

FOURTH ANNUAL

# CONSTITUTION DAY

ARTISTIC CELEBRATION  
2011



Austin Community College's Constitution Day is sponsored by The Center for Public Policy and Political Studies, the Social and Behavioral Sciences Division, and the Arts and Humanities Division. Prizes for 2D and 3D art, personal and researched essays, poetry and fiction are funded by private donations to the Center for Public Policy and Political Studies. Each year in October the topics for the following year are announced. Any student at ACC can submit work. Deadlines for next year's entries will be around August 1, 2011. Constitution Day is always celebrated on September 17th.

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# POETRY

## **Ghazal of an Indentured Servant**

Jonathan Gould

First Place

I saw an ad, it said do something right, become a soldier.  
I took the bait, and then I was a soldier.

I proved my mettle and mastered the drills-  
all for the right to be called a soldier.

Thousands have died in the uniform I wear,  
they passed on a legacy, the honor of a soldier.

Strangers thank me, most of them  
for the service I give-the service of a soldier.

I'd like a normal life, with my own choices,  
I didn't read the fine print - cost of being a soldier.

They control when I eat, they say when I sleep,  
Just meat for the grinder, an expendable soldier.

Government Issue just like my M16;  
PFC Gould, US Army PSYOP Soldier.

## Equal Rights

Shannon Smith

Second Place

The men whispered,  
of the weight of clouds.  
Turned our sorrows,  
into little plots of land.  
With each drumbeat  
a heart pumps out.  
I am not your squaw.  
I can test liberty,  
putting one finger,  
into the frigid river,  
that runs with,  
my mother's mother's blood.  
Men promised land-  
for collecting Indian scalps,  
now sit in little rooms,  
and brag of Native grandmothers,  
while hanging dream catchers,  
from their rearview mirrors.  
The paper applies when,  
men want it applied,  
and they give equal rights,  
to rancid meat,  
and poisoned blankets,  
to wrap our babies in.  
They give equal rights,  
to burning fields,  
and buried nuclear waste.  
Just because you enter a room-  
doesn't make it yours.

## **born in America**

Dana Tucker

Third Place

On a tree lined street in small town America, Baby Girl was born to a blue collar mom and blue collar dad. In apple pie style, she great and grew. Blonde hair bounced. Blue eyes enticed. She cheered her team.

Miles away across river and border, a sweet Mexican boy struggled to get to the tree lined street in small town America. Seeking more than he left. Starting life in a new place. Alienated and separated, but knowing that life could be good in America.

At Casa Ole, the Mexican boy met the blue eyed girl. He was washing dishes. She was serving customers. His language was stiff. Her smile was wide. Through it all they found a love that knows no borders.

Now politicos talk of round ups and fences. Criminal charges and illegalities. He is afraid. He only wants America and his blue eyed girl. Mexico holds nothing for him.

## **The American Prejudice**

Katherine Brady

Honorable Mention

Church doors slammed – upon hushed voices.  
Marriage granted – only one way.  
Assumed equal – but some lack rights.  
Rights only given to those believed “Right.”  
Amendments alter – discriminatory laws.  
History repeats – as differences evolve.  
Traditional beliefs – remain the law.  
Discrimination occurs – in all areas.  
Standing forever – believed unequal.  
Lacking rights – assumed secure.  
Until this country is fair all who are different –  
Beware.

## Jackpot Baby

Lina Lee

Honorable Mention

1

Jackpot Baby born  
Not in Las Vegas, but in Laredo Texas.  
Illegal immigrant parent happy  
Their bet is paying off.

2

They, without names  
Work day and night,  
They, without names  
Fleeing from Peru  
They, without names  
Traveling across Mexico,  
They, without names  
On top of moving freight trains,  
They, without names  
Dodging authorities and dangers,  
They, without names  
Making hideout at the American border.  
They, without names  
Fresh start at America new land.

3

Jackpot babies one after one,  
Offspring of Uncle Sam.  
American storks deliver food stamps,  
Health Care and much more.  
Broken wire, station malfunction,  
Jackpot babies drop and drop  
To this new land.  
Uncle Sam Deep Pocket,  
No more.

# CREATIVE PROSE

## My Heart Speaks In a Broken Tongue

John Scheer

First Place

My heart speaks in a broken tongue, the words, inflections and emphases all jumbled inside. It needs to attend LSL—Love as a Second Language—classes at the local community college. But Federal funding has all but dried up. The waiting list is a mile long, which is as long as my tongue is from my native lip. Services for naturalization become roads of good intentions. Rain clouds in Babylon used to grow crops of naturalized citizens, now have migrated elsewhere growing fields, silos and gardens filled with land mines, missiles and bargain marble epitaphs.

The Authentics tell me language learns itself only in full immersion. Can one learn love like learning a language or does one need to learn language in the way of falling for love? A head long outa control face plant over the Cliffs of Dover and into the sea, drowning, drowning kicking screaming and subsequently giving in to the sleepy pleasure of letting go of my former life, letting go of all the rude friction between me and this foreign diction. But somehow I've managed to find an old world grotto full of my kind of people, people who speak the language of that initial spark that started Creation. We, all of us in this little village, sing in chorus to the sound of Immortal Flame, caught up in a raw unbridled power too mysterious to explain. All of us, the whole village, galloping faster, stronger, longer, lasting Breath with no master. Not to white sea cliffs of Dover are we driven, but straight through hells kitchen, into death valley, full speed ahead next stop mid air, Grand Central Canyon, Arizona Valley.

If it's a teacher I need or a ticket outa this damned little ghetto or a rope to trip, falling into love with this abrasive nation, then sign me up, I'm ready to learn, point me to the nearest ticket booth, stretch it tight while I look the other way and trip on whatever drug you put in the aquifer. But frankly I'm not sure I want to fall for you because Sir I don't get your priorities, your authorities, your direction or heading and if I did give credence to your mottoes, your grottoes, your ethos and ethic, well then... then... You'd be looking at an epic full scale insurrection so loud

it would seem like silence while your own self violence amassed with compassion procrastinated and you—standing there—dumb-founded—while your ears are bleeding onto your starched white linen shirt, bleached and pressed with the hands of our women who you oppress, redressing with domineering fashion. Bleeding onto your silk tie woven from the heart strings of one billion Chinese slave laborers in a million different factories, spinning, churning, turning the fire in their bellies into trinkets, charms, gadgets and gidgets for digits and dollars and bottomless consumption. “Doctor, doctor my chest is splitting! Consumption be done about it?” The patient says. “Why of corpse!” says the doctor, pumping their veins full of lead.

You nation of recalcitrant children who stole the keys, went joy riding while your father and mother caught their Z's, and Since your daddy was the sheriff, you stole his badge and gun, his hat and boots 7 sizes too big, blindfolded your eyes, stumbled your feet not able to tell the screech of the gas from the screech of the brake or a bu-bump-bump on the street, what was that? oh well... You should turn yourself in before it's too late, before you make one of those irreversible pubescent mistakes.

## The Lady

Jeanette Rooze

Second Place

I thought I caught a glimpse of her; a shimmer of something beautiful and pure. I am not sure what I saw. She was, as a ghost, the remnant of significance that I cannot recall.

I shrug, and listen to the bustling bodies and booming voices, embracing the twitter-song laughter of women and the harsh guffaw of men. Surrounded by the most important people in the world, I mingle. Dignitaries from Kaz-who?-stan and politicians from France, a welcome pause in the conversation.

In reflection, I find myself lost, thinking of those who are in attendance. I planned this to be, even if it is in my mind, the gathering of those that foster peace for our aged and dying existence.

The Executive Branch—oh the powers vested in the President to enforce the laws with his many men. Agencies and agents created to control the value of air (EPA), the transparency of our money (SEC), and the quantity of weapons of mass destruction (EO 13382).

The Legislative Branch—oh, the powers vested in our House of Representative and Senate creating laws designed to inflate the size of the Federal Government. Lest we forget, the committees and subcommittees debating on the one-hundred-and-fifty-second word on the six hundredth page of a bill that will decide if an audit of the Federal Reserve should proceed.

I peered through the crowds again. Between the Presidential aides and Dalai Lama, I thought I caught sight of her circlet, crowning her golden hair while she glides across the ground, escaping my view once more.

The Judicial Branch—oh, the powers vested in our Courts, with the sole power to interpret the law and determine the constitutionality, of the actions of the legislative and executive branches. In their self-righteous robes, and unyielding hammer, they help

decide the faith of man, under the pretense of due process.

She enters my field of view again, attempting to dodge my sight, as she hides behind a column behind a Democratic Senator. I chase her. I cannot evoke her name, but her strength, the knowledge behind her half-seen smile; I know that she belongs in this room.

But who is she?

She moves like the wings of a bird, free from all restraints. Her robe flutters behind her, and then suddenly, with both feet placed firmly on the ground, she stands before me with no shame. I suddenly see her bright complexion and remember...

"My name is Libertas. I am freedom from enslavement, a gift from the founding fathers to ensure the rights of every citizen to have me in their life," she says to me, with outstretched fingers that hold everyone in the room.

She winks as she walks away and says over her shoulder, "Why, yes. I do belong to everyone. Even the government cannot keep me away."

# ART

# I Smell a Rat

Juan Carlos Amorrortu

First Place 2D



Etching

Professor: Terri Goodhue

## This is Not a Flag

Dewey J. Overholser

Second Place 2D



Woodblock on Fabric  
Professor: Terri Goodhue

**In My Name**  
Romelia Fong

Third Place 2D



Ink  
Professor: Melanie Hickerson

## Collaborate not Separate

Laurie Carswell

First Place 3D



Mixed Media  
Professor: Karen Bolton

**An American, Not a Color**

Linda Kim

Second Place 3D



Plywood, Wire, Acrylic  
Professor: Caprice Pierucci



# PERSONAL ESSAY

## Federalist Paper #10

Evan Campbell

First Place

Having plagued those great spectacles of history which were Ancient Greece and Renaissance Italy, faction has forever been the harbinger of ruin and disorder in any society which allows its citizens liberty. And it is this prominent problem which James Madison answers in Federalist Paper 10, arguing in favor of a union of the United States, in order to reduce the inevitable effects of faction. I agree with Madison's assessment, and therefore see aggregation as an effective deterrent against that pernicious threat to republics which is faction.

To introduce the subject matter, Madison defines factions as "a number of citizens... who are united and actuated... adverse to the rights of other citizens, or to the permanent and aggregate interests of the community (52)." Many current examples of factions come to mind, perhaps the most prominent of which are interest groups, lobbyists, and hate groups. Thus it is easy to see how factions continue to be a grave concern for republics, and why they deserve so much attention and effort.

As with any ailment against which we may struggle, there are various ways by which we can combat faction; including preventing it entirely, or by alleviating its effects. Regarding the first choice, I concur with Madison, that, in order to achieve this, we must deprive ourselves of liberty, or we all must be completely similar in our views. Obviously, both of these options are unacceptable, and so factions are inevitable; it is then how we deal with factions that is the issue.

Concerning how we are to control the effects of factions, Madison urges us to consider the fine differences between a pure democracy and a republic; for it is these which make a republic more resistive to faction. A pure democracy, by which he means "a society consisting of a small number of citizens, who assemble and administer the government in person (Madison 55)," offers no hope for assuaging faction, as there are no barriers to majority tyranny in such a form of government. This is only

exacerbated by the lower population of democracies. However, a republic allows a cure through two means: first, by electing several people to act in the stead of the rest, and second, by being able to be extended over a larger area, and thus have a greater influence.

Regarding the election of a few to represent the many, Madison acknowledges it as being quite possible that there will be those who obtain such a status only in order to “betray the interests of the people (56).” However, he then goes on to elucidate how an extensive republic is better than a smaller one. First is the issue of proportion – in a larger republic, there will be at least an equal number of fit representatives, and thus there will be a greater chance for a fit choice. Secondly, in a more vast and populous republic, the case of an incompetent representative will be rarer, as the people will possess greater suffrage.

Although too vast a republic and too compact a republic each pose different dangers, Madison declares that the Constitution reaches a balance by separating powers between the national and the state legislatures. Yet, what principally renders republics more resistant to factions than democracies is the greater extent of land and number of citizens over which the former may be extended. The smaller the society, the easier it is for those who promote factions to operate, as majorities are formed more often and there are fewer distinct parties and interests to oppose the majority. But, if expanded, the society is less likely to experience factions, as such majority tyrannies are not so often to be found, and there are more interests and parties to resist such an attempt.

Thus with the aforementioned securities against faction afforded by a republican form of government, I see, as Madison does, “a republican remedy for the diseases most incident to republican government (58).” And for this let us be proud to have maintained such a form of government, for although its true principles may

have been slightly eroded since Madison's time, we can yet still work toward that quest for a government "of the people, by the people, for the people (Lincoln 1)."

### **Works Cited**

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- Lincoln, Abraham. "The Gettysburg Address." 19 Nov. 1863. Abraham Lincoln Online. 9 May 2011. <http://showcase.netins.net/web/creative/lincoln/speeches/gettysburg.htm>.

## The Relief for Factions

Susannah Haver

Second Place

In Federalist No. 10, James Madison begins by saying, “Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction” (Greenberg A-13). Federalist No. 10 is one of the eighty-five Federalist Papers written by Alexander Hamilton, James Madison, and John Jay. In his essay, Madison argues the control of factions in the States. Though there is no way to eliminate unruly factions or their causes, it is possible for them to be controlled. In order to do this, representatives from the government should be appointed to a small number of factions in any large republic.

There are two main causes that form factions. Shortly after the beginning of his essay, Madison talks about the first cause of faction, corrupted government. In order for a government to prosper, the public must support it. However, Madison points out that the reason the public forms factions in the first place is because they do not always want to support their government. “The instability, injustice, and confusion, introduced into the public councils, have, in truth been the mortal diseases under which popular governments have everywhere perished” (A-13). Considering this, it is no wonder the public has separated into groups that either support or do not support the government and, of course, try to enforce their own ideas. “Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. These must be chiefly if not wholly the, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations” (A-13).

The second cause of faction is simply found in human nature. Men and women are trained to develop opinions and ideas that they are going to be passionate about. Each person is going to have his or her idea of what a perfect government is, and some will go to whatever extent necessary to bring that idea to form. Madison states in Federalist No. 10, “As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves” (A-13). Madison couldn’t have been more accurate regarding the causes for factions. The public will not participate in governmental affairs as long as it goes against what they believe and are passionate about. Since every man has his own opinion and beliefs, many factions are formed, which results in the disunity of the government, states, and country as a whole.

“There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controlling its effects.” Madison proceeds to say that the only way to remove the causes of factions would be to take away liberty and give every citizen the same opinions, passions, and interests (A-13). This is not possible because it goes against not only human nature, but also the Fourteenth Amendment of the Constitution of the United States. “The inference to which we are brought is, that the causes of faction cannot be removed; and that relief is only to be sought in the means of controlling its effects” (A-14). Despite the fact that the causes of faction cannot be eliminated, Madison argues that they can be controlled. By appointing representatives, the many factions are made fewer, the citizens unified, and the public more controlled. “Relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote... The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by

two obvious considerations” (A-14-15). Madison first states that a bigger republic is better than a smaller one for controlling factions. He points out that “however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few.” On the other hand, “however large the republic may be, the representatives must be limited to a certain number in order to guard against the confusion of a multitude” (A-15). It is obvious that the latter form of a republic is a better choice seeing as it “will present greater option, and consequently a greater probability of a fit choice.”

Secondly, in a large republic, there is less possibility for the candidates to evade the things they can in a small republic. “As each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts, by which elections are often carried; and the suffrages of the people being more free, will be more likely to center in men who possess the most attractive merit, and the most diffusive and established characters.” (A-15). It is unmistakably clear that by appointing representatives in a larger republic, there will be fewer factions, and a better chance for candidates who possess the character and qualities worthy of standing in the gap for the beliefs and ideas of the public to be chosen in elections.

Through Federalist No.10, Madison is proposing that the only way to control factions is by enforcing republican principal and appointing representatives to a large public. “A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking” (A-14). It is through these representatives that factions will be made fewer and the corruption of the government will be less prominent because the candidates will be narrowed down to more worthy individuals. The whole idea of the Federalist Papers was to persuade the people to ratify the Constitution. The Fourteenth Amendment of the United States

Constitution, Section 1, states, “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” (“The Constitution of the United States”). Once the Fourteenth Amendment came into existence, it proved to coincide with Madison’s proposal in Federalist No. 10 very harmoniously. This goes to prove that Madison’s proposal in his essay will not only provide relief for the violence of factions, but also ensure the liberty and freedom promised to the American public.

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N.p.: Pearson Education, Inc., 2009. A-13-15. Print. 7 May 2011.
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## Changing the 14th Amendment

Rachel Galvan

Third Place

In preparation for this essay, I decided to get on Google and do a little research in order to brush up on the 14th Amendment. Much to my irritation, one of the first things that popped up was a recent news article about the “anchor baby” issue—children born in the United States to non-citizen immigrants. Just to clear up any initial confusion, Section I of the 14th Amendment states that “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.” These children, according to this definition, are citizens. The concern about these children being citizens has been around for a while and some individuals have gone so far as to call for a change to be made to the Amendment in response to the “anchor baby problem”. The individuals who are in favor of changing the Amendment claim that the United States cannot afford to pay the costs associated with these babies, which include hospital costs when the child is born, costs to send the child to public school, and the costs of various other social services that the child may receive over the course of its life. Others are bothered by the fact that when the children are 21 years old, they are able to sponsor other family members for citizenship. Hearing reasons such as these, I have to ask the question: If we feel the need to go so far as to change a Constitutional amendment in order to keep certain people from being citizens because we can’t accommodate them financially, what are we spending money on that is so much more important than this one group of people who are clearly and unarguably legitimate citizens? Then again, is money really the issue? I’m not entirely convinced, but I’ll come back to that question later.

Let’s assume that lack of funds is the only drawback to allowing this group of people to be citizens. How much are we spending

on them? According to the Federation for American Immigration Reform (FAIR), the cost of educating these children in the seven states with highest concentration of non-citizen immigrants was estimated at \$5 billion in 2000. In addition to that, there are the costs incurred by hospitals when these children are born. For the state of California, FAIR came up with \$215.2 million spent on the deliveries of children born to non-citizen immigrants in 1994. It's true, that is a lot of money, but these are necessary expenditures that provide for very basic human needs. It's not exactly frivolous spending, even if it is allocated for this one controversial group of people. I know that we have more than enough money required to accommodate these people's needs, it's just a matter of cutting spending from other things that are less necessary.

If it were left up to me, I would take a critical look at the thing on which we are spending the most money by far—defense spending. According to a 2009 press release from the US Department of Defense, the proposed defense budget for 2010 was \$663.8 billion, which included \$130 billion to support programs overseas. Naturally, a large amount of this was purposed for Iraq and Afghanistan, but what about the rest? Most people don't realize that the United States has troops in over 150 countries around the world. Countries like... Australia. When I first heard about this a couple of years ago, I was very confused because I didn't realize Australia was a threat. Why do we need troops there? The more I thought about it, the more this "defense" budget sounds like an offense budget. If we could reallocate just the \$130 billion to education and social services, that would more than make up for the "strain" that children of non-citizen immigrants are putting on the economy and maybe we wouldn't be having this discussion about changing the 14th Amendment. That is, unless it isn't really about money at all.

I almost hate to bring up my next point for fear of sounding like Geraldo Rivera, but what if the individuals who are bothered so much by the presence of these children that they want to

change one of the most important amendments to the Constitution, just don't like whence these people are coming? According to the Department of Homeland Security, 80% of non-citizen immigrants originate from places like Latin America and various regions of Asia, such as the Philippines and Korea. By comparison, we almost never hear people complain about non-citizen immigrants from Canada or Europe. In addition, while there is constantly talk of the absolute necessity for a fence to be built along our southern border, I think I may have heard of a fence along the northern border twice—and in one of those instances it came from politicians who were worried about being perceived as penalizing the southern border over the northern one. It just seems like a massive double-standard, in my opinion.

Whatever the reasons may be, changing the 14th Amendment would be a total cop-out. Instead of thinking of creative spending solutions to eliminate the strain that is supposedly caused by these children, just change the law. Instead of being open-minded and learning to accept cultures that are very different from our own, just change the law. I fully support changing laws that make no sense, are out-dated, so on, and so forth. This is not one of those laws. This amendment defines, at the most basic level, who makes up the population of the United States and I think changing it would set a terrible precedence. I'm not sure I would want to live in a place where what defines me as a citizen can be changed for such shallow and myopic reasons.

# RESEARCHED ESSAY

## A Living Constitution

James Stark

First Place

“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. Const. am. XIV, § 1)

The Fourteenth Amendment to the United States Constitution, Section I, contains perhaps the most controversial and far-reaching provisions in the entirety of United States Constitutional Law. Since its ratification on July 9, 1868, the Fourteenth Amendment has been the subject of a nigh-unprecedented amount of case law, second only to the First in sheer number of suits, with tremendous swings in judicial opinion and appropriate legislation seemingly one year after the next. Forty years after the Amendment’s passage, author and lawyer Charles Wallace Collins wrote, “in the line of decisions under the Fourteenth Amendment, uncertainty has been the rule” (608). Almost one-hundred years thence, despite the overwhelming amount of cases invoking the Amendment, courts have yet to concur on a concrete understanding of the provisions enumerated in the Citizenship, Due Process, and Equal Protection Clauses that make up its first section. This fluidity of interpretation—due primarily to “elastic, vague, and indefinite” terminology (Collins 606)—has helped the Amendment remain a significant tool and source of debate to this day, gaining new relevance in a political dialogue filled with rhetoric of “anchor babies”, the struggle for LGBT rights, and a renewed fervor in the states to retake some measure of their sovereignty from the federal government.

As the second of three so called “Reconstruction Amendments”, Amendment XIV was originally passed in the wake of the American Civil War in order to—among other things—elevate the status of recently freed African American slaves to that of full

United States citizens, with all of the privileges and immunities appertaining thereto. It was in large part a response to the Dred Scott Decision of 1857 and the “Black Codes” which had been initiated in response to the passage of the Thirteenth Amendment, both of which insisted on the inferiority of black Americans regardless of status as slave or freedman. Though laden with implications far beyond assimilating the newly freed slaves, enforcing the Amendment even in regards to its original intent proved problematic as judiciaries nationwide began legislating in such a fashion as to immensely reduce the scope and application of Section 1’s provisions. Effectively, the courts originally held that the provisions of the Fourteenth Amendment “were created for the benefit of the newly freed black man and were inapplicable to exercises of legislative power which did not involve racial oppression or discrimination,” and narrow interpretation of the amendment was necessary lest it “might be held to have changed the Constitution” (Cushman 739, Epps 178).

In the Slaughterhouse Cases (1873)—the Supreme Court’s first interpretation of the Fourteenth Amendment—the Court acknowledged that there lay a “[clearly recognized and established] distinction between citizenship of the United States and citizenship of a state”, and that the Amendment provided only for the former. Furthermore, the justices recognized that the “security and protection” of citizens’ civil rights was the responsibility of individual states, and to mandate national enforcement of any civil rights provision was to “fetter and degrade the State governments by subjecting them to the control of Congress” (83 U.S. 36). Five years later, rendering its opinion on *Davidson v. New Orleans* (1878), the Court also effectively undermined the Due Process Clause, citing that “the constitutional meaning or value of the phrase ‘due process of law,’ remains to-day without satisfactory precision of definition,” and depending on one’s interpretation, it could be used “as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State court of the justice of the deci-

sion against him, and of the merits of the legislation on which such a decision may be founded” (96 U.S. 97). In *Munn v. Illinois* (1877), the Court went so far as to invalidate the Petitioners claim that his Fourteenth Amendment rights had been infringed upon by the state, stating, “For protection against abuses by legislatures, the people must resort to the polls, not to the courts” (94 U.S. 113). The original policy of the Court, in essence, was to apply a doctrine of “judicial non-interference”, and to expound on the definitions of Due Process and Equal Protection via “judicial inclusion and exclusion” (Cushman 741). Even by 1912, however, despite more than “five hundred and sixty-seven cases” interpreting Due Process alone, even the Supreme Court had not yet established via *stare decises* (essentially, judicial inclusion and exclusion) what could be considered a functional definition of Section I: said Justice Oliver Wendell Holmes, “But it is familiar that what is due process depends on circumstances” (Collins 605).

While it could be argued that the Supreme Court yet still lacks such a definition of the section, it has within the past seventy years at least veered heavily in favor of using it to justify significant judicial interference and more federal regulation of state activity. Though the shift may not have begun with these cases, this change is most heavily typified by *Brown v. Board of Education* (1954) for Equal Protection and *Roe v. Wade* (1973) for Due Process, both of which called heavily on the Fourteenth Amendment for grounds to dictate acceptable legislation in the states. While these and similar cases—like *Gideon v. Wainwright* (1963) and *Loving v. Virginia* (1967)—had doubtless positive significance for individual civil and political rights in the United States, they also hold troubling implications for the sovereignty and power of the states that the Court had before so adamantly protected. Coupled with the Civil Rights Act of 1964 passed by the legislature, these measures significantly hobbled the ability of the states to litigate and legislate at their discretions. Much more recently, however—due in no small part to the divisive nature of

the Obama administration—states have begun to reassert their sovereignty on a national scale, particularly in the areas of gay rights legislation, the newly passed universal healthcare legislation, the death penalty and, perhaps most intriguingly, immigration law.

With some high-profile immigration legislation coming out of Arizona and Alabama, immigration has lurched to the forefront of the American political consciousness. While not unusual in and of itself, it has been laden with largely unprecedented rhetoric regarding what is arguably the least controversial provision in the Fourteenth Amendment: the Citizenship Clause and US birthright citizenship. Many US conservatives allege that illegal immigrants are actively sneaking into the United States in order to give birth to US citizens who will then facilitate the citizenship process for any parents or relatives; these children have been given the disparaging epithet of “anchor babies”. The Amendment’s framers, they claim, had not intended and had no way of knowing that the clause would ever be used in such a fashion, and dissenters therefore call for a new understanding and perhaps even a complete repeal of the Citizenship Clause. Though the allegations regarding “anchor” children themselves are as unfounded as they are baffling, they do raise certain interesting notions regarding framer intent and contemporary context in reference to Constitutional law.

Despite a great deal of research and personal contemplation, and a significantly deepened knowledge of the legislative history surrounding, I can’t help but feeling that I’ve left this essay without what I would consider a substantively improved understanding of the Amendment itself. With such conflicted and fluctuating opinions arising even from the United States Supreme Court, perhaps such an uncertain conclusion was an inevitability. I would venture so far as to say that perhaps no one has such an understanding of the Amendment, and everyone is merely flying by the seat of their pants, as the expression goes, and Charles

Collins' sentiment, "in the line of decisions under the Fourteenth Amendment, uncertainty has been the rule," holds just as true now as it did in 1912. As the end-all, be-all of all American governmental action, the Constitution and its amendments are not nearly so clear cut as many would like to believe, and a remarkably large portion is yet still open to interpretation as the legislature and the judiciary see fit. It must be the responsibility of every thinking American citizen, then, to study and understand their Constitution to the best of their abilities, and hold their government and themselves accountable for its application.

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## The Faction Pendulum: Federalist Paper No. 10 in 2011

Justin Wright

Second Place

In 1787, James Madison identified the primary objective of government in a libertarian society: to manage the natural factions that plagued human life and government as effectively as possible. According to Madison, the development of factions is an inevitable consequence of the unequal distribution of wealth and the uneven distribution of the innate faculties from which that wealth is made possible in the first place. Madison thought the uneven distribution of wealth was a direct reflection of an equivalently unevenly distributed amount of ability. Essentially, Madison believed that economic inequality will always create factions, and that the root cause of this inequality is rooted in human nature. Madison understood that rectifying this undesirable situation would require the abdication of liberty itself, and so a different method of dealing with factions was developed. In Federalist Paper No. 10, Madison suggested the creation of a large republic, which would have the effect of preventing majority tyranny and ensuring that the reservoir of ideas and good leadership would not run dry. For Madison, the tyranny of the majority against the propertied minorities was a debilitating sickness, and a large republic was the medicine for that ailment. The circumstances under which Madison's view of republican government were forged appear to be reasonable justifications for his arguments—the Articles of Confederation were a mess and in dire need of repair. Despite the success of this marvelous experiment we call the United States over the last 224 years, I believe the emergence of new cultural and technological institutions call for a different approach to the problem of factions. The faction pendulum has swung yet again, and it is the minorities who now hold undue influence over the societal apparatus.

James Madison undoubtedly favored the interests of the aristocratic class—of this there can be no question; however, the historical circumstances under which he was writing Federalist Paper No. 10 alleviate some of the negative clouds surrounding his legacy. The Articles of Confederation, a constitution which was very responsive to majority opinion, had failed miserably in many respects. The events known as Shays' Rebellion had occurred the very same year,

and the fear of a popular uprising was very real and threatened to destroy the entire system. A class war was brewing, and if anyone needed vindication of the legitimacy of this sentiment, they had only to wait a few more years for the French Revolution. The ultimate behemoth of minority rule, finance capitalism, was still waiting for the culmination of the industrial revolution. Ultimately, the government established by the Articles of Confederation was vulnerable and James Madison intended to fix it. Madison's clarion call for the establishment of a large republic that would filter the impure thoughts of the masses into refined policy managed by an aristocratic class made a lot of sense. Ironically, we face a completely different problem today—the problem of minority rule.

Madison wrote of the need to temper the passions of the majority through a representative government that would fairly balance the rights of the minority with the rights of the majority. The problem that we face today is that minority groups have undue influence on the political and economic system of the United States despite the design of the constitution. The form of representative government that Madison called for is no longer capable of assimilating the ideas and values of society at large; to the extent that it is capable, it is only a reiteration of centrally mandated ideology reinforced by the party system and the media that caters to it. Two powerful political parties encompass virtually all legislatively feasible policy, and if someone wants to advocate any particular policy interest, he or she must first go through one of the two major parties—there is no other practical option. In fairness to our political leaders, the structure of the electoral process itself naturally evolves into a bipolar structure because it is a winner-take-all system—but that is no justification for maintaining it. According to Jeffery Jones, a researcher for Gallup, a majority of Americans have supported a third party for a long time (1). The fact that no legislative changes have been proposed that would enable this process to unfold is suggestive of how responsive our system is to majority rule. Some might ask why this matters if a bipolar congress is capable of passing the legislation needed, but they would have to confront the fact that congress has an approval

rating of only 21% (RealClearPolitics 1). If chronically low approval ratings like this one are the norm, then how does congress continue doing business as usual? The answer is that they have support from the powerful minority interests to whom they are beholden, as well as a complacent media, which I'll turn to later. Congressmen loyally serve the groups that put them into power and receive assistance in turn. According to Fredreka Schouten of USA Today, "16 of the 62 lawmakers who left Congress last year [2008] have landed jobs with groups that seek to influence policymakers..." (1). The controversies of Jack Abramoff, Chris Dodd, and Tom Delay are kitchen table conversations at this point in time. The real travesty is that the one institution capable of altering this state of affairs lies prostrate for the economically powerful. The homogeneity of opinion and the political complacency of the general public are supported by our system of media, which is heavily concentrated financially and in the hands of a powerful minority. The gradual diminishment of blue collar job opportunities, a progressively more lopsided income distribution, and corporate welfare at the expense of the majority are shameful realities frequently ignored or diminished in our sickly medium of discourse we refer to as the news media. According to the GAO, two thirds of all U.S. corporations paid no income taxes from 1997 to 2005, a fact which received little attention in the mainstream media (qtd. in Browning 1). Even though this made it into a newspaper, the fact is that most people don't get their news or political acculturation from print media. Additionally, despite the paucity of information available on television, 70% of the population received their news from sound bite ridden television as recently as 2008 (Langeveld 1). A small number of companies control this flow of information, and all of them are accountable to shareholders, not the American public. When you go to the movies you will probably be watching a movie produced by one of six major media studios. These six companies control approximately 82% of the movie production market, so you can forget about any watershed artistic expression lending itself to an awakening of political life (The Numbers 1). These statistics only scratch the surface of what it means to be a minority controlled society, but they serve as a good start. These statistics, among others

not mentioned, demonstrate that the degree and quality of artistic and political expression across the nation no longer constitutes a diversity of opinion. James Madison partially rests his case for large republican government on the following: “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.”(1). He was right about the majority losing some power, but I doubt he anticipated the stagnation of political innovation. Intellectual and political homogeneity is increased in the context of our national mass media, and I believe the extended sphere of information he so favorably refers to is illusory, because our information apparatus is centrally dictated. Our representative form of government, in conjunction with the modern mass media, has created a circular information and political whirlpool from which there is no escape. Ideological positions with no relation whatsoever are forcefully blended together to create the appearance of a coherent worldview, when they are really just a politically expedient construction that allows the major parties to incorporate as many disparate groups as possible into one voting bloc. This phenomenon is expected to some degree, but I can only imagine what would happen if the average citizen utilized an ideology as coherent as that of the powerful interests in society, and dispensed with the irrelevant issues they so forcefully contend with today (think of the Donald Trump birth controversy). The ideology of the powerful minority is a domestic version of Realpolitik, where any decision goes as long as it is self-serving—it is unfortunate that the common man fails to see this as James Madison did.

Madison understood society as a competition of factions at its heart, and he understood that those factions were comprised of people with power and those without it. Madison did not even bother with paeans to morality—he spoke the language of power. While Madison’s support of the aristocratic class may seem unconscionable, Madison did not support it out of hatred for the masses, but out of

practical consideration for the future of the challenged infant state he found himself in. We should apply a similar philosophy to our current predicament, and understand that the future of the country rests with an empowered majority; a majority that also speaks the language of power, but one with a vigorous media that enables it to wield that power wisely. This truly extended sphere of influence would undoubtedly be more effective than the limited system we have today.

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## The Fourteenth Amendment: Saving Civil Rights

Barron Scott

Third Place

The Fourteenth Amendment has been one of the most useful amendments to further civil rights causes in the United States. The Fourteenth Amendment has helped to shape the country in many ways. Some of the changes were the intent of the amendment, and some of the changes, like a woman's right to abortion, were not foreseen when they wrote the amendment. To truly understand the importance of the Fourteenth Amendment you need to understand why it was written, how it has been used and interpreted, and how it can affect present and future situations.

To best understand the Fourteenth Amendment it is best to break it down into its parts and explain the purpose behind statements. Section 1 of the Fourteenth Amendment of the U.S. Constitution states that,

“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” (Encyclopedia Britannica Web).

The Fourteenth Amendment was written primarily to make sure that southern states were treating freed black men with the same rights and privileges that they were giving white men after the Civil War. I say men because until 1920 and the Nineteenth Amendment women were denied the basic right of voting. The first issue that the amendment tries to tackle is who should be considered a citizen. This is a very important part of the amendment, for if you are a citizen of the United States you are entitled to protection of your rights by the United States. The amendment is clearly stating that all persons born or naturalized in the

United States and subject to the jurisdiction thereof are citizens. “The Fourteenth Amendment was to overrule (the) Dred Scott (case) and firmly establish the principles of birthright citizenship” (Maltz 73). The Dred Scott case stated that freed or slaved blacks could not be citizens. The portion of the amendment that talks about being subject to the jurisdiction of the United States was to deal with Native Americans Indians. This language was used to make sure to exclude Native American Indians from citizenship of the United States. This way they maintained their independent nation status. The next section of the amendment tells the States that they are not able to deny the privileges and rights of citizens. This is the Federal Government saying primarily to the South that they cannot create a state law to restrict the rights of citizens that are granted by the Federal Government. The next section of the amendment deals with the protection of rights of all citizens from the States. The amendment denies the States the ability to deprive a person of life, liberty, and property without the due process of law. That amendment also states that all citizens shall have equal protection under the laws. This was the Federal Government’s way of telling the southern States that they could not continue to make black men second class citizens in the eyes of the law.

The Fourteenth Amendment has brought about tremendous civil rights advancement. The path of advancement was not a straight or a smooth one. The use of the Fourteenth Amendment has evolved over the years. The first Fourteenth Amendment case to reach the Supreme Court was the Slaughter House case. The Slaughter House case did not deal with race at all, instead it dealt with a Louisiana law that created a monopolized slaughter house for all of the city of New Orleans. This law forced out small slaughter houses and butchers who did their own slaughtering. The State justified the law by saying that the city would be able to manage the health concerns that come with slaughter houses if there is just one big slaughter house. The Supreme Court ruled in favor of the State (Cases in Controversy). One of the

most controversial cases that dealt with the Fourteenth Amendment was the *Plessy v. Ferguson*. This case dealt with a State law in Louisiana that required blacks to ride in separate train cars from the whites. The Supreme Court decided in this case that blacks and other minorities could be separated from the whites if they are provided separate but equal accommodations (Cases in Controversy). This ruling led to any State laws, the Jim Crow laws, segregating blacks from whites. It took many years and many Supreme Court cases to slowly chip away the segregation caused by the *Plessy v. Ferguson* case. The Supreme Court started to break up segregation slowly and at the top of education. In cases like *Missouri v. Canada*, *Sweatt v. Painter*, and *McLaurin v. Oklahoma*, the Supreme Court ruled that separate is inherently not equal in the availability, quality, and experience of higher education (Cases in Controversy). These court cases were the stepping stones to one of the most famous cases of all, the *Brown v. Topeka Board of Education*. The *Brown* case tore down the whole idea of separate but equal in schools, and forced the integration of all schools (Cases in Controversy). This case caused a ripple effect in civil rights throughout the country. Race relations were not the only rights that have been protected by the Fourteenth Amendment. In *Roe v. Wade* a woman's right to have an abortion is protected by her right to privacy and the due process clause of the Fourteenth Amendment (Cases in Controversy).

The Fourteenth Amendment has done many great things for creating a more equal treatment of all citizens in the United States. Yet, the Fourteenth Amendment has come under fire recently due in large part to the first part of the amendment which states that all persons born in the United States are citizens. Recently there have been a large number of illegal immigrants who have traveled into the United States to have their babies, thus granting their children citizenship. There has been a push from some of the Border States, like Arizona, to change the Fourteenth Amendment and make it so that babies that are born to people

who are in the United States illegally are not granted automatic citizenship. This could be a dangerous precedent of taking rights away. The United States has prided itself on being for freedom and rights.

Another Fourteenth Amendment conflict arises in the Guantanamo Bay terrorist suspects. There are many terrorist suspects that are being held in a prison in Guantanamo Bay, Cuba that are being denied due process of law. This is a trickier subject than most, for the terrorist suspects are not U.S. citizens and it is the Federal Government, not the states, that are denying the people due process of law. The real question becomes: is the United States using technicalities to circumvent the intent of the Fourteenth Amendment? A major concern is that if the Federal Government will deny some people the rights of due process, what will stop them from denying other peoples in the future the due process. The question is where is the line that you allow the government the authority to deny basic rights, and do you let the government move that line?

The Fourteenth Amendment has been one of the most influential amendments in the history of the United States. It has forced the United States to try and treat everyone with equal rights regardless of race, gender, class, or age. The Fourteenth Amendment has been a major building block for civil rights in the United States. One could argue that, without the Fourteenth Amendment, society would be very different and a lot less equal.

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