

# THE ANTIFEDERALIST PAPERS NUMBER 78 79

## THE POWER OF THE JUDICIARY (PART 1)

1788

1. THE SUPREME COURT UNDER THIS CONSTITUTION WOULD BE EXALTED ABOVE ALL OTHER POWER IN THE GOVERNMENT, AND SUBJECT TO NO CONTROL. THE BUSINESS OF THIS PAPER WILL BE TO ILLUSTRATE THIS, AND TO SHOW THE DANGER THAT WILL RESULT FROM IT. I QUESTION WHETHER THE WORLD EVER SAW, IN ANY PERIOD OF IT, A COURT OF JUSTICE INVESTED WITH SUCH IMMENSE POWERS, AND YET PLACED IN A SITUATION SO LITTLE RESPONSIBLE. CERTAIN IT IS, THAT IN ENGLAND, AND IN THE SEVERAL STATES, WHERE WE HAVE BEEN TAUGHT TO BELIEVE THE COURTS OF LAW ARE PUT UPON THE MOST PRUDENT ESTABLISHMENT, THEY ARE ON A VERY DIFFERENT FOOTING.

THE JUDGES IN ENGLAND, IT IS TRUE, HOLD THEIR OFFICES DURING THEIR GOOD BEHAVIOR, BUT THEN THEIR DETERMINATIONS ARE SUBJECT TO CORRECTION BY THE HOUSE OF LORDS; AND THEIR POWER IS BY NO MEANS SO EXTENSIVE AS THAT OF THE PROPOSED SUPREME COURT OF THE UNION. I BELIEVE THEY IN NO INSTANCE ASSUME THE AUTHORITY TO SET ASIDE AN ACT OF PARLIAMENT UNDER THE IDEA THAT IT IS

INCONSISTENT WITH THEIR CONSTITUTION. THEY CONSIDER  
THEMSELVES BOUND TO DECIDE ACCORDING TO THE EXISTING  
LAWS OF THE LAND, AND NEVER UNDERTAKE TO CONTROL THEM  
BY ADJUDGING THAT THEY ARE INCONSISTENT WITH THE  
CONSTITUTION—MUCH LESS ARE THEY VESTED WITH THE  
POWER OF GIVING AN EQUITABLE CONSTRUCTION TO THE  
CONSTITUTION.

THE JUDGES IN ENGLAND ARE UNDER THE CONTROL OF THE  
LEGISLATURE, FOR THEY ARE BOUND TO DETERMINE  
ACCORDING TO THE LAWS PASSED UNDER THEM. BUT THE  
JUDGES UNDER THIS CONSTITUTION WILL CONTROL THE  
LEGISLATURE, FOR THE SUPREME COURT ARE AUTHORISED IN  
THE LAST RESORT, TO DETERMINE WHAT IS THE EXTENT OF THE  
POWERS OF THE CONGRESS. THEY ARE TO GIVE THE  
CONSTITUTION AN EXPLANATION, AND THERE IS NO POWER  
ABOVE THEM TO SET ASIDE THEIR JUDGMENT. THE FRAMERS OF  
THIS CONSTITUTION APPEAR TO HAVE FOLLOWED THAT OF THE  
BRITISH, IN RENDERING THE JUDGES INDEPENDENT, BY  
GRANTING THEM THEIR OFFICES DURING GOOD BEHAVIOR,  
WITHOUT FOLLOWING THE CONSTITUTION OF ENGLAND, IN  
INSTITUTING A TRIBUNAL IN WHICH THEIR ERRORS MAY BE  
CORRECTED; AND WITHOUT ADVERTING TO THIS, THAT THE  
JUDICIAL UNDER THIS SYSTEM HAVE A POWER WHICH IS ABOVE  
THE LEGISLATIVE, AND WHICH INDEED TRANSCENDS ANY

POWER BEFORE GIVEN TO A JUDICIAL BY ANY FREE  
GOVERNMENT UNDER HEAVEN.

I DO NOT OBJECT TO THE JUDGES HOLDING THEIR  
COMMISSIONS DURING GOOD BEHAVIOR. I SUPPOSE IT A  
PROPER PROVISION PROVIDED THEY WERE MADE  
PROPERLY RESPONSIBLE. BUT I SAY, THIS SYSTEM HAS  
FOLLOWED THE ENGLISH GOVERNMENT IN THIS, WHILE IT HAS  
DEPARTED FROM ALMOST EVERY OTHER PRINCIPLE OF THEIR  
JURISPRUDENCE, UNDER THE IDEA, OF RENDERING THE JUDGES  
INDEPENDENT; WHICH, IN THE BRITISH CONSTITUTION, MEANS  
NO MORE THAN THAT THEY HOLD THEIR PLACES DURING GOOD  
BEHAVIOR, AND HAVE FIXED SALARIES . . . [THE AUTHORS OF  
THE CONSTITUTION] HAVE MADE THE JUDGES INDEPENDENT, IN  
THE FULLEST SENSE OF THE WORD. THERE IS NO POWER  
ABOVE THEM, TO CONTROL ANY OF THEIR DECISIONS. THERE  
IS NO AUTHORITY THAT CAN REMOVE THEM, AND THEY CANNOT  
BE CONTROLLED BY THE LAWS OF THE LEGISLATURE. IN  
SHORT, THEY ARE INDEPENDENT OF THE PEOPLE, OF THE  
LEGISLATURE, AND OF EVERY POWER UNDER HEAVEN. MEN  
PLACED IN THIS SITUATION WILL GENERALLY SOON FEEL  
THEMSELVES INDEPENDENT OF HEAVEN ITSELF. BEFORE I  
PROCEED TO ILLUSTRATE THE TRUTH OF THESE REFLECTIONS, I  
BEG LIBERTY TO MAKE ONE REMARK. THOUGH IN MY OPINION  
THE JUDGES OUGHT TO HOLD THEIR OFFICES DURING GOOD

BĚHĀVIOR, YĚT Ī THĪNK ĪT ĪS CLĒAR, THĀT THĒ RĒASŪNS ĪN FĀVOR OF THĪS ĚSTĀBLĪSHMĚNT OF THĒ JŪDGĚS ĪN ĚNGLĀND, DŌ BY NŌ MĒANS ĀPLY TŌ THĪS CŪNTRY.

2. THĒ GRĒAT RĒASŪN ĀSSĪGNĚD, WHŪ THĒ JŪDGĚS ĪN BRĪTĀIN OUGHT TŌ BĒ COMMISSĪONĚD DŪRĪNG GOOD BĚHĀVIOR, ĪS THĪS, THĀT THĒY MĀY BĒ PLĀCĚD ĪN Ā SĪTŪĀTION, NŌT TŌ BĒ ĪNFLŪENCĚD BY THĒ CROWN, TŌ GĪVĚ SŪCH DĚCĪSĪNS ĀS WŪLD TĚND TŌ ĪNCRĒĀSĚ ĪTS POWĚRS ĀND PRĚRŌGĀTĪVĚS. WHĪLĚ THĒ JŪDGĚS HĚLD THĒIR PLĀCĚS ĀT THĒ WĪLL ĀND PLĚĀSŪRĚ OF THĒ KĪNG, ŌN WHŌM THĒY DĚPĚNDĚD NŌT ŌNLY FOR THĒIR ŌFFĪCĚS, BŪT ĀLSŌ FOR THĒIR SĀLĀRĪĚS, THĒY WĚRĚ SŪBJĚCT TŌ ĚVĚRY ŪNDŪĚ ĪNFLŪENCĚ. ĪF THĒ CROWN WĪSHĚD TŌ CĀRRŪ Ā FĀVŌRĪTĚ POINT, TŌ ĀCCŌMPLĪSH WHĪCH THĒ ĀĪD OF THĒ CŪRTS OF LĀW WĀS NĚCESSĀRY, THĒ PLĚĀSŪRĚ OF THĒ KĪNG WŪLD BĒ SĪGNĪFĪĚD TŌ THĒ JŪDGĚS. ĀND ĪT RĚQŪRĚD THĒ SPĪRĪT OF Ā MĀRTŪR FOR THĒ JŪDGĚS TŌ DĚTĚRMINĚ CŌNTRĀRY TŌ THĒ KĪNG'S WĪLL. THĒY WĚRĚ ĀBSŌLŪTĚLY DĚPĚNDĚNT ŪPŌN HĪM BŌTH FOR THĒIR ŌFFĪCĚS ĀND LĪVĪNGS. THĒ KĪNG, HŌLDĪNG HĪS ŌFFĪCĚ DŪRĪNG LĪFĚ, ĀND TRĀNSMĪTTĪNG ĪT TŌ HĪS PŌSTĚRĪTY ĀS ĀN ĪNHĚRĪTĀNCĚ, HĀS MŪCH STRŌNGĚR ĪNDŪCĚMĚNTS TŌ ĪNCRĒĀSĚ THĒ PRĚRŌGĀTĪVĚS OF HĪS ŌFFĪCĚ THĀN THŌSĚ WHŌ HŌLD THĒIR ŌFFĪCĚS FOR STĀTĚD PĚRĪODS OR ĚVĚN FOR LĪFĚ. HĚNCĚ THĒ ĚNGLĪSH NĀTION GĀĪNĚD Ā

G R E A T P O I N T , I N F A V O R O F L I B E R T Y , W H E N T H E Y O B T A I N E D  
T H E A P P O I N T M E N T O F T H E J U D G E , D U R I N G G O O D B E H A V I O R .  
T H E Y G O T F R O M T H E C R O W N A C O N C E S S I O N W H I C H  
D E P R I V E D I T O F O N E O F T H E M O S T P O W E R F U L E N G I N E S W I T H  
W H I C H I T M I G H T E N L A R G E T H E B O U N D A R I E S O F T H E R O Y A L  
P R E R O G A T I V E A N D E N C R O A C H O N T H E L I B E R T I E S O F T H E  
P E O P L E . B U T T H E S E R E A S O N S D O N O T A P P L Y T O T H I S  
C O U N T R Y . W E H A V E N O H E R E D I T A R Y M O N A R C H ; T H O S E W H O  
A P P O I N T T H E J U D G E S D O N O T H O L D T H E I R O F F I C E S F O R L I F E ,  
N O R D O T H E Y D E S C E N D T O T H E I R C H I L D R E N . T H E S A M E  
A R G U M E N T S , T H E R E F O R E , W H I C H W I L L C O N C L U D E I N F A V O R O F  
T H E T E N U R E O F T H E J U D G E ' S O F F I C E S F O R G O O D B E H A V I O R ,  
L O S E A C O N S I D E R A B L E P A R T O F T H E I R W E I G H T W H E N A P P L I E D  
T O T H E S T A T E A N D C O N D I T I O N O F A M E R I C A . B U T M U C H L E S S  
C A N I T B E S H O W N , T H A T T H E N A T U R E O F O U R G O V E R N M E N T  
R E Q U I R E S T H A T T H E C O U R T S S H O U L D B E P L A C E D B E Y O N D A L L  
A C C O U N T M O R E I N D E P E N D E N T , S O M U C H S O A S T O B E A B O V E  
C O N T R O L .

I H A V E S A I D T H A T T H E J U D G E S U N D E R T H I S S Y S T E M W I L L B E  
I N D E P E N D E N T I N T H E S T R I C T S E N S E O F T H E W O R D . T O P R O V E  
T H I S I W I L L S H O W T H A T T H E R E I S N O P O W E R A B O V E T H E M  
T H A T C A N C O N T R O L T H E I R D E C I S I O N S , O R C O R R E C T T H E I R  
E R R O R S . T H E R E I S N O A U T H O R I T Y T H A T C A N R E M O V E T H E M  
F R O M O F F I C E F O R A N Y E R R O R S O R W A N T O F C A P A C I T Y , O R

LŌWER THĒIR SĀLĀRIĒS, ĀND ĪN MĀNY CĀSĒS THĒIR PŌWER  
ĪS SŪPERĪOR TŌ THĀT ŌF THĒ LĒĜĪSLĀTURĒ.

1ST. THĒRĒ ĪS NŌ PŌWER ĀBŌVĒ THĒM THĀT CĀN CORRĒCT  
THĒIR ĒRRORS ŌR CŌNTRŌL THĒIR DĒCĪSIONS. THĒ  
ĀDJUDĪCĀTIONS ŌF THĪS CŌURT ĀRĒ FĪNAL ĀND ĪRRĒVERSĪBLĒ,  
FOR THĒRĒ ĪS NŌ CŌURT ĀBŌVĒ THĒM TŌ WHĪCH ĀPPĒĀLS CĀN  
LĪĒ, ĒĪTHĒR ĪN ĒRROR ŌR ŌN THĒ MĒRĪTS. ĪN THĪS RĒSPĒCT  
ĪT DĪFFĒRS FROM THĒ CŌURTS ĪN ĒNGLĀND, FOR THĒRĒ THĒ  
HŌUSĒ ŌF LŌRDS ĪS THĒ HĪGHĒST CŌURT, TŌ WHŌM ĀPPĒĀLS,  
ĪN ĒRROR, ĀRĒ CĀRRĪED FROM THĒ HĪGHĒST ŌF THĒ CŌURTS  
ŌF LĀW.

2ND. THĒY CĀNNŌT BĒ RĒMŌVĒD FROM ŌFFĪCĒ ŌR SŪFFĒR Ā  
DĪMĪNŪTION ŌF THĒIR SĀLĀRIĒS, FOR ĀNY ĒRROR ĪN  
JŪDGMĒNT [DŪĒ] TŌ WANT ŌF CĀPĀCĪTY. ĪT ĪS ĒXPĒRESSLY  
DĒCLĀRĒD BY THĒ CŌNSTĪTŪTION, "THĀT THĒY SHĀLL ĀT  
STĀTĒD TĪMĒS RĒCĒĪVĒ Ā CŌMPĒNSĀTION FOR THĒIR  
SĒRVĪCĒS WHĪCH SHĀLL NŌT BĒ DĪMĪNĪSHĒD DŪRĪNG THĒIR  
CŌNTĪNŪĀNCĒ ĪN ŌFFĪCĒ."

THĒ ŌNLY CLĀUSĒ ĪN THĒ CŌNSTĪTŪTION WHĪCH PRŌVĪDĒS FOR  
THĒ RĒMŌVAL ŌF THĒ JŪDĜĒS FROM ŌFFĪCĒS, ĪS THĀT WHĪCH  
DĒCLĀRĒS, THĀT "THĒ PRĒSĪDĒNT, VĪCĒ-PRĒSĪDĒNT, ĀND ĀLL  
CĪVĪL ŌFFĪCĒRS ŌF THĒ ŪNĪTĒD STĀTĒS, SHĀLL BĒ RĒMŌVĒD  
FROM ŌFFĪCĒ, ŌN ĪMPĒĀCHMĒNT FOR, ĀND CŌNVĪCTION ŌF

TREASON, BRIBERY, OR OTHER HIGH CRIMES AND MISDEMEANORS." BY THIS PARAGRAPH, CIVIL OFFICERS, IN WHICH THE JUDGES ARE INCLUDED, ARE REMOVABLE ONLY FOR CRIMES. TREASON AND BRIBERY ARE NAMED, AND THE REST ARE INCLUDED UNDER THE GENERAL TERMS OF HIGH CRIMES AND MISDEMEANORS. ERRORS IN JUDGMENT, OR WANT OF CAPACITY TO DISCHARGE THE DUTIES OF THE OFFICE, CAN NEVER BE SUPPOSED TO BE INCLUDED IN THESE WORDS, HIGH CRIMES AND MISDEMEANORS. A MAN MAY MISTAKE A CASE IN GIVING JUDGMENT, OR MANIFEST THAT HE IS INCOMPETENT TO THE DISCHARGE OF THE DUTIES OF A JUDGE, AND YET GIVE NO EVIDENCE OF CORRUPTION OR WANT OF INTEGRITY. TO SUPPORT THE CHARGE, IT WILL BE NECESSARY TO GIVE IN EVIDENCE SOME FACTS THAT WILL SHOW, THAT THE JUDGES COMMITTED THE ERROR FROM WICKED AND CORRUPT MOTIVES.

3D. THE POWER OF THIS COURT IS IN MANY CASES SUPERIOR TO THAT OF THE LEGISLATURE. I HAVE SHOWN, IN A FORMER PAPER, THAT THIS COURT WILL BE AUTHORIZED TO DECIDE UPON THE MEANING OF THE CONSTITUTION; AND THAT, NOT ONLY ACCORDING TO THE NATURAL AND OBVIOUS MEANING OF THE WORDS, BUT ALSO ACCORDING TO THE SPIRIT AND INTENTION OF IT. IN THE EXERCISE OF THIS POWER THEY WILL NOT BE SUBORDINATE TO, BUT ABOVE THE LEGISLATURE. FOR ALL THE DEPARTMENTS OF THIS GOVERNMENT WILL

RĚCĚIVĚ TĚHR PŮVĚRY, SŮ FĀR ĀS TĚY ĀRĚ ĚXPŘĚSĚD ĪN  
TĚ CŔNSTITŮCĪ, FRŔM TĚ PĚPLĚ ĪMMĚDĚĀTĚLY, WHŔ  
ĀRĚ TĚ SŮRĚ OF PŮVĚR. TĚ LĚĪSLĀTŮRĚ CĀN ŐNLY  
ĚXĚRĚCĪSĚ SŮCH PŮVĚRY ĀS ĀRĚ ĠVĚN TĚM BY TĚ  
CŔNSTITŮCĪ; TĚY CĀNNŔT ĀSSŮMĚ ĀNY OF TĚ RĪĠHTS  
ĀNNĚXĚD TŔ TĚ JŮDĪCĪL; FOR TĚS PLĀĪN RĚĀSON, TĚT TĚ  
SĀMĚ ĀUTHŔRĪTY WHĪCH VĚSTĚD TĚ LĚĪSLĀTŮRĚ WĪTH  
TĚHR PŮVĚRY, VĚSTĚD TĚ JŮDĪCĪL WĪTH TĚHR. BŔTH  
ĀRĚ DĚRĪVĚD FRŔM TĚ SĀMĚ SŮRĚ; BŔTH TĚRĚFORĚ ĀRĚ  
ĚQUĀLLY VĀLĪD, ĀND TĚ JŮDĪCĪL HŔLD TĚHR PŮVĚRY  
ĪNDĚPĚNDĚNTLY OF TĚ LĚĪSLĀTŮRĚ, ĀS TĚ LĚĪSLĀTŮRĚ DŔ  
OF TĚ JŮDĪCĪL. TĚ SŮPRĚMĚ CŔRT TĚN HĀVĚ Ā RĪĠHT,  
ĪNDĚPĚNDĚNT OF TĚ LĚĪSLĀTŮRĚ, TŔ ĠVĚ Ā CŔNSTRŮCĪŔN  
TŔ TĚ CŔNSTITŮCĪ ĀND ĚVĚRY PĀRT OF ĪT, ĀND TĚRĚ ĪS  
NŔ PŮVĚR PRŔVĪDĚD ĪN TĚS SYSTĚM TŔ CŔRRĚCT TĚHR  
CŔNSTRŮCĪŔN OR DŔ ĪT ĀWĀY. ĪF, TĚRĚFORĚ, TĚ  
LĚĪSLĀTŮRĚ PĀSS ĀNY LĀWS, ĪNCŔNSĪSTĚNT WĪTH TĚ SĚNSĚ  
TĚ JŮDĪĠS PŮT ŮPŔN TĚ CŔNSTITŮCĪ, TĚY WĪLL  
DĚCLĀRĚ ĪT VŔD; ĀND TĚRĚFORĚ ĪN TĚS RĚSPĚCT TĚHR  
PŮVĚR ĪS SŮPRĪOR TŔ TĚT OF TĚ LĚĪSLĀTŮRĚ. ĪN  
ĚNĠLĀND TĚ JŮDĪĠS ĀRĚ NŔT ŐNLY SŮBJĚCT TŔ HĀVĚ TĚHR  
DĚCĪSĪŔNS SĚT ĀSĪDĚ BY TĚ HŔUSĚ OF LŔRDS, FOR ĚRRŔR,  
BŮT ĪN CĀSĚS WHĚRĚ TĚY ĠVĚ ĀN ĚPLĀNĀCĪŔN TŔ TĚ  
LĀWS OR CŔNSTITŮCĪŔN OF TĚ CŔNTRY CŔNTRĀRY TŔ TĚ



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SĚNSE OF THE PARLIAMENT THOUGH THE PARLIAMENT WILL NOT SET ASIDE THE JUDGMENT OF THE COURT YET, THEY HAVE AUTHORITY, BY A NEW LAW, TO EXPLAIN THE FORMER ONE, AND BY THIS MEANS TO PREVENT A RECEPTION OF SUCH DECISIONS. BUT NO SUCH POWER IS IN THE LEGISLATURE. THE JUDGES ARE SUPREME AND NO LAW, EXPLANATORY OF THE CONSTITUTION, WILL BE BINDING ON THEM.

WHEN GREAT AND EXTRAORDINARY POWERS ARE VESTED IN ANY MAN, OR BODY OF MEN, WHICH IN THEIR EXERCISE, MAY OPERATE TO THE OPPRESSION OF THE PEOPLE, IT IS OF HIGH IMPORTANCE THAT POWERFUL CHECKS SHOULD BE FORMED TO PREVENT THE ABUSE OF IT.

PERHAPS NO RESTRAINTS ARE MORE FORCIBLE, THAN SUCH AS ARISE FROM RESPONSIBILITY TO SOME SUPERIOR POWER. HENCE IT IS THAT THE TRUE POLICY OF A REPUBLICAN GOVERNMENT IS, TO FRAME IT IN SUCH MANNER, THAT ALL PERSONS WHO ARE CONCERNED IN THE GOVERNMENT, ARE MADE ACCOUNTABLE TO SOME SUPERIOR FOR THEIR CONDUCT IN OFFICE. THIS RESPONSIBILITY SHOULD ULTIMATELY REST WITH THE PEOPLE. TO HAVE A GOVERNMENT WELL ADMINISTERED IN ALL ITS PARTS, IT IS REQUISITE THE DIFFERENT DEPARTMENTS OF IT SHOULD BE SEPARATED AND LODGED AS MUCH AS MAY BE IN DIFFERENT HANDS. THE

LĚGISLĀTĪVĚ POWER SHOULD BĚ IN ONĚ BŮDŮ, THĚ ĚXĚCŮTĪVĚ  
IN ANŮTHĚR, ĀND THĚ JŮDĪCĪĀL IN ONĚ DĪFFĚRĚNT FROM  
ĚĪTHĚR. BŮT STĪLL ĚĀCH OF THĚSĚ BŮDĪS SHOULD BĚ  
ACCŮUNTĀBLĚ FOR THĚĪR CŮNDŮCT. HĚNCĚ ĪT ĪS  
ĪMPRĀCTĪCĀBLĚ, PĚRHĀPS, TŮ MĀĪNTĀĪN Ā PĚRFĚCT  
DĪSTĪNCĪŮN BĚTWĚĚN THĚSĚ SĚVĚRĀL DĚPĀRTMĚNTS. FOR ĪT  
ĪS DĪFFĪCŮLT, ĪF NŮT ĪMPŮSSĪBLĚ, TŮ CĀLL TŮ ACCŮUNT THĚ  
SĚVĚRĀL ŮFFĪCĚRS ĪN GŮVERNĚMĚNT, WĪTHŮT ĪN SŮMĚ  
DĚGRĚĚ MĪXĪNG THĚ LĚGISLĀTĪVĚ ĀND JŮDĪCĪĀL. THĚ  
LĚGISLĀTURĚ ĪN Ā FRĚĚ RĚPŮBLĪC ĀRĚ CHŮSĚN BY THĚ PĚŮPLĚ  
ĀT STĀTĚD PĚRĪŮDS, ĀND THĚĪR RĚSPŮNSĪBĪLĪTY CŮNSĪSTS, ĪN  
THĚĪR BĚĪNG ĀMĚNĀBLĚ TŮ THĚ PĚŮPLĚ. WHĚN THĚ TERM FOR  
WHĪCH THĚY ĀRĚ CHŮSĚN SHĀLL ĚXPĪRĚ, WHO [THĚ PĚŮPLĚ]  
WĪLL THĚN HĀVĚ ŮPPŮRTŮNĪTY TŮ DĪSPLĀCĚ THĚM ĪF THĚY  
DĪSĀPPRŮVĚ OF THĚĪR CŮNDŮCT. BŮT ĪT WŮULD BĚ ĪMPRŮPĚR  
THĀT THĚ JŮDĪCĪĀL SHOULD BĚ ĚLĚCTĪVĚ, BĚCĀUSĚ THĚĪR  
BUSĪNĚSS RĚQŮĪRĚS THĀT THĚY SHOULD PŮSSĚSS Ā DĚGRĚĚ ŮF  
LĀW KNŮWLĚDĚ, WHĪCH ĪS ĀCQŮĪRĚD ŮNLY BY Ā RĚGŮLĀR  
ĚDŮCĀTĪŮN DĚGRĚĚ; ĀND BĚSĪDĚS ĪT ĪS FĪT THĀT THĚY SHOULD  
BĚ PLĀCĚD, ĪN Ā CĚRTĀĪN DĚGRĚĚ ĪN ĀN ĪNDĚPĚNDĚNT  
SĪTŮĀTĪŮN, THĀT THĚY MĀY MĀĪNTĀĪN FĪRMNĚSS ĀND  
STĚĀDĪNĚSS ĪN THĚĪR DĚCĪSĪŮNS. ĀS THĚ PĚŮPLĚ THĚRĚFORĚ  
ŮUGHT NŮT TŮ ĚLĚCT THĚ JŮDĚS, THĚY CĀNNŮT BĚ  
ĀMĚNĀBLĚ TŮ THĚM ĪMMĚDĚĀTELĚ, SŮMĚ ŮTHĚR MŮDĚ ŮF

AMENABILITY MUST THEREFORE BE DEVISED FOR THESE, AS  
WELL AS FOR ALL OTHER OFFICERS WHICH DO NOT SPRING  
FROM THE IMMEDIATE CHOICE OF THE PEOPLE. THIS IS TO BE  
EFFECTED BY MAKING ONE COURT SUBORDINATE TO ANOTHER,  
AND BY GIVING THEM COGNIZANCE OF THE BEHAVIOR OF ALL  
OFFICERS. BUT ON THIS PLAN WE AT LAST ARRIVE AT SOME  
SUPREME, OVER WHOM THERE IS NO POWER TO CONTROL BUT  
THE PEOPLE THEMSELVES. THIS SUPREME CONTROLLING  
POWER SHOULD BE IN THE CHOICE OF THE PEOPLE, OR ELSE  
YOU ESTABLISH AN AUTHORITY INDEPENDENT, AND NOT  
AMENABLE AT ALL, WHICH IS REPUGNANT TO THE PRINCIPLES  
OF A FREE GOVERNMENT. AGREEABLE TO THESE PRINCIPLES I  
SUPPOSE THE SUPREME JUDICIAL OUGHT TO BE LIABLE TO BE  
CALLED TO ACCOUNT, FOR ANY MISCONDUCT, BY SOME BODY  
OF MEN, WHO DEPEND UPON THE PEOPLE FOR THEIR PLACES;  
AND SO ALSO SHOULD ALL OTHER GREAT OFFICERS IN THE  
STATE, WHO ARE NOT MADE AMENABLE TO SOME SUPERIOR  
OFFICERS....

BRUTUS