9, 1894.

⁴ "...since all things of men are in motion and cannot stay steady, they must either rise or fall; and to many things that reason does not bring you, necessity brings you. [Thus] in ordering a republic there is need...to order it so that if indeed necessity brings it to expand, it can conserve what it has seized." Niccolo Machiavelli, *Discourses on Titus Livy*, Bk. 1, Ch. 6.

⁵ "...the government of a conqueror, imposed by force on the subdued, against whom he had no right of war, or who joined not in the war against him, where he had right, has no obligation upon them." John Locke, *Second Treatise of Government*, Ch. 16, Para. 187.

⁶ Except Canada, Australia, and New Zealand, which, because they were given some representation, remain closer to Britain than other former parts of the Empire; and Scotland, Wales, and Northern Ireland, which, because they were given full representation, remain part of the United Kingdom to this day.

⁷ "First, Sir, permit me to observe, that the use of force alone is but temporary. It may subdue for a moment; but it does not remove the necessity of subduing again: and a nation is not governed, which is perpetually to be conquered." Edmund Burke, Speech to Parliament on Conciliation with America, Mar. 22, 1775.

The thirteen States first remedied that injustice by governing their Union in a Continental Congress, which represented each State as a body politic. They then established a Constitution to represent both the States, in the Senate, and the people directly, in the House of Representatives. The Constitution was imperfect in its early years, as our Republic expanded across the continent: some of its people were held unjustly in slavery, while others were denied citizenship or the right to vote. Successive generations forged a more perfect Union: by constitutional amendments and wise acts of legislation, they extended full rights of citizenship to all those born or naturalized on U.S. soil. Thus, whereas our Republic began its expansion in North America with conquest, it followed with citizenship and representation, which in time included all those whom it once had conquered.⁸ Such representation permits the Union to govern justly all fifty States today.⁹

Yet mainland Americans tend to forget that four million of their fellow citizens reside in five overseas territories that have shared the history and experience of these United States for a century, yet are to this day excluded from full membership in the Union. Their representatives in Congress have no vote; their delegates cannot influence Presidential elections by casting votes in the Electoral College; and, as is now shown in Puerto Rico, such lack of influence frustrates their ability to recover from hardships. Yet they pay U.S. tax, contribute recruits to the U.S. military, and are governed by U.S. law.¹⁰ They were first brought under U.S. jurisdiction by conquest or purchase, which itself bestowed no lasting moral right to rule, and their present status is one of taxation without representation, which all Americans know sustains no such right. This condition ought not to be continued indefinitely; rather, full representation ought to be extended to them.

Furthermore, the District of Columbia, which was established by the Constitution as the seat of the federal government, and was never meant to become a State, now contains over half a million permanent residents – more, indeed, than Wyoming, the smallest State. Our Republic’s Founders withheld statehood for that district for the reason that no State ought to exert undue influence over the government of the Union by holding sovereignty over the grounds where that government convenes. This logic remains valid today. Yet to deny the district’s citizens any vote in Congress is nonetheless unjust. Any city, even one built for the sole purpose of convening a government, must have permanent inhabitants in order to function: for if no one lived there to work in its restaurants or shops, federal officials would have no food to eat, nor any place to buy essential goods. People must live in the District of Columbia; those people are citizens of the United States; and all citizens of the United States ought to be represented in Congress.

The American Indian and Alaska Native tribes, over five hundred in number, dispersed widely across the territory of the Republic, and counting on their rolls nearly three million of its citizens, have long been considered under law to be ‘domestic dependent nations,’ and as such

⁸ “My idea therefore, without considering whether we yield as a matter of right, or grant as a matter of favour, is to admit the people of our Colonies into an interest in the constitution; and, by recording that admission in the Journals of Parliament, to give them as strong an assurance as the nature of the thing will admit, that we mean for ever to adhere to that solemn declaration of systematic indulgence.” Burke, *Conciliation with America*, Mar. 22, 1775.

⁹ “Whatsoever cannot but be acknowledged to be of advantage to the society, and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever the people shall chuse their representatives upon just and undeniably equal measures, suitable to the original frame of the government, it cannot be doubted to be the will and act of the society, whoever permitted or caused them so to do.” John Locke, *Second Treatise of Government*, Ch. 13, Para. 158.

¹⁰ American Samoa has an even more unusual arrangement: its residents do not obtain U.S. citizenship by birth. Yet they have the highest rate of enlistment in the U.S. military; their commitment to the Union thus cannot be doubted.

have direct ties to both the federal and state governments.¹¹ A full description of their legal station is beyond our scope, but a few characteristics are abundantly clear: they, like the several States, enjoy a measure of partial sovereignty; tribal members are, by virtue of unequalled history of residence in America and clear establishment in U.S. law, citizens of the United States;¹² and, as citizens, they hold the indisputable right to vote and be represented in government.¹³

Today, two and a half centuries after our Republic's founding, those rights are finally, in large measure, respected by the government of the United States. Yet the Indian nations' exercise of the partial sovereignty due to them by solemn treaty, over the matters which constitute their distinctive interests, is often hindered on account of those nations' dispersal across the continent and their unique position within the several States. Representation in the management of those affairs ought, as a matter of right and also of sound policy, to be accorded them as a body politic.

We therefore offer several proposals to ensure full representation for all citizens of these United States, and in so doing to achieve a more perfect Union. We undertake to accomplish this aim without undermining the principles and institutions that buttress our Republic, such as partial sovereignty of the States and their equal representation in the Senate. We seek not revolution, but reform. We, citizens, must remain faithful to the enlightened logic of our Union's founding; we must recognize that the wrongs of past times, and their enduring legacy today, are a blighted exception to such high principles; and our efforts to redress the sins of our forebears must refine our Republic according to its original design, rather than demolish it.

To that end: Puerto Rico ought, with the consent of its citizens, to be admitted as a State after the 2020 Census of the United States. It is entirely qualified for statehood on account of its size: its population, as estimated presently, is more than three million, twice that of Hawaii. The present economic hardship of that territory ought not to obstruct its admission to the Union, for the fundamental logic in favor of statehood – that all citizens of this Republic ought to have representation in the federal government – is political rather than economic.

Nor ought Congress or the territorial government to dither on statehood with halfhearted referendums, designed to create deadlock by the inclusion of several ambiguous options, and tied to no immediate action. While obtaining the consent of Puerto Rico's citizens is, in our view, indispensable to just rule, the lawful power of conferring statehood rests with Congress; so, too, does responsibility for bringing the matter to decision. Congress ought without delay to pass an Act that shall establish Puerto Rico as State upon its ratification by a territory-wide vote, as it did for Alaska and Hawaii, thereby presenting our fellow citizens with a free, fair, and clear choice.

The other inhabited territories – Guam, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands – are geographically dispersed and, at present, each has a population smaller than that of many mainland towns; the largest, Guam, is less than a third the size of Wyoming, whose own population is merely an eightieth of California's. A nod must therefore be

¹¹ “It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations.” Chief Justice John Marshall, written opinion in *Cherokee Nation v. Georgia*, 1831.

¹² “Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States.” Indian Citizenship Act of 1924.

¹³ As the right to vote is assured to all U.S. citizens by the 15th Amendment and the Voting Rights Act of 1965.

made to practicality: were those commonwealths each to be represented separately in the House of Representatives, that body, in order to maintain proper proportion for existing States, would have to swell to an unmanageable size.¹⁴ To combine them as a single State, however, would be a manifest injustice: their circumstances are too varied to be provided for equitably by one state government. Yet if statehood is not the answer, principle nonetheless demands that the citizens resident there be granted representation in Congress and the Electoral College.

We therefore propose that, by means of constitutional amendment, Congress grant those territories a voting delegation in the House of Representatives, akin to the method that was used by the States in the Continental Congress. Under such an arrangement, the four territories would together form a delegation, whose composition is in proportion to their respective populations; and that delegation would have one vote in the House, as the smallest States do.¹⁵ The delegation would decide, by an internal vote of its members, which way it shall cast its Congressional vote for each act of legislation. We further propose that those territories together be granted Electoral College votes by extending to them the 23rd Amendment, which today provides electoral votes to the District of Columbia in proportion to its population but not exceeding that of the smallest State.¹⁶ The territories may then choose to divide between themselves the three electoral votes they would receive under such an arrangement, as Nebraska and Maine do with their districts.¹⁷

Combined representation of the above type is a practical matter made necessary by small population and geographical dispersion; in contrast to combined statehood, it would allow each commonwealth to continue governing its own affairs, while gaining a say in the Union. Should the number of permanent residents in any one of those territories someday increase so as to make viable the prospect of statehood, Congress ought then to offer it without delay.

The District of Columbia, in accordance with the logic of the Founders, also ought not to be made a State; but that logic does not go so far as to assert that its residents ought not to have representation in Congress. The influence of a partly-sovereign local government in the federal

¹⁴ “In general it may be remarked on this subject, that no political problem is less susceptible of a precise solution, than that which relates to the number most convenient for a representative legislature. ...Sixty or seventy men, may be more properly trusted with a given degree of power than six or seven. But it does not follow, that six or seven hundred would be proportionally a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is, that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes: as on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude.” James Madison, *Federalist No. 55*. The addition of a new State, the population of which is roughly one-third that of the now-smallest State, would require a tripling of the total number of Representatives – to 1305 – to remain in its current proportion. Yet, as we address below, the House is already in need of enlargement to restore proper proportion to the existing States. Doing both together would increase its size to nearly two thousand members. If we now lament deadlock in a chamber of 435, imagine the result at that size.

¹⁵ The population figures from the 2010 Census would suggest a seven-member delegation, wherein Guam would have three members, the Virgin Islands two members, and the Mariana Islands and Samoa one member each.

¹⁶ “The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.” *U.S. Constitution*.

¹⁷ Those States allocate some of their votes to the winning candidate in each of their Congressional districts, while reserving others to the winning candidate in the State at large.

capital was the matter of concern. On that premise, it is reasonable that the district's government not hold the representation in the Senate that is the preserve of the States; but it is not reasonable that its people be denied representation in the House. We propose that the district be given voting seats in the House of Representatives in proportion to its population, which exceeds that of the two smallest States. Its present formula for Electoral College representation, explained above, ought to remain the same, for the reason that the Electoral College is meant to represent both the people directly and the States; it is thus appropriate that the District of Columbia's residents are represented therein, but that the city as a body politic may not outweigh the votes of States.

Should these proposals become law, our Union would consist of fifty-one States and two special representative districts, the U.S. Overseas Commonwealths and the District of Columbia. Astute readers, however, will note that the present ratio of seats in the House of Representatives to the populations of the several States is itself flawed: Montana has nearly twice the population of Wyoming, for instance, yet has the same number of representatives. One of our Republic's most prominent newspapers recently proposed that chamber's enlargement, noting that the discrepancy was caused by legislation which, without clear Constitutional necessity, limited the size of the House to 435 members.¹⁸ We concur that a flaw exists, and that it undermines the purpose of the House of Representatives; we propose that it be resolved by legislation after the 2020 Census, concurrent with the extensions of representation proposed above.

Moreover, determining, as it does, the allocation of seats in the House of Representatives, the Census is fundamental to the working of our Republic; it thus ought to be shielded vigorously from interested tampering and carried out with the greatest possible precision. We call, therefore, for the Census Bureau to be equipped with the most useful modern technologies and funded in keeping with the vital role that our Union's Founders accorded it.

In regard to the American Indian and Alaska Native nations, we propose the formation of a representative body, composed of those nations' delegates, which shall advise the three federal agencies charged with fulfilling our Union's treaty obligations to them – the Bureau of Indian Affairs, the Bureau of Indian Education, and the Indian Health Service – and shall exercise some authority over the expenditure of funds which Congress appropriates to those departments. That those agencies manage affairs that affect tribal nations' distinct interests, as stipulated by treaty and separate from the interests of the whole public, is clearly evident; it is appropriate, therefore, that those nations, as partly-sovereign bodies politic, should have some oversight of them. In this way can those bureaus depart fully from their past existence as the forlorn receptacles of broken promises and become more accountable to those whom they are meant to serve.

On that matter, we must also comment on the means that have been used, in the past and in recent times, to obstruct tribal members and other citizens from exercising their fundamental right to vote. Of late, controversy has risen around requirements, instituted by state governments, for presenting identification to vote or register to vote. We consider it reasonable for citizens to identify themselves before they vote, but the means for doing so must freely be available to all; and when there is conflict in that regard, public authorities ought to give priority to protecting the right to vote, without the free exercise of which there can be no Republic.¹⁹

¹⁸ The *New York Times*, in a two-part editorial entitled "America Needs a Bigger House," published Nov. 9, 2018.

¹⁹ "The proposition to disfranchise the colored voter of the South in order to solve the race problem I hereby denounce as a mean and cowardly proposition, utterly unworthy of an honest, truthful and grateful nation. It is a

It may also be said, proudly, that the moral triumphs of our Republic are reflected in its laws, and none more so than the first section of the 14th Amendment, which enshrines a single, equal citizenship for all people born or naturalized in these United States.²⁰ Since the ratification of that Amendment, many worthy laws have been passed by Congress and the States that uphold the promise of liberty contained within it; yet since that time, and to the present day, those laws have not uniformly been upheld. In a republic, the law is and must always be the highest source of authority; and if it is upheld only selectively, the foundations of the republic shall weaken and crumble.²¹ We thus urge vigilance from all citizens and from governments at all levels, so that laws may be applied with constancy and fairness; and to ensure such an outcome, it is necessary that those entrusted with applying the law are never placed above it.

We conclude with one parting note relating to Puerto Rican statehood. It has been much remarked that Puerto Rico, were to it be admitted to our Union as a State, would be the first State to have a Spanish-speaking majority; and there are some who worry that its Hispanic culture is out of step with the national character of the Republic. To this apprehension, we counter that the United States has had a partial Hispanic character since the admission as States of Texas and Florida in 1845. Our Union had before then been largely British in its everyday culture, owing to its descent from the British Empire; but by admitting those two States and the six others which for centuries were part of the Spanish Empire,²² our Republic made itself heir to both the British and the Spanish legacies in North America and became, in a way, itself a part of Latin America. In a similar way is our Union the successor to the storied legacy of the French in North America and to the American Indian empires and confederations, whose names echo across its history and landscape, and whose descendants form a part of our Republic's might today.

Rather than fear Latin influence, therefore, citizens of these United States ought to recall that it has long been present, and embrace our Union's Anglo-Hispanic character. Our Republic ought then to use this aspect of its heritage to full advantage in its diplomacy with the countries of Latin America, much as it used its British roots to forge lasting and mutually-advantageous ties with Britain, Canada, Australia, and New Zealand. Yet before we turn to the subject of diplomacy, we must complete that of citizenship, by addressing in our next essay the challenges and opportunities of immigration.

—U.S. Citizen

proposition to sacrifice friends in order to conciliate enemies, to surrender the constitution to the late rebels for the lack of moral courage to execute its provisions." Frederick Douglass, "Lessons of the Hour" Speech, Jan. 9, 1894.

²⁰ "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *U.S. Constitution*.

²¹ "In old times when it was asked, 'How can we abolish slavery?' the answer was 'Quit stealing.' The same is the solution of the Race problem to-day. The whole thing can be done by simply no longer violating the amendments of the Constitution of the United States, and no longer evading the claims of justice. If this were done, there would be no negro problem to vex the South, or to vex the nation. Let the organic law of the land be honestly sustained and obeyed." Frederick Douglass, "Lessons of the Hour" Speech, Jan. 9, 1894.

²² New Mexico, Arizona, California, Nevada, Utah, and Colorado.