

The background of the cover is a photograph of the Statue of Liberty in New York City. The statue is shown from the waist up, holding the torch in her right hand and the tablet in her left. The sky is a mix of deep blue at the top and bright orange and yellow at the bottom, indicating a sunset or sunrise. Numerous birds are seen in flight against the sky. The title text is overlaid on the upper portion of the image.

# Readings in American Political Theory

THOMAS ROZINSKI

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TOURO UNIVERSITY  
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# Foreword

This is the second edition of a book designed to present the required reading for Touro University's course on American political theory. I taught this course using the first edition during the 2022-23 academic year, and my experience teaching three sections of students led me to make changes in the readings. I have added more from Thomas Jefferson and Abraham Lincoln and eliminated some late 20th-century works from theorists who have not become part of mainstream American political theory. I hope to cover them in a different book on contemporary political theory.

Trying to cover over 200 years of history has required significant editing of the works excerpted here. I have done my best to preserve the ideas of the authors while making them more accessible to 21st-century readers. I have updated punctuation, capitalization, and most spelling to make reading easier. In a few cases I have retained the original spelling when the meaning is clear to contemporary readers.

I gratefully acknowledge the assistance of Prof. Aaron Weinstein of Fairfield University, who made numerous helpful suggestions on my revised second edition. His diligent review not only prevented errors but also led to a wider selection of authors and improved content.

This book is dedicated to my parents, Henry and Barbara Ann Rozinski, who fortuitously named me after the great medieval political philosopher Thomas Aquinas. The values they taught me still inspire me today.

Thomas Rozinski  
Brooklyn, New York  
January 13, 2024

# What is American political theory?

As the United States of America approaches its sesquicentennial in 2026, it is worth taking stock of what makes American political theory a distinctive genre of political theory. Let's begin with the fact that this country is less known by its geographical identity ("America") than by its federalist structure ("United States"). This suggests that what unites the country—and underlies its political theory—is a belief in certain principles rather than the identity of a specific racial, ethnic, or religious group. American political theory is thus essentially about choice, not destiny; about increasing inclusion; about freedom to pursue happiness; and about the need to equalize opportunity. As I see it, one can best understand American political theory by identifying core principles shared by a majority of the writers included here.

The core notion of American government is the belief that the US is what its citizens make it. It is created by the people, not by divine providence or destiny. Government is not a preexisting power, but rather one constituted by Americans and legitimized by their ongoing consent. Thomas Paine advanced this view of government in his appeal to overthrow the British colonial administration in *Common Sense*. A few months later, Thomas Jefferson justified the right of a people to choose their own government in the Declaration of Independence. This belief in self-determination is reflected in the Constitution written at Philadelphia in 1787, and amended from time to time. In their decisions, the Supreme Court's interpretations of the Constitution repeatedly consider what Americans intended to create since what the Constitution means is always a product of choice.

Alongside the principle of self-determination is the belief that unchecked government power is never to be trusted, even if it may sometimes promote the public good. This principle is the basis for the checks and balances that were recommended by Baron Montesquieu, the principal source for the contents of the 1787 Constitution, and defended by James Madison, one of the writers of the *Federalist Papers*. Ever since, Americans have relied on the distribution of powers within the Constitution to prevent powerful individuals or groups from engaging in tyranny. Readings that illustrate these checks include Andrew Jackson's veto of a national bank charter and the Supreme Court's rejection of segregated education in *Brown v. Board of Education*.

A third principle is that American government should never be insulated from criticism because freedom means being able to dissent. Andrew Jackson invoked this freedom as president when he wrote that no issue is forever settled just because the Supreme Court has spoken. Over a century later, Franklin Roosevelt identified this as one of the four essential freedoms of democracy. This respect for dissent is also seen in the willingness of Americans to accept conscientious objection as a means of protest, even though they still punish protesters according to law. Both Henry David Thoreau and Martin Luther King Jr. broke the law to protest injustice, and the fact that their views and methods are celebrated today suggests that Americans view dissent as legitimate.

Closely associated with the right to dissent is the more general principle that government must respect certain basic individual rights. This need for a bill of rights stalled the ratification of the Constitution, and the importance of rights has been a theme for many of the writers in this book. These rights prevent government from usurping individual freedoms, but they have not always been available to all. The chapter on the Civil War presents the scary scenario of a United States without these fundamental rights. Many of

the writers in this volume, from Thomas Jefferson to Theodore and Franklin Roosevelt invoke the protection of these rights as the fundamental duty of American government.

A fifth principle is the recognition that government is always a work in progress, which means that change is both inevitable and necessary. In the late 19th century, supporters of both limited government (William Graham Sumner) and government intervention (Lester Ward, Herbert Croly) called for reforming American governments corrupted by the “spoils system.” Progressives such as Lincoln Steffens and Upton Sinclair vividly demonstrated the human suffering that arose when state and local government was unmoored from the rule of law. The American response was to adopt a civil service system to fairly enforce the law and make possible regulation in the public interest, a cause championed by Theodore Roosevelt. Even conservatives such as Joun Calhoun and Russell Kirk warn against viewing government structures as incapable of improvement.

A sixth component of American political theory is the expansion of groups entitled to equal opportunity. For much of American history, this opportunity was limited to a privileged few, as Victoria Woodhull, Martin Luther King Jr., and many others complained. Over time, the US recognized that all persons are entitled to equality. Justice John Harlan’s solitary dissent in *Plessy v. Ferguson* eventually blossomed into the unanimous opinion of Chief Justice Earl Warren in *Brown v. Board of Education*. Friedrich Hayek called this principle *isonomia*, and while the name never caught on, he most agree with him that equality of opportunity is an essential part of *The Constitution of Liberty*.

A seventh principle that emerged in the twentieth century is that government has a duty to aid those less well-off. For progressive reformers, it meant protective legislation for workers and union members; later, it meant public assistance and eventually health care. In the 1930s, Herbert Hoover and Franklin Roosevelt debated whether the government’s role should include welfare; by the late 1950s, even the libertarian Hayek was proclaiming it as an essential government duty. While there has always been debate about how much assistance government should provide to the needy, today almost all Americans accept its inclusion as a component of “promot[ing] the general welfare.”

Nevertheless, Americans have never viewed government as the panacea for all their ills. Over the past two-and-a-half centuries, there has always been skepticism about whether American government can provide solutions to every problem. In the US the public interest is often better served if government empowers individuals to develop their own solutions. Writers as diverse as the socialist Walter Lippmann and the conservative Ronald Reagan agree that government-imposed solutions often stifle freedom and generate inferior outcomes. Alexis de Tocqueville identified the ingenuity of Americans in solving problems as one of the principal reasons for the success of American democracy.

I could also have referenced Tocqueville’s *Democracy in America* for almost every other principle, even though he wrote in the 1830s. This is one of the reasons why I have included more from his two-volume work than any other source included in this collection. If I had to pick one book that represented American political theory, it would be Tocqueville’s. Ironically, he spent less time in the US than any other American writer included here—less than a year, and it happened almost two hundred years ago. Nevertheless, Tocqueville was able to discern more about the essence of American government than anyone else I have ever read. If I had to recommend any one book as an exemplar of what American political theory is all about, it would be *Democracy in America*.

Finally, a word about why the readings presented here end in the 1980s. There are two. First, this book contains more than enough material for a one-semester undergraduate course, which is the reason I



undertook this project. Two, I am not yet ready to tell the story of American political theory over the past 40 years. Maybe that will be a future project.

-Tom Rozinski

January 13, 2024

# UNIT I

## THE FOUNDING

The first unit examines the writings that led Americans to revolt from Britain and then establish a new Constitution 11 years later. Thomas Paine's *Common Sense* is the best example of the revolutionary writing that inspired Americans to risk a war against the strongest country in the world in pursuit of self-government. The next reading is the Declaration of Independence, written primarily by Thomas Jefferson, which sets forth a concise set of principles that justified that revolution.

When the first constitution, the Articles of Confederation, failed to establish an effective government, delegates from 12 of the 13 states met at Philadelphia in 1787 to discuss possible amendments. (Rhode Island didn't bother to send a representative.) Virginia's plan for an entirely new government spurred the framers to create a new Constitution instead, which is the next reading. Inspiration for many of its specific provisions was found in *The Spirit of the Laws* by Baron Montesquieu of France, who made many practical suggestions that were incorporated into the Constitution. A sample of his work is included to allow readers to see the source for many of the specific provisions in the Constitution.

The debate over whether the thirteen states should ratify the 1787 Constitution inspired debate throughout the country. Alexander Hamilton, John Jay, and James Madison drafted what are now called the *Federalist Papers*, and several important essays are included. The opponents of the new Constitution actually called themselves "Federalists," but because they opposed a constitution that created a federal government they are now known as Anti-Federalists. Three of their most important writings are also included. The last author in this unit is Thomas Jefferson, author of two letters that represent his views of American government as well as his first Inaugural Address.



# I. Thomas Paine: Publicizing the Need for Revolution

## Thomas Paine (1736-1809)

After the battle of Lexington and Concord in April 1775, the citizens of the thirteen colonies had to decide whether to take up arms against the United Kingdom and seek independence. They had faced increased demands from the British since 1763 in the form of taxes and forced quartering of troops, and their pleas for representation in Parliament had been rejected. Many believed it would be foolhardy for colonial militias to challenge the strongest military force in the world, and that the wiser course was to continue protesting, as the Sons of Liberty had done for the past decade. However, there was growing support for declaring independence from British rule.

Thomas Paine (he later added the e) was born in Norfolk, England, in 1736 and worked rather unsuccessfully as a tax collector and businessman. At the suggestion of Benjamin Franklin, he emigrated to the colonies in November 1774 and found work in Philadelphia editing a political magazine. In late 1775 he wrote *Common Sense*, a pamphlet that set forth the argument that the colonies should resort to force to separate from their British masters. His pamphlet was published anonymously on January 10, 1776 and circulated widely throughout the colonies. It was often read aloud in taverns and town squares since many colonists were illiterate.

## *Common Sense* (1776)

*Common Sense* presents the arguments that convinced Americans to take the risk of revolting against their British masters. Paine's arguments drew on the Bible to support his claim that all men were equal and that God had not desired kings to tyrannize over their subjects. He drew on existing political arguments in claiming that government without representation was illegitimate and that a republican government—one that was responsible to the people—would be less warlike than one ruled by a British king. He claimed that the colonial economy could financially support a war, but that taking out loans might be necessary.

Paine wrote at a time before Americans had worked out the details of establishing a constitutional

government to unite the thirteen colonies. He proposed a “Continental Conference” to write a constitution calls for inclusion of popularly-elected delegates from each state, a feature that was used by the drafters of the 1787 Constitution. His substantive recommendations include the need for a Bill of Rights “Securing freedom and property to all men, and above all things the free exercise of religion.” Paine’s pamphlet raised the political consciousness of the colonists at a time when committing to independence meant risking their lives against a foreign military force that had stationed thousands of troops in various cities.

Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher.

Society in every state is a blessing, but government even in its best state is but a necessary evil in its worst state an intolerable one; for when we suffer, or are exposed to the same miseries by a government, which we might expect in a country without government, our calamities is heightened by reflecting that we furnish the means by which we suffer! Government, like dress, is the badge of lost innocence; the palaces of kings are built on the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform, and irresistibly obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advises him out of two evils to choose the least. Wherefore, security being the true design and end of government, it unanswerably follows that whatever form thereof appears most likely to ensure it to us, with the least expense and greatest benefit, is preferable to all others.

In order to gain a clear and just idea of the design and end of government, let us suppose a small number of persons settled in some sequestered part of the earth, unconnected with the rest, they will then represent the first peopling of any country, or of the world. In this state of natural liberty, society will be their first thought. A thousand motives will excite them thereto, the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude, that he is soon obliged to seek assistance and relief of another, who in his turn requires the same. Four or five united would be able to raise a tolerable dwelling in the midst of a wilderness, but one man might labor out the common period of life without accomplishing any thing; when he had felled his timber he could not remove it, nor erect it after it was removed; hunger in the meantime would urge him from his work, and every different want call him a different way. Disease, nay even misfortune would be death, for though neither might be mortal, yet either would disable him from living, and reduce him to a state in which he might rather be said to perish than to die.

Thus necessity, like a gravitating power, would soon form our newly arrived emigrants into society, the reciprocal blessings of which, would supersede, and render the obligations of law and government unnecessary while they remained perfectly just to each other; but as nothing but heaven is impregnable to vice, it will unavoidably happen, that in proportion as they surmount the first difficulties of emigration, which bound them together in a common cause, they will begin to relax in their duty and attachment to each other; and this remissness will point out the necessity, of establishing some form of government to supply the defect of moral virtue.

Some convenient tree will afford them a State-House, under the branches of which, the whole colony may

assemble to deliberate on public matters. It is more than probable that their first laws will have the title only of Regulations, and be enforced by no other penalty than public disesteem. In this first parliament every man, by natural right, will have a seat.

But as the colony increases, the public concerns will increase likewise, and the distance at which the members may be separated, will render it too inconvenient for all of them to meet on every occasion as at first, when their number was small, their habitations near, and the public concerns few and trifling. This will point out the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake which those have who appointed them, and who will act in the same manner as the whole body would act were they present. If the colony continue increasing, it will become necessary to augment the number of the representatives, and that the interest of every part of the colony may be attended to, it will be found best to divide the whole into convenient parts, each part sending its proper number; and that the elected might never form to themselves an interest separate from the electors, prudence will point out the propriety of having elections often; because as the elected might by that means return and mix again with the general body of the electors in a few months, their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves. And as this frequent interchange will establish a common interest with every part of the community, they will mutually and naturally support each other, and on this (not on the unmeaning name of king) depends the strength of government, and the happiness of the governed.

Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of moral virtue to govern the world; here too is the design and end of government, viz., freedom and security. And however our eyes may be dazzled with snow, or our ears deceived by sound; however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and of reason will say, it is right....

The prejudice of Englishmen, in favor of their own government by king, lords, and commons, arises as much or more from national pride than reason. Individuals are undoubtedly safer in England than in some other countries, but the will of the king is as much the law of the land in Britain as in France, with this difference, that instead of proceeding directly from his mouth, it is handed to the people under the most formidable shape of an act of parliament. For the fate of Charles the First, hath only made kings more subtle—not more just.

Wherefore, laying aside all national pride and prejudice in favor of modes and forms, the plain truth is, that it is wholly owing to the constitution of the people, and not to the constitution of the government that the crown is not as oppressive in England as in Turkey.

An inquiry into the constitutional errors in the English form of government is at this time highly necessary; for as we are never in a proper condition of doing justice to others, while we continue under the influence of some leading partiality, so neither are we capable of doing it to ourselves while we remain fettered by any obstinate prejudice. And as a man, who is attached to a prostitute, is unfitted to choose or judge of a wife, so any prepossession in favor of a rotten constitution of government will disable us from discerning a good one....

Government by kings was first introduced into the world by the Heathens, from whom the children of Israel copied the custom. It was the most prosperous invention the Devil ever set on foot for the promotion of idolatry. The Heathens paid divine honors to their deceased kings, and the Christian world hath improved on the plan by doing the same to their living ones. How impious is the title of sacred majesty applied to a worm, who in the midst of his splendor is crumbling into dust!

As the exalting one man so greatly above the rest cannot be justified on the equal rights of nature, so neither can it be defended on the authority of scripture; for the will of the Almighty, as declared by Gideon and the prophet Samuel, expressly disapproves of government by kings. All anti-monarchical parts of scripture have been very smoothly glossed over in monarchical governments, but they undoubtedly merit the attention of countries which have their governments yet to form. Render unto Caesar the things which are Caesar's is the scriptural doctrine of courts, yet it is no support of monarchical government, for the Jews at that time were without a king, and in a state of vassalage to the Romans....

To the evil of monarchy we have added that of hereditary succession; and as the first is a degradation and lessening of ourselves, so the second, claimed as a matter of right, is an insult and an imposition on posterity. For all men being originally equals, no one by birth could have a right to set up his own family in perpetual preference to all others forever, and though himself might deserve some decent degree of honors of his contemporaries, yet his descendants might be far too unworthy to inherit them. One of the strongest natural proofs of the folly of hereditary right in kings, is, that nature disapproves it, otherwise she would not so frequently turn it into ridicule by giving mankind an ass for a lion.

Secondly, as no man at first could possess any other public honors than were bestowed upon him, so the givers of those honors could have no power to give away the right of posterity, and though they might say, "We choose you for our head," they could not, without manifest injustice to their children, say, "that your children and your children's children shall reign over ours for ever." Because such an unwise, unjust, unnatural compact might (perhaps) in the next succession put them under the government of a rogue or a fool. Most wise men, in their private sentiments, have ever treated hereditary right with contempt; yet it is one of those evils, which when once established is not easily removed; many submit from fear, others from superstition, and the more powerful part shares with the king the plunder of the rest.

This is supposing the present race of kings in the world to have had an honorable origin; whereas it is more than probable, that could we take off the dark covering of antiquity, and trace them to their first rise, that we should find the first of them nothing better than the principal ruffian of some restless gang, whose savage manners of preeminence in subtlety obtained him the title of chief among plunderers; and who by increasing in power, and extending his depredations, overawed the quiet and defenseless to purchase their safety by frequent contributions. Yet his electors could have no idea of giving hereditary right to his descendants, because such a perpetual exclusion of themselves was incompatible with the free and unrestrained principles they professed to live by. Wherefore, hereditary succession in the early ages of monarchy could not take place as a matter of claim, but ... what at first was submitted to as a convenience, was afterwards claimed as a right....

But it is not so much the absurdity as the evil of hereditary succession which concerns mankind. Did it ensure a race of good and wise men it would have the seal of divine authority, but as it opens a door to the foolish, the wicked; and the improper, it hath in it the nature of oppression. Men who look upon themselves born to reign, and others to obey, soon grow insolent; selected from the rest of mankind their minds are early poisoned by importance; and the world they act in differs so materially from the world at large, that they have but little opportunity of knowing its true interests, and when they succeed to the government are frequently the most ignorant and unfit of any throughout the dominions.

Another evil which attends hereditary succession is, that the throne is subject to be possessed by a minor at any age; all which time the regency, acting under the cover of a king, have every opportunity and inducement to betray their trust. The same national misfortune happens, when a king worn out with age

and infirmity, enters the last stage of human weakness. In both these cases the public becomes a prey to every miscreant, who can tamper successfully with the follies either of age or infancy.

The most plausible plea, which hath ever been offered in favor of hereditary succession, is, that it preserves a nation from civil wars; and were this true, it would be weighty; whereas, it is the most barefaced falsity ever imposed upon mankind. The whole history of England disowns the fact. Thirty kings and two minors have reigned in that distracted kingdom since the conquest, in which time there have been (including the Revolution) no less than eight civil wars and nineteen rebellions. Wherefore instead of making for peace, it makes against it, and destroys the very foundation it seems to stand on....

The nearer any government approaches to a republic, the less business there is for a king. It is somewhat difficult to find a proper name for the government of England. Sir William Meredith calls it a republic; but in its present state it is unworthy of the name, because the corrupt influence of the crown, by having all the places in its disposal, hath so effectually swallowed up the power, and eaten out the virtue of the house of commons (the republican part in the constitution) that the government of England is nearly as monarchical as that of France or Spain. Men fall out with names without understanding them. For it is the republican and not the monarchical part of the constitution of England which Englishmen glory in, viz., the liberty of choosing a house of commons from out of their own body—and it is easy to see that when the republican virtue fails, slavery ensues. My is the constitution of England sickly, but because monarchy hath poisoned the republic, the crown hath engrossed the commons?....

As much hath been said of the advantages of reconciliation, which, like an agreeable dream, hath passed away and left us as we were, it is but right, that we should examine the contrary side of the argument, and inquire into some of the many material injuries which these colonies sustain, and always will sustain, by being connected with, and dependent on Great Britain. To examine that connection and dependence, on the principles of nature and common sense, to see what we have to trust to, if separated, and what we are to expect, if dependent.

I have heard it asserted by some, that as America hath flourished under her former connection with Great Britain, that the same connection is necessary towards her future happiness, and will always have the same effect. Nothing can be more fallacious than this kind of argument. We may as well assert, that because a child has thrived upon milk, that it is never to have meat; or that the first twenty years of our lives is to become a precedent for the next twenty. But even this is admitting more than is true, for I answer roundly, that America would have flourished as much, and probably much more, had no European power had anything to do with her. The commerce by which she hath enriched herself are the necessaries of life, and will always have a market while eating is the custom of Europe....

But Britain is the parent country, say some. Then the more shame upon her conduct. Even brutes do not devour their young; nor savages make war upon their families; wherefore the assertion, if true, turns to her reproach; but it happens not to be true, or only partly so, and the phrase parent or mother country hath been Jesuitically adopted by the king and his parasites, with a low papistical design of gaining an unfair bias on the credulous weakness of our minds. Europe, and not England, is the parent country of America. This new world hath been the asylum for the persecuted lovers of civil and religious liberty from every Part of Europe. Hither have they fled, not from the tender embraces of the mother, but from the cruelty of the monster; and it is so far true of England, that the same tyranny which drove the first emigrants from home pursues their descendants still....

Besides, what have we to do with setting the world at defiance? Our plan is commerce, and that, well attended to, will secure us the peace and friendship of all Europe; because it is the interest of all Europe to



have America a free port. Her trade will always be a protection, and her barrenness of gold and silver secure her from invaders.

I challenge the warmest advocate for reconciliation, to show, a single advantage that this continent can reap, by being connected with Great Britain. I repeat the challenge, not a single advantage is derived. Our corn will fetch its price in any market in Europe, and our imported goods must be paid for buy them where we will.

But the injuries and disadvantages we sustain by that connection, are without number; and our duty to mankind I at large, as well as to ourselves, instruct us to renounce the alliance: Because, any submission to, or dependance on Great Britain, tends directly to involve this continent in European wars and quarrels; and sets us at variance with nations, who would otherwise seek our friendship, and against whom, we have neither anger nor complaint. As Europe is our market for trade, we ought to form no partial connection with any part of it. It is the true interest of America to steer clear of European contentions, which she never can do, while by her dependance on Britain, she is made the make-weight in the scale of British politics.

Europe is too thickly planted with kingdoms to be long at peace, and whenever a war breaks out between England and any foreign power, the trade of America goes to ruin, because of her connection with Britain. The next war may not turn out like the Past, and should it not, the advocates for reconciliation now will be wishing for separation then, because neutrality in that case would be a safer convoy than a man of war. Everything that is right or natural pleads for separation. The blood of the slain, the weeping voice of nature cries, 'tis time to part. Even the distance at which the Almighty hath placed England and America, is a strong and natural proof, that the authority of the one, over the other, was never the design of Heaven. The time likewise at which the continent was discovered, adds weight to the argument, and the manner in which it was peopled increases the force of it. The reformation was preceded by the discovery of America, as if the Almighty graciously meant to open a sanctuary to the persecuted in future years, when home should afford neither friendship nor safety....

Men of passive tempers look somewhat lightly over the offenses of Britain, and, still hoping for the best, are apt to call out, Come we shall be friends again for all this. But examine the passions and feelings of mankind. Bring the doctrine of reconciliation to the touchstone of nature, and then tell me, whether you can hereafter love, honor, and faithfully serve the power that hath carried fire and sword into your land? If you cannot do all these, then are you only deceiving yourselves, and by your delay bringing ruin upon posterity. Your future connection with Britain, whom you can neither love nor honor, will be forced and unnatural, and being formed only on the plan of present convenience, will in a little time fall into a relapse more wretched than the first. But if you say, you can still pass the violations over, then I ask, Hath your house been burnt? Hath your property been destroyed before your face? Are your wife and children destitute of a bed to lie on, or bread to live on? Have you lost a parent or a child by their hands, and yourself the ruined and wretched survivor? If you have not, then are you not a judge of those who have. But if you have, and can still shake hands with the murderers, then are you unworthy the name of husband, father, friend, or lover, and whatever may be your rank or title in life, you have the heart of a coward, and the spirit of a sycophant....

Every quiet method for peace hath been ineffectual. Our prayers have been rejected with disdain; and only tended to convince us, that nothing flatters vanity, or confirms obstinacy in kings more than repeated petitioning- and nothing hath contributed more than that very measure to make the kings of Europe absolute: Witness Denmark and Sweden. Wherefore since nothing but blows will do, for God's sake, let us come to a final separation, and not leave the next generation to be cutting throats, under the violated unmeaning names of parent and child.

To say, they will never attempt it again is idle and visionary, we thought so at the repeal of the stamp act, yet a year or two undeceived us; as well we may suppose that nations, which have been once defeated, will never renew the quarrel.

As to government matters, it is not in the powers of Britain to do this continent justice: The business of it will soon be too weighty, and intricate, to be managed with any tolerable degree of convenience, by a power, so distant from us, and so very ignorant of us; for if they cannot conquer us, they cannot govern us. To be always running three or four thousand miles with a tale or a petition, waiting four or five months for an answer, which when obtained requires five or six more to explain it in, will in a few years be looked upon as folly and childishness—there was a time when it was proper, and there is a proper time for it to cease.

Small islands not capable of protecting themselves, are the proper objects for kingdoms to take under their care; but there is something very absurd, in supposing a continent to be perpetually governed by an island. In no instance hath nature made the satellite larger than its primary planet, and as England and America, with respect to each Other, reverses the common order of nature, it is evident they belong to different systems: England to Europe—America to itself....

But admitting that matters were now made up, what would be the event? I answer, the ruin of the continent. And that for several reasons:

First. The powers of governing still remaining in the hands of the king, he will have a negative over the whole legislation of this continent. And as he hath shown himself such an inveterate enemy to liberty, and discovered such a thirst for arbitrary power, is he, or is he not, a proper man to say to these colonies, “You shall make no laws but what I please?” And is there any inhabitant in America so ignorant, as not to know, that according to what is called the present constitution, that this continent can make no laws but what the king gives leave to? and is there any man so unwise, as not to see, that (considering what has happened) he will suffer no Law to be made here, but such as suit his purpose? We may be as effectually enslaved by the want of laws in America, as by submitting to laws made for us in England. After matters are made up (as it is called) can there be any doubt but the whole power of the crown will be exerted, to keep this continent as low and humble as possible? Instead of going forward we shall go backward, or be perpetually quarrelling or ridiculously petitioning. We are already greater than the king wishes us to be, and will he not hereafter endeavor to make us less?....

America is only a secondary object in the system of British politics—England consults the good of this country, no farther than it answers her own purpose. Wherefore, her own interest leads her to suppress the growth of ours in every case which doth not promote her advantage, or in the least interfere with it. A pretty state we should soon be in under such a second-hand government, considering what has happened! Men do not change from enemies to friends by the alteration of a name; and in order to show that reconciliation now is a dangerous doctrine, I affirm, that it would be policy in the kingdom at this time, to repeal the acts for the sake of reinstating himself in the government of the provinces; in order, that he may accomplish by craft and subtlety, in the long run, what he cannot do by force and violence in the short one. Reconciliation and ruin are nearly related.

Secondly. That as even the best terms, which we can expect to obtain, can amount to no more than a temporary expedient, or a kind of government by guardianship, which can last no longer than till the colonies come of age, so the general face and state of things, in the interim, will be unsettled and unpromising. Emigrants of property will not choose to come to a country whose form of government hangs but by a thread, and who is every day tottering on the brink of commotion and disturbance; and numbers of the present inhabitant would lay hold of the interval, to dispose of their effects, and quit the continent.

But the most powerful of all arguments, is, that nothing but independence, i.e., a continental form of government, can keep the peace of the continent and preserve it inviolate from civil wars. I dread the event of a reconciliation with Britain now, as it is more than probable, that it will be followed by a revolt somewhere or other, the consequences of which may be far more fatal than all the malice of Britain....

Where there are no distinctions there can be no superiority, perfect equality affords no temptation. The republics of Europe are all (and we may say always) in peace. Holland and Switzerland are without wars, foreign or domestic; monarchical governments, it is true, are never long at rest: the crown itself is a temptation to enterprising ruffians at home; and that degree of pride and insolence ever attendant on regal authority swells into a rupture with foreign powers, in instances where a republican government, by being formed on more natural principles, would negotiate the mistake.

If there is any true cause of fear respecting independence it is because no plan is yet laid down. Men do not see their way out; wherefore, as an opening into that business I offer the following hints; at the same time modestly affirming, that I have no other opinion of them myself, than that they may be the means of giving rise to something better. Could the straggling thoughts of individuals be collected, they would frequently form materials for wise and able men to improve to useful matter.

Let the assemblies be annual, with a President only. The representation more equal. Their business wholly domestic, and subject to the authority of a continental congress.

Let each colony be divided into six, eight, or ten, convenient districts, each district to send a proper number of delegates to congress, so that each colony send at least thirty. The whole number in congress will be at least three hundred ninety. Each congress to... choose a president by the following method. When the delegates are met, let a colony be taken from the whole thirteen colonies by lot, after which let the whole congress choose (by ballot) a president from out of the delegates of that province. In the next Congress, let a colony be taken by lot from twelve only, omitting that colony from which the president was taken in the former congress, and so proceeding on till the whole thirteen shall have had their proper rotation. And in order that nothing may pass into a law but what is satisfactorily just, not less than three fifths of the congress to be called a majority. He that will promote discord, under a government so equally formed as this, would join Lucifer in his revolt.

But as there is a peculiar delicacy, from whom, or in what manner, this business must first arise, and as it seems most agreeable and consistent, that it should come from some intermediate body between the governed and the governors, that is between the Congress and the people, let a Continental Conference be held, in the following manner, and for the following purpose:

A committee of twenty-six members of Congress, viz., two for each colony. Two members for each house of assembly, or provincial convention; and five representatives of the people at large, to be chosen in the capital city or town of each province, for, and in behalf of the whole province, by as many qualified voters as shall think proper to attend from all parts of the province for that purpose; or, if more convenient, the representatives may be chosen in two or three of the most populous parts thereof. In this conference, thus assembled, will be united, the two grand principles of business, knowledge and power. The members of Congress, Assemblies, or Conventions, by having had experience in national concerns, will be able and useful counsellors, and the whole, being empowered by the people will have a truly legal authority.

The conferring members being met, let their business be to frame a Continental Charter, or Charter of the United Colonies; (answering to what is called the Magna Charta of England) fixing the number and manner of choosing members of Congress, members of Assembly, with their date of sitting, and drawing the line of business and jurisdiction between them: always remembering, that our strength is continental,

not provincial: Securing freedom and property to all men, and above all things the free exercise of religion, according to the dictates of conscience; with such other matter as is necessary for a charter to contain. Immediately after which, the said conference to dissolve, and the bodies which shall be chosen conformable to the said charter, to be the legislators and governors of this continent for the time being: Whose peace and happiness, may God preserve, Amen....

I have never met with a man, either in England or America, who hath not confessed his opinion, that a separation between the countries, would take place one time or other. And there is no instance in which we have shown less judgment, than in endeavoring to describe, what we call, the ripeness or fitness of the Continent for independence.

As all men allow the measure, and vary only in their opinion of the time, let us, in order to remove mistakes, take a general survey of things and endeavor if possible, to find out the very time. But we need not go far, the inquiry ceases at once, for the time hath found us. The general concurrence, the glorious union of all things prove the fact.

It is not in numbers but in unity, that our great strength lies; yet our present numbers are sufficient to repel the force of all the world. The Continent hath, at this time, the largest body of armed and disciplined men of any power under Heaven; and is just arrived at that pitch of strength, in which no single colony is able to support itself, and the whole, who united can accomplish the matter, and either more, or, less than this, might be fatal in its effects. Our land force is already sufficient, and as to naval affairs, we cannot be insensible, that Britain would never suffer an American man of war to be built while the continent remained in her hands. Wherefore we should be no forwarder an hundred years hence in that branch, than we are now; but the truth is, we should be less so, because the timber of the country is every day diminishing, and that which will remain at last, will be far off and difficult to procure.

Were the continent crowded with inhabitants, her sufferings under the present circumstances would be intolerable. The more seaport towns we had, the more should we have both to defend and to loose. Our present numbers are so happily proportioned to our wants, that no man need be idle. The diminution of trade affords an army, and the necessities of an army create a new trade. Debts we have none; and whatever we may contract on this account will serve as a glorious memento of our virtue. Can we but leave posterity with a settled form of government, an independent constitution of its own, the purchase at any price will be cheap. But to expend millions for the sake of getting a few acts repealed, and routing the present ministry only, is unworthy the charge, and is using posterity with the utmost cruelty; because it is leaving them the great work to do, and a debt upon their backs, from which they derive no advantage. Such a thought is unworthy a man of honor, and is the true characteristic of a narrow heart and a peddling politician.

The debt we may contract doth not deserve our regard if the work be but accomplished. No nation ought to be without a debt. A national debt is a national bond; and when it bears no interest, is in no case a grievance. Britain is oppressed with a debt of upwards of one hundred and forty millions sterling, for which she pays upwards of four millions interest. And as a compensation for her debt, she has a large navy; America is without a debt, and without a navy; yet for the twentieth part of the English national debt, could have a navy as large again....

In almost every article of defence we abound. Hemp flourishes even to rankness, so that we need not want cordage. Our iron is superior to that of other countries. Our small arms equal to any in the world. Cannon we can cast at pleasure. Saltpetre and gunpowder we are every day producing. Our knowledge is hourly improving. Resolution is our inherent character, and courage hath never yet forsaken us. Wherefore, what is it that we want? Why is it that we hesitate? From Britain we can expect nothing but ruin. If she is once

admitted to the government of America again, this Continent will not be worth living in. Jealousies will be always arising; insurrections will be constantly happening; and who will go forth to quell them? Who will venture his life to reduce his own countrymen to a foreign obedience? The difference between Pennsylvania and Connecticut, respecting some unlocated lands, shows the insignificance of a British government, and fully proves, that nothing but Continental authority can regulate Continental matters.

Another reason why the present time is preferable to all others, is, that the fewer our numbers are, the more land there is yet unoccupied, which instead of being lavished by the king on his worthless dependents, may be hereafter applied, not only to the discharge of the present debt, but to the constant support of government. No nation under heaven hath such an advantage as this.

The infant state of the Colonies, as it is called, so far from being against, is an argument in favor of independence. We are sufficiently numerous, and were we more so, we might be less united. It is a matter worthy of observation, that the more a country is peopled, the smaller their armies are. In military numbers, the ancients far exceeded the moderns: and the reason is evident, for trade being the consequence of population, men become too much absorbed thereby to attend to anything else. Commerce diminishes the spirit, both of patriotism and military defence. And history sufficiently informs us, that the bravest achievements were always accomplished in the non-age of a nation. With the increase of commerce England hath lost its spirit. The city of London, notwithstanding its numbers, submits to continued insults with the patience of a coward. The more men have to lose, the less willing are they to venture. The rich are in general slaves to fear, and submit to courtly power with the trembling duplicity of a spaniel.

Youth is the seed-time of good habits, as well in nations as in individuals. It might be difficult, if not impossible, to form the Continent into one government half a century hence. The vast variety of interests, occasioned by an increase of trade and population, would create confusion. Colony would be against colony. Each being able might scorn each other's assistance: and while the proud and foolish gloried in their little distinctions, the wise would lament that the union had not been formed before. Wherefore, the present time is the true time for establishing it. The intimacy which is contracted in infancy, and the friendship which is formed in misfortune, are, of all others, the most lasting and unalterable. Our present union is marked with both these characters: we are young, and we have been distressed; but our concord hath withstood our troubles, and fixes a memorable era for posterity to glory in....

I shall conclude these remarks, with the following timely and well intended hints, We ought to reflect, that there are three different ways by which an independency may hereafter be effected; and that one of those three, will one day or other, be the fate of America, viz. By the legal voice of the people in congress; by a military power; or by a mob: It may not always happen that our soldiers are citizens, and the multitude a body of reasonable men; virtue, as I have already remarked, is not hereditary, neither is it perpetual. Should an independency be brought about by the first of those means, we have every opportunity and every encouragement before us, to form the noblest, purest constitution on the face of the earth. We have it in our power to begin the world over again. A situation, similar to the present, hath not happened since the days of Noah until now. The birthday of a new world is at hand, and a race of men perhaps as numerous as all Europe contains, are to receive their portion of freedom from the event of a few months....

## 2. The Declaration of Independence and the US Constitution

### The Declaration of Independence (1776)

The Second Continental Congress appointed a five-man committee to prepare this resolution, but the principal drafter was Thomas Jefferson (profiled below). Jefferson followed the approach of British philosopher John Locke, whose *Second Treatise of Government* (1685) had justified the right of a people to overthrow an oppressive ruler. Locke wrote that governments were constituted by the people to protect their lives, liberty and property, and when they failed to do so the people had the right to replace them. The second paragraph of the Declaration is a concise summary of Locke's ideas.

Most of the remainder of the Declaration is a summary of Congress' grievances against the British colonial administration and its failure to redress these complaints or even consider them. Many of these complaints were translated into provisions in the 1787 Constitution or the Bill of Rights passed by the first Congress in 1789. The last paragraph of the Declaration contains the actual resolution that the Second Continental Congress adopted to declare independence from Great Britain and establish a new, independent state under international law.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former

Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.



## The US Constitution

The Constitution was approved by the Convention of Delegates on September 17, 1787 and signed that day. Article VII provided that it would go into force upon ratification by nine of the 13 states. The ninth state to ratify New Hampshire on June 21, 1788. Two more states ratified the Constitution before Congress first convened on March 4, 1789, so there were eleven states formally in the US when the new government commenced operations. North Carolina ratified the Constitution after the Bill of Rights had been proposed by Congress, and Rhode Island ratified it in May 1790.

Twelve amendments were submitted to the states on September 25, 1789. Over the next two years, amendments 3-12 were ratified by two-thirds of the states, and they were added to the Constitution on December 15, 1791. The original second amendment took 203 years to ratify, and when Michigan became the 38th state to ratify it on May 7, 1992, it was added to the Constitution as the 27th Amendment. The last time a constitutional amendment was proposed and ratified relatively contemporaneously was in 1970, when citizens aged 18-20 were permitted to vote.

### Preamble

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

### Article I

#### Section 1: Congress

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### Section 2: The House of Representatives

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every

thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

### Section 3: The Senate

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

### Section 4: Elections

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

### Section 5: Powers and Duties of Congress

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

#### Section 6: Rights and Disabilities of Members

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

#### Section 7: Legislative Process

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

#### Section 8: Powers of Congress

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;-And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

#### Section 9: Powers Denied Congress

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

#### Section 10: Powers Denied to the States

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

### **Article II**

#### Section 1

The executive Power shall be vested in a President of the United States of America.

He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

#### Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

#### Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

#### Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### **Article III**

#### Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

#### Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

#### Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

### **Article IV**

#### Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

#### Section 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

#### Section 3

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the

Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

#### Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

#### Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

#### Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

#### Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

#### **First Amendment (proposed 1789, ratified 1791)**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### **Second Amendment (proposed 1789, ratified 1791)**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

#### **Third Amendment (proposed 1789, ratified 1791)**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

#### **Fourth Amendment (proposed 1789, ratified 1791)**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported



by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Fifth Amendment (proposed 1789, ratified 1791)**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Sixth Amendment (proposed 1789, ratified 1791)**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Seventh Amendment (proposed 1789, ratified 1791)**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

**Eighth Amendment (proposed 1789, ratified 1791)**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Ninth Amendment (proposed 1789, ratified 1791)**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**10th Amendment (proposed 1789, ratified 1791)**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**11th Amendment (proposed 1794, ratified 1795)**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

**12th Amendment (proposed 1803, ratified 1804)**

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of

those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.— The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

### **13th Amendment (proposed and ratified 1865)**

#### Section 1

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

#### Section 2

Congress shall have power to enforce this article by appropriate legislation.

### **14th Amendment (proposed 1866, ratified 1868)**

#### Section 1

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.

#### Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

#### Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

#### Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for

payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

**15th Amendment (proposed 1869, ratified 1870)**

Section 1

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2

The Congress shall have the power to enforce this article by appropriate legislation.

**16th Amendment (proposed 1909, ratified 1913)**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

**17th Amendment (proposed 1912, ratified 1913)**

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

**18th Amendment (proposed 1917, ratified 1919, repealed 1933)**

Section 1

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

**19th Amendment (proposed 1919, ratified 1920)**

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

**20th Amendment (proposed 1932, ratified 1933)**

Section 1

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

#### Section 2

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

#### Section 3

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

#### Section 4

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

#### Section 5

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

#### Section 6

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

### **21st Amendment (proposed and ratified 1933)**

#### Section 1

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

#### Section 2

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

#### Section 3

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

### **22nd Amendment (proposed 1947, ratified 1951)**

#### Section 1

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

## Section 2

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

### **23rd Amendment (proposed 1960, ratified 1961)**

#### Section 1

The District constituting the seat of Government of the United States shall appoint in such manner as 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.

#### Section 2

The Congress shall have power to enforce this article by appropriate legislation.

### **24th Amendment (proposed 1962, ratified 1964)**

#### Section 1

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

#### Section 2

The Congress shall have power to enforce this article by appropriate legislation.

### **25th Amendment (proposed 1965, ratified 1967)**

#### Section 1

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

#### Section 2

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

#### Section 3

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

#### Section 4

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers

and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

**26th Amendment (proposed and ratified 1971)**

Section 1

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

**27th Amendment (proposed 1789, ratified 1992)**

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.

### 3. Montesquieu: The Source of Constitutional Inspiration

#### Charles Louis de Secondat, Baron de Montesquieu (1689-1755)

Charles-Louis de Secondat was born at La Brède, near Bordeaux, France in 1689. He inherited baronial titles from both sides of his family. His mother held the title Baroness de la Brède, and he inherited the title Baron de Montesquieu on the death of his paternal uncle on condition he take his name.

Montesquieu was given an extensive private education at home before being sent to the Catholic College in Juilly, from which he graduated in 1708 with a degree in law. He also studied law in Paris before he returned home to work in the family winemaking business. When his uncle died in 1716, Montesquieu inherited his position of magistrate and president *à mortier*, or deputy president of the Bordeaux *parlement*. This put him in charge of the criminal courts in the district, and he also supervised the jails in which defendants were held prior to trial.

By 1725, Montesquieu had tired of his administrative duties, so he resigned his government positions in order to engage in research in the sciences, medicine, and politics. In 1731, Montesquieu moved to England for two years. He attended debates at Parliament, became friends with many scientists, writers, and nobles, and was elected to the Royal Society of London. He believed that the British government proved that the rule of law and political freedom could exist in the modern world.

When Montesquieu returned to France, he began writing a treatise on how government could maintain order while protecting freedom. His work became increasingly difficult because he was losing his sight, and by the time he finished writing *The Spirit of the Laws* he was blind. He dictated its contents to a series of secretaries, producing a two-volume opus of 670 pages. Four decades later, this book became a principal source for the framers of the US Constitution.

#### *The Spirit of the Laws* (1748)

In the excerpts presented here, Montesquieu addressed many issues that were discussed at the Constitutional Convention. These included why republics could not succeed without virtuous citizens, why

external checks were needed on executive power, how promoting competition for office can benefit the public, and how democracies are likely to become corrupted. Montesquieu explained that political liberty required that “government be so constituted as no man need be afraid of another,” and identified institutions in the British government that could help other countries achieve this liberty.

### **Of the Republican Government, and the Laws in relation to Democracy**

When the body of the people is possessed of the supreme power, it is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy. In a democracy the people are in some respects the sovereign, and in others the subject.

There can be no exercise of sovereignty but by their suffrages, which are their own will; now the sovereign's will is the sovereign himself. The laws therefore which establish the right of suffrage are fundamental to this government. And indeed it is as important to regulate in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern....

The people, in whom the supreme power resides, ought to have the management of everything within their reach: that which exceeds their abilities must be conducted by their ministers. But they cannot properly be said to have their ministers, without the power of nominating them: it is, therefore, a fundamental maxim in this government is that the people should choose their ministers—that is, their magistrates.

They have occasion, as well as monarchs, and even more so, to be directed by a council or senate. But to have a proper confidence in these, they should have the choosing of the members; whether the election be made by themselves, as at Athens, or by some magistrate deputed for that purpose, as on certain occasions was customary at Rome.

The people are extremely well qualified for choosing those whom they are to entrust with part of their authority. They have only to be determined by things to which they cannot be strangers, and by facts that are obvious to sense. They can tell when a person has fought many battles, and been crowned with success; they are, therefore, capable of electing a general. They can tell when a judge is assiduous in his office, gives general satisfaction, and has never been charged with bribery; this is sufficient for choosing a praetor.... These are facts of which they can have better information in a public forum than a monarch in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this surpasses their abilities....

As the division of those who have a right of suffrage is a fundamental law in republics, so the manner of giving this suffrage is another fundamental law. The suffrage by lot is natural to democracy; as that by choice is to aristocracy.

The suffrage by lot is a method of electing that offends no one, but animates each citizen with the pleasing hope of serving his country. Yet as this method is in itself defective, it has been the endeavor of the most eminent legislators to regulate and amend it.

Solon made a law at Athens that military employments should be conferred by choice; but that senators and judges should be elected by lot. The same legislator ordained that civil magistracies, attended with great expense, should be given by choice; and the others by lot. In order, however, to amend the suffrage by lot, he made a rule that none but those who presented themselves should be elected; that the person elected should be examined by judges and that every one should have a right to accuse him if he were unworthy of



the office: this participated at the same time of the suffrage by lot, and of that by choice. When the time of their magistracy had expired, they were obliged to submit to another judgment in regard to their conduct. Persons utterly unqualified must have been extremely backward in giving in their names to be drawn by lot.

The law which determines the manner of giving suffrage is likewise fundamental in a democracy. It is a question of some importance whether the suffrages ought to be public or secret. Cicero observes that the laws which rendered them secret towards the close of the republic were the cause of its decline. But as this is differently practiced in different republics, I shall offer here my thoughts concerning this subject.

The people's suffrages ought doubtless to be public and this should be considered as a fundamental law of democracy. The lower class ought to be directed by those of higher rank, and restrained within bounds by the gravity of eminent personages. Hence, by rendering the suffrages secret in the Roman republic, all was lost; it was no longer possible to direct a populace that sought its own destruction. But when the body of the nobles are to vote in an aristocracy or in a democracy, the senate as the business is then only to prevent intrigues; the suffrages cannot be too secret.

Intriguing in a senate is dangerous; it is dangerous also in a body of nobles; but not so among the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on account of an actor as ever they could be for the welfare of the state. The misfortune of a republic is when intrigues are at an end; which happens when the people are gained by bribery and corruption: in this case they grow indifferent to public affairs, and avarice becomes their predominant passion. Unconcerned about the government and everything belonging to it, they quietly wait for their hire....

### **Of the Relation of Laws to the Nature of Monarchical Government**

The intermediate, subordinate, and dependent powers constitute the nature of monarchical government; I mean of that in which a single person governs by fundamental laws... [I]n monarchies the prince is the source of all power, political and civil. These fundamental laws necessarily suppose the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and of course there is no fundamental law.

The most natural, intermediate, and subordinate power is that of the nobility. This in some measure seems to be essential to a monarchy, whose fundamental maxim is: no monarch, no nobility; no nobility, no monarch; but there may be a despotic prince.

There are men who have endeavored in some countries in Europe to suppress the jurisdiction of the nobility, not perceiving that they were driving at the very thing that was done by the parliament of England. Abolish the privileges of the lords, the clergy and cities in a monarchy, and you will soon have a popular state, or else a despotic government....

Though the ecclesiastic power be so dangerous in a republic, yet it is extremely proper in a monarchy, especially of the absolute kind. What would become of Spain and Portugal, since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power? A barrier ever useful when there is no other: for since a despotic government is productive of the most dreadful calamities to human nature, the very evil that restrains it is beneficial to the subject....

It is not enough to have intermediate powers in a monarchy; there must be also a depositary of the laws. This depositary can only be the judges of the supreme courts of justice, who promulgate the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence and contempt of civil government, require that there should be a body invested with the power of reviving and executing the laws....

### **Of the Principle of Democracy**

There is no great share of probity necessary to support a monarchical or despotic government. The force of laws in one, and the prince's arm in the other, are sufficient to direct and maintain the whole. But in a popular state, one spring more is necessary, namely, virtue.

What I have here advanced is confirmed by the unanimous testimony of historians, and is extremely agreeable to the nature of things. For it is clear that in a monarchy, where he who commands the execution of the laws generally thinks himself above them, there is less need of virtue than in a popular government, where the person entrusted with the execution of the laws is sensible of his being subject to their direction.

Clear is it also that a monarch who, through bad advice or indolence, ceases to enforce the execution of the laws. He may easily repair the evil; he has only to follow other advice, or to shake off this indolence. But when, in a popular government, there is a suspension of the laws, as this can proceed only from the corruption of the republic, the state is certainly undone.

A very droll spectacle it was in the last century to behold the impotent efforts of the English towards the establishment of democracy. As they who had a share in the direction of public affairs were void of virtue; as their ambition was inflamed by the success of the most daring of their members; as the prevailing parties were successively animated by the spirit of faction, the government was continually changing: the people, amazed at so many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed....

When virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. The objects of their desires are changed: what they were fond of before has become indifferent; they were free while under the restraint of laws, but they would fain now be free to act against law; and as each citizen is like a slave who has run away from his master, that which was a maxim of equity he calls rigor; that which was a rule of action he styles constraint; and to precaution he gives the name of fear. Frugality, and not the thirst of gain, now passes for avarice. Formerly the wealth of individuals constituted the public treasure; but now this has become the patrimony of private persons. The members of the commonwealth riot on the public spoils, and its strength is only the power of a few, and the license of many....

### **In what Manner Virtue is supplied in a Monarchical Government**

[I]f monarchy wants one spring, it is provided with another. Honor, that is, the prejudice of every person and rank, supplies the place of the political virtue of which I have been speaking, and is everywhere her representative: here it is capable of inspiring the most glorious actions, and, joined with the force of laws, may lead us to the end of government as well as virtue itself.

Hence, in well-regulated monarchies, they are almost all good subjects, and very few good men; for to be a good man a good intention is necessary, and we should love our country, not so much on our own account, as out of regard to the community....

### **Of the Principle of Monarchy**

Ambition is pernicious in a republic. But in a monarchy it has some good effects; it gives life to the government, and is attended with this advantage, that it is in no way dangerous, because it may be continually checked.

It is with this kind of government as with the system of the universe, in which there is a power that constantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honor sets all the parts of the body politic in motion, and by its very action connects them; thus each individual advances the public good, while he only thinks of promoting his own interest....

Is it not very exacting to oblige men to perform the most difficult actions, such as require an extraordinary exertion of fortitude and resolution, without other recompense than that of glory and applause?

### **Of the Corruption of the Principles of Democracy**

The principle of democracy is corrupted not only when the spirit of equality is extinct, but likewise when they fall into a spirit of extreme equality, and when each citizen would fain be upon a level with those whom he has chosen to command him. Then the people, incapable of bearing the very power they have delegated, want to manage everything themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges.

When this is the case, virtue can no longer subsist in the republic. The people are desirous of exercising the functions of the magistrates, who cease to be revered. The deliberations of the senate are slighted; all respect is then laid aside for the senators, and consequently for old age. If there is no more respect for old age, there will be none presently for parents; deference to husbands will be likewise thrown off, and submission to masters. This license will soon become general, and the trouble of command be as fatiguing as that of obedience. Wives, children, slaves will shake off all subjection. No longer will there be any such thing as manners, order, or virtue.

We find in Xenophon's Banquet a very lively description of a republic in which the people abused their equality. Each guest gives in his turn the reason why he is satisfied. "Content I am," says Chamides, "because of my poverty. When I was rich, I was obliged to pay my court to informers, knowing I was more liable to be hurt by them than capable of doing them harm. The republic constantly demanded some new tax of me; and I could not decline paying. Since I have grown poor, I have acquired authority; nobody threatens me; I rather threaten others. I can go or stay where I please. The rich already rise from their seats and give me the way. I am a king, I was before a slave: I paid taxes to the republic, now it maintains me: I am no longer afraid of losing: but I hope to acquire?..."

The corruption will increase among the corruptors, and likewise among those who are already corrupted. The people will divide the public money among themselves, and, having added the administration of affairs to their indolence, will be for blending their poverty with the amusements of luxury. But with their indolence and luxury, nothing but the public treasure will be able to satisfy their demands.

We must not be surprised to see their suffrages given for money. It is impossible to make great largesse to the people without great extortion; and to compass this, the state must be subverted. The greater the advantages they seem to derive from their liberty, the nearer they approach towards the critical moment of losing it. Petty tyrants arise who have all the vices of a single tyrant. The small remains of liberty soon become insupportable; a single tyrant starts up, and the people are stripped of everything, even of the profits of their corruption.

Democracy has, therefore, two excesses to avoid: the spirit of inequality, which leads to aristocracy or monarchy, and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest....

### **Of the Spirit of Extreme Equality**

As distant as heaven is from earth, so is the true spirit of equality from that of extreme equality. The former does not imply that everybody should command, or that no one should be commanded, but that we obey or command our equals. It endeavors not to shake off the authority of a master, but that its masters should be none but its equals.

In the state of nature, indeed, all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the laws.

Such is the difference between a well-regulated democracy and one that is not so, that in the former men are equal only as citizens, but in the latter they are equal also as magistrates, as senators, as judges, as fathers, as husbands, or as masters.

The natural place of virtue is near to liberty; but it is not nearer to excessive liberty than to servitude....

### **In what Liberty consists**

It is true that in democracies the people seem to act as they please; but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must have continually present in our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power.

Democratic and aristocratic states are not in their own nature free. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say that virtue itself has need of limits?

To prevent this abuse, it is necessary from the very nature of things that power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.

### **Of the End or View of Different Governments**

Though all governments have the same general end, which is that of preservation, yet each has another particular object. Increase of dominion was the object of Rome; war, that of Sparta; religion, that of the Jewish laws; commerce, that of Marseilles; public tranquility, that of the laws of China: navigation, that of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general, the pleasures of the prince, that of despotic states; that of monarchies, the prince's and the kingdom's glory; the independence of individuals is the end aimed at by the laws of Poland, thence results the oppression of the whole.

One nation there is also in the world that has for the direct end of its constitution political liberty. We shall presently examine the principles on which this liberty is founded; if they are sound, liberty will appear in its highest perfection....

### **Of the Constitution of England**

In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes

criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

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

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals....

Hence it is that many of the princes of Europe, whose aim has been leveled at arbitrary power, have constantly set out with uniting in their own persons all the branches of magistracy, and all the great offices of state....

The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.

By this method the judicial power, so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate.

In accusations of a deep and criminal nature, it is proper the person accused should have the privilege of choosing, in some measure, his judges, in concurrence with the law; or at least he should have a right to except against so great a number that the remaining part may be deemed his own choice.

The other two powers may be given rather to magistrates or permanent bodies, because they are not exercised on any private subject; one being no more than the general will of the state, and the other the execution of that general will.

But though the tribunals ought not to be fixed, the judgments ought; and to such a degree as to be ever conformable to the letter of the law. Were they to be the private opinion of the judge, people would then live in society, without exactly knowing the nature of their obligations.

The judges ought likewise to be of the same rank as the accused, or, in other words, his peers; to the end that he may not imagine he is fallen into the hands of persons inclined to treat him with rigor. If the legislature leaves the executive power in possession of a right to imprison those subjects who can give security for their good behavior, there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime, in which case they are really free, being subject only to the power of the law.

But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it forever....

As in a country of liberty, every man who is supposed a free agent ought to be his own governor;

the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniences, it is fit the people should transact by their representatives what they cannot transact by themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests than with those of other places, and are better judges of the capacity of their neighbors than of that of the rest of their countrymen. The members, therefore, of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place a representative should be elected by the inhabitants.

The great advantage of representatives is their capacity of discussing public affairs. For this the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy.

It is not at all necessary that the representatives who have received a general instruction from their constituents should wait to be directed on each particular affair, as is practiced in the diets of Germany. True it is that by this way of proceeding the speeches of the deputies might with greater propriety be called the voice of the nation; but, on the other hand, this would occasion infinite delays; would give each deputy a power of controlling the assembly; and, on the most urgent and pressing occasions, the wheels of government might be stopped by the caprice of a single person....

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation as to be deemed to have no will of their own... Neither ought the representative body to be chosen for the executive part of government, for which it is not so fit; but for the enacting of laws, or to see whether the laws in being are duly executed, a thing suited to their abilities, and which none indeed but themselves can properly perform....

Of the three powers above mentioned, the judiciary is in some measure next to nothing: there remain, therefore, only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose....

The executive power ought to be in the hands of a monarch, because this branch of government, having need of dispatch, is better administered by one than by many: on the other hand, whatever depends on the legislative power is oftentimes better regulated by many than by a single person.

But if there were no monarch, and the executive power should be committed to a certain number of persons selected from the legislative body, there would be an end then of liberty; by reason the two powers would be united, as the same persons would sometimes possess, and would be always able to possess, a share in both....

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and, moreover, would cut out too much work for the executive power, so as to take off its attention to its office, and oblige it to think only of defending its own prerogatives, and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body were once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting may reasonably entertain some hopes of the next: but were it to be always the same body, the people upon seeing it once corrupted would no longer expect any good from its laws; and of course they would either become desperate or fall into a state of indolence....

Were the executive power not to have a right of restraining the encroachments of the legislative body,

the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper, on the other hand, that the legislative power should have a right to stay the executive. For as the execution has its natural limits, it is useless to confine it; besides, the executive power is generally employed in momentary operations....

But if the legislative power in a free state has no right to stay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed.... But whatever may be the issue of that examination, the legislative body ought not to have a power of arraigning the person, nor, of course, the conduct, of him who is entrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried there is an end of liberty....

It is possible that the law, which is clear-sighted in one sense, and blind in another, might, in some cases, be too severe. But as we have already observed, the national judges are no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderating either its force or rigor. That part, therefore, of the legislative body, which we have just now observed to be a necessary tribunal on another occasion, is also a necessary tribunal in this; it belongs to its supreme authority to moderate the law in favor of the law itself, by mitigating the sentence.

It might also happen that a subject entrusted with the administration of public affairs may infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not or would not punish. But, in general, the legislative power cannot try causes: and much less can it try this particular case, where it represents the party aggrieved, which is the people. It can only, therefore, impeach. But before what court shall it bring its impeachment? Must it go and demean itself before the ordinary tribunals, which are its inferiors, and, being composed, moreover, of men who are chosen from the people as well as itself, will naturally be swayed by the authority of so powerful an accuser? No: in order to preserve the dignity of the people, and the security of the subject, the legislative part which represents the people must bring in its charge before the legislative part which represents the nobility, who have neither the same interests nor the same passions....

The executive power, pursuant of what has been already said, ought to have a share in the legislature by the power of rejecting, otherwise it would soon be stripped of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone. If the prince were to have a part in the legislature by the power of resolving, liberty would be lost. But as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting....

Here then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative.

These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert.

As the executive power has no other part in the legislative than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose, because as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposals which were made against its will....

Were the executive power to determine the raising of public money, otherwise than by giving its consent, liberty would be at an end; because it would become legislative in the most important point of legislation....

To prevent the executive power from being able to oppress, it is requisite that the armies with which it is entrusted should consist of the people, and have the same spirit as the people, as was the case at Rome till the time of Marius. To obtain this end, there are only two ways, either that the persons employed in the army should have sufficient property to answer for their conduct to their fellow-subjects, and be enlisted only for a year, as was customary at Rome: or if there should be a standing army, composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortress should be suffered...

It is not my business to examine whether the English actually enjoy this liberty or not. Sufficient it is for my purpose to observe that it is established by their laws; and I inquire no further.



## 4. The Federalists: Advocating for the Constitution

### Alexander Hamilton (1755-1804)

Alexander Hamilton was born on the Caribbean island of Nevis and raised on St. Croix. After his father left and his mother died, he was taken in by a wealthy merchant who trained him in business. At age 15, he travelled to the British North America colonies and eventually enrolled at Columbia. His studies ended when it was closed due to the revolution, and he never finished. He read law on his own and was admitted to the bar in 1782.

Hamilton joined a revolutionary militia while in college and distinguished himself at the battle of Princeton. General Washington promoted him to chief of staff, and he handled much of Washington's correspondence. Given command of a regiment in 1781, he helped win the battle of Yorktown. After the war, he returned to New York, where he served briefly in Congress before practicing law and founding the Bank of New York. Critical of the Articles of Confederation, he became a leading advocate for change. Hamilton remained close to Washington and served as Secretary of the Treasury between 1789 and 1795. He continued his involvement in politics until 1804, when he died in a duel with Aaron Burr.

### John Jay (1745-1824)

John Jay was born to a wealthy family in Rye, New York. He graduated Columbia and became a lawyer in 1768. His opposition to British colonial policies led to his election to the first continental congress six years later, and he presided over the second congress. After the revolution, he became US ambassador to Spain and helped negotiate the treaty with Britain that ended the revolutionary war. He served as Secretary of Foreign Affairs under the Articles of Confederation but did not attend the 1787 Convention.

After the Constitution was ratified, President Washington chose him as the first Chief Justice of the Supreme Court. The Court heard few cases in his five years on the Court, and he resigned in 1795 to become Governor of

New York. He was confirmed for a second term as Chief Justice in December 1800, but declined to serve due to ill health. The vacant seat was filled a month later by John Marshall.

## James Madison (1751-1836)

James Madison grew up on a tobacco plantation in Virginia and was educated by private tutors. He finished college at Princeton in two years and returned home to study law in 1772. He served as a colonel during the Revolutionary War and participated in Virginia's constitutional convention, after which he was elected to the state's new legislature. He served in Congress from 1780-83, then returned to the Virginia legislature.

Madison had a leading role at the Constitutional Convention and also served as its secretary. He was elected to the first House of Representatives and wrote the first draft of the Bill of Rights. While he initially advised President Washington, he eventually joined the new Democratic-Republican party and left Congress in 1797. Madison served for eight years as Jefferson's Secretary of State and then eight years as the nation's fourth president.

## The Federalist Papers (1787-88)

The Federalist Papers are a collection of essays that were published in New York newspapers while the people were considering whether to ratify the new constitution. Most were published before the delegates to the state constitutional convention were elected. Hamilton wrote 51 of the 85 essays; Madison wrote 26; they jointly wrote three more. John Jay wrote the remaining five.

## Jay, Federalist 5

In this early paper, John Jay refuted the proposal that the states would be better off separating into three confederacies that would have more homogenous policies and economies. He drew on the example of the British Union of England, Scotland and Wales as making the whole both economically stronger and deterring foreign aggression. He suggested that rather than negotiate their differences, these American confederacies might turn to European states that could bring war and eventual occupation to the recently-freed states.

### Concerning Dangers from Foreign Force and Influence

Queen Anne, in her letter of the 1st July, 1706, to the Scotch Parliament, makes some observations on the importance of the *union* then forming between England and Scotland, which merit our attention.... “An entire and perfect union will be the solid foundation of lasting peace: It will secure your religion, liberty, and property; remove the animosities amongst yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches, and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be *enabled to resist all its enemies.*” “We most earnestly recommend to you calmness and unanimity in this great and weighty affair, that the union may be brought to a happy conclusion, being the only effectual way to secure our present and future happiness, and disappoint the designs of our and your enemies, who will doubtless, on this occasion, *use their utmost endeavors to prevent or delay this union.*”

It was remarked in the preceding paper, that weakness and divisions at home would invite dangers from abroad; and that nothing would tend more to secure us from them than union, strength, and good government within ourselves. This subject is copious and cannot easily be exhausted.

The history of Great Britain is the one with which we are in general the best acquainted, and it gives us many useful lessons. We may profit by their experience without paying the price which it cost them. Although it seems obvious to common sense that the people of such an island should be but one nation, yet we find that they were for ages divided into three, and that those three were almost constantly embroiled in quarrels and wars with one another. Notwithstanding their true interest with respect to the continental nations was really the same, yet by the arts and policy and practices of those nations, their mutual jealousies were perpetually kept inflamed, and for a long series of years they were far more inconvenient and troublesome than they were useful and assisting to each other.

Should the people of America divide themselves into three or four nations, would not the same thing happen? Would not similar jealousies arise, and be in like manner cherished? Instead of their being “joined in affection” and free from all apprehension of different “interests,” envy and jealousy would soon extinguish confidence and affection, and the partial interests of each confederacy, instead of the general interests of all America, would be the only objects of their policy and pursuits. Hence, like most other *bordering* nations, they would always be either involved in disputes and war, or live in the constant apprehension of them.

The most sanguine advocates for three or four confederacies cannot reasonably suppose that they would

long remain exactly on an equal footing in point of strength, even if it was possible to form them so at first; but, admitting that to be practicable, yet what human contrivance can secure the continuance of such equality? Independent of those local circumstances which tend to beget and increase power in one part and to impede its progress in another, we must advert to the effects of that superior policy and good management which would probably distinguish the government of one above the rest, and by which their relative equality in strength and consideration would be destroyed. For it cannot be presumed that the same degree of sound policy, prudence, and foresight would uniformly be observed by each of these confederacies for a long succession of years.

Whenever, and from whatever causes, it might happen, and happen it would, that any one of these nations or confederacies should rise on the scale of political importance much above the degree of her neighbors, that moment would those neighbors behold her with envy and with fear. Both those passions would lead them to countenance, if not to promote, whatever might promise to diminish her importance; and would also restrain them from measures calculated to advance or even to secure her prosperity. Much time would not be necessary to enable her to discern these unfriendly dispositions. She would soon begin, not only to lose confidence in her neighbors, but also to feel a disposition equally unfavorable to them. Distrust naturally creates distrust, and by nothing is good-will and kind conduct more speedily changed than by invidious jealousies and uncandid imputations, whether expressed or implied.

The North is generally the region of strength, and many local circumstances render it probable that the most Northern of the proposed confederacies would, at a period not very distant, be unquestionably more formidable than any of the others. No sooner would this become evident than the *Northern Hive* would excite the same ideas and sensations in the more southern parts of America which it formerly did in the southern parts of Europe. Nor does it appear to be a rash conjecture that its young swarms might often be tempted to gather honey in the more blooming fields and milder air of their luxurious and more delicate neighbors.

They who well consider the history of similar divisions and confederacies will find abundant reason to apprehend that those in contemplation would in no other sense be neighbors than as they would be borderers; that they would neither love nor trust one another, but on the contrary would be a prey to discord, jealousy, and mutual injuries; in short, that they would place us exactly in the situations in which some nations doubtless wish to see us, viz., *formidable only to each other*.

From these considerations it appears that those gentlemen are greatly mistaken who suppose that alliances offensive and defensive might be formed between these confederacies, and would produce that combination and union of wills of arms and of resources, which would be necessary to put and keep them in a formidable state of defense against foreign enemies.

When did the independent states, into which Britain and Spain were formerly divided, combine in such alliance, or unite their forces against a foreign enemy? The proposed confederacies will be *distinct nations*. Each of them would have its commerce with foreigners to regulate by distinct treaties; and as their productions and commodities are different and proper for different markets, so would those treaties be essentially different. Different commercial concerns must create different interests, and of course different degrees of political attachment to and connection with different foreign nations. Hence it might and probably would happen that the foreign nation with whom the *Southern* confederacy might be at war would be the one with whom the *Northern* confederacy would be the most desirous of preserving peace and friendship. An alliance so contrary to their immediate interest would not therefore be easy to form, nor, if formed, would it be observed and fulfilled with perfect good faith.

Nay, it is far more probable that in America, as in Europe, neighboring nations, acting under the impulse of opposite interests and unfriendly passions, would frequently be found taking different sides. Considering our distance from Europe, it would be more natural for these confederacies to apprehend danger from one another than from distant nations, and therefore that each of them should be more desirous to guard against the others by the aid of foreign alliances, than to guard against foreign dangers by alliances between themselves. And here let us not forget how much more easy it is to receive foreign fleets into our ports, and foreign armies into our country, than it is to persuade or compel them to depart. How many conquests did the Romans and others make in the characters of allies, and what innovations did they under the same character introduce into the governments of those whom they pretended to protect....

## Madison, Federalist 10

Federalist 10 is one of the two most famous *Federalist Papers*. Madison addressed a central problem in democratic theory: what if a faction of citizens gets control of government and uses its powers to advance their interests at the expense of the general public? As Madison pointed out, there is no difficulty in protecting the public interest if this faction is in a minority, but what can stop it if it has majority support? Then the interests and rights of the minority would be imperiled.

Madison's explanation of the constitutional design makes it clear that the framers did not support direct democracy as the national form of government. He identified two components of the new Constitution that will prevent majority factions from dominating national politics. The first is the representative principle, which will ensure that factional interests are filtered by public-spirited members of Congress. The second is the large size of the country, which will prevent one faction from dominating others due to the diversity of the new nation. While a faction may succeed in passing some legislation, it would never dominate the US government due to the many other interests that will predominate in other states. Therefore, size provides a check against any faction forming a permanent majority in Congress.

### **The Union as a Safeguard Against Domestic Faction and Insurrection**

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. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have as effectually obviated the danger on this side, as was wished and expected. 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. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. 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. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the

various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

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*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such

on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

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. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more 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.

In the first place, it is to be remarked 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; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, 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 too 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.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the



representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. 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. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans.

## Hamilton, Federalist 15

Here Hamilton lamented the sad state of the US government under the Article of Confederation, claiming the country is in “the last stage of national humiliation.” The weak national government was unable to sustain an economy or even force foreign soldiers to leave its territory. Hamilton found the solution in giving the national government the power to pass laws that regulate citizens directly, something it lacked the power to do under the Articles. This power would allow the government to collect sufficient taxes to allow it to achieve its objectives, as opposed to relying on requisitions from the states that were sporadic and insufficient. Hamilton rejected the compact federalism of the Articles on the grounds that its centrifugal tendencies drew power from the national government to the states. Instead, he supported the new Constitution’s grant of substantial powers to the national government.

### **The Insufficiency of the Present Confederation to Preserve the Union**

We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interests, not less than of our rights. Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us....

The great and radical vice in the construction of the existing Confederation is in the principle of *legislation for states or governments*, in their *corporate* or *collective* capacities, and as contradistinguished from the *individuals* of which they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of appointment, the United States has an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequence of this is, that though in theory their resolutions concerning those objects are

laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option....

There is nothing absurd or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of time, place, circumstance, and quantity, leaving nothing to future discretion, and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war, of observance and non-observance, as the interests or passions of the contracting powers dictate. In the early part of the present century there was an epidemical rage in Europe for this species of compacts, from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power and the peace of that part of the world, all the resources of negotiation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive but afflicting lesson to mankind, how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith, and which oppose general considerations of peace and justice to the impulse of any immediate interest or passion.

If the particular States in this country are disposed to stand in a similar relation to each other, and to drop the project of a general *discretionary superintendence*, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance offensive and defensive; and would place us in a situation to be alternate friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still will adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens—the only proper objects of government.

Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the coercion of the magistracy, or by the coercion of arms. The first kind can evidently apply only to men; the last kind must of necessity, be employed against bodies politic, or communities, or States. It is evident that there is no process of a court by which the observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword. In an association where the general authority is confined to the collective bodies of the communities, that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it.

There was a time when we were told that breaches, by the States, of the regulations of the federal authority were not to be expected; that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the

Union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation has a less active influence, when the infamy of a bad action is to be divided among a number than when it is to fall singly upon one. A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons of whom they are composed into improprieties and excesses, for which they would blush in a private capacity.

In addition to all this, there is, in the nature of sovereign power, an impatience of control, that disposes those who are invested with the exercise of it, to look with an evil eye upon all external attempts to restrain or direct its operations. From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common center. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect that the persons entrusted with the administration of the affairs of the particular members of a confederacy will at all times be ready, with perfect good-humor, and an unbiased regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of human nature.

If, therefore, the measures of the Confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favor of local objects, which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans, framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. Those who have been conversant in the proceedings of popular assemblies; who have seen how difficult it often is, where there is no exterior pressure of circumstances, to bring them to harmonious resolutions on important points, will readily conceive how impossible it must be to induce a number of such assemblies, deliberating at a distance from each other, at different times, and under different impressions, long to co-operate in the same views and pursuits.

In our case, the concurrence of thirteen distinct sovereign wills is requisite, under the Confederation, to the complete execution of every important measure that proceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; the delinquencies of the States have, step by step, matured themselves to an extreme, which has, at length, arrested all the wheels of the

national government, and brought them to an awful stand. Congress at this time scarcely possess the means of keeping up the forms of administration, till the States can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified produced at first only unequal and disproportionate degrees of compliance with the requisitions of the Union. The greater deficiencies of some States furnished the pretext of example and the temptation of interest to the complying, or to the least delinquent States. Why should we do more in proportion than those who are embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burden? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not, without hesitation, combat. Each State, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins.

## Hamilton, Federalist 23

In 23, Hamilton stressed the importance of a strong national government, arguing that limiting its powers because of fear that they will be abused will prevent it from having adequate means to preserve the peace and safety of the country. The Articles of Confederation failed to provide sufficient power for the national government, and hence they must be replaced with the proposed new Constitution. Hamilton reiterated the importance of giving the national government power to regulate the behavior of individuals in order to maximize its ability to address both domestic and foreign problems.

### **The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union**

The necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of the Union, is the point at the examination of which we are now arrived.

This inquiry will naturally divide itself into three branches the objects to be provided for by the federal government, the quantity of power necessary to the accomplishment of those objects, the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

The principal purposes to be answered by union are these: the common defense of the members; the preservation of the public peace as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no

constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense.

This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the *means* ought to be proportioned to the *end*; the persons, from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained.

Whether there ought to be a federal government entrusted with the care of the common defense, is a question in the first instance, open for discussion; but the moment it is decided in the affirmative, it will follow, that that government ought to be clothed with all the powers requisite to complete execution of its trust. And unless it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, in any matter essential to its efficacy that is, in any matter essential to the *formation, direction, or support of the national forces*.

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the "common defense and general welfare." It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and the observations, made under the last head, will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the system; that if we are in earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is that the Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practiced in other governments.

If the circumstances of our country are such as to demand a compound instead of a simple, a confederate instead of a sole, government, the essential point which will remain to be adjusted will be to discriminate the objects, as far as it can be done, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge. Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same State the proper department of the local governments? These must possess all the authorities which

are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success....

Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the federal government an unconfined authority, as to all those objects which are entrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modeled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the *national interests*. Wherever these can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention ought to have confined themselves to showing, that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people....

## Madison, Federalist 51

In one of the most famous Federalist Papers, Madison recognized the criticism that the division of powers between branches is insufficient to prevent Congress from encroaching on the other two branches. His response was that the constitution is structured to take into account the personal motivations of those who will serve in the new government. The new constitution relied on the ambition that each branch's members would have to protect their power to lessen the possibility of encroachments by other officials.

Madison recognized the fundamental tension in representative government: to provide sufficient power to fulfill the government's responsibilities while concurrently protecting against official abuse or overreach of power. Madison claimed the constitution supplied "by opposite and rival interests, the defect of better motives." He also identified other factors that constrain the branches to their constitutional powers, which are the division between state and national authority and the diversity of competing interests within a large country, which he believed would limit the extent to which a Congressional majority can cater to factional interests.

### **The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments**

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so

contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places....

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against



dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?...

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased.

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature,

where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the republican cause, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the federal principle.

## Madison, Federalist 57

In 57, Madison examined the composition of the House of Representatives and responded to arguments that it would establish an elite legislative body. As the voters who choose the representatives will be the same people who vote for the largest body in the state legislature, this would reflect the choices made in each state's constitution. Madison also addressed worries that the Representatives votes would deviate from the public interest. Not only would their desires for distinction motivate them to serve the public, but regular biennial elections would allow for their removal if they deviate from the wishes of the voters.

Madison also raises what he considered an additional check on the Representatives' actions: they would be bound by the laws to the same extent as everyone else. He recognized that the Constitution does not specifically require this, but claimed that the "genius of the whole system" will produce this outcome. He prophesied that if Americans ever tolerate the passing of laws that exempt the Representatives, "the people will be prepared to tolerate everything but liberty." Madison concluded his analysis by demonstrating that the population of the legislative districts will be comparable to the districts established in several of the state legislatures.

### **The Supposed Tendency of the Plan of the Convention to Elevate the Few Above the Many**

The third charge against the House of Representatives is, that it will be taken from that class of citizens

which will have least sympathy with the mass of the people, and be most likely to aim at an ambitious sacrifice of the many to the aggrandizement of the few.

Of all the objections which have been framed against the federal Constitution, this is perhaps the most extraordinary. Whilst the objection itself is levelled against a pretended oligarchy, the principle of it strikes at the very root of republican government.

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one is such a limitation of the term of appointments as will maintain a proper responsibility to the people.

Let me now ask what circumstance there is in the constitution of the House of Representatives that violates the principles of republican government, or favors the elevation of the few on the ruins of the many?...

Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State.

Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people.

If we consider the situation of the men on whom the free suffrages of their fellow-citizens may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents.

In the first place, as they will have been distinguished by the preference of their fellow-citizens, we are to presume that in general they will be somewhat distinguished also by those qualities which entitle them to it, and which promise a sincere and scrupulous regard to the nature of their engagements.

In the second place, they will enter into the public service under circumstances which cannot fail to produce a temporary affection at least to their constituents. There is in every breast a sensibility to marks of honor, of favor, of esteem, and of confidence, which, apart from all considerations of interest, is some pledge for grateful and benevolent returns. Ingratitude is a common topic of declamation against human nature; and it must be confessed that instances of it are but too frequent and flagrant, both in public and in private life. But the universal and extreme indignation which it inspires is itself a proof of the energy and prevalence of the contrary sentiment.

In the third place, those ties which bind the representative to his constituents are strengthened by motives of a more selfish nature. His pride and vanity attach him to a form of government which favors his pretensions and gives him a share in its honors and distinctions. Whatever hopes or projects might be entertained by a few aspiring characters, it must generally happen that a great proportion of the men deriving their advancement from their influence with the people, would have more to hope from a preservation of the favor, than from innovations in the government subversive of the authority of the people.

All these securities, however, would be found very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of Representatives is so constituted as to support in the members an

habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it.

I will add, as a fifth circumstance in the situation of the House of Representatives, restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments, of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America—a spirit which nourishes freedom, and in return is nourished by it.

If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty.

Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the great mass of the people. It is possible that these may all be insufficient to control the caprice and wickedness of man. But are they not all that government will admit, and that human prudence can devise? Are they not the genuine and the characteristic means by which republican government provides for the liberty and happiness of the people? Are they not the identical means on which every State government in the Union relies for the attainment of these important ends?...

The only difference discoverable between the two cases is, that each representative of the United States will be elected by five or six thousand citizens; whilst in the individual States, the election of a representative is left to about as many hundreds. Will it be pretended that this difference is sufficient to justify an attachment to the State governments, and an abhorrence to the federal government? If this be the point on which the objection turns, it deserves to be examined.

Is it supported by reason? This cannot be said, without maintaining that five or six thousand citizens are less capable of choosing a fit representative, or more liable to be corrupted by an unfit one, than five or six hundred. Reason, on the contrary, assures us, that as in so great a number a fit representative would be most likely to be found, so the choice would be less likely to be diverted from him by the intrigues of the ambitious or the bribes of the rich.

Is the consequence from this doctrine admissible? If we say that five or six hundred citizens are as many as can jointly exercise their right of suffrage, must we not deprive the people of the immediate choice of their public servants, in every instance where the administration of the government does not require as many of them as will amount to one for that number of citizens?

Is the doctrine warranted by facts?... The districts in New Hampshire in which the senators are chosen immediately by the people, are nearly as large as will be necessary for her representatives in the Congress. Those of Massachusetts are larger than will be necessary for that purpose; and those of New York still more so. In the last State the members of Assembly for the cities and counties of New York and Albany are elected by very nearly as many voters as will be entitled to a representative in the Congress, calculating on

the number of sixty-five representatives only. It makes no difference that in these senatorial districts and counties a number of representatives are voted for by each elector at the same time. If the same electors at the same time are capable of choosing four or five representatives, they cannot be incapable of choosing one. Pennsylvania is an additional example....

## Madison, Federalist 62

Madison then turned to the Senate, and examined the benefits of having Senators selected by state legislatures. He admitted that the allocation of two Senators per state deviates from democratic principles, and justified this by citing the need for compromise with smaller states in order to achieve a new Constitution that could be ratified by all states. He saw the six-year staggered terms as providing a protection against hasty legislation motivated by popular passions, and concluded that the longer terms of the Senate would likely increase the “order and stability” of the federal government.

### The Senate

The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

It is equally unnecessary to dilate on the appointment of senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

The equality of representation in the Senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small States, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a proportional share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an equal share in the common councils, it does not appear to be without some reason that in a compound republic,

partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but “of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable.” A common government, with powers equal to its objects, is called for by the voice, and still more loudly by the political situation, of America. A government founded on principles more consonant to the wishes of the larger States, is not likely to be obtained from the smaller States. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

Another advantage accruing from this ingredient in the constitution of the Senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller States, would be more rational, if any interests common to them, and distinct from those of the other States, would otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the faculty and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation.

The number of senators, and the duration of their appointment, come next to be considered. In order to form an accurate judgment on both of these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution.

First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

Second. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into

intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Third. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding against each preceding session; so many admonitions to the people, of the value of those aids which may be expected from a well-constituted senate?

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last. The federal Constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

Fourth. The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success...

[G]reat injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.

## Hamilton, Federalist 68

Hamilton presented the justification for the electoral college in 68, praising the decision to filter public opinion through electors chosen specifically to vote for President and Vice President. He claimed that this would avoid tumult when elections take place since the choices will be made separately in each state by electors esteemed by citizens. He also praised the exclusion of federal officials from the process as it would avoid potential conflicts of interest. He predicted that the electoral college would prevent men with “talents for low intrigue ... and popularity from being elected president.”

### The Mode of Electing the President

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents.... I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of *several*, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of *one* who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign



powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias....

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says: "For forms of government let fools contest/That which is best administered is best," yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration....

## Hamilton, Federalist 70

Hamilton next addressed whether the presidency should be split between multiple men or subjected to oversight by a council. He argued for a unitary president on the grounds that it best promoted accountability, since when multiple people make decisions it is easy for them to escape personal responsibility. He also argued that an energetic executive is essential to good leadership, and that a single president can take action more efficiently than any plural executive. Much of this paper responded to anti-Federalist claims that presidents will have too much power and will not be sufficiently accountable to Congress or the people.

### **The Executive Department further considered**

There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and

have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have entrusted the executive authority wholly to single men.<sup>1</sup> Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction....

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarring of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to

operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, everything would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility.

Responsibility is of two kinds to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author....

“I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point.” These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?...

It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of

his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself...

## Hamilton, Federalist 78

While the framers spent extensive time at the Constitutional Convention discussing the composition of the legislative and executive branches, they spent relatively little time discussing the judiciary. Rather than establish a court system, they left this to Congress and merely provided minimum requirements for federal judges. However, the theory of a third branch that is independent of popular will is an important addition to constitutional theory, since prior to this time the judiciary was viewed as a component of the executive branch.

Hamilton began by explaining that the life tenure of federal judges would help prevent the other branches from exceeding their constitutional powers. He then discussed how he thought this would work: the Supreme Court would declare laws unconstitutional if they exceed the power delegated to Congress. Although he claimed the judiciary would be “the least dangerous branch” because it “has neither force nor will but merely judgment,” he admitted that judges would have the power to declare laws unconstitutional when they were contrary to the “manifest tenor” of the Constitution—not only when they violate specific constitutional provisions.

Hamilton argued that the will of the people, as expressed in the constitution, can only be sustained if the constitution is regarded as superior to subsequent laws—the opposite of the British common law tradition. He correctly predicted that the judiciary’s power of judicial review would protect the rights of minorities and even deter Congress from passing laws infringing on their rights.

### The Judicial Department

We proceed now to an examination of the judiciary department of the proposed government...

As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behavior*; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent

barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither *force* nor *will*, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power [citing Montesquieu]; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that “there is no liberty, if the power of judging be not separated from the legislative and executive powers.” [quoting Montesquieu] And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the

people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an equal authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise *will* instead of *judgment*, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove anything, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them



was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established *good behavior* as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

# 5. The Anti-Federalists: Opposing the New Constitution

## The Anti-Federalists

Scholars today classify those who opposed the new constitution as Anti-Federalists, although they too believed in federal government. Their federalism was based on a compact between states that allowed them to control the actions of the national government and limit it to purposes on which they all agreed. This was the structure of the government established by the Articles of Confederation. Their opponents, now called Federalists, believed in a national government with more robust powers that had the power to control the states as well as individual citizens through legislation and executive orders. The Anti-Federalists' model was closer to the 18th century meaning of "federalism," yet they lost the debate over the constitution, and today they are ironically remembered for opposing federalism.

## The Federal Farmer [most likely Melancton Smith (1744-1798)]

For many years, the Federal Farmer was assumed to be Richard Henry Lee (1732-1794), a Virginia delegate to the Continental Congress during the ratification debate in New York. However, extensive historical research and content analysis led most scholars to change this attribution. The consensus is now that the Federal Farmer was likely Melancton Smith, a wealthy New York merchant and delegate to the Continental Congress between 1785-1787. Smith's opposition is notable because most wealthy businessmen supported the new constitution because it was likely to prevent states from interfering with interstate commerce.

Although Smith argued against the ratification of the Constitution in his articles, he ultimately voted to ratify it at the New York State Convention in Poughkeepsie in 1788. He remained active in New York State politics, serving in the New York Assembly. He also helped found the New York Manumission Society to abolish slavery. He died in New York City during the yellow fever epidemic of 1798.

## Number 7 (December 31, 1787)

In his seventh article on the new constitution, the Farmer expressed concern that the new national government might be unable to persuade the people to heed its laws and then use force to impose its will on the people. He then criticized the system of representation embodied in the Constitution, claiming that the lack of any requirement for increasing the size of a House could allow a small number of representatives to control the branch with little input from the public. He believed that it would likely be controlled by an aristocracy composed principally of lawyers, ministers, and doctors that would legislate in their interests and give lesser consideration to the interests of merchants, manufacturers, and farmers.

In viewing the various governments instituted by mankind, we see their whole force reducible to two principles – the important springs which alone move the machines, and give them their intended influence and control, are force and persuasion: by the former men are compelled, by the latter they are drawn. We denominate a government despotic or free, as the one or other principle prevails in it. Perhaps it is not possible for a government to be so despotic, as not to operate persuasively on some of its subjects; nor is it, in the nature of things, I conceive, for a government to be so free, or so supported by voluntary consent, as never to want force to compel obedience to the laws. In despotic governments one man, or a few men, independent of the people, generally make the laws, command obedience, and enforce it by the sword: one-fourth part of the people are armed, and obliged to endure the fatigues of soldiers, to oppress the others and keep them subject to the laws. In free governments the people, or their representatives, make the laws; their execution is principally the effect of voluntary consent and aid; the people respect the magistrate, follow their private pursuits, and enjoy the fruits of their labor with very small deductions for the public use. The body of the people must evidently prefer the latter species of government; and it can be only those few, who may be well paid for the part they take in enforcing despotism, that can, for a moment, prefer the former. Our true object is to give full efficacy to one principle, to arm persuasion on every side, and to render force as little necessary as possible. Persuasion is never dangerous ... even in despotic governments; but military force, if often applied internally, can never fail to destroy the love and confidence, and break the spirits, of the people; and ... hold their places by the peoples' elections.

I repeat my observation, that the plan proposed will have a doubtful operation between the two principles; and whether it will preponderate towards persuasion or force is uncertain.

Government must exist—If the persuasive principle be feeble, force is infallibly the next resort—The moment the laws of congress shall be disregarded they must languish, and the whole system be convulsed—that moment we must have recourse to this next resort, and all freedom vanish.

It being impracticable for the people to assemble to make laws, they must elect legislators, and assign men to the different departments of the government. In the representative branch we must expect chiefly to collect the confidence of the people, and in it to find almost entirely the force of persuasion. In forming this branch, therefore, several important considerations must be attended to. It must possess abilities to discern the situation of the people and of public affairs, a disposition to sympathize with the people, and a capacity

and inclination to make laws congenial to their circumstances and condition: it must afford security against interested combinations, corruption and influence; it must possess the confidence, and have the voluntary support of the people.

I think these positions will not be controverted, nor the one I formerly advanced, that a fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected, in such manner as they would be were the people all assembled. Having made these general observations, I shall proceed to consider further my principal position, viz. that there is no substantial representation of the people provided for in a government, in which the most essential powers, even as to the internal police of the country, are proposed to be lodged; and to propose certain amendments as to the representative branch: 1st, That there ought to be *an increase of the numbers of representatives*: And, 2dly, That the elections of them ought to be better secured.

The representation is unsubstantial and ought to be increased... In America we have done more in establishing this important branch on its true principles, than, perhaps, all the world besides; yet even here, I conceive, that very great improvements in representation may be made. In fixing this branch, the situation of the people must be surveyed, and the number of representatives and forms of election apportioned to that situation. When we find a numerous people settled in a fertile and extensive country, possessing equality, and few or none of them oppressed with riches or wants, it ought to be the anxious care of the constitution and laws, to arrest them from national depravity, and to preserve them in their happy condition. A virtuous people make just laws, and good laws tend to preserve unchanged a virtuous people. A virtuous and happy people by laws uncongenial to their characters, may easily be gradually changed into servile and depraved creatures. Where the people, or their representatives, make the laws, it is probable they will generally be fitted to the national character and circumstances, unless the representation be partial, and the imperfect substitute of the people. However, the people may be electors, if the representation be so formed as to give one or more of the natural classes of men in the society an undue ascendancy over the others, it is imperfect; the former will gradually become masters, and the latter slaves.

It is the first of all among the political balances, to preserve in its proper station each of these classes. We talk of balances in the legislature, and among the departments of government; we ought to carry them to the body of the people. Since I advanced the idea of balancing the several orders of men in a community, in forming a genuine representation, and seen that idea considered as chimerical, I have been sensibly struck with a sentence in the Marquis Beccaria's treatise: this sentence was quoted by congress in 1774, and is as follows:—"In every society there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the others to the extreme of weakness and misery; the intent of good laws is to oppose this effort, and to diffuse their influence universally and equally." Add to this Montesquieu's opinion, that "in a free state every man, who is supposed to be a free agent, ought to be concerned in his own government: therefore, the legislative should reside in the whole body of the people, or their representatives." It is extremely clear that these writers had in view the several orders of men in society, which we call aristocratical, democratical, mercantile, mechanic, &c. and perceived the efforts they are constantly, from interested and ambitious views, disposed to make to elevate themselves and oppress others. Each order must have a share in the business of legislation actually and efficiently. It is deceiving a people to tell them they are electors, and can choose their legislators, if they cannot, in the nature of things, choose men from among themselves, and genuinely like themselves.

I wish you to take another idea along with you; we are not only to balance these natural efforts, but we are also to guard against accidental combinations; combinations founded in the connections of offices and

private interests, both evils which are increased in proportion as the number of men, among which the elected must be, are decreased. To set this matter in a proper point of view, we must form some general ideas and descriptions of the different classes of men, as they may be divided by occupations and politically: the first class is the aristocratical. There are three kinds of aristocracy spoken of in this country—the first is a constitutional one, which does not exist in the United States in our common acceptation of the word. Montesquieu, it is true, observes, that where a part of the persons in a society, for want of property, age, or moral character, are excluded any share in the government, the others, who alone are the constitutional electors and elected, form this aristocracy; this according to him, exists in each of the United States, where a considerable number of persons, as all convicted of crimes, under age, or not possessed of certain property, are excluded any share in the government; the second is an aristocratic faction, a junto of unprincipled men, often distinguished for their wealth or abilities, who combine together and make their object their private interests and aggrandizement; the existence of this description is merely accidental, but particularly to be guarded against. The third is the natural aristocracy; this term we use to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary; we may place men on one side of this line, which others may place on the other, and in all disputes between the few and the many, a considerable number are wavering and uncertain themselves on which side they are, or ought to be. In my idea of our natural aristocracy in the United States, I include about four or five thousand men; and among these I reckon those who have been placed in the offices of governors, of members of Congress, and state senators generally, in the principal officers of Congress, of the army and militia, the superior judges, the most eminent professional men, &c. and men of large property—the other persons and orders in the community form the natural democracy; this includes in general the yeomanry, the subordinate officers, civil and military, the fishermen, mechanics and traders, many of the merchants and professional men.

It is easy to perceive that men of these two classes, the aristocratical, and democratical, with views equally honest, have sentiments widely different, especially respecting public and private expenses, salaries, taxes, &c. Men of the first class associate more extensively, have a high sense of honor, possess abilities, ambition, and general knowledge: men of the second class are not so much used to combining great objects; they possess less ambition, and a larger share of honesty: their dependence is principally on middling and small estates, industrious pursuits, and hard labor, while that of the former is principally on the emoluments of large estates, and of the chief offices of government. Not only the efforts of these two great parties are to be balanced, but other interests and parties also, which do not always oppress each other merely for want of power, and for fear of the consequences; though they, in fact, mutually depend on each other; yet such are their general views, that the merchants alone would never fail to make laws favorable to themselves and oppressive to the farmers, &c. the farmers alone would act on like principles; the former would tax the land, the latter the trade. The manufacturers are often disposed to contend for monopolies, buyers make every exertion to lower prices, and sellers to raise them; men who live by fees and salaries endeavor to raise them, and the part of the people who pay them, endeavor to lower them; the public creditors to augment the taxes, and the people at large to lessen them. Thus, in every period of society, and in all the transactions of men, we see parties verifying the observation made by the Marquis; and those classes which have not their sentinels in the government, in proportion to what they have to gain or lose, must infallibly be ruined.

Efforts among parties are not merely confined to property; they contend for rank and distinctions; all their passions in turn are enlisted in political controversies—Men, elevated in society, are often disgusted with the changeableness of the democracy, and the latter are often agitated with the passions of jealousy and envy: the yeomanry possess a large share of property and strength, are nervous and firm in their

opinions and habits—the mechanics of towns are ardent and changeable, honest and credulous, they are inconsiderable for numbers, weight and strength, not always sufficiently stable for the supporting free governments; the fishing interest partakes partly of the strength and stability of the landed, and partly of the changeableness of the mechanic interest. As to merchants and traders, they are our agents in almost all money transactions; give activity to government, and possess a considerable share of influence in it. It has been observed by an able writer that frugal industrious merchants are generally advocates for liberty. It is an observation, I believe, well founded, that the schools produce but few advocates for republican forms of government; gentlemen of the law, divinity, physic, &c. probably form about a fourth part of the people; yet their political influence, perhaps, is equal to that of all the other descriptions of men; if we may judge from the appointments to Congress, the legal characters will often, in a small representation, be the majority; but the more the representatives are increased, the more of the farmers, merchants, &c. will be found to be brought into the government.

These general observations will enable you to discern what I intend by different classes, and the general scope of my ideas, when I contend for uniting and balancing their interests, feelings, opinions, and views in the legislature; we may not only so unite and balance these as to prevent a change in the government by the gradual exaltation of one part to the depression of others, but we may derive many other advantages from the combination and full representation; a small representation can never be well informed as to the circumstances of the people, the members of it must be too far removed from the people, in general, to sympathize with them, and too few to communicate with them: a representation must be extremely imperfect where the representatives are not circumstanced to make the proper communications to their constituents, and where the constituents in turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions, to their representatives; where there is but one representative to 30,000, or 40,000 inhabitants, it appears to me, he can only mix, and be acquainted with a few respectable characters among his constituents, even double the federal representation, and then there must be a very great distance between the representatives and the people in general represented. On the proposed plan, the state of Delaware, the city of Philadelphia, the state of Rhode Island, the province of Maine, the county of Suffolk in Massachusetts, will have one representative each; there can be but little personal knowledge, or but few communications, between him and the people at large of either of those districts. It has been observed, that mixing only with the respectable men, he will get the best information and ideas from them; he will also receive impressions favorable to their purposes particularly....

Could we get over all our difficulties respecting a balance of interests and party efforts, to raise some and oppress others, the want of sympathy, information and intercourse between the representatives and the people, an insuperable difficulty will still remain, I mean the constant liability of a small number of representatives to private combinations; the tyranny of the one, or the licentiousness of the multitude, are, in my mind, but small evils, compared with the factions of the few. It is a consideration well worth pursuing, how far this house of representatives will be liable to be formed into private juntos, how far influenced by expectations of appointments and offices, how far liable to be managed by the president and senate, and how far the people will have confidence in them....

## Number 16 (January 20, 1788)

In his sixteenth article, the Federal Farmer criticized the arguments of those who believed the Constitution did not need a bill of rights. He noted their inconsistency in also arguing that there was no need for one because some rights were already protected by the Constitution, since the inclusion of those rights suggested that others were not protected. Furthermore, the limitations on protected rights also suggested that Congress has even more regulatory power. For example, why did the Constitution only bar religious tests for those seeking federal offices? Did this mean they could be used to restrict voting or jury service?

Melancton Smith applauded the British practice of regularly reading aloud a list of individual rights, as it reminded the people of their entitlements, and suggested that a US bill of rights would have the same effect. He suggested a list of rights that should be included in the new constitution. He would get his wish, as the first Congress would pass a bill of rights in 1789, and ten of its twelve provisions would be added to the Constitution in 1791, with an eleventh (now the 27th Amendment) added in 1992.

Having gone through with the organization of the government, I shall now proceed to examine more particularly those clauses which respect its powers. I shall begin with those articles and stipulations which are necessary for accurately ascertaining the extent of powers, and what is given, and for guarding, limiting, and restraining them in their exercise. We often find these articles and stipulations placed in bills of rights; but they may as well be incorporated in the body of the constitution, as selected and placed by themselves.... On the one hand, it seems to be considered as a necessary distinct limb of the constitution, and as containing a certain number of very valuable articles, which are applicable to all societies; and, on the other, as useless, especially in a federal government, possessing only enumerated power—nay, dangerous, as individual rights are numerous, and not easy to be enumerated in a bill of rights, and from articles, or stipulations, securing some of them, it may be inferred, that others not mentioned are surrendered....

In forming a state constitution, under which to manage not only the great but the little concerns of a community: the powers to be possessed by the government are often too numerous to be enumerated; the people to adopt the shortest way often give general powers, indeed all powers, to the government, in some general words, and then, by a particular enumeration, take back, or rather say they however reserve certain rights as sacred, and which no laws shall be made to violate: hence the idea that all powers are given which are not reserved; but in forming a federal constitution, which *ex vi termine*, supposes state governments existing, and which is only to manage a few great national concerns, we often find it easier to enumerate particularly the powers to be delegated to the federal head, than to enumerate particularly the individual rights to be reserved; and the principle will operate in its full force, when we carefully adhere to it. When we particularly enumerate the powers given, we ought either carefully to enumerate the rights reserved, or be totally silent about them; we must either particularly enumerate both, or else suppose the particular enumeration of the powers given adequately draws the line between them and the rights reserved, particularly to enumerate the former and not the latter, I think most advisable: however, as men

appear generally to have their doubts about these silent reservations, we might advantageously enumerate the powers given, and then in general words, according to the mode adopted in the 2d article of the confederation, declare all powers, rights and privileges, are reserved, which are not explicitly and expressly given up.

People, and very wisely too, like to be express and explicit about their essential rights, and not to be forced to claim them on the precarious and unascertained tenure of inferences and general principles, knowing that in any controversy between them and their rulers, concerning those rights, disputes may be endless, and nothing certain.... [T]here are infinite advantages in particularly enumerating many of the most essential rights reserved in all cases; and as to the less important ones, we may declare in general terms, that all not expressly surrendered are reserved. We do not by declarations change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot.... What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people, and has their assent: we discern certain rights, as the freedom of the press, and the trial by jury, &c. which the people of England and of America of course believe to be sacred, and essential to their political happiness, and this belief in them is the result of ideas at first suggested to them by a few able men, and of subsequent experience; while the people of some other countries hear these rights mentioned with the utmost indifference; they think the privilege of existing at the will of a despot much preferable to them. Why this difference amongst beings every way formed alike? The reason of the difference is obvious—it is the effect of education, a series of notions impressed upon the minds of the people by examples, precepts and declarations. When the people of England got together, at the time they formed Magna Carta, they did not consider it sufficient, that they were indisputably entitled to certain natural and unalienable rights, not depending on silent titles, they, by a declaratory act, expressly recognized them, and explicitly declared to all the world, that they were entitled to enjoy those rights; they made an instrument in writing, and enumerated those they then thought essential, or in danger... that the people might not forget these rights, and gradually become prepared for arbitrary government, their discerning and honest leaders caused this instrument to be confirmed near forty times, and to be read twice a year in public places... to fix the contents of it in the minds of the people, as they successively come upon the stage....

It is not merely in this point of view, that I urge the engrafting in the constitution additional declaratory articles. The distinction, in itself just, that all powers not given are reserved, is in effect destroyed by this very constitution, as I shall particularly demonstrate—and even independent of this, the people, by adopting the constitution, give many general undefined powers to congress, in the constitutional exercise of which, the rights in question may be effected. Gentlemen who oppose a federal bill of rights, or further declaratory articles, seem to view the subject in a very narrow imperfect manner. These have for their objects, not only the enumeration of the rights reserved, but principally to explain the general powers delegated in certain material points, and to restrain those who exercise them by fixed known boundaries....

The first point urged, is, that all power is reserved not expressly given, that particular enumerated powers only are given, that all others are not given, but reserved, and that it is needless to attempt to restrain congress in the exercise of powers they possess not. This reasoning is logical, but of very little importance in the common affairs of men; but the constitution does not appear to respect it even in any view. To prove this, I might cite several clauses in it. I shall only remark on two or three. By article 1, section 9, “No title of nobility shall be granted by congress.” Was this clause omitted, what power would congress have to make titles of nobility? in what part of the constitution would they find it? The answer must be, that congress



would have no such power—that the people, by adopting the constitution, will not part with it. Why then by a negative clause, restrain congress from doing what it would have no power to do? This clause, then, must have no meaning, or imply, that were it omitted, congress would have the power in question, either upon the principle that some general words in the constitution may be so construed as to give it, or on the principle that congress possess the powers not expressly reserved. But this clause was in the confederation, and is said to be introduced into the constitution from very great caution. Even a cautionary provision implies a doubt, at least, that it is necessary; and if so in this case, clearly it is also alike necessary in all similar ones. The fact appears to be, that the people in forming the confederation, and the convention, in this instance, acted, naturally, they did not leave the point to be settled by general principles and logical inferences; but they settle the point in a few words, and all who read them at once understand them.

The trial by jury in criminal as well as in civil causes, has long been considered as one of our fundamental rights, and has been repeatedly recognized and confirmed by most of the state conventions. But the constitution expressly establishes this trial in criminal, and wholly omits it in civil causes. The jury trial in criminal causes, and the benefit of the writ of habeas corpus, are already as effectually established as any of the fundamental or essential rights of the people in the United States. This being the case, why in adopting a federal constitution do we now establish these, and omit all others, or all others, at least, with a few exceptions, such as again agreeing there shall be no ex post facto laws, no titles of nobility, &c. We must consider this constitution when adopted as the supreme act of the people, and in construing it hereafter, we and our posterity must strictly adhere to the letter and spirit of it, and in no instance depart from them: in construing the federal constitution, it will be not only impracticable, but improper to refer to the state constitutions. They are entirely distinct instruments and inferior acts: besides, by the people's now establishing certain fundamental rights, it is strongly implied, that they are of opinion, that they would not otherwise be secured as a part of the federal system, or be regarded in the federal administration as fundamental. Further, these same rights, being established by the state constitutions, and secured to the people, our recognizing them now, implies, that the people thought them insecure by the state establishments, and extinguished or put afloat by the new arrangement of the social system, unless re-established.—Further, the people, thus establishing some few rights, and remaining totally silent about others similarly circumstanced, the implication indubitably is, that they mean to relinquish the latter, or at least feel indifferent about them. Rights, therefore, inferred from general principles of reason, being precarious and hardly ascertainable in the common affairs of society, and the people, in forming a federal constitution, explicitly shewing they conceive these rights to be thus circumstanced, and accordingly proceed to enumerate and establish some of them, the conclusion will be, that they have established all which they esteem valuable and sacred. On every principle, then, the people especially having began, ought to go through enumerating, and establish particularly all the rights of individuals, which can by any possibility come in question in making and executing federal laws. I have already observed upon the excellency and importance of the jury trial in civil as well as in criminal causes, instead of establishing it in criminal causes only; we ought to establish it generally... why not use the language that has always been used in this country, and say, “the people of the United States shall always be entitled to the trial by jury.” This would show the people still hold the right sacred, and enjoin it upon congress substantially to preserve the jury trial in all cases, according to the usage and custom of the country....

Security against ex post facto laws, the trial by jury, and the benefits of the writ of habeas corpus, are but a part of those inestimable rights the people of the United States are entitled to, even in judicial proceedings, by the course of the common law. These may be secured in general words, as in New York, the Western

Territory, &c. by declaring the people of the United States shall always be entitled to judicial proceedings according to the course of the common law, as used and established in the said states. Perhaps it would be better to enumerate the particular essential rights the people are entitled to in these proceedings, as has been done in many of the states, and as has been done in England. In this case, the people may proceed to declare, that no man shall be held to answer to any offence, till the same be fully described to him; nor to furnish evidence against himself: that, except in the government of the army and navy, no person shall be tried for any offence, whereby he may incur loss of life, or an infamous punishment, until he be first indicted by a grand jury: that every person shall have a right to produce all proofs that may be favorable to him, and to meet the witnesses against him face to face: that every person shall be entitled to obtain right and justice freely and without delay: that all persons shall have a right to be secure from all unreasonable searches and seizures of their persons, houses, papers, or possessions; and that all warrants shall be deemed contrary to this right, if the foundation of them be not previously supported by oath, and there be not in them a special designation of persons or objects of search, arrest, or seizure: and that no person shall be exiled or molested in his person or effects, otherwise than by the judgment of his peers, or according to the law of the land. A celebrated writer observes upon this last article, that in itself it may be said to comprehend the whole end of political society. These rights are not necessarily reserved, they are established, or enjoyed but in few countries: they are stipulated rights, almost peculiar to British and American laws... [M]en are entitled to these rights and benefits in the judicial proceedings of our state courts generally: but it will by no means follow, that they will be entitled to them in the federal courts, and have a right to assert them, unless secured and established by the constitution or federal laws. We certainly, in federal processes, might as well claim the benefits of the writ of habeas corpus, as to claim trial by a jury—the right to have counsel—to have witnesses face to face—to be secure against unreasonable search warrants, &c. was the constitution silent as to the whole of them:—but the establishment of the former, will evince that we could not claim them without it; and the omission of the latter, implies they are relinquished, or deemed of no importance. These are rights and benefits individuals acquire by compact; they must claim them under compacts, or immemorial usage—it is doubtful, at least, whether they can be claimed under immemorial usage in this country; and it is, therefore, we generally claim them under compacts, as charters and constitutions....

### Brutus [true identity unknown]

For many years, Brutus was thought to have been the pseudonym of Robert Yates (1738-1801), a surveyor-turned-lawyer who helped draft the New York State Constitution and was appointed to the State Supreme Court in 1777. He was a delegate to the 1787 Constitutional Convention, but left when he learned that it planned to write a new constitution, which he believed was beyond its authority. However, recent scholarship suggests that Brutus was more likely Melancton Smith, profiled above, or John Williams (1731-1799), a New York State legislator who had actively opposed the Constitution in 1788. Given the uncertainty about Brutus' identity, no attribution is made here.

## Number 15 (March 20, 1788)

Brutus agreed with Hamilton that the new Supreme Court would become the final interpreter of the Constitution, and that it would have the power to interpret its words according to their “spirit and intent.” He believed that the final interpreter of the Constitution should be responsible to the people, not judges who serve for life are not subject to popular control. He also criticized the Constitution for only allowing federal judges to be removed only through impeachment, which he claimed would allow them to stay on the bench even if they were incompetent or made bad decisions. Finally, he believes that the federal judiciary would interpret the Constitution to empower the national government at the expense of the states, which would weaken state powers because federal judges could claim these powers were now controlled by the national government.

I said in my last number, that 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 by them. But the judges under this constitution will control the legislature, for the supreme court are authorized 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—they 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....

The great reason assigned, why the judges in Britain ought to be commissioned during good behavior, is this, that they may be placed in a situation, not to be influenced by the crown, to give such decisions, as would tend to increase its powers and prerogatives. While the judges held their places at the will and pleasure of the king, on whom they depended not only for their offices, but also for their salaries, they were subject to every undue influence.... Hence the English nation gained a great point, in favor of liberty. When they obtained the appointment of the judges, during good behavior, they got from the crown a concession, which deprived it of one of the most powerful engines with which it might enlarge the boundaries of the royal prerogative and encroach on the liberties of the people. But these reasons do not apply to this country, we have no hereditary monarch; those who appoint the judges do not hold their offices for life, nor do they descend to their children. The same arguments, therefore, which will conclude in favor of the tenor of the judge's offices for good behavior, lose a considerable part of their weight when applied to the state and condition of America. But much less can it be shown, that the nature of our government requires that the courts should be placed beyond all account more independent, so much so as to be above control.

I have said that the judges under this system will be independent in the strict sense of the word: To prove this I will show that there is no power above them that can control their decisions, or correct their errors.... The adjudications of this court are final and irreversible, for there is no court above them to which appeals can lie, either in error or on the merits. In this respect it differs from the courts in England, for there the house of lords is the highest court, to whom appeals, in error, are carried from the highest of the courts of law.

2d. They cannot be removed from office or suffer a diminution of their salaries, for any error in judgment or want of capacity. It is expressly declared by the constitution, "That they shall at stated times receive a compensation for their services which shall not be diminished during their continuance in office."

The only clause in the constitution which provides for the removal of the judges from office, is that which declares, that "the president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of 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 showed, 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 receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution, they cannot assume any of the rights annexed to the judicial, for this

plain reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs—both are derived from the same source, both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial. The supreme court then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature....

I have, in the course of my observation on this constitution, affirmed and endeavored to show, that it was calculated to abolish entirely the state governments, and to melt down the states into one entire government, for every purpose as well internal and local, as external and national. In this opinion the opposers of the system have generally agreed—and this has been uniformly denied by its advocates in public. Some individuals, indeed, among them, will confess, that it has this tendency, and scruple not to say, it is what they wish; and I will venture to predict, without the spirit of prophecy, that if it is adopted without amendments, or some such precautions as will ensure amendments immediately after its adoption, that the same gentlemen who have employed their talents and abilities with such success to influence the public mind to adopt this plan, will employ the same to persuade the people, that it will be for their good to abolish the state governments as useless and burdensome.

Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accommodate themselves to the temper of the people. Their decisions on the meaning of the constitution will commonly take place in cases which arise between individuals, with which the public will not be generally acquainted; one adjudication will form a precedent to the next, and this to a following one... In this situation, the general legislature, might pass one law after another, extending the general and abridging the state jurisdictions, and to sanction their proceedings would have a course of decisions of the judicial to whom the constitution has committed the power of explaining the constitution. If the states remonstrated, the constitutional mode of deciding upon the validity of the law is with the supreme court, and neither people, nor state legislatures, nor the general legislature can remove them or reverse their decrees.

Had the construction of the constitution been left with the legislature, they would have explained it at their peril; if they exceed their powers, or sought to find, in the spirit of the constitution, more than was expressed in the letter, the people from whom they derived their power could remove them, and do themselves right; and indeed I can see no other remedy that the people can have against their rulers for encroachments of this nature. A constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them and do themselves justice; but in order to enable them to do this with the greater facility, those whom the people choose at stated periods, should have the power in the last resort to determine the sense of the compact; if they determine contrary to the understanding of the people, an appeal will lie to the people at the period when the rulers are to be elected, and they will have it in their power to remedy the evil; but when this power is lodged in the hands of men independent of the people, and of their representatives, and who are not, constitutionally, accountable for their opinions, no way is left to control them but with a high hand and an outstretched arm.

## 6. Thomas Jefferson's Revolutionary Perspective

### Thomas Jefferson (1743-1826)

Thomas Jefferson was born to wealthy parents on a plantation near what is now Charlottesville, Virginia in 1743. He was educated by private tutors and graduated the College of William and Mary at age 19. He studied law with a prominent attorney and opened a legal practice. He was elected to the Virginia House of Burgesses in 1769, and five years later gained fame for writing "A Summary View of the Rights of British America," a pamphlet that argued the British government had no right to exercise authority over its North American colonies. Two years later, he became the principal drafter of the Declaration of Independence while serving as a delegate to the Continental Congress.

Jefferson later served as Governor of Virginia (1779-1781) and as Ambassador to France (1786-1789). President George Washington appointed him the First Secretary of State in March 1789, and he served in this capacity until the end of 1793. He joined the opposition to the Federalist Party and ran for President in 1796 against John Adams. He received the second-most votes, which made him Vice President to his adversary for four years. In 1800, he successfully challenged Adams for the presidency. He served two terms before retiring in 1809.

### Letter to James Madison (1787)

Although Jefferson did not attend the Constitutional Convention because he was serving as Ambassador to France, he did comment on the new Constitution in a letter to James Madison. He praised several features of the new constitution, but objected to the absence of a bill of rights as endangering the common law liberties that Americans had become accustomed to. He also opposed allowing presidents to run for reelection, predicting that they would claim fraud and attempt to remain in office if they lost by a close margin. Finally, he noted his opposition to energetic government, and suggested that a little revolution is not always a bad thing.

...[A] few words on the Constitution proposed by our Convention. I like much the general idea of framing a government which should go on of itself peaceably, without needing continual recurrence to the state legislatures. I like the organization of the government into Legislative, Judiciary and Executive. I like the power given the Legislature to levy taxes, and for that reason solely approve of the greater house being chosen by the people directly. For tho' I think a house chosen by them will be very illy qualified to legislate

for the Union, for foreign nations &c. yet this evil does not weigh against the good of preserving inviolate the fundamental principle that the people are not to be taxed but by representatives chosen immediately by themselves. I am captivated by the compromise of the opposite claims of the great and little states, of the latter to equal, and the former to proportional influence. I am much pleased too with the substitution of the method of voting by persons, instead of that of voting by states: and I like the negative given to the Executive with a third of either house, though I should have liked it better had the Judiciary been associated for that purpose, or invested with a similar and separate power. There are other good things of less moment.

I will now add what I do not like. First the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land and not by the law of Nations. To say, as Mr. Wilson does, that a bill of rights was not necessary because all is reserved in the case of the general government which is not given, while in the particular ones all is given which is not reserved, might do for the Audience to whom it was addressed, but is surely a gratis dictum, opposed by strong inferences from the body of the instrument, as well as from the omission of the clause of our present confederation which had declared that in express terms. It was a hard conclusion to say because there has been no uniformity among the states as to the cases triable by jury, because some have been so incautious as to abandon this mode of trial, therefore the more prudent states shall be reduced to the same level of calamity. It would have been much more just and wise to have concluded the other way that as most of the states had judiciously preserved this palladium, those who had wandered should be brought back to it, and to have established general right instead of general wrong. Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference.

The second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the constitution permits it. He is then an officer for life. This once observed it becomes of so much consequence to certain nations to have a friend or a foe at the head of our affairs that they will interfere with money and with arms. A Galloman or an Angloman will be supported by the nation he befriends. If once elected, and at a second or third election outvoted by one or two votes, he will pretend false votes, foul play, hold possession of the reins of government, be supported by the states voting for him, especially if they are the central ones lying in a compact body themselves and separating their opponents: and they will be aided by one nation of Europe, while the majority are aided by another. The election of a President of America some years hence will be much more interesting to certain nations of Europe than ever the election of a king of Poland was. Reflect on all the instances in history ancient and modern, of elective monarchies, and say if they do not give foundation for my fears. The Roman emperors, the popes, while they were of any importance, the German emperors till they became hereditary in practice, the kings of Poland, the Deys of the Ottoman dependencies. It may be said that if elections are to be attended with these disorders, the seldomer they are renewed the better. But experience shows that the only way to prevent disorder is to render them uninteresting by frequent changes. An incapacity to be elected a second time would have been the only effectual preventative. The power of removing him every fourth year by the vote of the people is a power which will not be exercised. The king of Poland is removeable every day by the Diet, yet he is never removed.

Smaller objections are the Appeal in fact as well as law, and the binding all persons Legislative Executive and Judiciary by oath to maintain that constitution. I do not pretend to decide what would be the best

method of procuring the establishment of the manifold good things in this constitution, and of getting rid of the bad. Whether by adopting it in hopes of future amendment, or, after it has been duly weighed and canvassed by the people, after seeing the parts they generally dislike, and those they generally approve, to say to them “We see now what you wish. Send together your deputies again, let them frame a constitution for you omitting what you have condemned, and establishing the powers you approve. Even these will be a great addition to the energy of your government.” At all events I hope you will not be discouraged from other trials, if the present one should fail of its full effect.

I have thus told you freely what I like and dislike: merely as a matter of curiosity, for I know your own judgment has been formed on all these points after having heard everything which could be urged on them. I own I am not a friend to a very energetic government. It is always oppressive. The late rebellion in Massachusetts has given more alarm than I think it should have done. Calculate that one rebellion in 13 states in the course of 11 years, is but one for each state in a century and a half. No country should be so long without one. Nor will any degree of power in the hands of government prevent insurrections. France, with all its despotism, and two or three hundred thousand men always in arms has had three insurrections in the three years I have been here in every one of which greater numbers were engaged than in Massachusetts and a great deal more blood was spilt. In Turkey, which Montesquieu supposes more despotic, insurrections are the events of every day. In England, where the hand of power is lighter than here, but heavier than with us they happen every half dozen years. Compare again the ferocious depredations of their insurgents with the order, the moderation and the almost self-extinguishment of ours. After all, it is my principle that the will of the Majority should always prevail. If they approve the proposed Convention in all its parts, I shall concur in it cheerfully, in hopes that they will amend it whenever they shall find it work wrong.

I think our governments will remain virtuous for many centuries; as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America. When they get piled upon one another in large cities, as in Europe, they will become corrupt as in Europe. Above all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty....

## Letter to Elbridge Gerry (1799)

Candidates for president did not personally campaign in the 1790s, so there are no speeches by Thomas Jefferson setting forth his political program. However, in a letter to future Vice President Elbridge Gerry, Jefferson set forth his belief in a small federal government with a limited military, promotion of commerce between nations instead of competition, and state governments as more conducive to democratic government.

...I shall make to you a profession of my political faith; in confidence that you will consider every future imputation on me of a contrary complexion as bearing on its front the mask of falsehood & calumny.

I do then with sincere zeal wish an inviolable preservation of our present federal constitution, according to the true sense in which it was adopted by the states, that in which it was advocated by its friends,



and not that which its enemies apprehended, who therefore became its enemies: and I am opposed to the monarchising its features by the forms of its administration, with a view to conciliate a first transition to a President and Senate for life, and from that to a hereditary tenure of these offices, and thus to worm out the elective principle. I am for preserving to the states the powers not yielded by them to the Union, and to the legislature of the Union its constitutional share in the division of powers: and I am not for transferring all the powers of the states to the general government, and all those of that government to the Executive branch. I am for a government rigorously frugal and simple, applying all the possible savings of the public revenue to the discharge of the national debt: and not for a multiplication of officers & salaries merely to make partisans, and for increasing, by every device, the public debt, on the principle of its being a public blessing. I am for relying, for internal defense, on our militia solely till actual invasion, and for such a naval force only as may protect our coasts and harbors from such depredations as we have experienced: and not for a standing army in time of peace which may overawe the public sentiment; nor for a navy which by its own expenses and the eternal wars in which it will implicate us, will grind us with public burthens, and sink us under them. I am for free commerce with all nations, political connection with none, and little or no diplomatic establishment: and I am not for linking ourselves, by new treaties with the quarrels of Europe, entering that field of slaughter to preserve their balance, or joining in the confederacy of kings to war against the principles of liberty. I am for freedom of religion, and against all maneuvers to bring about a legal ascendancy of one sect over another; for freedom of the press, and against all violations of the constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents. And I am for encouraging the progress of science in all its branches; and not for raising a hue and cry against the sacred name of philosophy, for awing the human mind, by stories of rawhead and bloody bones, to a distrust of its own vision and to repose implicitly on that of others; to go backwards instead of forwards to look for improvement, to believe that government, religion, morality & every other science were in the highest perfection in ages of the darkest ignorance, and that nothing can ever be devised more perfect than what was established by our forefathers.

To these I will add that I was a sincere wellwisher to the success of the French revolution, and still wish it may end in the establishment of a free & well ordered republic: but I have not been insensible under the atrocious depredations they have committed on our commerce. The first object of my heart is my own country. in that is embarked my family, my fortune, and my own existence. I have not one farthing of interest, nor one fiber of attachment out of it, nor a single motive of preference of any one nation to another but in proportion as they are more or less friendly to us. but though deeply feeling the injuries of France, I did not think war the surest mode of redressing them. I did believe that a mission sincerely disposed to preserve peace, would obtain for us a peaceable and honorable settlement and retribution; and I appeal to you to say whether this might not have been obtained, if either of your colleagues had been of the same sentiment with yourself.—[T]hese my friend are my principles; they are unquestionably the principles of the great body of our fellow citizens, and I know there is not one of them which is not yours also....

## First Inaugural Address (1801)

The final selection from Jefferson is his first Inaugural Address, given shortly after a divisive election that had been decided by the House of Representatives only two weeks before he took the oath of office. He championed bipartisan government and welcomed debate over the issues facing the new country. His statement “We are all republicans; we are all federalists” foreshadows his administration’s attempt to limit the size of the national government while making sure that it was powerful enough to counter attacks from abroad.

Called upon to undertake the duties of the first Executive office of our country, I avail myself of the presence of that portion of my fellow citizens which is here assembled to express my grateful thanks for the favor with which they have been pleased to look towards me, to declare a sincere consciousness that the task is above my talents, and that I approach it with those anxious and awful presentiments which the greatness of the charge, and the weakness of my powers so justly inspire. A rising nation, spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, engaged in commerce with nations who feel power and forget right, advancing rapidly to destinies beyond the reach of mortal eye; when I contemplate these transcendent objects, and see the honor, the happiness, and the hopes of this beloved country committed to the issue and the auspices of this day, I shrink from the contemplation and humble myself before the magnitude of the undertaking. Utterly indeed should I despair, did not the presence of many, whom I here see, remind me, that, in the other high authorities provided by our constitution, I shall find resources of wisdom, of virtue, and of zeal, on which to rely under all difficulties. To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked, amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have past, the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely, and to speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the constitution all will of course arrange themselves under the will of the law, and unite in common efforts for the common good. All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression. Let us then, fellow citizens, unite with one heart and one mind, let us restore to social intercourse that harmony and affection without which liberty, and even life itself, are but dreary things. And let us reflect that having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance, as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others; and should divide opinions as to measures of safety; but every difference of opinion is

not a difference of principle. We have called by different names brethren of the same principle. We are all republicans; we are all federalists. If there be any among us who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it. I know indeed that some honest men fear that a republican government cannot be strong; that this government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm, on the theoretic and visionary fear, that this government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest government on earth. I believe it the only one, where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern.—Sometimes it is said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels, in the form of kings, to govern him? Let history answer this question.

Let us then, with courage and confidence, pursue our own federal and republican principles; our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high minded to endure the degradations of the others, possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation, entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow citizens, resulting not from birth, but from our actions and their sense of them, enlightened by a benign religion, professed indeed and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude and the love of man, acknowledging and adoring an overruling providence, which by all its dispensations proves that it delights in the happiness of man here, and his greater happiness hereafter; with all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow citizens, a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government; and this is necessary to close the circle of our felicities.

About to enter, fellow citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our government, and consequently those which ought to shape its administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations.—Equal and exact justice to all men, of whatever state or persuasion, religious or political:—peace, commerce, and honest friendship with all nations, entangling alliances with none:—the support of the state governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies:—the preservation of the General government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad: a jealous care of the right of election by the people, a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided:—absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of the despotism:—a well disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them:—the supremacy of the civil over the military authority:—economy in the public expense, that labor may be lightly burthened:—the honest payment of our debts and sacred preservation of the public faith:—encouragement of agriculture, and of commerce as its handmaid:—the diffusion of information, and arraignment of all abuses at the bar of the public reason:—freedom of religion; freedom of the press; and freedom of person,

under the protection of the Habeas Corpus:—and trial by juries impartially selected. These principles form the bright constellation, which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages, and blood of our heroes have been devoted to their attainment:—they should be the creed of our political faith; the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty and safety.

I repair then, fellow citizens, to the post you have assigned me. With experience enough in subordinate offices to have seen the difficulties of this the greatest of all, I have learnt to expect that it will rarely fall to the lot of imperfect man to retire from this station with the reputation, and the favor, which bring him into it. Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose pre-eminent services had entitled him to the first place in his country's love, and destined for him the fairest page in the volume of faithful history, I ask so much confidence only as may give firmness and effect to the legal administration of your affairs. I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground. I ask your indulgence for my own errors, which will never be intentional; and your support against the errors of others, who may condemn what they would not if seen in all its parts. The approbation implied by your suffrage, is a great consolation to me for the past; and my future solicitude will be, to retain the good opinion of those who have bestowed it in advance, to conciliate that of others by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.

Relying then on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choices it is in your power to make. And may that infinite power, which rules the destinies of the universe, lead our councils to what is best, and give them a favorable issue for your peace and prosperity.



## UNIT II

# AMERICAN POLITICAL THEORY BEFORE THE CIVIL WAR

The next unit covers the first half of the nineteenth century. It begins with two Supreme Court cases that clarified important constitutional principles. The first, *Marbury v. Madison*, represented the first extended justification of the Supreme Court's power to invalidate federal laws that were not authorized by the Constitution. Although the Court indicated in 1795 in *Hylton v. United States* that it possessed this power, it never used it to strike down a federal law until 1803. The second, *McCulloch v. Maryland*, concerned the authority of Congress to create a national bank in the absence of express constitutional authorization. John Marshall's clear and forceful opinion in that case is still cited today whenever the Court interprets (or reinterprets) a constitutional provision.

Next, the unit jumps ahead to the late 1820s. Andrew Jackson had run for president in 1824 and received the most popular and electoral votes, but he was defeated in the House of Representatives by a "corrupt bargain" between two candidates with fewer electoral votes. Claiming that he had been victimized by an anti-democratic institution (the electoral college), he created a new party that was initially named "Democracy." In his first inaugural address, Jackson called for eliminating the electoral college, a goal that remains unfulfilled almost two centuries later. He also called for restraining the federal government's growth by transferring more power to the states, as exemplified by his veto of a bill rechartering the national bank in 1832. With the federal government stalemated over the slavery question, Jackson believed that the Union would be stronger if it allowed states more control over their own economies and property rights.

Alexis de Tocqueville visited the US during Jackson's presidency and provided a snapshot of American institutions in the 1830s. The selection from *Democracy in America* is the longest section in this book, and Tocqueville has so much to say it was difficult not to include more of his ideas. Tocqueville attempted to explain why democratic government had succeeded in the US but not in France, and many of his explanations about how Americans think about self-rule still resonate today.

Also included in this unit are three other works, one of which rarely appears in college courses today. John Calhoun is largely excluded because he justified slavery, but his proposal that important private interests be given a veto over government policies resonates today in descriptions of how US government actually works. Henry David Thoreau has remained popular for his essay on civil disobedience, which criticizes mindless obedience to the law and offers conscientious objection as an alternative. The unit ends with Elizabeth Cady Stanton's adaptation of the Declaration of Independence, which vividly presents the subordinate position of women in antebellum America.



# 7. John Marshall expands the Supreme Court's power

## John Marshall (1755-1835)

Born in a log cabin in rural Virginia, John Marshall was the oldest of 15 children. He served as a lieutenant during the Revolutionary War before studying law at the College of William and Mary. He won election to the Virginia House of Delegates in 1782 and developed a successful legal practice. After the Constitutional Convention, he was elected to Virginia's ratifying convention, where he argued successfully for ratification. He continued to practice law until 1798, when President John Adams selected him as one of three envoys to France to negotiate an end to the Quasi-war with the US. French officials attempted to extort money from these envoys in what later became known as the XYZ affair.

Upon Marshall's return, Adams offered to nominate him to the Supreme Court as an Associate Justice. Marshall declined, preferring to run for Congress. He won election and soon became a leader of the moderate faction of the Federalist Party. In early 1800, he gave a famous speech on the floor of the House, extolling the President as the "sole organ" of the US in international affairs. Later that year, Adams named him Secretary of State. After the Federalists lost the November elections, Adams nominated him Chief Justice, and he took office on February 4, 1801. There was one month left in the Adams administration, during which Marshall simultaneously served as Secretary of State and Chief Justice, something that would be impossible today.

Before Marshall joined the Court, each justice wrote a separate opinion, a practice adopted from English law. Marshall convinced the justices to agree on one opinion for the Court, thereby clarifying its holding in the case. This expanded the Court's power by allowing it to establish precedential interpretations of the Constitution. Marshall served on the Court for 34 years, still the record for a Chief Justice.

## *Marbury v. Madison* (1803)

This famous case began when President John Adams appointed Justices of the Peace for the District of Columbia during his last few days in office. Commission certifying each appointment were prepared, and John



Marshall signed the commissions in his capacity as Secretary of State. However, not all of the commissions were delivered before Adams' term expired on March 4, 1801. Incoming President Jefferson found undelivered commissions when he entered the executive mansion at midnight and ordered that some not be delivered, believing this would cancel the appointments. William Marbury, one of the justices who did not receive his commission, filed for a writ of mandamus in the Supreme Court. If granted, this writ would have forced the Jefferson administration to deliver the commissions and recognize the recipients as validly appointed.

Marshall feared that Jefferson would refuse an order to deliver the commissions, even though the Court had issued similar writs in the previous decade. While Marshall wanted to make it clear that Marbury had been validly appointed even though he did not receive his commission, he knew that the Court's power and prestige would suffer if its order was not complied with. Jefferson's attorneys had not argued that it was unconstitutional for the Court to issue writs of mandamus, but Marshall invented this interpretation to avoid having to issue an order that Jefferson would likely ignore. His opinion for a unanimous court set forth a strong statement of the Court's power to declare federal laws unconstitutional—and also that the President was acting contrary to law even though he was able to get away with it this time.

In the order in which the court has viewed this subject, the following questions have been considered and decided.

1st. Has the applicant a right to the commission he demands?

2dly. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

3dly. If they do afford him a remedy, is it a mandamus issuing from this court?

The first object of enquiry is,

1st. Has the applicant a right to the commission he demands?

His right originates in an act of congress passed in February, 1801, [which provides] “that there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace as the president of the United States shall, from time to time, think expedient, to continue in office for five years.

It appears, from the affidavits, that in compliance with this law, a commission for William Marbury as a justice of peace for the county of Washington, was signed by John Adams, then president of the United States; after which the seal of the United States was affixed to it; but the commission has never reached the person for whom it was made out.

In order to determine whether he is entitled to this commission, it becomes necessary to enquire whether he has been appointed to the office. For if he has been appointed, the law continues him in office for five years, and he is entitled to the possession of those evidences of office, which, being completed, became his property....

The last act to be done by the President, is the signature of the commission. He has then acted on the advice and consent of the senate to his own nomination. The time for deliberations has then passed. He has decided. His judgment, on the advice and consent of the senate concurring with his nomination, has been made, and the officer is appointed. This appointment is evidenced by an open, unequivocal act; and being the last act required from the person making it, necessarily excludes the idea of its being, so far as respects the appointment, an inchoate and incomplete transaction.

Some point of time must be taken when the power of the executive over an officer, not removable at

his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act, required from the person possessing the power, has been performed. This last act is the signature of the commission....

The commission being signed, the subsequent duty of the secretary of state is prescribed by law, and not to be guided by the will of the President. He is to affix the seal of the United States to the commission, and is to record it.

This is not a proceeding which may be varied, if the judgment of the executive shall suggest one more eligible; but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the secretary of state to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this regard, as has been very properly stated at the bar, under the authority of law, and not by the instructions of the President. It is a ministerial act which the law enjoins on a particular officer for a particular purpose....

The transmission of the commission, is a practice directed by convenience, but not by law. It cannot therefore be necessary to constitute the appointment which must precede it, and which is the mere act of the President. If the executive required that every person appointed to an office, should himself take means to procure his commission, the appointment would not be the less valid on that account. The appointment is the sole act of the President; the transmission of the commission is the sole act of the officer to whom that duty is assigned, and may be accelerated or retarded by circumstances which can have no influence on the appointment. A commission is transmitted to a person already appointed; not to a person to be appointed or not, as the letter enclosing the commission should happen to get into the post-office and reach him in safety, or to miscarry....

It is therefore decidedly the opinion of the court, that when a commission has been signed by the President, the appointment is made; and that the commission is complete, when the seal of the United States has been affixed to it by the secretary of state....

Mr. Marbury, then, since his commission was signed by the President, and sealed by the secretary of state, was appointed; and as the law creating the office, gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable; but vested in the officer legal rights, which are protected by the laws of his country.

To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

This brings us to the second enquiry; which is,

2dly. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

...By the constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive....

But when the legislature proceeds to impose on that officer other duties; when he is directed

peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.

The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority. If, for example, Mr. Marbury had taken the oaths of a magistrate, and proceeded to act as one; in consequence of which a suit had been instituted against him, in which his defence had depended on his being a magistrate; the validity of his appointment must have been determined by judicial authority.

So, if he conceives that, by virtue of his appointment, he has a legal right, either to the commission which has been made out for him, or to a copy of that commission, it is equally a question examinable in a court, and the decision of the court upon it must depend on the opinion entertained of his appointment.

That question has been discussed, and the opinion is, that the latest point of time which can be taken as that at which the appointment was complete, and evidenced, was when, after the signature of the president, the seal of the United States was affixed to the commission.

It is then the opinion of the court,

1st. That by signing the commission of Mr. Marbury, the president of the United States appointed him a justice of peace, for the county of Washington in the district of Columbia; and that the seal of the United States, affixed thereto by the secretary of state, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years.

2dly. That, having this legal title to the office, he has a consequent right to the commission; a refusal to deliver which, is a plain violation of that right, for which the laws of his country afford him a remedy.

It remains to be enquired whether,

3dly. He is entitled to the remedy for which he applies. This depends on,

1st. The nature of the writ applied for, and,

2dly. The power of this court....

[T]o render the mandamus a proper remedy, the officer to whom it is directed, must be one to whom, on legal principles, such writ may be directed; and the person applying for it must be without any other specific and legal remedy....

It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus, is to be determined. Where the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will; it is again repeated, that any application to a court to control, in any respect, his conduct, would be rejected without hesitation.

But where he is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which, the President cannot lawfully forbid, and therefore is never presumed to have forbidden.... [T]he applicant has, to that commission, a vested legal right, of which the executive cannot deprive him. He has

been appointed to an office, from which he is not removable at the will of the executive; and being so appointed, he has a right to the commission which the secretary has received from the president for his use....

This, then, is a plain case for a mandamus, either to deliver the commission, or a copy of it from the record; and it only remains to be enquired,

Whether it can issue from this court.

The act to establish the judicial courts of the United States authorizes the supreme court “to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.”

The secretary of state, being a person holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional, and therefore absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign.

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish. This power is expressly extended to all cases arising under the laws of the United States; and consequently, in some form, may be exercised over the present case; because the right claimed is given by a law of the United States.

In the distribution of this power it is declared that “the supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction.”

It has been insisted, at the bar, that as the original grant of jurisdiction, to the supreme and inferior courts, is general, and the clause, assigning original jurisdiction to the supreme court, contains no negative or restrictive words; the power remains to the legislature, to assign original jurisdiction to that court in other cases than those specified in the article which has been recited; provided those cases belong to the judicial power of the United States....

When an instrument organizing fundamentally a judicial system, divides it into one supreme, and so many inferior courts as the legislature may ordain and establish; then enumerates its powers, and proceeds so far to distribute them, as to define the jurisdiction of the supreme court by declaring the cases in which it shall take original jurisdiction, and that in others it shall take appellate jurisdiction; the plain import of the words seems to be, that in one class of cases its jurisdiction is original, and not appellate; in the other it is appellate, and not original. If any other construction would render the clause inoperative, that is an additional reason for rejecting such other construction, and for adhering to their obvious meaning.

To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction.

It has been stated at the bar that the appellate jurisdiction may be exercised in a variety of forms, and that if it be the will of the legislature that a mandamus should be used for that purpose, that will must be obeyed. This is true, yet the jurisdiction must be appellate, not original.

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. Although, therefore, a mandamus may be directed to courts, yet to issue such a writ to an officer for the delivery of a paper, is in effect the same as to sustain an original action for that paper, and therefore seems not to belong to appellate, but to original jurisdiction. Neither is it necessary in such a case as this, to enable the court to exercise its appellate jurisdiction.

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of

the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution; and it becomes necessary to enquire whether a jurisdiction, so conferred, can be exercised.

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular

case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply...

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any state." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? Ought the judges to close their eyes on the constitution, and only see the law.

The constitution declares that "no bill of attainder or ex post facto law shall be passed."

If, however, such a bill should be passed and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the fame overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument, as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on the subject. It is in these words, "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as ... according to the best of my abilities and understanding, agreeably to the constitution, and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

## *McCulloch v. Maryland (1819)*

The power of Congress is limited to the specific authorizations set forth in article I, section 8 of the Constitution. As the United States grew, could the government's powers also expand, or would there be a need for a formal amendment each time Congress sought to adopt a program not contemplated by the Constitution? This issue reached the Supreme Court in 1819 when the State of Maryland challenged congressional power to establish a bank on the grounds that there was no specific constitutional authorization for this endeavor. Maryland had placed a tax on currency issued by banks not chartered in the state, and the treasurer of the Bank of the United States had refused to pay the tax on the grounds that a state could not tax a federal entity. Maryland responded by claiming that the Bank's existence was unconstitutional because the Constitution did not explicitly give Congress the power to create banks.

The Supreme Court heard nine days of argument on the case, still the record today. Chief Justice Marshall, writing for a unanimous court, held that the Necessary and Proper Clause gives Congress flexibility in designing new institutions to carry out its article I, section 8 powers, and that the Supremacy Clause in the Constitution prevents states from weakening federal institutions by taxing them. His opinion significantly expanded the power of Congress by eliminating the need for specific constitutional authority to adopt the means it chose to achieve objectives stated in Article I. The decision also affirmed the power of the Supreme Court to change the meaning of the Constitution, effectively creating a judicial bypass to the Article V amendment process.

The first question made in the cause is—has congress power to incorporate a bank? The power now contested was exercised by the first congress elected under the present constitution. The bill for incorporating the Bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted, first, in the fair and open field of debate, and afterwards, in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law. The original act was permitted to expire; but a short experience of the embarrassments to which the refusal to revive it exposed the government, convinced those who were most prejudiced against the measure of its necessity, and induced the passage of the present law. It would require no ordinary share of intrepidity, to assert that a measure adopted under these circumstances, was a bold and plain usurpation, to which the constitution gave no countenance....

In discussing this question, the counsel for the state of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument, not as emanating from the people, but as the act of sovereign and independent states. The powers of the general government, it has been said, are delegated by the states, who alone are truly sovereign; and must be exercised in subordination to the states, who alone possess supreme dominion. It would be difficult to sustain this proposition. The convention which framed the constitution was indeed elected by the state legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the

then existing congress of the United States, with a request that it might “be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification.” This mode of proceeding was adopted; and by the convention, by congress, and by the state legislatures, the instrument was submitted to the *people*.... [T]he people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negated, by the state governments. The constitution, when thus adopted, was of complete obligation, and bound the state sovereignties....

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word “expressly,” and declares only, that the powers “not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;” thus leaving the question, whether the particular power which may become the subject of contest, has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it, to avoid those embarrassments.

A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the 9th section of the 1st article, introduced? It is also, in some degree, warranted, by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget that it is a *constitution* we are expounding...

But the constitution of the United States has not left the right of congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning. To its enumeration of powers is added, that of making “all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof”...

[T]he argument on which most reliance is placed, is drawn from that peculiar language of this clause. Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the government, but such only as may be “*necessary and proper*” for carrying them into execution. The word “*necessary*” is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to congress, in each case, that only which is most direct and simple.

Is it true, that this is the sense in which the word “*necessary*” is always used? Does it always import an absolute physical necessity, so strong, that one thing to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient,



or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in a their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense—in that sense which common usage justifies. The word “necessary” is of this description. It has not a fixed character, peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases....

That the power of taxing it by the states may be exercised so as to destroy it, is too obvious to be denied. But taxation is said to be an absolute power, which acknowledges no other limits than those expressly prescribed in the constitution, and like sovereign power of every other description, is entrusted to the discretion of those who use it. But the very terms of this argument admit, that the sovereignty of the state, in the article of taxation itself, is subordinate to, and may be controlled by the constitution of the United States. How far it has been controlled by that instrument, must be a question of construction. In making this construction, no principle, not declared, can be admissible, which would defeat the legitimate operations of a supreme government. It is of the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence....

The argument on the part of the state of Maryland, is, not that the states may directly resist a law of congress, but that they may exercise their acknowledged powers upon it, and that the constitution leaves them this right, in the confidence that they will not abuse it. Before we proceed to examine this argument, and to subject it to test of the constitution, we must be permitted to bestow a few considerations on the nature and extent of this original right of taxation, which is acknowledged to remain with the states. It is admitted, that the power of taxing the people and their property, is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.

The people of a state, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituent over their representative, to guard them against its abuse. But the means employed by the government of the Union have no such security, nor is the right of a state to tax them sustained by the same theory. Those means are not given by the people of a particular state, not given by the constituents of the legislature, which claim the right to tax them, but by the people of all the states. They are given by all, for the benefit of all—and upon theory, should be subjected to that government only which belongs to all....

The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable, that it does

not. Those powers are not given by the people of a single state. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be supreme. Consequently, the people of a single state cannot confer a sovereignty which will extend over them.

If we measure the power of taxation residing in a state by the extent of sovereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a state unimpaired; which leaves to a state the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the states, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down, what there is an acknowledged right in another to build up; from the incompatibility of a right in one government to destroy, what there is a right in another to preserve....

If we apply the principle for which the state of Maryland contends, to the constitution, generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the states. The American people have declared their constitution and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the states. If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent-rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states....

## 8. Andrew Jackson Popularizes Politics

### Andrew Jackson (1767-1845)

Born in South Carolina, Andrew Jackson received little formal education before he was orphaned at 14. He studied law with a lawyer in North Carolina and was admitted to the bar of that state at age 20. The next year, he was appointed a prosecutor in the new territory of Tennessee, and quickly gained acclaim for his legal success. When Tennessee became a state, he was elected its first representative, and one year later was chosen as senator. He then embarked upon a military career that saw him become a hero of the War of 1812 for winning the battle of New Orleans in 1815.

Jackson reentered politics in 1823 when the Tennessee legislature again chose him as senator. He ran for president in 1824 and received the largest number of popular and electoral votes. However, he lost to John Quincy Adams when the election went to the House of Representatives and Henry Clay convinced several state delegations to back Adams. When Clay was announced as Adams' new Secretary of State, Jackson denounced the result as a "corrupt bargain" and created a new party, soon to become the Democratic Party. Jackson defeated Adams in a rematch in the 1828 presidential election, and went on to serve two terms. When he retired, he was almost 70; the US would not have an older president until Dwight Eisenhower in 1960.

### First Annual Message to Congress (1829)

Jackson's First Annual Message to Congress called for it to amend the Constitution to replace the electoral college with popular election. Jackson also called for limiting the terms of federal officials to promote rotation in office, which had not been the practice of previous presidential administrations. He discussed the status of Native American tribes at length, arguing that they should be subject to state laws even though they resided on federal reservations. He offered them the option of accepting state sovereignty or abandoning their lands to move to a new "Indian Territory" in what is now Oklahoma. Many of those who chose this option and embarked upon the "Trail of Tears" died before they reached their intended destination.

It affords me pleasure to tender my friendly greetings to you on the occasion of your assembling at the seat of government to enter upon the important duties to which you have been called by the voice of our countrymen. The task devolves on me, under a provision of the Constitution, to present to you, as the federal

legislature of 24 sovereign states and 12,000,000 happy people, a view of our affairs, and to propose such measures as in the discharge of my official functions have suggested themselves as necessary to promote the objects of our union.

In communicating with you for the first time it is to me a source of unfeigned satisfaction, calling for mutual gratulation and devout thanks to a benign providence, that we are at peace with all mankind, and that our country exhibits the most cheering evidence of general welfare and progressive improvement. Turning our eyes to other nations, our great desire is to see our brethren of the human race secured in the blessings enjoyed by ourselves, and advancing in knowledge, in freedom, and in social happiness...

I consider it one of the most urgent of my duties to bring to your attention the propriety of amending that part of the Constitution which relates to the election of President and Vice-President. Our system of government was by its framers deemed an experiment, and they therefore consistently provided a mode of remedying its defects.

To the people belongs the right of electing their Chief Magistrate; it was never designed that their choice should in any case be defeated, either by the intervention of electoral colleges or by the agency confided, under certain contingencies, to the House of Representatives. Experience proves that in proportion as agents to execute the will of the people are multiplied there is danger of their wishes being frustrated. Some may be unfaithful; all are liable to err. So far, therefore, as the people can with convenience speak, it is safer for them to express their own will.

The number of aspirants to the Presidency and the diversity of the interests which may influence their claims leave little reason to expect a choice in the first instance, and in that event the election must devolve on the House of Representatives, where it is obvious the will of the people may not be always ascertained, or, if ascertained, may not be regarded. From the mode of voting by states the choice is to be made by 24 votes, and it may often occur that one of these will be controlled by an individual Representative. Honors and offices are at the disposal of the successful candidate. Repeated ballotings may make it apparent that a single individual holds the cast in his hand. May he not be tempted to name his reward?

But even without corruption, supposing the probity of the Representative to be proof against the powerful motives by which it may be assailed, the will of the people is still constantly liable to be misrepresented. One may err from ignorance of the wishes of his constituents; another from a conviction that it is his duty to be governed by his own judgment of the fitness of the candidates; finally, although all were inflexibly honest, all accurately informed of the wishes of their constituents, yet under the present mode of election a minority may often elect a President, and when this happens it may reasonably be expected that efforts will be made on the part of the majority to rectify this injurious operation of their institutions. But although no evil of this character should result from such a perversion of the first principle of our system—that the majority is to govern—it must be very certain that a President elected by a minority cannot enjoy the confidence necessary to the successful discharge of his duties.

In this as in all other matters of public concern policy requires that as few impediments as possible should exist to the free operation of the public will. Let us, then, endeavor so to amend our system that the office of Chief Magistrate may not be conferred upon any citizen but in pursuance of a fair expression of the will of the majority.

I would therefore recommend such an amendment of the Constitution as may remove all intermediate agency in the election of the President and Vice President. The mode may be so regulated as to preserve to each state its present relative weight in the election, and a failure in the first attempt may be provided for by confining the second to a choice between the two highest candidates. In connection with such an

amendment it would seem advisable to limit the service of the Chief Magistrate to a single term of either four or six years. If, however, it should not be adopted, it is worthy of consideration whether a provision disqualifying for office the Representatives in Congress on whom such an election may have devolved would not be proper.

While members of Congress can be constitutionally appointed to offices of trust and profit it will be the practice, even under the most conscientious adherence to duty, to select them for such stations as they are believed to be better qualified to fill than other citizens; but the purity of our government would doubtless be promoted by their exclusion from all appointments in the gift of the President, in whose election they may have been officially concerned. The nature of the judicial office and the necessity of securing in the Cabinet and in diplomatic stations of the highest rank the best talents and political experience should, perhaps, except these from the exclusion.

There are, perhaps, few men who can for any great length of time enjoy office and power without being more or less under the influence of feelings unfavorable to the faithful discharge of their public duties. Their integrity may be proof against improper considerations immediately addressed to themselves, but they are apt to acquire a habit of looking with indifference upon the public interests and of tolerating conduct from which an unpracticed man would revolt. Office is considered as a species of property, and government rather as a means of promoting individual interests than as an instrument created solely for the service of the people. Corruption in some and in others a perversion of correct feelings and principles divert government from its legitimate ends and make it an engine for the support of the few at the expense of the many. The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance; and I cannot but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience. I submit, therefore, to your consideration whether the efficiency of the government would not be promoted and official industry and integrity better secured by a general extension of the law which limits appointments to four years.

In a country where offices are created solely for the benefit of the people no one man has any more intrinsic right to official station than another. Offices were not established to give support to particular men at the public expense. No individual wrong is, therefore, done by removal, since neither appointment to nor continuance in office is a matter of right. The incumbent became an officer with a view to public benefits, and when these require his removal they are not to be sacrificed to private interests. It is the people, and they alone, who have a right to complain when a bad officer is substituted for a good one. He who is removed has the same means of obtaining a living that are enjoyed by the millions who never held office. The proposed limitation would destroy the idea of property now so generally connected with official station, and although individual distress may be some times produced, it would, by promoting that rotation which constitutes a leading principle in the republican creed, give healthful action to the system....

The condition and ulterior destiny of the Indian tribes within the limits of some of our states have become objects of much interest and importance. It has long been the policy of government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another wholly incompatible with its success. Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them farther into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditures upon the subject, government has constantly defeated its own policy, and the Indians in general, receding farther and farther

to the west, have retained their savage habits. A portion, however, of the Southern tribes, having mingled much with the whites and made some progress in the arts of civilized life, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These states, claiming to be the only sovereigns within their territories, extended their laws over the Indians, which induced the latter to call upon the United States for protection.

Under these circumstances the question presented was whether the general government had a right to sustain those people in their pretensions. The Constitution declares that “no new state shall be formed or erected within the jurisdiction of any other state” without the consent of its legislature. If the general government is not permitted to tolerate the erection of a confederate state within the territory of one of the members of this Union against her consent, much less could it allow a foreign and independent government to establish itself there.

Georgia became a member of the Confederacy which eventuated in our federal union as a sovereign state, always asserting her claim to certain limits, which, having been originally defined in her colonial charter and subsequently recognized in the treaty of peace, she has ever since continued to enjoy, except as they have been circumscribed by her own voluntary transfer of a portion of her territory to the United States in the articles of cession of 1802. Alabama was admitted into the union on the same footing with the original states, with boundaries which were prescribed by Congress.

There is no constitutional, conventional, or legal provision which allows them less power over the Indians within their borders than is possessed by Maine or New York. Would the people of Maine permit the Penobscot tribe to erect an independent government within their state? And unless they did would it not be the duty of the general government to support them in resisting such a measure? Would the people of New York permit each remnant of the six nations within her borders to declare itself an independent people under the protection of the United States? Could the Indians establish a separate republic on each of their reservations in Ohio? And if they were so disposed would it be the duty of this government to protect them in the attempt? If the principle involved in the obvious answer to these questions be abandoned, it will follow that the objects of this government are reversed, and that it has become a part of its duty to aid in destroying the states which it was established to protect.

Actuated by this view of the subject, I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those states.

Our conduct toward these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for a while their once terrible names. Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the states does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity. It is too late to inquire whether it was just in the United States to include them and their territory within the bounds of new states, whose limits they could control. That step cannot be retraced. A state cannot be dismembered by Congress or restricted in the exercise of her constitutional power. But the people of those states and of every state, actuated by feelings of justice and a regard for our national honor,

submit to you the interesting question whether something cannot be done, consistently with the rights of the states, to preserve this much-injured race.

As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any state or territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race and to attest the humanity and justice of this government.

This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the states they must be subject to their laws. In return for their obedience as individuals they will without doubt be protected in the enjoyment of those possessions which they have improved by their industry. But it seems to me visionary to suppose that in this state of things claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain or passed them in the chase. Submitting to the laws of the states, and receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population....

### Veto Message on Rechartering the Bank of the United States (1832)

Jackson published this document during his campaign for reelection in 1832 to explain why he vetoed a bill rechartering the Bank of the United States for fifteen additional years. Although the bank was federally incorporated, it was owned by wealthy private shareholders. Jackson believed that the terms of the revised charter were far more favorable to the shareholders than the public, and he viewed the bill as a transfer from the working classes to the moneyed class, some of whom lived abroad. He argued against the establishment of monopolies like the bank on the grounds that it could prevent Congress from enacting corrective laws should the bank fail to promote the public interest.

Jackson also attacked those who said the bank's constitutionality was conclusively determined in *McCulloch v. Maryland* in 1819. Jackson believed that Congress and the president are also legitimate interpreters of the Constitution, and that even though the judiciary has interpreted a provision the other branches may challenge that interpretation. This means that the meaning of constitutional terms is always open to reinterpretation until there is a consensus about the correct meaning of the provision. Although this may sound revolutionary, it is the way many people view the Supreme Court's decisions today.

The bill "to modify and continue" the act entitled "An act to incorporate the subscribers to the Bank of the United States" was presented to me on the 4th July instant. Having considered it with that solemn regard to

the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections....

The present corporate body, denominated the president, directors, and company of the Bank of the United States, will have existed at the time this act is intended to take effect twenty years. It enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of the stock far above its par value, operated as a gratuity of many millions to the stockholders....

Every monopoly and all exclusive privileges are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing bank must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained....

It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock and thus secure to the people the full market value of the privileges granted? Why should not Congress create and sell twenty-eight millions of stock, incorporating the purchasers with all the powers and privileges secured in this act and putting the premium upon the sales into the Treasury?

But this act does not permit competition in the purchase of this monopoly. It seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government. It appears that more than a fourth part of the stock is held by foreigners and the residue is held by a few hundred of our own citizens, chiefly of the richest class. For their benefit does this act exclude the whole American people from competition in the purchase of this monopoly and dispose of it for many millions less than it is worth. This seems the less excusable because some of our citizens not now stockholders petitioned that the door of competition might be opened, and offered to take a charter on terms much more favorable to the Government and country....

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interests, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders, every consideration of sound policy and every impulse of American feeling admonishes that it should be *purely American*. Its stockholders should be composed exclusively of our own citizens, who at least ought to be friendly to our Government and willing to support it in times of difficulty and danger. So abundant is domestic capital that competition in subscribing for the stock of local banks has recently led almost to riots. To a bank exclusively of American stockholders, possessing the powers and privileges granted by this act, subscriptions for \$200,000,000 could be readily obtained. Instead of sending abroad the stock of the bank in which the Government must deposit its funds



and on which it must rely to sustain its credit in times of emergency, it would rather seem to be expedient to prohibit its sale to aliens under penalty of absolute forfeiture.

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I cannot assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve.

But in the case relied upon the Supreme Court have not decided that all the features of this corporation are compatible with the Constitution. It is true that the court have said that the law incorporating the bank is a constitutional exercise of power by Congress; but taking into view the whole opinion of the court and the reasoning by which they have come to that conclusion, I understand them to have decided that inasmuch as a bank is an appropriate means for carrying into effect the enumerated powers of the General Government, therefore the law incorporating it is in accordance with that provision of the Constitution which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying those powers into execution." Having satisfied themselves that the word "necessary" in the Constitution means needful, "requisite," "essential," "conducive to," and that "a bank" is a convenient, a useful, and essential instrument in the prosecution of the Government's "fiscal operations," they conclude that to "use one must be within the discretion of Congress" and that "the act to incorporate the Bank of the United States is a law made in pursuance of the Constitution;" "but," say they, "where the law is not prohibited and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground."

The principle here affirmed is that the "degree of its necessity," involving all the details of a banking institution, is a question exclusively for legislative consideration. A bank is constitutional, but it is the province of the Legislature to determine whether this or that particular power, privilege, or exemption is "necessary and proper" to enable the bank to discharge its duties to the Government, and from their

decision there is no appeal to the courts of justice. Under the decision of the Supreme Court, therefore, it is the exclusive province of Congress and the President to decide whether the particular features of this act are *necessary* and *proper* in order to enable the bank to perform conveniently and efficiently the public duties assigned to it as a fiscal agent, and therefore constitutional, or *unnecessary* and *improper*, and therefore unconstitutional.

Without commenting on the general principle affirmed by the Supreme Court, let us examine the details of this act in accordance with the rule of legislative action which they have laid down. It will be found that many of the powers and privileges conferred on it cannot be supposed necessary for the purpose for which it is proposed to be created, and are not, therefore, means necessary to attain the end in view, and consequently not justified by the Constitution.

The original act of incorporation, section 21, enacts “that no other bank shall be established by any future law of the United States during the continuance of the corporation hereby created, for which the faith of the United States is hereby pledged: *Provided*, Congress may renew existing charters for banks within the District of Columbia not increasing the capital thereof, and may also establish any other bank or banks in said District with capitals not exceeding in the whole \$6,000,000 if they shall deem it expedient.” This provision is continued in force by the act before me fifteen years from ... March, 1836.

If Congress possessed the power to establish one bank, they had power to establish more than one if in their opinion two or more banks had been “necessary” to facilitate the execution of the powers delegated to them in the Constitution. If they possessed the power to establish a second bank, it was a power derived from the Constitution to be exercised from time to time, and at any time when the interests of the country or the emergencies of the Government might make it expedient. It was possessed by one Congress as well as another, and by all Congresses alike, and alike at every session. But the Congress of 1816 have taken it away from their successors for twenty years, and the Congress of 1832 proposes to abolish it for fifteen years more. It cannot be “*necessary*” or “*proper*” for Congress to barter away or divest themselves of any of the powers-vested in them by the Constitution to be exercised for the public good. It is not “*necessary*” to the efficiency of the bank, nor is it “*proper*” in relation to themselves and their successors. They may *properly* use the discretion vested in them, but they may not limit the discretion of their successors. This restriction on themselves and grant of a monopoly to the bank is therefore unconstitutional...

On two subjects only does the Constitution recognize in Congress the power to grant exclusive privileges or monopolies. It declares that “Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Out of this express delegation of power have grown our laws of patents and copyrights. As the Constitution expressly delegates to Congress the power to grant exclusive privileges in these cases as the means of executing the substantive power “to promote the progress of science and useful arts,” it is consistent with the fair rules of construction to conclude that such a power was not intended to be granted as a means of accomplishing any other end. On every other subject which comes within the scope of Congressional power there is an ever-living discretion in the use of proper means, which cannot be restricted or abolished without an amendment of the Constitution. Every act of Congress, therefore, which attempts by grants of monopolies or sale of exclusive privileges for a limited time, or a time without limit, to restrict or extinguish its own discretion in the choice of means to execute its delegated powers is equivalent to a legislative amendment of the Constitution, and palpably unconstitutional.

This act authorizes and encourages transfers of its stock to foreigners and grants them an exemption from all State and national taxation. So far from being “*necessary and proper*” that the bank should possess

this power to make it a safe and efficient agent of the Government in its fiscal operations, it is calculated to convert the Bank of the United States into a foreign bank, to impoverish our people in time of peace, to disseminate a foreign influence through every section of the Republic, and in war to endanger our independence....

It is maintained by some that the bank is a means of executing the constitutional power “to coin money and regulate the value thereof.” Congress have established a mint to coin money and passed laws to regulate the value thereof. The money so coined, with its value so regulated, and such foreign coins as Congress may adopt are the only currency known to the Constitution. But if they have other power to regulate the currency, it was conferred to be exercised by themselves, and not to be transferred to a corporation. If the bank be established for that purpose, with a charter unalterable without its consent, Congress have parted with their power for a term of years, during which the Constitution is a dead letter. It is neither necessary nor proper to transfer its legislative power to such a bank, and therefore unconstitutional.

By its silence, considered in connection with the decision of the Supreme Court in the case of *McCulloch* against the State of Maryland, this act takes from the States the power to tax a portion of the banking business carried on within their limits, in subversion of one of the strongest barriers which secured them against Federal encroachments. Banking, like farming, manufacturing, or any other occupation or profession, is a *business*, the right to follow which is not originally derived from the laws. Every citizen and every company of citizens in all of our States possessed the right until the State legislatures deemed it good policy to prohibit private banking by law. If the prohibitory State laws were now repealed, every citizen would again possess the right. The State banks are a qualified restoration of the right which has been taken away by the laws against banking, guarded by such provisions and limitations as in the opinion of the State legislatures the public interest requires. These corporations, unless there be an exemption in their charter, are, like private bankers and banking companies, subject to State taxation. The manner in which these taxes shall be laid depends wholly on legislative discretion. It may be upon the bank, upon the stock, upon the profits, or in any other mode which the sovereign power shall will.

Upon the formation of the Constitution the States guarded their taxing power with peculiar jealousy. They surrendered it only as it regards imports and exports. In relation to every other object within their jurisdiction, whether persons, property, business, or professions, it was secured in as ample a manner as it was before possessed... The principle is conceded that the States cannot rightfully tax the operations of the General Government. They cannot tax the money of the Government deposited in the State banks, nor the agency of those banks in remitting it; but will any man maintain that their mere selection to perform this public service for the General Government would exempt the State banks and their ordinary business from State taxation?... There is no more appropriate subject of taxation than banks, banking, and bank stocks, and none to which the States ought more pertinaciously to cling....

If our power over means is so absolute that the Supreme Court will not call in question the constitutionality of an act of Congress the subject of which “is not prohibited, and is really calculated to effect any of the objects intrusted to the Government,” although, as in the case before me, it takes away powers expressly granted to Congress and rights scrupulously reserved to the States, it becomes us to proceed in our legislation with the utmost caution. Though not directly, our own powers and the rights of the States may be indirectly legislated away in the use of means to execute substantive powers. We may not enact that Congress shall not have the power of exclusive legislation over the District of Columbia, but we may pledge the faith of the United States that as a means of executing other powers it shall not be exercised for twenty years or forever. We may not pass an act prohibiting the States to tax the banking business

carried on within their limits, but we may, as a means of executing our powers over other objects, place that business in the hands of our agents and then declare it exempt from State taxation in their hands. Thus may our own powers and the rights of the States, which we cannot directly curtail or invade, be frittered away and extinguished in the use of means employed by us to execute other powers. That a bank of the United States, competent to all the duties which may be required by the Government, might be so organized as not to infringe on our own delegated powers or the reserved rights of the States I do not entertain a doubt. Had the Executive been called upon to furnish the project of such an institution, the duty would have been cheerfully performed. In the absence of such a call it was obviously proper that he should confine himself to pointing out those prominent features in the act presented which in his opinion make it incompatible with the Constitution and sound policy. A general discussion will now take place, eliciting new light and settling important principles; and a new Congress, elected in the midst of such discussion, and furnishing an equal representation of the people according to the last census, will bear to the Capitol the verdict of public opinion, and, I doubt not, bring this important question to a satisfactory result...

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each to move unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we cannot at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy...

# 9. Alexis de Tocqueville's Perspective on American democracy

## Alexis de Tocqueville (1805-1859)

Alexis de Tocqueville was born in Normandy, France in 1805, and visited the US only once, for about eleven months in 1832-33. The purpose of his trip was to study how Americans treated their prisoners, which was far more humanely than they were treated in Europe. After he wrote that book, he turned his general observations about the US into a much broader book for a wider audience: a study of democracy in the US and its lessons for the democratic revolution that he believed was inevitable in Europe. As he said in his introduction, “A new science of politics is necessary for a new era,” and his book became the seminal work in the field of democratic theory.

Tocqueville's first volume was published in 1835, and its success helped get Tocqueville elected to the French National Assembly. A second volume followed five years later. Tocqueville eventually reached the position of foreign affairs minister before he was dismissed by Louis Napoleon Bonaparte in 1849. He died of tuberculosis ten years later.

## *Democracy in America* ( vol. 1 1835/vol. 2 1840)

In the two volumes of *Democracy in America*, Tocqueville expressed grave concern that the power of majorities was formally unchecked in the United States, and especially in state governments. He also observed that since Americans supported democratic choice, there was great social pressure against those who deviated from majority norms. He popularized the phrase “tyranny of the majority,” first attributed to John Adams.

Nevertheless, American democracy had not degenerated into a “reign of terror” like France. Tocqueville identified several characteristics that prevented majoritarian excess. This selection mentions the main six: freedom of the press, the proliferation of private associations, religious devotion coupled with respect for other religions, the extensive role of lawyers in American government, judicial review, and citizen juries. Nevertheless, Tocqueville worried about the future of American democracy if business interests drew people

away from political life. He feared that a country that was more concerned about making money than participating in politics might someday fall under the spell of a demagogue who would dismantle its democratic institutions.

Tocqueville also made several interesting predictions about the future of the US. In the conclusion to volume one, he not only predicts that the US and Russia would someday divide world loyalties, but also exactly when that would occur. While the text does not provide a specific year, Tocqueville predicts that it will happen when the American population reaches 150 million. That happened in 1948 at the beginning of the Cold War. He also foresaw that the slavery issue could not be settled without a civil war. Finally, he envisioned the rise of the administrative state and its increasingly detailed regulation of daily life, though he saw hope in the protection that American courts could give to individual liberties.

### **Introduction to Volume 1**

Amongst the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of conditions. I readily discovered the prodigious influence which this primary fact exercises on the whole course of society, by giving a certain direction to public opinion, and a certain tenor to the laws; by imparting new maxims to the governing powers, and peculiar habits to the governed.

I speedily perceived that the influence of this fact extends far beyond the political character and the laws of the country, and that it has no less empire over civil society than over the Government; it creates opinions, engenders sentiments, suggests the ordinary practices of life, and modifies whatever it does not produce.

The more I advanced in the study of American society, the more I perceived that the equality of conditions is the fundamental fact from which all others seem to be derived, and the central point at which all my observations constantly terminated.

I then turned my thoughts to our own hemisphere, where I imagined that I discerned something analogous to the spectacle which the New World presented to me. I observed that the equality of conditions is daily progressing towards those extreme limits which it seems to have reached in the United States; and that the democracy which governs the American communities appears to be rapidly rising into power in Europe.

I hence conceived the idea of the book which is now before the reader.

It is evident to all alike that a great democratic revolution is going on amongst us; but there are two opinions as to its nature and consequences. To some it appears to be a novel accident, which as such may still be checked; to others it seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency which is to be found in history....

In perusing the pages of our history, we shall scarcely meet with a single great event, in the lapse of seven hundred years, which has not turned to the advantage of equality.

The Crusades and the wars of the English decimated the nobles and divided their possessions: the erection of communities introduced an element of democratic liberty into the bosom of feudal monarchy; the invention of fire-arms equalized the villain and the noble on the field of battle; printing opened the same resources to the minds of all classes; the post was organized so as to bring the same information to the door of the poor man's cottage, and to the gate of the palace; and Protestantism proclaimed that all men are alike

able to find the road to heaven. The discovery of America offered a thousand new paths to fortune, and placed riches and power within the reach of the adventurous and the obscure.

If we examine what has happened in France at intervals of fifty years, beginning with the eleventh century, we shall invariably perceive that a twofold revolution has taken place in the state of society. The noble has gone down on the social ladder, and the *roturier* has gone up; the one descends as the other rises. Every half-century brings them nearer to each other, and they will very shortly meet.

Nor is this phenomenon at all peculiar to France. Whithersoever we turn our eyes we shall witness the same continual revolution throughout the whole of Christendom.

The various occurrences of national existence have everywhere turned to the advantage of democracy; all men have aided it by their exertions: those who have intentionally labored in its cause, and those who have served it unwittingly; those who have fought for it, and those who have declared themselves its opponents,—have all been driven along in the same track, have all labored to one end, some ignorantly and some unwillingly; all have been blind instruments in the hands of God.

The gradual development of the equality of conditions is therefore a providential fact, and it possesses all the characteristics of a Divine decree: it is universal, it is durable, it constantly eludes all human interference, and all events as well as all men contribute to its progress....

The whole book which is here offered to the public has been written under the impression of a kind of religious dread produced in the author's mind by the contemplation of so irresistible a revolution, which has advanced for centuries in spite of such amazing obstacles, and which is still proceeding in the midst of the ruins it has made.

It is not necessary that God himself should speak in order to disclose to us the unquestionable signs of his will; we can discern them in the habitual course of nature, and in the invariable tendency of events: I know, without a special revelation, that the planets move in the orbits traced by the Creator's finger.

If the men of our time were led by attentive observation, and by sincere reflection, to acknowledge that the gradual and progressive development of social equality is at once the past and future of their history, this solitary truth would confer the sacred character of a Divine decree upon the change. To attempt to check democracy would be in that case to resist the will of God; and the nations would then be constrained to make the best of the social lot awarded to them by Providence....

The first duty which is at this time imposed upon those who direct our affairs is to educate the democracy; to warm its faith, if that be possible; to purify its morals; to direct its energies; to substitute a knowledge of business for its inexperience, and an acquaintance with its true interests for its blind propensities; to adapt its government to time and place, and to modify it in compliance with the occurrences and the actors of the age.

A new science of politics is indispensable to a new world....

I can conceive a society in which all men would profess an equal attachment and respect for the laws of which they are the common authors; in which the authority of the State would be respected as necessary, though not as divine; and the loyalty of the subject to the chief magistrate would not be a passion, but a quiet and rational persuasion. Every individual being in the possession of rights which he is sure to retain, a kind of manly reliance, and reciprocal courtesy would arise between all classes, alike removed from pride and meanness.

The people, well acquainted with its true interests, would allow that in order to profit by the advantages of society, it is necessary to satisfy its demands. In this state of things, the voluntary association of the

citizens might supply the individual exertions of the nobles, and the community would be alike protected from anarchy and from oppression.

I admit that, in a democratic State thus constituted, society will not be stationary; but the impulses of the social body may be regulated and directed forwards; if there be less splendor than in the halls of an aristocracy, the contrast of misery will be less frequent also; the pleasures of enjoyment may be less excessive, but those of comfort will be more general; the sciences may be less perfectly cultivated, but ignorance will be less common; the impetuosity of the feelings will be repressed, and the habits of the nation softened; there will be more vices and fewer crimes.

In the absence of enthusiasm and of an ardent faith, great sacrifices may be obtained from the members of a commonwealth by an appeal to their understandings and their experience: each individual will feel the same necessity for uniting with his fellow-citizens to protect his own weakness; and as he knows that if they are to assist, he must co-operate, he will readily perceive that his personal interest is identified with the interest of the community.

The nation, taken as a whole, will be less brilliant, less glorious, and perhaps less strong; but the majority of the citizens will enjoy a greater degree of prosperity, and the people will remain quiet, not because it despairs of amelioration, but because it is conscious of the advantages of its condition.

If all the consequences of this state of things were not good or useful, society would at least have appropriated all such as were useful and good; and having once and for ever renounced the social advantages of aristocracy, mankind would enter into possession of all the benefits which democracy can afford....

There is a country in the world where the great revolution which I am speaking of seems nearly to have reached its natural limits; it has been effected with ease and simplicity, say rather that this country has attained the consequences of the democratic revolution which we are undergoing, without having experienced the revolution itself.

The emigrants who fixed themselves on the shores of America in the beginning of the seventeenth century, severed the democratic principle from all the principles which repressed it in the old communities of Europe, and transplanted it unalloyed to the New World. It has there been allowed to spread in perfect freedom, and to put forth its consequences in the laws by influencing the manners of the country.

It appears to me beyond a doubt that sooner or later we shall arrive, like the Americans, at an almost complete equality of conditions. But I do not conclude from this, that we shall ever be necessarily led to draw the same political consequences which the Americans have derived from a similar social organization. I am far from supposing that they have chosen the only form of government which a democracy may adopt; but the identity of the efficient cause of laws and manners in the two countries is sufficient to account for the immense interest we have in becoming acquainted with its effects in each of them.

It is not, then, merely to satisfy a legitimate curiosity that I have examined America; my wish has been to find instruction by which we may ourselves profit. Whoever should imagine that I have intended to write a panegyric would be strangely mistaken, and on reading this book he will perceive that such was not my design: nor has it been my object to advocate any form of government in particular, for I am of opinion that absolute excellence is rarely to be found in any legislation; I have not even affected to discuss whether the social revolution, which I believe to be irresistible, is advantageous or prejudicial to mankind; I have acknowledged this revolution as a fact already accomplished or on the eve of its accomplishment; and I have selected the nation, from amongst those which have undergone it, in which its development has been the most peaceful and the most complete, in order to discern its natural consequences, and, if it be possible,



to distinguish the means by which it may be rendered profitable. I confess that in America I saw more than America; I sought the image of democracy itself, with its inclinations, its character, its prejudices, and its passions, in order to learn what we have to fear or to hope from its progress.

In the first part of this work I have attempted to show the tendency given to the laws by the democracy of America, which is abandoned almost without restraint to its instinctive propensities; and to exhibit the course it prescribes to the Government and the influence it exercises on affairs. I have sought to discover the evils and the advantages which it produces. I have examined the precautions used by the Americans to direct it, as well as those which they have not adopted, and I have undertaken to point out the causes which enable it to govern society....

## **Chapter 2: Concerning their point of departure and its importance for the future of the Anglo-Americans**

...If we carefully examine the social and political state of America after having studied its history, we shall remain perfectly convinced that not an opinion, not a custom, not a law, I may even say not an event, is upon record which the origin of that people will not explain. The readers of this book will find the germ of all that is to follow in the present chapter, and the key to almost the whole work.

The emigrants who came at different periods to occupy the territory now covered by the American Union, differed from each other in many respects; their aim was not the same, and they governed themselves on different principles.

These men had, however, certain features in common, and they were all placed in an analogous situation. The tie of language is perhaps the strongest and the most durable that can unite mankind. All the emigrants spoke the same tongue; they were all offsets from the same people. Born in a country which had been agitated for centuries by the struggles of faction, and in which all parties had been obliged in their turn to place themselves under the protection of the laws, their political education had been perfected in this rude school, and they were more conversant with the notions of right, and the principles of true freedom, than the greater part of their European contemporaries....

All the British colonies had then a great degree of similarity at the epoch of their settlement. All of them, from their first beginning, seemed destined to witness the growth, not of the aristocratic liberty of their mother-country, but of that freedom of the middle and lower orders of which the history of the world had as yet furnished no complete example.

In this general uniformity several striking differences were, however, discernible, which it is necessary to point out. Two branches may be distinguished in the Anglo-American family which have hitherto grown up without entirely commingling; the one in the South, the other in the North.

Virginia received the first English colony; the emigrants took possession of it in 1607.... The men sent to Virginia were seekers of gold, adventurers without resources and without character, whose turbulent and restless spirit endangered the infant colony and rendered its progress uncertain. The artisans and agriculturists arrived afterwards; and although they were a more moral and orderly race of men, they were in nowise above the level of the inferior classes in England. No lofty conceptions, no intellectual system directed the foundation of these new settlements. The colony was scarcely established when slavery was introduced, and this was the main circumstance which has exercised so prodigious an influence on the character, the laws, and all the future prospects of the South.

Slavery, as we shall afterwards show, dishonors labor; it introduces idleness into society, and with idleness, ignorance and pride, luxury and distress. It enervates the powers of the mind, and benumbs the activity of

man. The influence of slavery, united to the English character, explains the manners and the social condition of the Southern States.

In the North, the same English foundation was modified by the most opposite shades of character; and here I may be allowed to enter into some details. The two or three main ideas which constitute the basis of the social theory of the United States were first combined in the Northern English colonies, more generally denominated the States of New England. The principles of New England spread at first to the neighboring states; they then passed successively to the more distant ones; and at length they imbued the whole Confederation. They now extend their influence beyond its limits over the whole American world. The civilization of New England has been like a beacon lit upon a hill, which after it has diffused its warmth around, tinges the distant horizon with its glow....

The settlers who established themselves on the shores of New England all belonged to the more independent classes of their native country. Their union on the soil of America at once presented the singular phenomenon of a society containing neither lords nor common people, neither rich nor poor. These men possessed, in proportion to their number, a greater mass of intelligence than is to be found in any European nation of our own time. All, without a single exception, had received a good education, and many of them were known in Europe for their talents and their acquirements. The other colonies had been founded by adventurers without family; the emigrants of New England brought with them the best elements of order and morality, they landed in the desert accompanied by their wives and children....

The emigrants, or, as they deservedly styled themselves, the Pilgrims, belonged to that English sect, the austerity of whose principles had acquired for them the name of Puritans. Puritanism was not merely a religious doctrine, but it corresponded in many points with the most absolute democratic and republican theories. It was this tendency which had aroused its most dangerous adversaries. Persecuted by the Government of the mother-country, and disgusted by the habits of a society opposed to the rigor of their own principles, the Puritans went forth to seek some rude and unfrequented part of the world, where they could live according to their own opinions, and worship God in freedom....

It must not be imagined that the piety of the Puritans was of a merely speculative kind, or that it took no cognizance of the course of worldly affairs. Puritanism, as I have already remarked, was scarcely less a political than a religious doctrine....

In England the stronghold of Puritanism was in the middle classes, and it was from the middle classes that the majority of the emigrants came. The population of New England increased rapidly; and whilst the hierarchy of rank despotically classed the inhabitants of the mother-country, the colony continued to present the novel spectacle of a community homogeneous in all its parts. A democracy, more perfect than any which antiquity had dreamt of, started in full size and panoply from the midst of an ancient feudal society....

The general principles which are the groundwork of modern constitutions—principles which were imperfectly known in Europe, and not completely triumphant even in Great Britain, in the seventeenth century—were all recognized and determined by the laws of New England: the intervention of the people in public affairs, the free voting of taxes, the responsibility of authorities, personal liberty, and trial by jury, were all positively established without discussion.

From these fruitful principles consequences have been derived and applications have been made such as no nation in Europe has yet ventured to attempt.

In Connecticut the electoral body consisted, from its origin, of the whole number of citizens; and this is readily to be understood, when we recollect that this people enjoyed an almost perfect equality of fortune,

and a still greater uniformity of opinions. In Connecticut, at this period, all the executive functionaries were elected, including the Governor of the State. The citizens above the age of sixteen were obliged to bear arms; they formed a national militia, which appointed its own officers, and was to hold itself at all times in readiness to march for the defense of the country.

In the laws of Connecticut, as well as in all those of New England, we find the germ and gradual development of that township independence which is the life and mainspring of American liberty at the present day. The political existence of the majority of the nations of Europe commenced in the superior ranks of society, and was gradually and imperfectly communicated to the different members of the social body. In America, on the other hand, it may be said that the township was organized before the county, the county before the State, the State before the Union.

In New England, townships were completely and definitively constituted as early as 1650. The independence of the township was the nucleus round which the local interests, passions, rights, and duties collected and clung. It gave scope to the activity of a real political life, most thoroughly democratic and republican. The colonies still recognized the supremacy of the mother-country; monarchy was still the law of the State; but the republic was already established in every township.

The towns named their own magistrates of every kind, rated themselves, and levied their own taxes. In the parish of New England the law of representation was not adopted, but the affairs of the community were discussed, as at Athens, in the marketplace, by a general assembly of the citizens.

In studying the laws which were promulgated at this first era of the American republics, it is impossible not to be struck by the remarkable acquaintance with the science of government, and the advanced theory of legislation which they display. The ideas there formed of the duties of society towards its members are evidently much loftier and more comprehensive than those of the European legislators at that time: obligations were there imposed which were elsewhere slighted. In the States of New England, from the first, the condition of the poor was provided for; strict measures were taken for the maintenance of roads, and surveyors were appointed to attend to them; registers were established in every parish, in which the results of public deliberations, and the births, deaths, and marriages of the citizens were entered; clerks were directed to keep these registers; officers were charged with the administration of vacant inheritances, and with the arbitration of litigated landmarks; and many others were created whose chief functions were the maintenance of public order in the community. The law enters into a thousand useful provisions for a number of social wants which are at present very inadequately felt in France.

But it is by the attention it pays to Public Education that the original character of American civilization is at once placed in the clearest light. "It being," says the law, "one chief project of Satan to keep men from the knowledge of the Scripture by persuading from the use of tongues, to the end that learning may not be buried in the graves of our forefathers, in church and commonwealth, the Lord assisting our endeavors,..." Here follow clauses establishing schools in every township, and obliging the inhabitants, under pain of heavy fines, to support them. Schools of a superior kind were founded in the same manner in the more populous districts. The municipal authorities were bound to enforce the sending of children to school by their parents; they were empowered to inflict fines upon all who refused compliance; and in cases of continued resistance society assumed the place of the parent, took possession of the child, and deprived the father of those natural rights which he used to so bad a purpose. The reader will undoubtedly have remarked the preamble of these enactments: in America, religion is the road to knowledge, and the observance of the Divine laws leads man to civil freedom....

### **Chapter 3: Social state of the Anglo-Americans**

...I have stated in the preceding chapter that great equality existed among the emigrants who settled on the shores of New England. The germ of aristocracy was never planted in that part of the Union. The only influence which obtained there was that of intellect; the people were used to reverence certain names as the emblems of knowledge and virtue. Some of their fellow-citizens acquired a power over the rest which might truly have been called aristocratic, if it had been capable of transmission from father to son.

This was the state of things to the east of the Hudson: to the south-west of that river, and in the direction of the Floridas, the case was different. In most of the States situated to the south-west of the Hudson some great English proprietors had settled, who had imported with them aristocratic principles and the English law of descent... In the South, one man, aided by slaves, could cultivate a great extent of country: it was therefore common to see rich landed proprietors. But their influence was not altogether aristocratic as that term is understood in Europe, since they possessed no privileges; and the cultivation of their estates being carried on by slaves, they had no tenants depending on them, and consequently no patronage. Still, the great proprietors south of the Hudson constituted a superior class, having ideas and tastes of its own, and forming the center of political action. This kind of aristocracy sympathized with the body of the people, whose passions and interests it easily embraced; but it was too weak and too short-lived to excite either love or hatred for itself. This was the class which headed the insurrection in the South, and furnished the best leaders of the American revolution....

When the equal partition of property is established by law, the intimate connection is destroyed between family feeling and the preservation of the paternal estate; the property ceases to represent the family; for, as it must inevitably be divided after one or two generations, it has evidently a constant tendency to diminish, and must in the end be completely dispersed....

It is not only the fortunes of men which are equal in America; even their acquirements partake in some degree of the same uniformity. I do not believe that there is a country in the world where, in proportion to the population, there are so few uninstructed, and at the same time so few learned individuals. Primary instruction is within the reach of everybody; superior instruction is scarcely to be obtained by any. This is not surprising; it is in fact the necessary consequence of what we have advanced above. Almost all the Americans are in easy circumstances, and can therefore obtain the first elements of human knowledge.

In America there are comparatively few who are rich enough to live without a profession. Every profession requires an apprenticeship, which limits the time of instruction to the early years of life. At fifteen they enter upon their calling, and thus their education ends at the age when ours begins. Whatever is done afterwards, is with a view to some special and lucrative object; a science is taken up as a matter of business, and the only branch of it which is attended to is such as admits of an immediate practical application.

In America most of the rich men were formerly poor: most of those who now enjoy leisure were absorbed in business during their youth; the consequence of which is, that when they might have had a taste for study, they had no time for it, and when the time is at their disposal they have no longer the inclination....

America, then, exhibits in her social state a most extraordinary phenomenon. Men are there seen on a greater equality in point of fortune and intellect, or, in other words, more equal in their strength, than in any other country of the world, or in any age of which history has preserved the remembrance....

It is impossible to believe that equality will not eventually find its way into the political world as it does everywhere else. To conceive of men remaining forever unequal upon one single point, yet equal on all others, is impossible; they must come in the end to be equal upon all.

Now I know of only two methods of establishing equality in the political world; every citizen must be put in

possession of his rights, or rights must be granted to no one. For nations which are arrived at the same stage of social existence as the Anglo-Americans, it is therefore very difficult to discover a medium between the sovereignty of all and the absolute power of one man: and it would be vain to deny that the social condition which I have been describing is equally liable to each of these consequences.

There is, in fact, a manly and lawful passion for equality which excites men to wish all to be powerful and honored. This passion tends to elevate the humble to the rank of the great; but there exists also in the human heart a depraved taste for equality, which impels the weak to attempt to lower the powerful to their own level, and reduces men to prefer equality in slavery to inequality with freedom. Not that those nations whose social condition is democratic naturally despise liberty; on the contrary, they have an instinctive love of it. But liberty is not the chief and constant object of their desires; equality is their idol: they make rapid and sudden efforts to obtain liberty; and if they miss their aim, resign themselves to their disappointment; but nothing can satisfy them except equality, and rather than lose it they resolve to perish.

On the other hand, in a state where the citizens are nearly on an equality, it becomes difficult for them to preserve their independence against the aggressions of power. No one among them being strong enough to engage in the struggle with advantage, nothing but a general combination can protect their liberty. And such a union is not always to be found.

From the same social position, then, nations may derive one or the other of two great political results; these results are extremely different from each other, but they may both proceed from the same cause.

The Anglo-Americans are the first nations who, having been exposed to this formidable alternative, have been happy enough to escape the dominion of absolute power. They have been allowed by their circumstances, their origin, their intelligence, and especially by their moral feeling, to establish and maintain the sovereignty of the people.

#### **Chapter 4: The principle of the sovereignty of the people in America**

In America, the principle of the sovereignty of the people is not either barren or concealed, as it is with some other nations; it is recognized by the customs and proclaimed by the laws; it spreads freely, and arrives without impediment at its most remote consequences. If there be a country in the world where the doctrine of the sovereignty of the people can be fairly appreciated, where it can be studied in its application to the affairs of society, and where its dangers and its advantages may be foreseen, that country is assuredly America...

The American revolution broke out, and the doctrine of the sovereignty of the people, which had been nurtured in the townships and municipalities, took possession of the State: every class was enlisted in its cause; battles were fought, and victories obtained for it; until it became the law of laws... [V]ictory was irrevocably pronounced in favor of the democratic cause. All power was, in fact, in its hands, and resistance was no longer possible. The higher orders submitted without a murmur and without a struggle to an evil which was thenceforth inevitable. The ordinary fate of falling powers awaited them; each of their several members followed his own interest; and as it was impossible to wring the power from the hands of a people which they did not detest sufficiently to brave, their only aim was to secure its good-will at any price. The most democratic laws were consequently voted by the very men whose interests they impaired: and thus, although the higher classes did not excite the passions of the people against their order, they accelerated the triumph of the new state of things; so that, by a singular change, the democratic impulse was found to be most irresistible in the very States where the aristocracy had the firmest hold...

When a nation modifies the elective qualification, it may easily be foreseen that sooner or later that

qualification will be entirely abolished. There is no more invariable rule in the history of society: the further electoral rights are extended, the greater is the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength. The ambition of those who are below the appointed rate is irritated in exact proportion to the great number of those who are above it. The exception at last becomes the rule, concession follows concession, and no stop can be made short of universal suffrage.

At the present day the principle of the sovereignty of the people has acquired, in the United States, all the practical development which the imagination can conceive. It is unencumbered by those fictions which have been thrown over it in other countries, and it appears in every possible form according to the exigency of the occasion. Sometimes the laws are made by the people in a body, as at Athens; and sometimes its representatives, chosen by universal suffrage, transact business in its name, and almost under its immediate control...

The nation participates in the making of its laws by the choice of its legislators, and in the execution of them by the choice of the agents of the executive government; it may almost be said to govern itself, so feeble and so restricted is the share left to the administration, so little do the authorities forget their popular origin and the power from which they emanate.

#### **Chapter 5: Necessity of examining the condition of the states before examining the union at large**

“Centralization” has become a word of general and daily use, without any precise meaning being attached to it. Nevertheless, there exist two distinct kinds of centralization, which it is necessary to discriminate with accuracy.

Certain interests are common to all parts of a nation, such as the enactment of its general laws, and the maintenance of its foreign relations. Other interests are peculiar to certain parts of the nation; such, for instance, as the business of different townships. When the power which directs the general interests is centered in one place, or vested in the same persons, it constitutes a central government. In like manner the power of directing partial or local interests, when brought together into one place, constitutes what may be termed a central administration.

Upon some points these two kinds of centralization coalesce; but by classifying the objects which fall more particularly within the province of each of them, they may easily be distinguished.

It is evident that a central government acquires immense power when united to administrative centralization. Thus combined, it accustoms men to set their own will habitually and completely aside; to submit, not only for once or upon one point, but in every respect and at all times. Not only, therefore, does this union of power subdue them compulsorily, but it affects them in the ordinary habits of life, and influences each individual, first separately, and then collectively.

These two kinds of centralization mutually assist and attract each other; but they must not be supposed to be inseparable. It is impossible to imagine a more completely central government than that which existed in France under Louis XIV; when the same individual was the author and the interpreter of the laws, and the representative of France at home and abroad, he was justified in asserting that the State was identified with his person....

I cannot conceive that a nation can enjoy a secure or prosperous existence without a powerful centralization of government. But I am of opinion that a central administration enervates the nations in which it exists by incessantly diminishing their public spirit. If such an administration succeeds in condensing at a given moment on a given point all the disposable resources of a people, it impairs at least

the renewal of those resources. It may ensure a victory in the hour of strife, but it gradually relaxes the sinews of strength. It may contribute admirably to the transient greatness of a man, but it cannot ensure the durable prosperity of a nation....

[I]n the United States no central administration and no dependent series of public functionaries exist. Local authority has been carried to lengths which no European nation could endure without great inconvenience, and which has even produced some disadvantageous consequences in America. But in the United States the centralization of the Government is complete; and it would be easy to prove that the national power is more compact than it has ever been in the old nations of Europe... In America the legislature of each State is supreme: nothing can impede its authority; neither privileges, nor local immunities, nor personal influence, nor even the empire of reason, since it represents that majority which claims to be the sole organ of reason. Its own determination is, therefore, the only limit to its action. In juxtaposition to it, and under its immediate control, is the representative of the executive power, whose duty it is to constrain the refractory to submit by superior force....

The partisans of centralization in Europe are wont to maintain that the Government directs the affairs of each locality better than the citizens could do it for themselves: this may be true when the central power is enlightened, and when the local districts are ignorant; when it is as alert as they are slow; when it is accustomed to act, and they to obey... But I deny that such is the case when the people is as enlightened, as awake to its interests, and as accustomed to reflect on them, as the Americans are. I am persuaded, on the contrary, that in this case the collective strength of the citizens will always conduce more efficaciously to the public welfare than the authority of the Government....

Centralization succeeds more easily, indeed, in subjecting the external actions of men to a certain uniformity, which at last commands our regard, independently of the objects to which it is applied, like those devotees who worship the statue, and forget the deity it represents. Centralization imparts without difficulty an admirable regularity to the routine of business; provides for the details of the social police with sagacity; represses the smallest disorder and the most petty misdemeanors; maintains society in a *status quo* alike secure from improvement and decline; and perpetuates a drowsy precision in the conduct of affairs, which is hailed by the heads of the administration as a sign of perfect order and public tranquility: in short, it excels more in prevention than in action. Its force deserts it when society is to be disturbed or accelerated in its course; and if once the cooperation of private citizens is necessary to the furtherance of its measures, the secret of its impotence is disclosed....

The European who is accustomed to find a functionary always at hand to interfere with all he undertakes, has some difficulty in accustoming himself to the complex mechanism of the administration of the townships. In general it may be affirmed that the lesser details of the police, which render life easy and comfortable, are neglected in America; but that the essential guarantees of man in society are as strong there as elsewhere. In America the power which conducts the Government is far less regular, less enlightened, and less learned, but an hundredfold more authoritative than in Europe. In no country in the world do the citizens make such exertions for the common weal: and I am acquainted with no people which has established schools as numerous and as efficacious, places of public worship better suited to the wants of the inhabitants, or roads kept in better repair. Uniformity or permanence of design, the minute arrangement of details, and the perfection of an ingenious administration, must not be sought for in the United States: but it will be easy to find, on the other hand, the symptoms of a power, which, if it is somewhat barbarous, is at least robust; and of an existence, which is checkered with accidents indeed, but cheered at the same time by animation and effort....

In certain countries of Europe the natives consider themselves as a kind of settlers, indifferent to the fate of the spot upon which they live. The greatest changes are effected without their concurrence, and (unless chance may have apprised them of the event) without their knowledge; nay more, the citizen is unconcerned as to the condition of his village, the police of his street, the repairs of the church or of the parsonage; for he looks upon all these things as unconnected with himself, and as the property of a powerful stranger whom he calls the Government. He has only a life-interest in these possessions, and he entertains no notions of ownership or of improvement. This want of interest in his own affairs goes so far, that if his own safety or that of his children is endangered, instead of trying to avert the peril, he will fold his arms, and wait till the nation comes to his assistance. This same individual who has so completely sacrificed his own free will, has no natural propensity to obedience; he cowers, it is true, before the pettiest officer; but he braves the law with the spirit of a conquered foe as soon as its superior force is removed: his oscillations between servitude and license are perpetual. When a nation has arrived at this state, it must either change its customs and its laws, or perish: the source of public virtue is dry; and though it may contain subjects, the race of citizens is extinct. Such communities are a natural prey to foreign conquest....

It is not the *administrative*, but the *political* effects of the local system that I most admire in America. In the United States the interests of the country are everywhere kept in view; they are an object of solicitude to the people of the whole Union, and every citizen is as warmly attached to them as if they were his own. He takes pride in the glory of his nation; he boasts of its success, to which he conceives himself to have contributed; and he rejoices in the general prosperity by which he profits. The feeling he entertains towards the State is analogous to that which unites him to his family, and it is by a kind of egotism that he interests himself in the welfare of his country.

The European generally submits to a public officer because he represents a superior force; but to an American he represents a right. In America it may be said that no one renders obedience to man, but to justice and to law. If the opinion which the citizen entertains of himself is exaggerated, it is at least salutary; he unhesitatingly confides in his own powers, which appear to him to be all-sufficient. When a private individual meditates an undertaking, however directly connected it may be with the welfare of society, he never thinks of soliciting the cooperation of the Government; but he publishes his plan, offers to execute it himself, courts the assistance of other individuals, and struggles manfully against all obstacles. Undoubtedly he is often less successful than the State might have been in his position; but in the end, the sum of these private undertakings far exceeds all that the Government could have done.

As the administrative authority is within the reach of the citizens, whom it in some degree represents, it excites neither their jealousy nor their hatred: as its resources are limited, everyone feels that he must not rely solely on its assistance. Thus when the administration thinks fit to interfere, it is not abandoned to itself as in Europe; the duties of the private citizens are not supposed to have lapsed because the State assists in their fulfilment; but everyone is ready, on the contrary, to guide and to support it. This action of individual exertions, joined to that of the public authorities, frequently performs what the most energetic central administration would be unable to execute. It would be easy to adduce several facts in proof of what I advance, but I had rather give only one, with which I am more thoroughly acquainted. In America, the means which the authorities have at their disposal for the discovery of crimes and the arrestation of criminals are few. A State police does not exist, and passports are unknown. The criminal police of the United States cannot be compared to that of France; the magistrates and public prosecutors are not numerous, and the examinations of prisoners are rapid and oral. Nevertheless in no country does crime more rarely elude punishment. The reason is, that everyone conceives himself to be interested in furnishing evidence of



the act committed, and in stopping the delinquent. During my stay in the United States, I witnessed the spontaneous formation of committees for the pursuit and prosecution of a man who had committed a great crime in a certain county. In Europe a criminal is an unhappy being who is struggling for his life against the ministers of justice, whilst the population is merely a spectator of the conflict: in America he is looked upon as an enemy of the human race, and the whole of mankind is against him.

I believe that provincial institutions are useful to all nations, but nowhere do they appear to me to be more indispensable than amongst a democratic people. In an aristocracy, order can always be maintained in the midst of liberty; and as the rulers have a great deal to lose, order is to them a first-rate consideration. In like manner an aristocracy protects the people from the excesses of despotism, because it always possesses an organized power ready to resist a despot. But a democracy without provincial institutions has no security against these evils. How can a populace, unaccustomed to freedom in small concerns, learn to use it temperately in great affairs? What resistance can be offered to tyranny in a country where every private individual is impotent, and where the citizens are united by no common tie? Those who dread the license of the mob, and those who fear the rule of absolute power, ought alike to desire the progressive growth of provincial liberties....

### **Chapter 11: Liberty of the Press in the United States**

...If anyone could point out an intermediate and yet a tenable position between the complete independence and the entire subjection of the public expression of opinion, I should perhaps be inclined to adopt it; but the difficulty is to discover this position. If it is your intention to correct the abuses of unlicensed printing and to restore the use of orderly language, you may in the first instance try the offender by a jury; but if the jury acquits him, the opinion which was that of a single individual becomes the opinion of the country at large. Too much and too little has therefore hitherto been done. If you proceed, you must bring the delinquent before a court of permanent judges. But even here the cause must be heard before it can be decided; and the very principles which no book would have ventured to avow are blazoned forth in the pleadings, and what was obscurely hinted at in a single composition is then repeated in a multitude of other publications... The powers of thought do not rely, like the powers of physical strength, upon the number of their mechanical agents, nor can a host of authors be reckoned like the troops which compose an army; on the contrary, the authority of a principle is often increased by the smallness of the number of men by whom it is expressed. The words of a strong-minded man, which penetrate amidst the passions of a listening assembly, have more power than the vociferations of a thousand orators; and if it be allowed to speak freely in any public place, the consequence is the same as if free speaking was allowed in every village. The liberty of discourse must therefore be destroyed as well as the liberty of the press; this is the necessary term of your efforts; but if your object was to repress the abuses of liberty, they have brought you to the feet of a despot. You have been led from the extreme of independence to the extreme of subjection without meeting with a single tenable position for shelter....

[I]n the countries in which the doctrine of the sovereignty of the people ostensibly prevails, the censorship of the press is not only dangerous, but it is absurd. When the right of every citizen to co-operate in the government of society is acknowledged, every citizen must be presumed to possess the power of discriminating between the different opinions of his contemporaries, and of appreciating the different facts from which inferences may be drawn. The sovereignty of the people and the liberty of the press may therefore be looked upon as correlative institutions; just as the censorship of the press and universal suffrage are two things which are irreconcilably opposed, and which cannot long be retained among the

institutions of the same people.... Americans, having once admitted the doctrine of the sovereignty of the people, apply it with perfect consistency. It was never their intention to found a permanent state of things with elements that undergo daily modifications; and there is consequently nothing criminal in an attack upon the existing laws, provided it be not attended with a violent infraction of them. They are moreover of opinion that courts of justice are unable to check the abuses of the press; and that as the subtilty of human language perpetually eludes the severity of judicial analysis, offences of this nature are apt to escape the hand which attempts to apprehend them....

The characteristics of the American journalist consist in an open and coarse appeal to the passions of the populace; and he habitually abandons the principles of political science to assail the characters of individuals, to track them into private life, and disclose all their weaknesses and errors....

The personal opinions of the editors have no kind of weight in the eyes of the public: the only use of a journal is, that it imparts the knowledge of certain facts, and it is only by altering or distorting those facts that a journalist can contribute to the support of his own views.

But although the press is limited to these resources, its influence in America is immense. It is the power which impels the circulation of political life through all the districts of that vast territory. Its eye is constantly open to detect the secret springs of political designs, and to summon the leaders of all parties to the bar of public opinion. It rallies the interests of the community round certain principles, and it draws up the creed which factions adopt; for it affords a means of intercourse between parties which hear, and which address each other without ever having been in immediate contact. When a great number of the organs of the press adopt the same line of conduct, their influence becomes irresistible; and public opinion, when it is perpetually assailed from the same side, eventually yields to the attack. In the United States each separate journal exercises but little authority, but the power of the periodical press is only second to that of the people....

It has been remarked that in times of great religious fervor men sometimes change their religious opinions; whereas in times of general skepticism everyone clings to his own persuasion. The same thing takes place in politics under the liberty of the press. In countries where all the theories of social science have been contested in their turn, the citizens who have adopted one of them stick to it, not so much because they are assured of its excellence, as because they are not convinced of the superiority of any other. In the present age men are not very ready to die in defense of their opinions, but they are rarely inclined to change them; and there are fewer martyrs as well as fewer apostates....

## **Chapter 12: Political associations in the United States**

In no country in the world has the principle of association been more successfully used, or more unsparingly applied to a multitude of different objects, than in America. Besides the permanent associations which are established by law under the names of townships, cities, and counties, a vast number of others are formed and maintained by the agency of private individuals.

The citizen of the United States is taught from his earliest infancy to rely upon his own exertions in order to resist the evils and the difficulties of life; he looks upon social authority with an eye of mistrust and anxiety, and he only claims its assistance when he is quite unable to shift without it. This habit may even be traced in the schools of the rising generation, where the children in their games are wont to submit to rules which they have themselves established, and to punish misdemeanors which they have themselves defined. The same spirit pervades every act of social life. If a stoppage occurs in a thoroughfare, and the circulation of the public is hindered, the neighbors immediately constitute a deliberative body; and this extemporaneous

assembly gives rise to an executive power which remedies the inconvenience before anybody has thought of recurring to an authority superior to that of the persons immediately concerned.... Societies are formed to resist enemies which are exclusively of a moral nature, and to diminish the vice of intemperance: in the United States associations are established to promote public order, commerce, industry, morality, and religion; for there is no end which the human will, seconded by the collective exertions of individuals, despairs of attaining...

An association consists simply in the public assent which a number of individuals give to certain doctrines, and in the engagement which they contract to promote the spread of those doctrines by their exertions. The right of association with these views is very analogous to the liberty of unlicensed writing; but societies thus formed possess more authority than the press. When an opinion is represented by a society, it necessarily assumes a more exact and explicit form. It numbers its partisans, and compromises their welfare in its cause: they, on the other hand, become acquainted with each other, and their zeal is increased by their number. An association unites the efforts of minds which have a tendency to diverge in one single channel, and urges them vigorously towards one single end which it points out.

The second degree in the right of association is the power of meeting. When an association is allowed to establish centers of action at certain important points in the country, its activity is increased and its influence extended. Men have the opportunity of seeing each other; means of execution are more readily combined, and opinions are maintained with a degree of warmth and energy which written language cannot approach.

Lastly, in the exercise of the right of political association, there is a third degree: the partisans of an opinion may unite in electoral bodies, and choose delegates to represent them in a central assembly. This is, properly speaking, the application of the representative system to a party.

Thus, in the first instance, a society is formed between individuals professing the same opinion, and the tie which keeps it together is of a purely intellectual nature; in the second case, small assemblies are formed which only represent a fraction of the party. Lastly, in the third case, they constitute a separate nation in the midst of the nation, a government within the Government. Their delegates, like the real delegates of the majority, represent the entire collective force of their party; and they enjoy a certain degree of that national dignity and great influence which belong to the chosen representatives of the people. It is true that they have not the right of making the laws, but they have the power of attacking those which are in being, and of drawing up beforehand those which they may afterwards cause to be adopted...

It must be acknowledged that the unrestrained liberty of political association has not hitherto produced, in the United States, those fatal consequences which might perhaps be expected from it elsewhere. The right of association was imported from England, and it has always existed in America; so that the exercise of this privilege is now amalgamated with the manners and customs of the people. At the present time the liberty of association is become a necessary guarantee against the tyranny of the majority. In the United States, as soon as a party is become preponderant, all public authority passes under its control; its private supporters occupy all the places, and have all the force of the administration at their disposal. As the most distinguished partisans of the other side of the question are unable to surmount the obstacles which exclude them from power, they require some means of establishing themselves upon their own basis, and of opposing the moral authority of the minority to the physical power which domineers over it. Thus a dangerous expedient is used to obviate a still more formidable danger.

The omnipotence of the majority appears to me to present such extreme perils to the American Republics that the dangerous measure which is used to repress it seems to be more advantageous than prejudicial. And

here I am about to advance a proposition which may remind the reader of what I said before in speaking of municipal freedom: There are no countries in which associations are more needed to prevent the despotism of faction or the arbitrary power of a prince, than those which are democratically constituted. In aristocratic nations the body of the nobles and the more opulent part of the community are in themselves natural associations, which act as checks upon the abuses of power. In countries in which these associations do not exist, if private individuals are unable to create an artificial and a temporary substitute for them, I can imagine no permanent protection against the most galling tyranny; and a great people may be oppressed by a small faction, or by a single individual, with impunity....

In America the citizens who form the minority associate, in order, in the first place, to show their numerical strength, and so to diminish the moral authority of the majority; and, in the second place, to stimulate competition, and to discover those arguments which are most fitted to act upon the majority; for they always entertain hopes of drawing over their opponents to their own side, and of afterwards disposing of the supreme power in their name. Political associations in the United States are therefore peaceable in their intentions, and strictly legal in the means which they employ; and they assert with perfect truth that they only aim at success by lawful expedients.

The difference which exists between the Americans and ourselves depends on several causes. In Europe there are numerous parties so diametrically opposed to the majority that they can never hope to acquire its support, and at the same time they think that they are sufficiently strong in themselves to struggle and to defend their cause. When a party of this kind forms an association, its object is, not to conquer, but to fight. In America the individuals who hold opinions very much opposed to those of the majority are no sort of impediment to its power, and all other parties hope to win it over to their own principles in the end. The exercise of the right of association becomes dangerous in proportion to the impossibility which excludes great parties from acquiring the majority. In a country like the United States, in which the differences of opinion are mere differences of hue, the right of association may remain unrestrained without evil consequences. The inexperience of many of the European nations in the enjoyment of liberty leads them only to look upon the liberty of association as a right of attacking the Government. The first notion which presents itself to a party, as well as to an individual, when it has acquired a consciousness of its own strength, is that of violence: the notion of persuasion arises at a later period and is only derived from experience. The English, who are divided into parties which differ most essentially from each other, rarely abuse the right of association, because they have long been accustomed to exercise it. In France the passion for war is so intense that there is no undertaking so mad, or so injurious to the welfare of the State, that a man does not consider himself honored in defending it, at the risk of his life.

But perhaps the most powerful of the causes which tend to mitigate the excesses of political association in the United States is universal suffrage. In countries in which universal suffrage exists the majority is never doubtful, because neither party can pretend to represent that portion of the community which has not voted. The associations which are formed are aware, as well as the nation at large, that they do not represent the majority: this is, indeed, a condition inseparable from their existence; for if they did represent the preponderating power, they would change the law instead of soliciting its reform. The consequence of this is that the moral influence of the Government which they attack is very much increased, and their own power is very much enfeebled....

#### **Chapter 14: The real advantages derived by American society from democratic government**

...Democratic laws generally tend to promote the welfare of the greatest possible number; for they

emanate from the majority of the citizens, who are subject to error, but who cannot have an interest opposed to their own advantage. The laws of an aristocracy tend, on the contrary, to concentrate wealth and power in the hands of the minority, because an aristocracy, by its very nature, constitutes a minority. It may therefore be asserted, as a general proposition, that the purpose of a democracy in the conduct of its legislation is useful to a greater number of citizens than that of an aristocracy. This is, however, the sum total of its advantages.

Aristocracies are infinitely more expert in the science of legislation than democracies ever can be. They are possessed of a self-control which protects them from the errors of temporary excitement, and they form lasting designs which they mature with the assistance of favorable opportunities. Aristocratic government proceeds with the dexterity of art; it understands how to make the collective force of all its laws converge at the same time to a given point. Such is not the case with democracies, whose laws are almost always ineffective or inopportune. The means of democracy are therefore more imperfect than those of aristocracy, and the measures which it unwittingly adopts are frequently opposed to its own cause; but the object it has in view is more useful...

There is one sort of patriotic attachment which principally arises from that instinctive, disinterested, and undefinable feeling which connects the affections of man with his birthplace. This natural fondness is united to a taste for ancient customs, and to a reverence for ancestral traditions of the past; those who cherish it love their country as they love the mansions of their fathers. They enjoy the tranquility which it affords them; they cling to the peaceful habits which they have contracted within its bosom; they are attached to the reminiscences which it awakens, and they are even pleased by the state of obedience in which they are placed. This patriotism is sometimes stimulated by religious enthusiasm, and then it is capable of making the most prodigious efforts. It is in itself a kind of religion; it does not reason, but it acts from the impulse of faith and of sentiment....

But, like all instinctive passions, this kind of patriotism is more apt to prompt transient exertion than to supply the motives of continuous endeavor. It may save the State in critical circumstances, but it will not unfrequently allow the nation to decline in the midst of peace.

Whilst the manners of a people are simple and its faith unshaken, whilst society is steadily based upon traditional institutions whose legitimacy has never been contested, this instinctive patriotism is wont to endure.

But there is another species of attachment to a country which is more rational than the one we have been describing. It is perhaps less generous and less ardent, but it is more fruitful and more lasting; it is coeval with the spread of knowledge, it is nurtured by the laws, it grows by the exercise of civil rights, and, in the end, it is confounded with the personal interest of the citizen. A man comprehends the influence which the prosperity of his country has upon his own welfare; he is aware that the laws authorize him to contribute his assistance to that prosperity, and he labors to promote it as a portion of his interest in the first place, and as a portion of his right in the second....

I maintain that the most powerful, and perhaps the only, means of interesting men in the welfare of their country which we still possess is to make them partakers in the Government. At the present time civic zeal seems to me to be inseparable from the exercise of political rights; and I hold that the number of citizens will be found to augment or to decrease in Europe in proportion as those rights are extended.

In the United States the inhabitants were thrown but as yesterday upon the soil which they now occupy, and they brought neither customs nor traditions with them there; they meet each other for the first time with no previous acquaintance; in short, the instinctive love of their country can scarcely exist in their

minds; but everyone takes as zealous an interest in the affairs of his township, his county, and of the whole State, as if they were his own, because everyone, in his sphere, takes an active part in the government of society... As the American participates in all that is done in his country, he thinks himself obliged to defend whatever may be censured; for it is not only his country which is attacked upon these occasions, but it is himself. The consequence is, that his national pride resorts to a thousand artifices, and to all the petty tricks of individual vanity....

I am persuaded that the only means which we possess at the present time of inculcating the notion of rights, and of rendering it, as it were, palpable to the senses, is to invest all the members of the community with the peaceful exercise of certain rights: this is very clearly seen in children, who are men without the strength and the experience of manhood. When a child begins to move in the midst of the objects which surround him, he is instinctively led to turn everything which he can lay his hands upon to his own purposes; he has no notion of the property of others; but as he gradually learns the value of things, and begins to perceive that he may in his turn be deprived of his possessions, he becomes more circumspect, and he observes those rights in others which he wishes to have respected in himself. The principle which the child derives from the possession of his toys is taught to the man by the objects which he may call his own. In America those complaints against property in general which are so frequent in Europe are never heard, because in America there are no paupers; and as everyone has property of his own to defend, everyone recognizes the principle upon which he holds it.

The same thing occurs in the political world. In America the lowest classes have conceived a very high notion of political rights, because they exercise those rights; and they refrain from attacking those of other people, in order to ensure their own from attack. Whilst in Europe the same classes sometimes recalcitrate even against the supreme power, the American submits without a murmur to the authority of the pettiest magistrate.

The government of democracy brings the notion of political rights to the level of the humblest citizens, just as the dissemination of wealth brings the notion of property within the reach of all the members of the community; and I confess that, to my mind, this is one of its greatest advantages. I do not assert that it is easy to teach men to exercise political rights; but I maintain that, when it is possible, the effects which result from it are highly important; and I add that, if there ever was a time at which such an attempt ought to be made, that time is our own. It is clear that the influence of religious belief is shaken, and that the notion of divine rights is declining; it is evident that public morality is vitiated, and the notion of moral rights is also disappearing: these are general symptoms of the substitution of argument for faith, and of calculation for the impulses of sentiment. If, in the midst of this general disruption, you do not succeed in connecting the notion of rights with that of personal interest, which is the only immutable point in the human heart, what means will you have of governing the world except by fear? When I am told that, since the laws are weak and the populace is wild, since passions are excited and the authority of virtue is paralyzed, no measures must be taken to increase the rights of the democracy, I reply, that it is for these very reasons that some measures of the kind must be taken; and I am persuaded that governments are still more interested in taking them than society at large, because governments are liable to be destroyed and society cannot perish....

In the United States, except slaves, servants, and paupers in the receipt of relief from the townships, there is no class of persons who do not exercise the elective franchise, and who do not indirectly contribute to make the laws. Those who design to attack the laws must consequently either modify the opinion of the nation or trample upon its decision.

A second reason, which is still more weighty, may be further adduced; in the United States everyone is

personally interested in enforcing the obedience of the whole community to the law; for as the minority may shortly rally the majority to its principles, it is interested in professing that respect for the decrees of the legislator which it may soon have occasion to claim for its own. However irksome an enactment may be, the citizen of the United States complies with it, not only because it is the work of the majority, but because it originates in his own authority, and he regards it as a contract to which he is himself a party....

It is not impossible to conceive the surpassing liberty which the Americans enjoy; some idea may likewise be formed of the extreme equality which subsists amongst them, but the political activity which pervades the United States must be seen in order to be understood. No sooner do you set foot upon the American soil than you are stunned by a kind of tumult; a confused clamor is heard on every side; and a thousand simultaneous voices demand the immediate satisfaction of their social wants. Everything is in motion around you; here, the people of one quarter of a town are met to decide upon the building of a church; there, the election of a representative is going on; a little further the delegates of a district are posting to the town in order to consult upon some local improvements; or in another place the laborers of a village quit their ploughs to deliberate upon the project of a road or a public school....

This ceaseless agitation which democratic government has introduced into the political world influences all social intercourse. I am not sure that upon the whole this is not the greatest advantage of democracy. And I am much less inclined to applaud it for what it does than for what it causes to be done. It is incontestable that the people frequently conducts public business very ill; but it is impossible that the lower orders should take a part in public business without extending the circle of their ideas, and without quitting the ordinary routine of their mental acquirements. The humblest individual who is called upon to co-operate in the government of society acquires a certain degree of self-respect; and as he possesses authority, he can command the services of minds much more enlightened than his own. He is canvassed by a multitude of applicants, who seek to deceive him in a thousand different ways, but who instruct him by their deceit. He takes a part in political undertakings which did not originate in his own conception, but which give him a taste for undertakings of the kind. New ameliorations are daily pointed out in the property which he holds in common with others, and this gives him the desire of improving that property which is more peculiarly his own. He is perhaps neither happier nor better than those who came before him, but he is better informed and more active. I have no doubt that the democratic institutions of the United States, joined to the physical constitution of the country, are the cause (not the direct, as is so often asserted, but the indirect cause) of the prodigious commercial activity of the inhabitants. It is not engendered by the laws, but the people learns how to promote it by the experience derived from legislation.

When the opponents of democracy assert that a single individual performs the duties which he undertakes much better than the government of the community, it appears to me that they are perfectly right. The government of an individual, supposing an equality of instruction on either side, is more consistent, more persevering, and more accurate than that of a multitude, and it is much better qualified judiciously to discriminate the characters of the men it employs. If any deny what I advance, they have certainly never seen a democratic government, or have formed their opinion upon very partial evidence. It is true that even when local circumstances and the disposition of the people allow democratic institutions to subsist, they never display a regular and methodical system of government. Democratic liberty is far from accomplishing all the projects it undertakes, with the skill of an adroit despotism. It frequently abandons them before they have borne their fruits, or risks them when the consequences may prove dangerous; but in the end it produces more than any absolute government, and if it do fewer things well, it does a greater number of things. Under its sway the transactions of the public administration are not nearly so important

as what is done by private exertion. Democracy does not confer the most skillful kind of government upon the people, but it produces that which the most skillful governments are frequently unable to awaken, namely, an all-pervading and restless activity, a superabundant force, and an energy which is inseparable from it, and which may, under favorable circumstances, beget the most amazing benefits. These are the true advantages of democracy....

### **Chapter 15: The omnipotent power of the majority and its consequences**

The very essence of democratic government consists in the absolute sovereignty of the majority; for there is nothing in democratic States which is capable of resisting it. Most of the American Constitutions have sought to increase this natural strength of the majority by artificial means. We observed, in examining the Federal Constitution, that the efforts of the legislators of the Union had been diametrically opposed to the present tendency. The consequence has been that the Federal Government is more independent in its sphere than that of the States. But the Federal Government scarcely ever interferes in any but external affairs; and the governments of the State are in reality the authorities which direct society in America.

The legislature is, of all political institutions, the one which is most easily swayed by the wishes of the majority. The Americans determined that the members of the legislature should be elected by the people immediately, and for a very brief term, in order to subject them, not only to the general convictions, but even to the daily passion of their constituents. The members of both houses are taken from the same class in society, and are nominated in the same manner; so that the modifications of the legislative bodies are almost as rapid and quite as irresistible as those of a single assembly. It is to a legislature thus constituted that almost all the authority of the government has been entrusted... In several States the judicial power was also submitted to the elective discretion of the majority, and in all of them its existence was made to depend on the pleasure of the legislative authority, since the representatives were empowered annually to regulate the stipend of the judges.

Custom, however, has done even more than law. A proceeding which will in the end set all the guarantees of representative government at naught is becoming more and more general in the United States; it frequently happens that the electors, who choose a delegate, point out a certain line of conduct to him, and impose upon him a certain number of positive obligations which he is pledged to fulfill...

Several other circumstances concur in rendering the power of the majority in America not only preponderant, but irresistible. The moral authority of the majority is partly based upon the notion that there is more intelligence and more wisdom in a great number of men collected together than in a single individual, and that the quantity of legislators is more important than their quality. The theory of equality is in fact applied to the intellect of man: and human pride is thus assailed in its last retreat by a doctrine which the minority hesitate to admit, and in which they very slowly concur. Like all other powers, and perhaps more than all other powers, the authority of the many requires the sanction of time; at first it enforces obedience by constraint, but its laws are not respected until they have long been maintained.

The right of governing society, which the majority supposes itself to derive from its superior intelligence, was introduced into the United States by the first settlers, and this idea, which would be sufficient of itself to create a free nation, has now been amalgamated with the manners of the people and the minor incidents of social intercourse.

The French, under the old monarchy, held it for a maxim (which is still a fundamental principle of the English Constitution) that the King could do no wrong; and if he did do wrong, the blame was imputed to



his advisers. This notion was highly favorable to habits of obedience, and it enabled the subject to complain of the law without ceasing to love and honor the lawgiver. The Americans entertain the same opinion with respect to the majority.

The moral power of the majority is founded upon yet another principle, which is, that the interests of the many are to be preferred to those of the few.... In the United States ... all parties are willing to recognize the right of the majority because they all hope to turn those rights to their own advantage at some future time. The majority therefore in that country exercises a prodigious actual authority, and a moral influence which is scarcely less preponderant; no obstacles exist which can impede or so much as retard its progress, or which can induce it to heed the complaints of those whom it crushes upon its path. This state of things is fatal in itself and dangerous for the future....

I hold it to be an impious and an execrable maxim that, politically speaking, a people has a right to do whatsoever it pleases, and yet I have asserted that all authority originates in the will of the majority. Am I then, in contradiction with myself?

A general law—which bears the name of Justice—has been made and sanctioned, not only by a majority of this or that people, but by a majority of mankind. The rights of every people are consequently confined within the limits of what is just. A nation may be considered as a jury which is empowered to represent society at large, and to apply the great and general law of justice. Ought such a jury, which represents society, to have more power than the society in which the laws it applies originate?

When I refuse to obey an unjust law, I do not contest the right which the majority has of commanding, but I simply appeal from the sovereignty of the people to the sovereignty of mankind. It has been asserted that a people can never entirely outstep the boundaries of justice and of reason in those affairs which are more peculiarly its own, and that consequently, full power may fearlessly be given to the majority by which it is represented. But this language is that of a slave.

A majority taken collectively may be regarded as a being whose opinions, and most frequently whose interests, are opposed to those of another being, which is styled a minority. If it be admitted that a man, possessing absolute power, may misuse that power by wronging his adversaries, why should a majority not be liable to the same reproach? Men are not apt to change their characters by agglomeration; nor does their patience in the presence of obstacles increase with the consciousness of their strength. And for these reasons I can never willingly invest any number of my fellow-creatures with that unlimited authority which I should refuse to any one of them....

Unlimited power is in itself a bad and dangerous thing; human beings are not competent to exercise it with discretion, and God alone can be omnipotent, because His wisdom and His justice are always equal to His power. But no power upon earth is so worthy of honor for itself, or of reverential obedience to the rights which it represents, that I would consent to admit its uncontrolled and all-predominant authority. When I see that the right and the means of absolute command are conferred on a people or upon a king, upon an aristocracy or a democracy, a monarchy or a republic, I recognize the germ of tyranny, and I journey onward to a land of more hopeful institutions.

In my opinion the main evil of the present democratic institutions of the United States does not arise, as is often asserted in Europe, from their weakness, but from their overpowering strength; and I am not so much alarmed at the excessive liberty which reigns in that country as at the very inadequate securities which exist against tyranny.

If, on the other hand, a legislative power could be so constituted as to represent the majority without necessarily being the slave of its passions; an executive, so as to retain a certain degree of uncontrolled

authority; and a judiciary, so as to remain independent of the two other powers; a government would be formed which would still be democratic without incurring any risk of tyrannical abuse....

It is in the examination of the display of public opinion in the United States that we clearly perceive how far the power of the majority surpasses all the powers with which we are acquainted in Europe. Intellectual principles exercise an influence which is so invisible, and often so inappreciable, that they baffle the toils of oppression. At the present time the most absolute monarchs in Europe are unable to prevent certain notions, which are opposed to their authority, from circulating in secret throughout their dominions, and even in their courts. Such is not the case in America; as long as the majority is still undecided, discussion is carried on; but as soon as its decision is irrevocably pronounced, a submissive silence is observed, and the friends, as well as the opponents, of the measure unite in assenting to its propriety. The reason of this is perfectly clear: no monarch is so absolute as to combine all the powers of society in his own hands, and to conquer all opposition with the energy of a majority which is invested with the right of making and of executing the laws.

The authority of a king is purely physical, and it controls the actions of the subject without subduing his private will; but the majority possesses a power which is physical and moral at the same time; it acts upon the will as well as upon the actions of men, and it represses not only all contest, but all controversy. I know no country in which there is so little true independence of mind and freedom of discussion as in America. In any constitutional state in Europe every sort of religious and political theory may be advocated and propagated abroad; for there is no country in Europe so subdued by any single authority as not to contain citizens who are ready to protect the man who raises his voice in the cause of truth from the consequences of his hardihood. If he is unfortunate enough to live under an absolute government, the people is upon his side; if he inhabits a free country, he may find a shelter behind the authority of the throne, if he require one. The aristocratic part of society supports him in some countries, and the democracy in others. But in a nation where democratic institutions exist, organized like those of the United States, there is but one sole authority, one single element of strength and of success, with nothing beyond it.

In America the majority raises very formidable barriers to the liberty of opinion: within these barriers an author may write whatever he pleases, but he will repent it if he ever step beyond them. Not that he is exposed to the terrors of an auto-da-fe, but he is tormented by the slights and persecutions of daily obloquy. His political career is closed forever, since he has offended the only authority which is able to promote his success. Every sort of compensation, even that of celebrity, is refused to him. Before he published his opinions he imagined that he held them in common with many others; but no sooner has he declared them openly than he is loudly censured by his overbearing opponents, whilst those who think without having the courage to speak, like him, abandon him in silence. He yields at length, oppressed by the daily efforts he has been making, and he subsides into silence, as if he was tormented by remorse for having spoken the truth....

The excesses of monarchical power had devised a variety of physical means of oppression: the democratic republics of the present day have rendered it as entirely an affair of the mind as that will which it is intended to coerce. Under the absolute sway of an individual despot the body was attacked in order to subdue the soul, and the soul escaped the blows which were directed against it and rose superior to the attempt; but such is not the course adopted by tyranny in democratic republics; there the body is left free, and the soul is enslaved. The sovereign can no longer say, "You shall think as I do on pain of death;" but he says, "You are free to think differently from me, and to retain your life, your property, and all that you possess; but if such be your determination, you are henceforth an alien among your people. You may retain your civil rights, but they will be useless to you, for you will never be chosen by your fellow-citizens if you solicit their suffrages,

and they will affect to scorn you if you solicit their esteem. You will remain among men, but you will be deprived of the rights of mankind.

Your fellow-creatures will shun you like an impure being, and those who are most persuaded of your innocence will abandon you too, lest they should be shunned in their turn...

If ever these lines are read in America, I am well assured of two things: in the first place, that all who peruse them will raise their voices to condemn me; and in the second place, that very many of them will acquit me at the bottom of their conscience....

Jefferson has also thus expressed himself in a letter to Madison: "The executive power in our Government is not the only, perhaps not even the principal, object of my solicitude. The tyranny of the Legislature is really the danger most to be feared, and will continue to be so for many years to come. The tyranny of the executive power will come in its turn, but at a more distant period." I am glad to cite the opinion of Jefferson upon this subject rather than that of another, because I consider him to be the most powerful advocate democracy has ever sent forth.

### **Chapter 16: What mitigates the tyranny of the majority in the United States**

... [I]n the United States the majority, which so frequently displays the tastes and the propensities of a despot, is still destitute of the more perfect instruments of tyranny. In the American republics the activity of the central Government has never as yet been extended beyond a limited number of objects sufficiently prominent to call forth its attention. The secondary affairs of society have never been regulated by its authority... When the central Government which represents that majority has issued a decree, it must entrust the execution of its will to agents, over whom it frequently has no control, and whom it cannot perpetually direct. The townships, municipal bodies, and counties may therefore be looked upon as concealed breakwaters, which check or part the tide of popular excitement. If an oppressive law were passed, the liberties of the people would still be protected by the means by which that law would be put in execution: the majority cannot descend to the details and (as I will venture to style them) the puerilities of administrative tyranny... if a democratic republic similar to that of the United States were ever founded in a country where the power of a single individual had previously subsisted, and the effects of a centralized administration had sunk deep into the habits and the laws of the people, I do not hesitate to assert, that in that country a more insufferable despotism would prevail than any which now exists in the monarchical States of Europe, or indeed than any which could be found on this side of the confines of Asia.

In visiting the Americans and in studying their laws we perceive that the authority they have entrusted to members of the legal profession, and the influence which these individuals exercise in the Government, is the most powerful existing security against the excesses of democracy. This effect seems to me to result from a general cause which it is useful to investigate, since it may produce analogous consequences elsewhere...

Men who have more especially devoted themselves to legal pursuits derive from those occupations certain habits of order, a taste for formalities, and a kind of instinctive regard for the regular connection of ideas, which naturally render them very hostile to the revolutionary spirit and the unreflecting passions of the multitude.

The special information which lawyers derive from their studies ensures them a separate station in society, and they constitute a sort of privileged body in the scale of intelligence. This notion of their superiority perpetually recurs to them in the practice of their profession: they are the masters of a science which is necessary, but which is not very generally known; they serve as arbiters between the citizens;

and the habit of directing the blind passions of parties in litigation to their purpose inspires them with a certain contempt for the judgment of the multitude. To this it may be added that they naturally constitute a body, not by any previous understanding, or by an agreement which directs them to a common end; but the analogy of their studies and the uniformity of their proceedings connect their minds together, as much as a common interest could combine their endeavors.

A portion of the tastes and of the habits of the aristocracy may consequently be discovered in the characters of men in the profession of the law. They participate in the same instinctive love of order and of formalities; and they entertain the same repugnance to the actions of the multitude, and the same secret contempt of the government of the people. I do not mean to say that the natural propensities of lawyers are sufficiently strong to sway them irresistibly; for they, like most other men, are governed by their private interests and the advantages of the moment.

In a state of society in which the members of the legal profession are prevented from holding that rank in the political world which they enjoy in private life, we may rest assured that they will be the foremost agents of revolution.... In a community in which lawyers are allowed to occupy, without opposition, that high station which naturally belongs to them, their general spirit will be eminently conservative and anti-democratic....

The government of democracy is favorable to the political power of lawyers; for when the wealthy, the noble, and the prince are excluded from the government, they are sure to occupy the highest stations, in their own right, as it were, since they are the only men of information and sagacity, beyond the sphere of the people, who can be the object of the popular choice. If, then, they are led by their tastes to combine with the aristocracy and to support the Crown, they are naturally brought into contact with the people by their interests. They like the government of democracy, without participating in its propensities and without imitating its weaknesses; whence they derive a twofold authority, from it and over it. The people in democratic states do not mistrust the members of the legal profession, because it is well known that they are interested in serving the popular cause; and it listens to them without irritation, because it does not attribute to them any sinister designs. The object of lawyers is not, indeed, to overthrow the institutions of democracy, but they constantly endeavor to give it an impulse which diverts it from its real tendency, by means which are foreign to its nature. Lawyers belong to the people by birth and interest, to the aristocracy by habit and by taste, and they may be looked upon as the natural bond and connecting link of the two great classes of society.

The profession of the law is the only aristocratic element which can be amalgamated without violence with the natural elements of democracy, and which can be advantageously and permanently combined with them. I am not unacquainted with the defects which are inherent in the character of that body of men; but without this admixture of lawyer-like sobriety with the democratic principle, I question whether democratic institutions could long be maintained, and I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people.

This aristocratic character, which I hold to be common to the legal profession, is much more distinctly marked in the United States and in England than in any other country. This proceeds not only from the legal studies of the English and American lawyers, but from the nature of the legislation, and the position which those persons occupy in the two countries. The English and the Americans have retained the law of precedents; that is to say, they continue to found their legal opinions and the decisions of their courts upon the opinions and the decisions of their forefathers. In the mind of an English or American lawyer a taste and a reverence for what is old is almost always united to a love of regular and lawful proceedings....

In America there are no nobles or men of letters, and the people is apt to mistrust the wealthy; lawyers

consequently form the highest political class, and the most cultivated circle of society. They have therefore nothing to gain by innovation, which adds a conservative interest to their natural taste for public order. If I were asked where I place the American aristocracy, I should reply without hesitation that it is not composed of the rich, who are united together by no common tie, but that it occupies the judicial bench and the bar.

The more we reflect upon all that occurs in the United States the more shall we be persuaded that the lawyers as a body form the most powerful, if not the only, counterpoise to the democratic element. In that country we perceive how eminently the legal profession is qualified by its powers, and even by its defects, to neutralize the vices which are inherent in popular government. When the American people is intoxicated by passion, or carried away by the impetuosity of its ideas, it is checked and stopped by the almost invisible influence of its legal counsellors, who secretly oppose their aristocratic propensities to its democratic instincts, their superstitious attachment to what is antique to its love of novelty, their narrow views to its immense designs, and their habitual procrastination to its ardent impatience.

The courts of justice are the most visible organs by which the legal profession is enabled to control the democracy. The judge is a lawyer, who, independently of the taste for regularity and order which he has contracted in the study of legislation, derives an additional love of stability from his own inalienable functions. His legal attainments have already raised him to a distinguished rank amongst his fellow-citizens; his political power completes the distinction of his station, and gives him the inclinations natural to privileged classes.

Armed with the power of declaring the laws to be unconstitutional, the American magistrate perpetually interferes in political affairs. He cannot force the people to make laws, but at least he can oblige it not to disobey its own enactments; or to act inconsistently with its own principles. I am aware that a secret tendency to diminish the judicial power exists in the United States, and by most of the constitutions of the several States the Government can, upon the demand of the two houses of the legislature, remove the judges from their station. By some other constitutions the members of the tribunals are elected, and they are even subjected to frequent re-elections. I venture to predict that these innovations will sooner or later be attended with fatal consequences, and that it will be found out at some future period that the attack which is made upon the judicial power has affected the democratic republic itself.

It must not, however, be supposed that the legal spirit of which I have been speaking has been confined, in the United States, to the courts of justice; it extends far beyond them. As the lawyers constitute the only enlightened class which the people does not mistrust, they are naturally called upon to occupy most of the public stations. They fill the legislative assemblies, and they conduct the administration; they consequently exercise a powerful influence upon the formation of the law, and upon its execution. The lawyers are, however, obliged to yield to the current of public opinion, which is too strong for them to resist it, but it is easy to find indications of what their conduct would be if they were free to act as they chose. The Americans, who have made such copious innovations in their political legislation, have introduced very sparing alterations in their civil laws, and that with great difficulty, although those laws are frequently repugnant to their social condition. The reason of this is, that in matters of civil law the majority is obliged to defer to the authority of the legal profession, and that the American lawyers are disinclined to innovate when they are left to their own choice....

Scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate; hence all parties are obliged to borrow the ideas, and even the language, usual in judicial proceedings in their daily controversies. As most public men are, or have been, legal practitioners, they introduce the customs and technicalities of their profession into the affairs of the country. The jury extends

this habitude to all classes. The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that the whole people contracts the habits and the tastes of the magistrate. The lawyers of the United States form a party which is but little feared and scarcely perceived, which has no badge peculiar to itself, which adapts itself with great flexibility to the exigencies of the time, and accommodates itself to all the movements of the social body; but this party extends over the whole community, and it penetrates into all classes of society; it acts upon the country imperceptibly, but it finally fashions it to suit its purposes....

The jury is above all a political institution, and it must be regarded in this light in order to be duly appreciated. By the jury I mean a certain number of citizens chosen indiscriminately, and invested with a temporary right of judging. Trial by jury, as applied to the repression of crime, appears to me to introduce an eminently republican element into the government upon the following grounds: The institution of the jury may be aristocratic or democratic, according to the class of society from which the jurors are selected; but it always preserves its republican character, inasmuch as it places the real direction of society in the hands of the governed, or of a portion of the governed, instead of leaving it under the authority of the Government.... The true sanction of political laws is to be found in penal legislation, and if that sanction be wanting the law will sooner or later lose its cogency. He who punishes infractions of the law is therefore the real master of society. Now the institution of the jury raises the people itself, or at least a class of citizens, to the bench of judicial authority. The institution of the jury consequently invests the people, or that class of citizens, with the direction of society....

The jury is pre-eminently a political institution; it must be regarded as one form of the sovereignty of the people; when that sovereignty is repudiated, it must be rejected, or it must be adapted to the laws by which that sovereignty is established. The jury is that portion of the nation to which the execution of the laws is entrusted, as the Houses of Parliament constitute that part of the nation which makes the laws; and in order that society may be governed with consistency and uniformity, the list of citizens qualified to serve on juries must increase and diminish with the list of electors. This I hold to be the point of view most worthy of the attention of the legislator, and all that remains is merely accessory....

When the jury is reserved for criminal offences, the people only witnesses its occasional action in certain particular cases.... When, on the contrary, the influence of the jury is extended to civil causes, its application is constantly palpable; it affects all the interests of the community; everyone co-operates in its work: it thus penetrates into all the usages of life, it fashions the human mind to its peculiar forms, and is gradually associated with the idea of justice itself....

It teaches men to practice equity, every man learns to judge his neighbor as he would himself be judged; and this is especially true of the jury in civil causes, for, whilst the number of persons who have reason to apprehend a criminal prosecution is small, every one is liable to have a civil action brought against him. The jury teaches every man not to recoil before the responsibility of his own actions, and impresses him with that manly confidence without which political virtue cannot exist. It invests each citizen with a kind of magistracy, it makes them all feel the duties which they are bound to discharge towards society, and the part which they take in the Government. By obliging men to turn their attention to affairs which are not exclusively their own, it rubs off that individual egotism which is the rust of society.

The jury contributes most powerfully to form the judgment and to increase the natural intelligence of a people, and this is, in my opinion, its greatest advantage. It may be regarded as a gratuitous public school ever open, in which every juror learns to exercise his rights, enters into daily communication with the most

learned and enlightened members of the upper classes, and becomes practically acquainted with the laws of his country, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even by the passions of the parties. I think that the practical intelligence and political good sense of the Americans are mainly attributable to the long use which they have made of the jury in civil causes. I do not know whether the jury is useful to those who are in litigation; but I am certain it is highly beneficial to those who decide the litigation; and I look upon it as one of the most efficacious means for the education of the people which society can employ... It is more especially by means of the jury in civil causes that the American magistrates imbue all classes of society with the spirit of their profession. Thus the jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it to rule well.

### **Chapter 18: Principal causes tending to maintain the democratic republic**

The greatest part of British America was peopled by men who, after having shaken off the authority of the Pope, acknowledged no other religious supremacy; they brought with them into the New World a form of Christianity which I cannot better describe than by styling it a democratic and republican religion. This sect contributed powerfully to the establishment of a democracy and a republic, and from the earliest settlement of the emigrants, politics and religion contracted an alliance which has never been dissolved.

About fifty years ago Ireland began to pour a Catholic population into the United States; on the other hand, the Catholics of America made proselytes, and at the present moment more than a million of Christians professing the truths of the Church of Rome are to be met with in the Union. The Catholics are faithful to the observances of their religion; they are fervent and zealous in the support and belief of their doctrines. Nevertheless they constitute the most republican and the most democratic class of citizens which exists in the United States....

The priests in America have divided the intellectual world into two parts: in the one they place the doctrines of revealed religion, which command their assent; in the other they leave those truths which they believe to have been freely left open to the researches of political inquiry. Thus the Catholics of the United States are at the same time the most faithful believers and the most zealous citizens....

The sects which exist in the United States are innumerable. They all differ in respect to the worship which is due from man to his Creator, but they all agree in respect to the duties which are due from man to man. Each sect adores the Deity in its own peculiar manner, but all the sects preach the same moral law in the name of God. If it be of the highest importance to man, as an individual, that his religion should be true, the case of society is not the same. Society has no future life to hope for or to fear; and provided the citizens profess a religion, the peculiar tenets of that religion are of very little importance to its interests. Moreover, almost all the sects of the United States are comprised within the great unity of Christianity, and Christian morality is everywhere the same....

I do not question that the great austerity of manners which is observable in the United States, arises, in the first instance, from religious faith. Religion is often unable to restrain man from the numberless temptations of fortune; nor can it check that passion for gain which every incident of his life contributes to arouse, but its influence over the mind of woman is supreme, and women are the protectors of morals. There is certainly no country in the world where the tie of marriage is so much respected as in America, or where conjugal happiness is more highly or worthily appreciated.... Whilst the European endeavors to forget his domestic troubles by agitating society, the American derives from his own home that love of order which he afterwards carries with him into public affairs.

In the United States the influence of religion is not confined to the manners, but it extends to the intelligence of the people. Amongst the Anglo-Americans, there are some who profess the doctrines of Christianity from a sincere belief in them, and others who do the same because they are afraid to be suspected of unbelief. Christianity, therefore, reigns without any obstacle, by universal consent; the consequence is, as I have before observed, that every principle of the moral world is fixed and determinate, although the political world is abandoned to the debates and the experiments of men. Thus the human mind is never left to wander across a boundless field; and, whatever may be its pretensions, it is checked from time to time by barriers which it cannot surmount. Before it can perpetrate innovation, certain primal and immutable principles are laid down, and the boldest conceptions of human device are subjected to certain forms which retard and stop their completion....

[T]he revolutionists of America are obliged to profess an ostensible respect for Christian morality and equity, which does not easily permit them to violate the laws that oppose their designs; nor would they find it easy to surmount the scruples of their partisans, even if they were able to get over their own. Hitherto no one in the United States has dared to advance the maxim, that everything is permissible with a view to the interests of society; an impious adage which seems to have been invented in an age of freedom to shelter all the tyrants of future ages. Thus whilst the law permits the Americans to do what they please, religion prevents them from conceiving, and forbids them to commit, what is rash or unjust.

Whilst I was in America, a witness, who happened to be called at the assizes of the county of Chester (State of New York), declared that he did not believe in the existence of God, or in the immortality of the soul. The judge refused to admit his evidence, on the ground that the witness had destroyed beforehand all the confidence of the Court in what he was about to say. The newspapers related the fact without any further comment....

The short space of threescore years can never content the imagination of man; nor can the imperfect joys of this world satisfy his heart. Man alone, of all created beings, displays a natural contempt of existence, and yet a boundless desire to exist; he scorns life, but he dreads annihilation. These different feelings incessantly urge his soul to the contemplation of a future state, and religion directs his musings thither. Religion, then, is simply another form of hope; and it is no less natural to the human heart than hope itself. Men cannot abandon their religious faith without a kind of aberration of intellect, and a sort of violent distortion of their true natures; but they are invincibly brought back to more pious sentiments; for unbelief is an accident, and faith is the only permanent state of mankind. If we only consider religious institutions in a purely human point of view, they may be said to derive an inexhaustible element of strength from man himself, since they belong to one of the constituent principles of human nature.

I am aware that at certain times religion may strengthen this influence, which originates in itself, by the artificial power of the laws, and by the support of those temporal institutions which direct society. Religions, intimately united to the governments of the earth, have been known to exercise a sovereign authority derived from the twofold source of terror and of faith; but when a religion contracts an alliance of this nature, I do not hesitate to affirm that it commits the same error as a man who should sacrifice his future to his present welfare; and in obtaining a power to which it has no claim, it risks that authority which is rightfully its own. When a religion founds its empire upon the desire of immortality which lives in every human heart, it may aspire to universal dominion; but when it connects itself with a government, it must necessarily adopt maxims which are only applicable to certain nations. Thus, in forming an alliance with a political power, religion augments its authority over a few, and forfeits the hope of reigning over all....

The Church cannot share the temporal power of the State without being the object of a portion of that



animosity which the latter excites.... The alliance which religion contracts with political powers must needs be onerous to itself; since it does not require their assistance to live, and by giving them its assistance to live, and by giving them its assistance it may be exposed to decay....

### **Conclusion**

The time will therefore come when one hundred and fifty millions of men will be living in North America, equal in condition, the progeny of one race, owing their origin to the same cause, and preserving the same civilization, the same language, the same religion, the same habits, the same manners, and imbued with the same opinions, propagated under the same forms. The rest is uncertain, but this is certain; and it is a fact new to the world—a fact fraught with such portentous consequences as to baffle the efforts even of the imagination.

There are, at the present time, two great nations in the world which seem to tend towards the same end, although they started from different points: I allude to the Russians and the Americans. Both of them have grown up unnoticed; and whilst the attention of mankind was directed elsewhere, they have suddenly assumed a most prominent place amongst the nations; and the world learned their existence and their greatness at almost the same time. All other nations seem to have nearly reached their natural limits, and only to be charged with the maintenance of their power; but these are still in the act of growth ... proceeding with ease and with celerity along a path to which the human eye can assign no term. The American struggles against the natural obstacles which oppose him; the adversaries of the Russian are men; the former combats the wilderness and savage life; the latter, civilization with all its weapons and its arts: the conquests of the one are therefore gained by the ploughshare; those of the other by the sword. The Anglo-American relies upon personal interest to accomplish his ends, and gives free scope to the unguided exertions and common-sense of the citizens; the Russian centers all the authority of society in a single arm: the principal instrument of the former is freedom; of the latter servitude. Their starting-point is different, and their courses are not the same; yet each of them seems to be marked out by the will of Heaven to sway the destinies of half the globe.

### **Volume 2, Part 2, chapter 2: Of individualism in democratic countries**

*Individualism* is a novel expression, to which a novel idea has given birth. Our fathers were only acquainted with egotism. Egotism is a passionate and exaggerated love of self, which leads a man to connect everything with his own person, and to prefer himself to everything in the world. Individualism is a mature and calm feeling, which disposes each member of the community to sever himself from the mass of his fellows and to draw apart from his family and his friends, so that, after he has thus formed a little circle of his own, he willingly leaves society at large to itself. Egotism originates in blind instinct: individualism proceeds from erroneous judgment more than from depraved feelings; it originates as much in the deficiencies of the mind as in the perversity of the heart.

Egotism blights the germ of all virtue: individualism, at first, only saps the virtues of public life; but, in the long run, it attacks and destroys all others, and is at length absorbed in downright egotism. Egotism is a vice as old as the world, which does not belong to one form of society more than to another: individualism is of democratic origin, and it threatens to spread in the same ratio as the equality of conditions.

Amongst aristocratic nations, as families remain for centuries in the same condition, often on the same spot, all generations become as it were contemporaneous. A man almost always knows his forefathers, and respects them: he thinks he already sees his remote descendants, and he loves them. He willingly

imposes duties on himself towards the former and the latter; and he will frequently sacrifice his personal gratifications to those who went before and to those who will come after him.

Aristocratic institutions have, moreover, the effect of closely binding every man to several of his fellow-citizens. As the classes of an aristocratic people are strongly marked and permanent, each of them is regarded by its own members as a sort of lesser country, more tangible and more cherished than the country at large. As in aristocratic communities all the citizens occupy fixed positions, one above the other, the result is that each of them always sees a man above himself whose patronage is necessary to him, and below himself another man whose co-operation he may claim.

Men living in aristocratic ages are therefore almost always closely attached to something placed out of their own sphere, and they are often disposed to forget themselves. It is true that in those ages the notion of human fellowship is faint, and that men seldom think of sacrificing themselves for mankind; but they often sacrifice themselves for other men. In democratic ages, on the contrary, when the duties of each individual to the race are much more clear, devoted service to any one man becomes more rare; the bond of human affection is extended, but it is relaxed.

Amongst democratic nations new families are constantly springing up, others are constantly falling away, and all that remain change their condition; the woof of time is every instant broken, and the track of generations effaced. Those who went before are soon forgotten; of those who will come after no one has any idea: the interest of man is confined to those in close propinquity to himself.

As each class approximates to other classes, and intermingles with them, its members become indifferent and as strangers to one another. Aristocracy had made a chain of all the members of the community, from the peasant to the king; democracy breaks that chain, and severs every link of it.

As social conditions become more equal, the number of persons increases who, although they are neither rich enough nor powerful enough to exercise any great influence over their fellow-creatures, have nevertheless acquired or retained sufficient education and fortune to satisfy their own wants. They owe nothing to any man, they expect nothing from any man; they acquire the habit of always considering themselves as standing alone, and they are apt to imagine that their whole destiny is in their own hands.

Thus not only does democracy make every man forget his ancestors, but it hides his descendants, and separates his contemporaries, from him; it throws him back for ever upon himself alone, and threatens in the end to confine him entirely within the solitude of his own heart.

## **Part 2, chapter 4: Americans combat the effects of individualism by free institutions**

Despotism, which is of a very timorous nature, is never more secure of continuance than when it can keep men asunder; and all its influence is commonly exerted for that purpose. No vice of the human heart is so acceptable to it as egotism: a despot easily forgives his subjects for not loving him, provided they do not love each other. He does not ask them to assist him in governing the state; it is enough that they do not aspire to govern it themselves. He stigmatizes as turbulent and unruly spirits those who would combine their exertions to promote the prosperity of the community; and, perverting the natural meaning of words, he applauds as good citizens those who have no sympathy for any but themselves.

Thus the vices which despotism engenders are precisely those which equality fosters. These two things mutually and perniciously complete and assist each other. Equality places men side by side, unconnected by any common tie; despotism raises barriers to keep them asunder: the former predisposes them not to consider their fellows, the latter makes general indifference a sort of public virtue.

Despotism then, which is at all times dangerous, is more particularly to be feared in democratic ages. It is

easy to see that in those same ages men stand most in need of freedom. When the members of a community are forced to attend to public affairs, they are necessarily drawn from the circle of their own interests, and snatched at times from self-observation. As soon as a man begins to treat of public affairs in public, he begins to perceive that he is not so independent of his fellows as he had at first imagined, and, that, in order to obtain their support, he must often lend them his co-operation.

When the public is supreme, there is no man who does not feel the value of public goodwill, or who does not endeavor to court it by drawing to himself the esteem and affection of those amongst whom he is to live. Many of the passions which congeal and keep asunder human hearts, are then obliged to retire and hide below the surface. Pride must be dissembled; disdain dares not break out; egotism fears its own self. Under a free government, as most public offices are elective, the men, whose elevated minds or aspiring hopes are too closely circumscribed in private life, constantly feel that they cannot do without the population which surrounds them. Men learn at such times to think of their fellows from ambitious motives; and they frequently find it, in a manner, their interest to forget themselves.

I may here be met by an objection derived from electioneering intrigues, the meanness of candidates, and the calumnies of their opponents. These are opportunities for animosity, which occur the oftener, the more frequent elections become. Such evils are doubtless great, but they are transient; whereas the benefits which attend them remain. The desire of being elected may lead some men for a time to violent hostility; but this same desire leads all men in the long run mutually to support each other; and, if it happens that an election accidentally severs two friends, the electoral system brings a multitude of citizens permanently together, who would always have remained unknown to each other. Freedom engenders private animosities, but despotism gives birth to general indifference....

It is difficult to draw a man out of his own circle to interest him in the destiny of the state, because he does not clearly understand what influence the destiny of the state can have upon his own lot. But if it be proposed to make a road cross the end of his estate, he will see at a glance that there is a connection between this small public affair and his greatest private affairs; and he will discover, without its being shown to him, the close tie which unites private to general interest. Thus, far more may be done by entrusting to the citizens the administration of minor affairs than by surrendering to them the control of important ones, towards interesting them in the public welfare, and convincing them that they constantly stand in need one of the other in order to provide for it. A brilliant achievement may win for you the favor of a people at one stroke; but to earn the love and respect of the population which surrounds you, a long succession of little services rendered and of obscure good deeds,—a constant habit of kindness, and an established reputation for disinterestedness,—will be required. Local freedom, then, which leads a great number of citizens to value the affection of their neighbors and of their kindred, perpetually brings men together, and forces them to help one another, in spite of the propensities which sever them.

In the United States the more opulent citizens take great care not to stand aloof from the people; on the contrary, they constantly keep on easy terms with the lower classes: they listen to them, they speak to them every day. They know that the rich in democracies always stand in need of the poor; and that in democratic ages you attach a poor man to you more by your manner than by benefits conferred....

It would be unjust to suppose that the patriotism and the zeal which every American displays for the welfare of his fellow-citizens are wholly insincere. Although private interest directs the greater part of human actions in the United States, as well as elsewhere, it does not regulate them all. I must say that I have often seen Americans make great and real sacrifices to the public welfare; and I have remarked a hundred instances in which they hardly ever failed to lend faithful support to each other. The free institutions which

the inhabitants of the United States possess, and the political rights of which they make so much use, remind every citizen, and in a thousand ways, that he lives in society. They every instant impress upon his mind the notion that it is the duty as well as the interest of men to make themselves useful to their fellow-creatures; and as he sees no particular ground of animosity to them, since he is never either their master or their slave, his heart readily leans to the side of kindness. Men attend to the interests of the public, first by necessity, afterwards by choice: what was intentional becomes an instinct; and by dint of working for the good of one's fellow citizens, the habit and the taste for serving them is at length acquired....

**Part 2, chapter 8: Americans combat the effects of individualism by the principle of self-interest rightly understood**

...In the United States hardly anybody talks of the beauty of virtue; but they maintain that virtue is useful, and prove it every day. The American moralists do not profess that men ought to sacrifice themselves for their fellow-creatures *because* it is noble to make such sacrifices; but they boldly aver that such sacrifices are as necessary to him who imposes them upon himself, as to him for whose sake they are made....

The doctrine of interest rightly understood is not then new, but amongst the Americans of our time it finds universal acceptance: it has become popular there; you may trace it at the bottom of all their actions, you will remark it in all they say. It is as often to be met with on the lips of the poor man as of the rich.... [Americans] are fond of explaining almost all the actions of their lives by the principle of interest rightly understood; they show with complacency how an enlightened regard for themselves constantly prompts them to assist each other, and inclines them willingly to sacrifice a portion of their time and property to the welfare of the State. In this respect I think they frequently fail to do themselves justice; for in the United States, as well as elsewhere, people are sometimes seen to give way to those disinterested and spontaneous impulses which are natural to man: but the Americans seldom allow that they yield to emotions of this kind; they are more anxious to do honor to their philosophy than to themselves....

The principle of interest rightly understood is not a lofty one, but it is clear and sure. It does not aim at mighty objects, but it attains without excessive exertion all those at which it aims. As it lies within the reach of all capacities, everyone can without difficulty apprehend and retain it. By its admirable conformity to human weaknesses, it easily obtains great dominion; nor is that dominion precarious, since the principle checks one personal interest by another, and uses, to direct the passions, the very same instrument which excites them.

The principle of interest rightly understood produces no great acts of self-sacrifice, but it suggests daily small acts of self-denial. By itself it cannot suffice to make a man virtuous, but it disciplines a number of citizens in habits of regularity, temperance, moderation, foresight, self-command; and, if it does not lead men straight to virtue by the will, it gradually draws them in that direction by their habits. If the principle of interest rightly understood were to sway the whole moral world, extraordinary virtues would doubtless be more rare; but I think that gross depravity would then also be less common. The principle of interest rightly understood perhaps prevents some men from rising far above the level of mankind; but a great number of other men, who were falling far below it, are caught and restrained by it. Observe some few individuals, they are lowered by it; survey mankind, it is raised.

I am not afraid to say, that the principle of interest rightly understood appears to me the best suited of all philosophical theories to the wants of the men of our time, and that I regard it as their chief remaining security against themselves. Towards it, therefore, the minds of the moralists of our age should turn; even should they judge it to be incomplete, it must nevertheless be adopted as necessary....

## **Part two, chapter 20, How an aristocracy may be created by industry**

I have shown that democracy is favorable to the growth of manufactures, and that it increases without limit the numbers of the manufacturing classes: we shall now see by what side-road manufacturers may possibly in their turn bring men back to aristocracy.

It is acknowledged, that when a workman is engaged every day upon the same detail, the whole commodity is produced with greater ease, promptitude, and economy. It is likewise acknowledged, that the cost of the production of manufactured goods is diminished by the extent of the establishment in which they are made, and by the amount of capital employed or of credit. These truths had long been imperfectly discerned, but in our time they have been demonstrated. They have been already applied to many very important kinds of manufactures, and the humblest will gradually be governed by them. I know of nothing in politics which deserves to fix the attention of the legislator more closely than these two new axioms of the science of manufactures.

When a workman is unceasingly and exclusively engaged in the fabrication of one thing, he ultimately does his work with singular dexterity; but at the same time he loses the general faculty of applying his mind to the direction of the work. He every day becomes more adroit and less industrious; so that it may be said of him, that in proportion as the workman improves the man is degraded. What can be expected of a man who has spent twenty years of his life in making heads for pins? And to what can that mighty human intelligence, which has so often stirred the world, be applied in him, except it be to investigate the best method of making pins' heads? When a workman has spent a considerable portion of his existence in this manner, his thoughts are forever set upon the object of his daily toil; his body has contracted certain fixed habits, which it can never shake off: in a word, he no longer belongs to himself, but to the calling which he has chosen. It is in vain that laws and manners have been at the pains to level all barriers round such a man, and to open to him on every side a thousand different paths to fortune; a theory of manufactures more powerful than manners and laws binds him to a craft, and frequently to a spot, which he cannot leave: it assigns to him a certain place in society, beyond which he cannot go: in the midst of universal movement, it has rendered him stationary.

In proportion as the principle of the division of labor is more extensively applied, the workman becomes weaker, more narrow-minded and more dependent. The art advances, the artisan recedes. On the other hand, in proportion as it becomes more manifest that the productions of manufactures are by so much the cheaper and better as the manufacture is larger and the amount of capital employed more considerable, wealthy and educated men come forward to embark in manufactures which were heretofore abandoned to poor or ignorant handicraftsmen. The magnitude of the efforts required, and the importance of the results to be obtained, attract them. Thus at the very time at which the science of manufactures lowers the class of workmen, it raises the class of masters.

The workman concentrates his faculties more and more upon the study of a single detail, the master surveys a more extensive whole, and the mind of the latter is enlarged in proportion as that of the former is narrowed. In a short time the one will require nothing but physical strength without intelligence; the other stands in need of science, and almost of genius, to ensure success. This man resembles more and more the administrator of a vast empire—that man, a brute.

The master and the workman have then here no similarity, and their differences increase every day. They are only connected as the two rings at the extremities of a long chain. Each of them fills the station which is made for him, and out of which he does not get: the one is continually, closely, and necessarily dependent upon the other, and seems as much born to obey as that other is to command. What is this but aristocracy?

As the conditions of men constituting the nation become more and more equal, the demand for manufactured commodities becomes more general and more extensive; and the cheapness which places these objects within the reach of slender fortunes becomes a great element of success. Hence there are every day more men of great opulence and education who devote their wealth and knowledge to manufactures; and who seek, by opening large establishments, and by a strict division of labor, to meet the fresh demands which are made on all sides. Thus, in proportion as the mass of the nation turns to democracy, that particular class which is engaged in manufactures becomes more aristocratic. Men grow more alike in the one—more different in the other; and inequality increases in the less numerous class, in the same ratio in which it decreases in the community.

Hence it would appear, on searching to the bottom, that aristocracy should naturally spring out of the bosom of democracy.

But this kind of aristocracy by no means resembles those kinds which preceded it. It will be observed at once, that, as it applies exclusively to manufactures and to some manufacturing callings, it is a monstrous exception in the general aspect of society. The small aristocratic societies which are formed by some manufacturers in the midst of the immense democracy of our age, contain, like the great aristocratic societies of former ages, some men who are very opulent, and a multitude who are wretchedly poor. The poor have few means of escaping from their condition and becoming rich; but the rich are constantly becoming poor, or they give up business when they have realized a fortune.

Thus the elements of which the class of the poor is composed are fixed; but the elements of which the class of the rich is composed are not so. To say the truth, though there are rich men, the class of rich men does not exist; for these rich individuals have no feelings or purposes in common, no mutual traditions or mutual hopes; there are therefore members, but no body. Not only are the rich not compactly united amongst themselves, but there is no real bond between them and the poor. Their relative position is not a permanent one; they are constantly drawn together or separated by their interests. The workman is generally dependent on the master, but not on any particular master: these two men meet in the factory, but know not each other elsewhere; and whilst they come into contact on one point, they stand very wide apart on all others. The manufacturer asks nothing of the workman but his labor; the workman expects nothing from him but his wages. The one contracts no obligation to protect, nor the other to defend; and they are not permanently connected either by habit or by duty.

The aristocracy created by business rarely settles in the midst of the manufacturing population which it directs: the object is not to govern that population, but to use it. An aristocracy thus constituted can have no great hold upon those whom it employs; and even if it succeed in retaining them at one moment, they escape the next: it knows not how to will, and it cannot act.

The territorial aristocracy of former ages was either bound by law, or thought itself bound by usage, to come to the relief of its serving-men, and to succor their distresses. But the manufacturing aristocracy of our age first impoverishes and debases the men who serve it, and then abandons them to be supported by the charity of the public. This is a natural consequence of what has been said before. Between the workman and the master there are frequent relations, but no real partnership.

I am of opinion, upon the whole, that the manufacturing aristocracy which is growing up under our eyes, is one of the harshest which ever existed in the world; but at the same time it is one of the most confined and least dangerous. Nevertheless the friends of democracy should keep their eyes anxiously fixed in this direction; for if ever a permanent inequality of conditions and aristocracy again penetrate into the world, it may be predicted that this is the channel by which they will enter.

#### **Part 4, chapters 6-7, What sort of despotism democratic countries have to fear**

...When the Roman emperors were at the height of their power, the different nations of the empire still preserved manners and customs of great diversity; although they were subject to the same monarch, most of the provinces were separately administered; they abounded in powerful and active municipalities; and although the whole government of the empire was centered in the hands of the emperor alone, and he always remained, upon occasions, the supreme arbiter in all matters, yet the details of social life and private occupations lay for the most part beyond his control. The emperors possessed, it is true, an immense and unchecked power, which allowed them to gratify all their whimsical tastes, and to employ for that purpose the whole strength of the State. They frequently abused that power arbitrarily to deprive their subjects of property or of life: their tyranny was extremely onerous to the few, but it did not reach the greater number; it was fixed to some few main objects, and neglected the rest; it was violent, but its range was limited.

But it would seem that if despotism were to be established amongst the democratic nations of our days, it might assume a different character; it would be more extensive and more mild; it would degrade men without tormenting them. I do not question, that in an age of instruction and equality like our own, sovereigns might more easily succeed in collecting all political power into their own hands, and might interfere more habitually and decidedly within the circle of private interests, than any sovereign of antiquity could ever do. But this same principle of equality which facilitates despotism, tempers its rigor. We have seen how the manners of society become more humane and gentle in proportion as men become more equal and alike. When no member of the community has much power or much wealth, tyranny is, as it were, without opportunities and a field of action. As all fortunes are scanty, the passions of men are naturally circumscribed, their imagination limited, their pleasures simple. This universal moderation moderates the sovereign himself, and checks within certain limits the inordinate stretch of his desires...

I think then that the species of oppression by which democratic nations are menaced is unlike anything which ever before existed in the world: our contemporaries will find no prototype of it in their memories. I am trying myself to choose an expression which will accurately convey the whole of the idea I have formed of it, but in vain; the old words despotism and tyranny are inappropriate: the thing itself is new; and since I cannot name it, I must attempt to define it.

I seek to trace the novel features under which despotism may appear in the world. The first thing that strikes the observation is an innumerable multitude of men all equal and alike, incessantly endeavoring to procure the petty and paltry pleasures with which they glut their lives. Each of them, living apart, is as a stranger to the fate of all the rest,—his children and his private friends constitute to him the whole of mankind; as for the rest of his fellow-citizens, he is close to them, but he sees them not;—he touches them, but he feels them not; he exists but in himself and for himself alone; and if his kindred still remain to him, he may be said at any rate to have lost his country.

Above this race of men stands an immense and tutelary power, which takes upon itself alone to secure their gratifications, and to watch over their fate. That power is absolute, minute, regular, provident, and mild. It would be like the authority of a parent, if, like that authority, its object was to prepare men for manhood; but it seeks on the contrary to keep them in perpetual childhood: it is well content that the people should rejoice, provided they think of nothing but rejoicing. For their happiness such a government willingly labors, but it chooses to be the sole agent and the only arbiter of that happiness: it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal

concerns, directs their industry, regulates the descent of property, and subdivides their inheritances—what remains, but to spare them all the care of thinking and all the trouble of living?

Thus it every day renders the exercise of the free agency of man less useful and less frequent; it circumscribes the will within a narrower range, and gradually robs a man of all the uses of himself. The principle of equality has prepared men for these things: it has predisposed men to endure them, and oftentimes to look on them as benefits.

After having thus successively taken each member of the community in its powerful grasp, and fashioned them at will, the supreme power then extends its arm over the whole community. It covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softened, bent, and guided: men are seldom forced by it to act, but they are constantly restrained from acting: such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to be nothing better than a flock of timid and industrious animals, of which the government is the shepherd....

Our contemporaries are constantly excited by two conflicting passions; they want to be led, and they wish to remain free: as they cannot destroy either one or the other of these contrary propensities, they strive to satisfy them both at once. They devise a sole, tutelary, and all-powerful form of government, but elected by the people. They combine the principle of centralization and that of popular sovereignty; this gives them a respite: they console themselves for being in tutelage by the reflection that they have chosen their own guardians. Every man allows himself to be put in a harness, because he sees that it is not a person or a class of persons, but the people at large that holds the end of his chain.

By this system the people shake off their state of dependence just long enough to select their master, and then relapse into it again. A great many persons at the present day are quite contented with this sort of compromise between administrative despotism and the sovereignty of the people; and they think they have done enough for the protection of individual freedom when they have surrendered it to the power of the nation at large. This does not satisfy me: the nature of him I am to obey signifies less to me than the fact of extorted obedience.

I do not however deny that a constitution of this kind appears to me to be infinitely preferable to one, which, after having concentrated all the powers of government, should vest them in the hands of an irresponsible person or body of persons. Of all the forms which democratic despotism could assume, the latter would assuredly be the worst.

When the sovereign is elective, or narrowly watched by a legislature which is really elective and independent, the oppression which he exercises over individuals is sometimes greater, but it is always less degrading; because every man, when he is oppressed and disarmed, may still imagine, that whilst he yields obedience it is to himself he yields it, and that it is to one of his own inclinations that all the rest give way.... To create a representation of the people in every centralized country is, therefore, to diminish the evil which extreme centralization may produce, but not to get rid of it. I admit that by this means room is left for the intervention of individuals in the more important affairs; but it is not the less suppressed in the smaller and more private ones. It must not be forgotten that it is especially dangerous to enslave men in the minor details of life. For my own part, I should be inclined to think freedom less necessary in great things than in little ones, if it were possible to be secure of the one without possessing the other.

Subjection in minor affairs breaks out every day, and is felt by the whole community indiscriminately. It does not drive men to resistance, but it crosses them at every turn, till they are led to surrender the exercise



of their will. Thus their spirit is gradually broken and their character enervated; whereas that obedience, which is exacted on a few important but rare occasions, only exhibits servitude at certain intervals, and throws the burden of it upon a small number of men. It is in vain to summon a people, which has been rendered so dependent on the central power, to choose from time to time the representatives of that power; this rare and brief exercise of their free choice, however important it may be, will not prevent them from gradually losing the faculties of thinking, feeling, and acting for themselves, and thus gradually falling below the level of humanity.

I add that they will soon become incapable of exercising the great and only privilege which remains to them. The democratic nations which have introduced freedom into their political constitution, at the very time when they were augmenting the despotism of their administrative constitution, have been led into strange paradoxes. To manage those minor affairs in which good sense is all that is wanted, the people are held to be unequal to the task; but when the government of the country is at stake, the people are invested with immense powers; they are alternately made the playthings of their ruler, and his masters—more than kings, and less than men....

I believe that it is easier to establish an absolute and despotic government amongst a people in which the conditions of society are equal, than amongst any other; and I think that if such a government were once established amongst such a people, it would not only oppress men, but would eventually strip each of them of several of the highest qualities of humanity. Despotism therefore appears to me peculiarly to be dreaded in democratic ages. I should have loved freedom, I believe, at all times, but in the time in which we live I am ready to worship it.

On the other hand, I am persuaded that all who shall attempt, in the ages upon which we are entering, to base freedom upon aristocratic privilege, will fail—that all who shall attempt to draw and to retain authority within a single class, will fail. At the present day no ruler is skillful or strong enough to found a despotism, by re-establishing permanent distinctions of rank amongst his subjects: no legislator is wise or powerful enough to preserve free institutions, if he does not take equality for his first principle and his watchword. All those of our contemporaries who would establish or secure the independence and the dignity of their fellow-men, must show themselves the friends of equality.... Thus the question is not how to reconstruct aristocratic society, but how to make liberty proceed out of that democratic state of society in which God has placed us.

These two truths appear to me simple, clear, and fertile in consequences; and they naturally lead me to consider what kind of free government can be established amongst a people in which social conditions are equal.

It results from the very constitution of democratic nations and from their necessities, that the power of government amongst them must be more uniform, more centralized, more extensive, more searching, and more efficient than in other countries. Society at large is naturally stronger and more active, individuals more subordinate and weak; the former does more, the latter less; and this is inevitably the case.

It is not therefore to be expected that the range of private independence will ever be as extensive in democratic as in aristocratic countries—nor is this to be desired; for, amongst aristocratic nations the mass is often sacrificed to the individual, and the prosperity of the greater number to the greatness of the few. It is both necessary and desirable that the government of a democratic people should be active and powerful: and our object should not be to render it weak or indolent, but solely to prevent it from abusing its aptitude and its strength....

In periods of aristocracy every man is always bound so closely to many of his fellow-citizens, that he

cannot be assailed without their coming to his assistance. In ages of equality every man naturally stands alone; he has no hereditary friends whose co-operation he may demand, no class upon whose sympathy he may rely: he is easily got rid of, and he is trampled on with impunity. At the present time, an oppressed member of the community has therefore only one method of self-defense—he may appeal to the whole nation; and if the whole nation is deaf to his complaint, he may appeal to mankind: the only means he has of making this appeal is by the press. Thus the liberty of the press is infinitely more valuable amongst democratic nations than amongst all others; it is the only cure for the evils which equality may produce. Equality sets men apart and weakens them; but the press places a powerful weapon within every man's reach, which the weakest and loneliest of them all may use. Equality deprives a man of the support of his connections; but the press enables him to summon all his fellow-countrymen and all his fellow-men to his assistance....

Something analogous may be said of the judicial power. It is a part of the essence of judicial power to attend to private interests, and to fix itself with predilection on minute objects submitted to its observation: another essential quality of judicial power is never to volunteer its assistance to the oppressed, but always to be at the disposal of the humblest of those who solicit it; their complaint, however feeble they may themselves be, will force itself upon the ear of justice and claim redress, for this is inherent in the very constitution of the courts of justice.

A power of this kind is therefore peculiarly adapted to the wants of freedom, at a time when the eye and finger of the government are constantly intruding into the minutest details of human actions, and when private persons are at once too weak to protect themselves, and too much isolated for them to reckon upon the assistance of their fellows. The strength of the courts of law has ever been the greatest security which can be offered to personal independence; but this is more especially the case in democratic ages: private rights and interests are in constant danger, if the judicial power does not grow more extensive and more strong to keep pace with the growing equality of conditions....

Men living in democratic ages do not readily comprehend the utility of forms: they feel an instinctive contempt for them—I have elsewhere shown for what reasons. Forms excite their contempt and often their hatred; as they commonly aspire to none but easy and present gratifications, they rush onwards to the object of their desires, and the slightest delay exasperates them. This same temper, carried with them into political life, renders them hostile to forms, which perpetually retard or arrest them in some of their projects.

Yet this objection which the men of democracies make to forms is the very thing which renders forms so useful to freedom; for their chief merit is to serve as a barrier between the strong and the weak, the ruler and the people, to retard the one, and give the other time to look about him. Forms becomes more necessary in proportion as the government becomes more active and more powerful, whilst private persons are becoming more indolent and more feeble. Thus democratic nations naturally stand more in need of forms than other nations, and they naturally respect them less. This deserves most serious attention.

Nothing is more pitiful than the arrogant disdain of most of our contemporaries for questions of form; for the smallest questions of form have acquired in our time an importance which they never had before: many of the greatest interests of mankind depend upon them. I think that if the statesmen of aristocratic ages could sometimes contemn forms with impunity, and frequently rise above them, the statesmen to whom the government of nations is now confided ought to treat the very least among them with respect, and not neglect them without imperious necessity....

Another tendency, which is extremely natural to democratic nations and extremely dangerous, is that which leads them to despise and undervalue the rights of private persons. The attachment which men feel

to a right, and the respect which they display for it, is generally proportioned to its importance, or to the length of time during which they have enjoyed it. The rights of private persons amongst democratic nations are commonly of small importance, of recent growth, and extremely precarious. The consequence is that they are often sacrificed without regret, and almost always violated without remorse.

But it happens that at the same period and amongst the same nations in which men conceive a natural contempt for the rights of private persons, the rights of society at large are naturally extended and consolidated: in other words, men become less attached to private rights at the very time at which it would be most necessary to retain and to defend what little remains of them. It is therefore most especially in the present democratic ages, that the true friends of the liberty and the greatness of man ought constantly to be on the alert to prevent the power of government from lightly sacrificing the private rights of individuals to the general execution of its designs. At such times ... no private rights are so unimportant that they can be surrendered with impunity to the caprices of a government. The reason is plain: if the private right of an individual is violated at a time when the human mind is fully impressed with the importance and the sanctity of such rights, the injury done is confined to the individual whose right is infringed; but to violate such a right, at the present day, is deeply to corrupt the manners of the nation and to put the whole community in jeopardy, because the very notion of this kind of right constantly tends amongst us to be impaired and lost....

The political world is metamorphosed: new remedies must henceforth be sought for new disorders. To lay down extensive, but distinct and settled limits, to the action of the government; to confer certain rights on private persons, and to secure to them the undisputed enjoyment of those rights; to enable individual man to maintain whatever independence, strength, and original power he still possesses; to raise him by the side of society at large, and uphold him in that position,—these appear to me the main objects of legislators in the ages upon which we are now entering.

It would seem as if the rulers of our time sought only to use men in order to make things great; I wish that they would try a little more to make great men; that they would set less value on the work, and more upon the workman; that they would never forget that a nation cannot long remain strong when every man belonging to it is individually weak, and that no form or combination of social polity has yet been devised, to make an energetic people out of a community of pusillanimous and enfeebled citizens.

I trace amongst our contemporaries two contrary notions which are equally injurious. One set of men can perceive nothing in the principle of equality but the anarchical tendencies which it engenders: they dread their own free agency—they fear themselves. Other thinkers, less numerous but more enlightened, take a different view: beside that track which starts from the principle of equality to terminate in anarchy, they have at last discovered the road which seems to lead men to inevitable servitude. They shape their souls beforehand to this necessary condition; and, despairing of remaining free, they already do obeisance in their hearts to the master who is soon to appear. The former abandon freedom, because they think it dangerous; the latter, because they hold it to be impossible.

If I had entertained the latter conviction, I should not have written this book, but I should have confined myself to deploring in secret the destiny of mankind. I have sought to point out the dangers to which the principle of equality exposes the independence of man, because I firmly believe that these dangers are the most formidable, as well as the least foreseen, of all those which futurity holds in store: but I do not think that they are insurmountable.

The men who live in the democratic ages upon which we are entering have naturally a taste for independence: they are naturally impatient of regulation, and they are wearied by the permanence even of

the condition they themselves prefer. They are fond of power; but they are prone to despise and hate those who wield it, and they easily elude its grasp by their own mobility and insignificance.

These propensities will always manifest themselves, because they originate in the groundwork of society, which will undergo no change: for a long time they will prevent the establishment of any despotism, and they will furnish fresh weapons to each succeeding generation which shall struggle in favor of the liberty of mankind. Let us then look forward to the future with that salutary fear which makes men keep watch and ward for freedom, not with that faint and idle terror which depresses and enervates the heart.

# 10. John C. Calhoun and the Need for Concurrent Majorities

## John C. Calhoun (1782-1850)

Born in South Carolina, John C. Calhoun attended Yale College. There he studied with President Timothy Dwight, who advocated that New England secede from the United States rather than remain in a union that permitted slavery. Although Calhoun disagreed with Dwight on many issues, establishing better protection for minority rights became his lifelong quest.

Calhoun attended the Tapping Reeve Law School in Connecticut and was admitted to the South Carolina bar in 1807. He soon entered politics and was elected to the House of Representatives in 1810. He joined the War Hawks in Congress and was active in organizing preparations for the War of 1812. His experience in organizing military preparations and reforming the army and navy led President James Monroe to name him Secretary of War in 1817.

Calhoun initially sought the presidency in the 1824 election, but when it became clear he would not win he focused his efforts on the vice presidency. He was the running mate of both John Quincy Adams and Andrew Jackson, and although they divided the vote for president, Calhoun was elected vice president by a majority of the electoral college. He served one term under Adams, then jumped to Jackson's presidential ticket for the next election. Jackson's victory in 1828 gave Calhoun a second term as vice president. Once again, he found himself opposed to the President's policies. This time, he chose to resign three months before his term ended, which allowed him to take his seat as a newly-elected Senator in December 1832 rather than wait for his term as Vice President to expire the following March. He cast 31 tie-breaking votes as Vice President, a record that lasted until Kamala Harris broke it in 2023.

Calhoun continued to serve in the Senate until 1843, when he resigned to run for president. When that effort failed, he accepted an appointment as Secretary of State for one year. He returned to the Senate in 1845, where he served until he died in 1850.

## *Disquisition on Government (1848)*

Calhoun believed that constitutional democracy was flawed because it allowed a majority to trample on the interests of minorities. While popular suffrage was the most important check on government, it did not protect all major interest groups against adverse legislative action. Calhoun promoted the doctrine of concurrent majorities, which allowed interest groups to veto policies that they believed would harm their group. This was accomplished through the interposition of what Calhoun called a constitutional “organism,” the key feature of his political theory. Calhoun did not specify exactly which interest groups would be entitled to a veto, but undoubtedly one of them was plantation owners (who owned slaves). In the absence of such an organism, Calhoun promoted the doctrine of nullification, under which individual states could refuse to enforce federal policies (such as the tariff) whenever they believed those policies would harm their interests.

Calhoun also attacked the belief in the equality of all persons, which Jefferson had enshrined in the Declaration. While he believed that liberty was essential to a successful government, he believed that it should be apportioned based on “different degrees of intelligence, patriotism and virtue.” This meant that it should not “be bestowed on a people too ignorant, degraded and vicious to be capable of either appreciating or of enjoying it.” Calhoun’s beliefs reflected one of the major reasons supporters of slavery used to deny slaves liberty: that they could not be trusted to use freedom responsibly.

...What is that constitution or law of our nature, without which government would not exist, and with which its existence is necessary?

In considering this, I assume, as an incontestable fact, that man is so constituted as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; and he has, accordingly, never been found, in any age or country, in any state other than the social. In no other, indeed, could he exist; and in no other—were it possible for him to exist—could he attain to a full development of his moral and intellectual faculties, or raise himself, in the scale of being, much above the level of the brute creation.

I next assume, also, as a fact not less incontestable, that, while man is so constituted as to make the social state necessary to his existence and the full development of his faculties, this state itself cannot exist without government. The assumption rests on universal experience. In no age or country has any society or community ever been found, whether enlightened or savage, without government of some description. Having assumed these, as unquestionable phenomena of our nature, I shall, without further remark, proceed to the investigation of the primary and important question, What is that constitution of our nature, which, while it impels man to associate with his kind, renders it impossible for society to exist without government?

The answer will be found in the fact ... that, while man is created for the social state, and is accordingly so formed as to feel what affects others, as well as what affects himself, he is, at the same time, so constituted as to feel more intensely what affects him directly, than what affects him indirectly through others; or, to express it differently, he is so constituted, that his direct or individual affections are stronger than his sympathetic or social feelings....

But that constitution of our nature which makes us feel more intensely what affects us directly than what affects us indirectly through others, necessarily leads to conflict between individuals. Each, in consequence, has a greater regard for his own safety or happiness, than for the safety or happiness of others; and, where these come in opposition, is ready to sacrifice the interests of others to his own. And hence, the tendency to a universal state of conflict, between individual and individual; accompanied by the connected passions of suspicion, jealousy, anger and revenge, followed by insolence, fraud and cruelty; and, if not prevented by some controlling power, ending in a state of universal discord and confusion, destructive of the social state and the ends for which it is ordained. This controlling power, wherever vested, or by whomsoever exercised, is government.

It follows, then, that man is so constituted, that government is necessary to the existence of society, and society to his existence, and the perfection of his faculties. It follows, also, that government has its origin in this twofold constitution of his nature; the sympathetic or social feelings constituting the remote, and the individual or direct, the proximate cause.

If man had been differently constituted in either particular; if, instead of being social in his nature, he had been created without sympathy for his kind, and independent of others for his safety and existence; or if, on the other hand, he had been so created, as to feel more intensely what affected others than what affected himself, (if that were possible,) or, even, had this supposed interest been equal,—it is manifest that, in either case, there would have been no necessity for government, and that none would ever have existed. But, although society and government are thus intimately connected with and dependent on each other, of the two society is the greater. It is the first in the order of things, and in the dignity of its object; that of society being primary—to preserve and perfect our race; and that of government secondary and subordinate, to preserve and perfect society. Both are, however, necessary to the existence and well-being of our race, and equally of Divine ordination....

[G]overnment, although intended to protect and preserve society, has itself a strong tendency to disorder and abuse of its powers, as all experience and almost every page of history testify. The cause is to be found in the same constitution of our nature which makes government indispensable. The powers which it is necessary for government to possess, in order to repress violence and preserve order, cannot execute themselves. They must be administered by men in whom, like others, the individual are stronger than the social feelings. And hence, the powers vested in them to prevent injustice and oppression on the part of others, will, if left unguarded, be by them converted into instruments to oppress the rest of the community. That by which this is prevented, by whatever name called, is what is meant by constitution, in its most comprehensive sense, when applied to government.

Having its origin in the same principle of our nature, constitution stands to government, as government stands to society; and, as the end for which society is ordained, would be defeated without government, so that for which government is ordained would, in a great measure, be defeated without constitution. But they differ in this striking particular. There is no difficulty in forming government. It is not even a matter of choice, whether there shall be one or not. Like breathing, it is not permitted to depend on our volition. Necessity will force it on all communities in some one form or another. Very different is the case as to constitution. Instead of a matter of necessity, it is one of the most difficult tasks imposed on man to form a constitution worthy of the name; while, to form a perfect one—one that would completely counteract the tendency of government to oppression and abuse, and hold it strictly to the great ends for which it is ordained—has thus far exceeded human wisdom, and possibly ever will....

With these remarks, I proceed to the consideration of the important and difficult question: How is

this tendency of government to be counteracted? Or, to express it more fully, How can those who are invested with the powers of government be prevented from employing them, as the means of aggrandizing themselves, instead of using them to protect and preserve society? It cannot be done by instituting a higher power to control the government, and those who administer it. This would be but to change the seat of authority, and to make this higher power, in reality, the government; with the same tendency, on the part of those who might control its powers, to pervert them into instruments of aggrandizement. Nor can it be done by limiting the powers of government, so as to make it too feeble to be made an instrument of abuse; for ... it is a sufficient objection that it would, if practicable, defeat the end for which government is ordained, by making it too feeble to protect and preserve society. The powers necessary for this purpose will ever prove sufficient to aggrandize those who control it, at the expense of the rest of the community....

How government, then, must be constructed, in order to counteract, through its organism, this tendency on the part of those who make and execute the laws to oppress those subject to their operation, is the next question which claims attention.

There is but one way in which this can possibly be done; and that is, by such an organism as will furnish the ruled with the means of resisting successfully this tendency on the part of the rulers to oppression and abuse. Power can only be resisted by power, and tendency by tendency. Those who exercise power and those subject to its exercise—the rulers and the ruled—stand in antagonistic relations to each other. The same constitution of our nature which leads rulers to oppress the ruled—regardless of the object for which government is ordained—will, with equal strength, lead the ruled to resist, when possessed of the means of making peaceable and effective resistance. Such an organism, then, as will furnish the means by which resistance may be systematically and peaceably made on the part of the ruled, to oppression and abuse of power on the part of the rulers, is the first and indispensable step towards forming a constitutional government. And as this can only be effected by or through the right of suffrage, the right on the part of the ruled to choose their rulers at proper intervals, and to hold them thereby responsible for their conduct, —the responsibility of the rulers to the ruled, through the right of suffrage, is the indispensable and primary principle in the foundation of a constitutional government. When this right is properly guarded, and the people sufficiently enlightened to understand their own rights and the interests of the community, and duly to appreciate the motives and conduct of those appointed to make and execute the laws, it is all-sufficient to give to those who elect, effective control over those they have elected.

I call the right of suffrage the indispensable and primary principle; for it would be a great and dangerous mistake to suppose, as many do, that it is, of itself, sufficient to form constitutional governments. To this erroneous opinion may be traced one of the causes, why so few attempts to form constitutional governments have succeeded; and why, of the few which have, so small a number have had durable existence. It has led, not only to mistakes in the attempts to form such governments, but to their overthrow, when they have, by some good fortune, been correctly formed. So far from being, of itself, sufficient—however well guarded it might be, and however enlightened the people—it would, unaided by other provisions, leave the government as absolute, as it would be in the hands of irresponsible rulers; and with a tendency, at least as strong, towards oppression and abuse of its powers; as I shall next proceed to explain.

The right of suffrage, of itself, can do no more than give complete control to those who elect, over the conduct of those they have elected. In doing this, it accomplishes all it possibly can accomplish. This is its aim—and when this is attained, its end is fulfilled. It can do no more, however enlightened the people, or however widely extended or well guarded the right may be. The sum total, then, of its effects, when



most successful, is, to make those elected, the true and faithful representatives of those who elected them—instead of irresponsible rulers—as they would be without it; and thus, by converting it into an agency, and the rulers into agents, to divest government of all claims to sovereignty, and to retain it unimpaired to the community. But it is manifest that the right of suffrage, in making these changes, transfers, in reality, the actual control over the government, from those who make and execute the laws, to the body of the community; and, thereby, places the powers of the government as fully in the mass of the community, as they would be if they, in fact, had assembled, made, and executed the laws themselves, without the intervention of representatives or agents. The more perfectly it does this, the more perfectly it accomplishes its ends; but in doing so, it only changes the seat of authority, without counteracting, in the least, the tendency of the government to oppression and abuse of its powers.

If the whole community had the same interests, so that the interests of each and every portion would be so affected by the action of the government that the laws which oppressed or impoverished one portion, would necessarily oppress and impoverish all others—or the reverse—then the right of suffrage, of itself, would be all-sufficient to counteract the tendency of the government to oppression and abuse of its powers; and, of course, would form, of itself, a perfect constitutional government. The interest of all being the same, by supposition, as far as the action of the government was concerned, all would have like interests as to what laws should be made, and how they should be executed. All strife and struggle would cease as to who should be elected to make and execute them. The only question would be, who was most fit; who the wisest and most capable of understanding the common interest of the whole. This decided, the election would pass off quietly, and without party discord; as no one portion could advance its own peculiar interest without regard to the rest, by electing a favorite candidate.

But such is not the case. On the contrary, nothing is more difficult than to equalize the action of the government, in reference to the various and diversified interests of the community; and nothing more easy than to pervert its powers into instruments to aggrandize and enrich one or more interests by oppressing and impoverishing the others; and this too, under the operation of laws, couched in general terms; and which, on their face, appear fair and equal. Nor is this the case in some particular communities only. It is so in all; the small and the great, the poor and the rich, irrespective of pursuits, productions, or degrees of civilization;—with, however, this difference, that the more extensive and populous the country, the more diversified the condition and pursuits of its population, and the richer, more luxurious, and dissimilar the people, the more difficult is it to equalize the action of the government,—and the more easy for one portion of the community to pervert its powers to oppress, and plunder the other.

Such being the case, it necessarily results, that the right of suffrage, by placing the control of the government in the community must, from the same constitution of our nature which makes government necessary to preserve society, lead to conflict among its different interests, each striving to obtain possession of its powers, as the means of protecting itself against the others—or of advancing its respective interests, regardless of the interests of others. For this purpose, a struggle will take place between the various interests to obtain a majority, in order to control the government. If no one interest be strong enough, of itself, to obtain it, a combination will be formed between those whose interests are most alike; each conceding something to the others, until a sufficient number is obtained to make a majority. The process may be slow, and much time may be required before a compact, organized majority can be thus formed; but formed it will be in time, even without preconcert or design, by the sure workings of that principle or constitution of our nature in which government it self originates. When once formed, the community will be divided into two great parties—a major and minor—between which there will be incessant

struggles on the one side to retain, and on the other to obtain the majority—and, thereby, the control of the government and the advantages it confers.

As, then, the right of suffrage, without some other provision, cannot counteract this tendency of government, the next question for consideration is—What is that other provision? This demands the most serious consideration; for of all the questions embraced in the science of government, it involves a principle, the most important, and the least understood; and when understood, the most difficult of application in practice. It is, indeed, emphatically, that principle which makes the constitution, in its strict and limited sense.

From what has been said, it is manifest, that this provision must be of a character calculated to prevent any one interest, or combination of interests, from using the powers of government to aggrandize itself at the expense of the others. Here lies the evil: and just in proportion as it shall prevent, or fail to prevent it, in the same degree it will effect, or fail to effect the end intended to be accomplished. There is but one certain mode in which this result can be secured; and that is, by the adoption of some restriction or limitation, which shall so effectually prevent any one interest, or combination of interests, from obtaining the exclusive control of the government, as to render hopeless all attempts directed to that end. There is, again, but one mode in which this can be effected; and that is, by taking the sense of each interest or portion of the community, which may be unequally and injuriously affected by the action of the government, separately, through its own majority, or in some other way by which its voice may be fairly expressed; and to require the consent of each interest, either to put or to keep the government in action. This, too, can be accomplished only in one way—and that is, by such an organism of the government—and, if necessary for the purpose, of the community also—as will, by dividing and distributing the powers of government, give to each division or interest, through its appropriate organ, either a concurrent voice in making and executing the laws, or a veto on their execution. It is only by such an organism, that the assent of each can be made necessary to put the government in motion; or the power made effectual to arrest its action, when put in motion; and it is only by the one or the other that the different interests, orders, classes, or portions, into which the community may be divided, can be protected, and all conflict and struggle between them prevented, by rendering it impossible to put or to keep it in action, without the concurrent consent of all.

Such an organism as this, combined with the right of suffrage, constitutes, in fact, the elements of constitutional government....

It may be readily inferred, from what has been stated, that the effect of organism is neither to supersede nor diminish the importance of the right of suffrage; but to aid and perfect it. The object of the latter is, to collect the sense of the community. The more fully and perfectly it accomplishes this, the more fully and perfectly it fulfils its end. But the most it can do, of itself, is to collect the sense of the greater number; that is, of the stronger interests, or combination of interests; and to assume this to be the sense of the community. It is only when aided by a proper organism, that it can collect the sense of the entire community, of each and all its interests; of each, through its appropriate organ, and of the whole, through all of them united. This would truly be the sense of the entire community; for whatever diversity each interest might have within itself, as all would have the same interest in reference to the action of the government, the individuals composing each would be fully and truly represented by its own majority or appropriate organ, regarded in reference to the other interests. In brief, every individual of every interest might trust, with confidence, its majority or appropriate organ, against that of every other interest.

It results, from what has been said, that there are two different modes in which the sense of the community may be taken; one, simply by the right of suffrage, unaided; the other, by the right through

a proper organism. Each collects the sense of the majority. But one regards numbers only, and considers the whole community as a unit, having but one common interest throughout; and collects the sense of the greater number of the whole, as that of the community. The other, on the contrary, regards interests as well as numbers—considering the community as made up of different and conflicting interests, as far as the action of the government is concerned; and takes the sense of each, through its majority or appropriate organ, and the united sense of all, as the sense of the entire community. The former of these I shall call the numerical, or absolute majority; and the latter, the concurrent, or constitutional majority... Until this distinction is recognized, and better understood, there will continue to be great liability to error in properly constructing constitutional governments, especially of the popular form, and of preserving them when properly constructed. Until then, the latter will have a strong tendency to slide, first, into the government of the numerical majority, and, finally, into absolute government of some other form....

The first and leading error which naturally arises from overlooking the distinction referred to, is, to confound the numerical majority with the people; and this so completely as to regard them as identical. This is a consequence that necessarily results from considering the numerical as the only majority. All admit, that a popular government, or democracy, is the government of the people; for the terms imply this. A perfect government of the kind would be one which would embrace the consent of every citizen or member of the community; but as this is impracticable, in the opinion of those who regard the numerical as the only majority, and who can perceive no other way by which the sense of the people can be taken, they are compelled to adopt this as the only true basis of popular government, in contradistinction to governments of the aristocratical or monarchical form. Being thus constrained, they are, in the next place, forced to regard the numerical majority, as, in effect, the entire people; that is, the greater part as the whole; and the government of the greater part as the government of the whole. It is thus the two come to be confounded, and a part made identical with the whole. And it is thus, also, that all the rights, powers, and immunities of the whole people come to be attributed to the numerical majority; and, among others, the supreme, sovereign authority of establishing and abolishing governments at pleasure.

This radical error, the consequence of confounding the two, and of regarding the numerical as the only majority, has contributed more than any other cause, to prevent the formation of popular constitutional governments—and to destroy them even when they have been formed. It leads to the conclusion that, in their formation and establishment, nothing more is necessary than the right of suffrage, and the allotment to each division of the community a representation in the government, in proportion to numbers. If the numerical majority were really the people; and if, to take its sense truly, were to take the sense of the people truly, a government so constituted would be a true and perfect model of a popular constitutional government; and every departure from it would detract from its excellence. But, as such is not the case—as the numerical majority, instead of being the people, is only a portion of them—such a government, instead of being a true and perfect model of the people's government, that is, a people self-governed, is but the government of a part, over a part, the major over the minor portion.

But this misconception of the true elements of constitutional government does not stop here. It leads to others equally false and fatal, in reference to the best means of preserving and perpetuating them, when, from some fortunate combination of circumstances, they are correctly formed. For they who fall into these errors regard the restrictions which organism imposes on the will of the numerical majority as restrictions on the will of the people, and, therefore, as not only useless, but wrongful and mischievous. And hence they endeavor to destroy organism, under the delusive hope of making government more democratic....

The necessary consequence of taking the sense of the community by the concurrent majority is, as has

been explained, to give to each interest or portion of the community a negative on the others. It is this mutual negative among its various conflicting interests, which invests each with the power of protecting itself; and places the rights and safety of each, where only they can be securely placed, under its own guardianship. Without this there can be no systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others: and without this there can be no constitution. It is this negative power, the power of preventing or arresting the action of the government—be it called by what term it may—veto, interposition, nullification, check, or balance of power—which, in fact, forms the constitution. They are all but different names for the negative power. In all its forms, and under all its names, it results from the concurrent majority. Without this there can be no negative; and, without a negative, no constitution. The assertion is true in reference to all constitutional governments, be their forms what they may. It is, indeed, the negative power which makes the constitution—and the positive which makes the government. The one is the power of acting—and the other the power of preventing or arresting action....

From this there results another distinction, which, although secondary in its character, very strongly marks the difference between these forms of government. I refer to their respective conservative principle; that is, the principle by which they are upheld and preserved. This principle, in constitutional governments, is compromise—and in absolute governments, is force—as will be next explained. It has been already shown, that the same constitution of man which leads those who govern to oppress the governed—if not prevented—will, with equal force and certainty, lead the latter to resist oppression, when possessed of the means of doing so peaceably and successfully. But absolute governments, of all forms, exclude all other means of resistance to their authority, than that of force; and, of course, leave no other alternative to the governed, but to acquiesce in oppression, however great it may be, or to resort to force to put down the government. But the dread of such a resort must necessarily lead the government to prepare to meet force in order to protect itself; and hence, of necessity, force becomes the conservative principle of all such governments.

On the contrary, the government of the concurrent majority, where the organism is perfect, excludes the possibility of oppression, by giving to each interest, or portion, or order—where there are established classes—the means of protecting itself, by its negative, against all measures calculated to advance the peculiar interests of others at its expense. Its effect, then, is, to cause the different interests, portions, or orders—as the case may be—to desist from attempting to adopt any measure calculated to promote the prosperity of one, or more, by sacrificing that of others; and thus to force them to unite in such measures only as would promote the prosperity of all, as the only means to prevent the suspension of the action of the government;—and, thereby, to avoid anarchy, the greatest of all evils. It is by means of such authorized and effectual resistance, that oppression is prevented, and the necessity of resorting to force superseded, in governments of the concurrent majority—and, hence, compromise, instead of force, becomes their conservative principle....

The concurrent majority, on the other hand, tends to unite the most opposite and conflicting interests, and to blend the whole in one common attachment to the country. By giving to each interest, or portion, the power of self-protection, all strife and struggle between them for ascendancy, is prevented; and, thereby, not only every feeling calculated to weaken the attachment to the whole is suppressed, but the individual and the social feelings are made to unite in one common devotion to country. Each sees and feels that it can best promote its own prosperity by conciliating the goodwill, and promoting the prosperity of the others. And hence, there will be diffused throughout the whole community kind feelings between its different portions; and, instead of antipathy, a rivalry amongst them to promote the interests of each other, as far

as this can be done consistently with the interest of all. Under the combined influence of these causes, the interests of each would be merged in the common interests of the whole; and thus, the community would become a unit, by becoming the common center of attachment of all its parts. And hence, instead of faction, strife, and struggle for party ascendancy, there would be patriotism, nationality, harmony, and a struggle only for supremacy in promoting the common good of the whole....

To perfect society, it is necessary to develop the faculties, intellectual and moral, with which man is endowed. But the main spring to their development, and, through this, to progress, improvement and civilization, with all their blessings, is the desire of individuals to better their condition. For, this purpose, liberty and security are indispensable. Liberty leaves each free to pursue the course he may deem best to promote his interest and happiness, as far as it may be compatible with the primary end for which government is ordained—while security gives assurance to each, that he shall not be deprived of the fruits of his exertions to better his condition. These combined give to this desire the strongest impulse of which it is susceptible. For, to extend liberty beyond the limits assigned, would be to weaken the government and to render it incompetent to fulfill its primary end—the protection of society against dangers, internal and external. The effect of this would be, insecurity; and, of insecurity—to weaken the impulse of individuals to better their condition, and thereby retard progress and improvement.

On the other hand, to extend the powers of the government so as to contract the sphere assigned to liberty would have the same effect, by disabling individuals in their efforts to better their condition. Herein is to be found the principle which assigns to power and liberty their proper spheres, and reconciles each to the other under all circumstances. For, if power be necessary to secure to liberty the fruits of its exertions, liberty, in turn, repays power with interest, by increased population, wealth, and other advantages, which progress and improvement bestow on the community. By thus assigning to each its appropriate sphere, all conflicts between them cease; and each is made to co-operate with and assist the other, in fulfilling the great ends for which government is ordained.

But the principle, applied to different communities, will assign to them different limits. It will assign a larger sphere to power and a more contracted one to liberty, or the reverse, according to circumstances. To the former, there must ever be allotted, under all circumstances, a sphere sufficiently large to protect the community against danger from without and violence and anarchy within. The residuum belongs to liberty. More cannot be safely or rightly allotted to it. But some communities require a far greater amount of power than others to protect them against anarchy and external dangers; and, of course, the sphere of liberty in such, must be proportionally contracted.

The causes calculated to enlarge the one and contract the other, are numerous and various. Some are physical—such as open and exposed frontiers, surrounded by powerful and hostile neighbors. Others are moral—such as the different degrees of intelligence, patriotism, and virtue among the mass of the community, and their experience and proficiency in the art of self-government. Of these, the moral are, by far, the most influential. A community may possess all the necessary moral qualifications, in so high a degree, as to be capable of self-government under the most adverse circumstances; while, on the other hand, another may be so sunk in ignorance and vice, as to be incapable of forming a conception of liberty, or of living, even when most favored by circumstances, under any other than an absolute and despotic government.

The principle, in all communities, according to these numerous and various causes, assigns to power and liberty their proper spheres. To allow to liberty, in any case, a sphere of action more extended than this assigns, would lead to anarchy; and this, probably, in the end, to a contraction instead of an enlargement of

its sphere. Liberty, then, when forced on a people unfit for it, would, instead of a blessing, be a curse; as it would, in its reaction, lead directly to anarchy—the greatest of all curses. No people, indeed, can long enjoy more liberty than that to which their situation and advanced intelligence and morals fairly entitle them. If more than this be allowed, they must soon fall into confusion and disorder—to be followed, if not by anarchy and despotism, by a change to a form of government more simple and absolute; and, therefore, better suited to their condition. And hence, although it may be true, that a people may not have as much liberty as they are fairly entitled to, and are capable of enjoying—yet the reverse is questionably true—that no people can long possess more than they are fairly entitled to. Liberty, indeed, though among the greatest of blessings, is not so great as that of protection; inasmuch, as the end of the former is the progress and improvement of the race—while that of the latter is its preservation and perpetuation. And hence, when the two come into conflict, liberty must, and ever ought, to yield to protection; as the existence of the race is of greater moment than its improvement.

It follows, from what has been stated, that it is a great and dangerous error to suppose that all people are equally entitled to liberty. It is a reward to be earned, not a blessing to be gratuitously lavished on all alike—a reward reserved for the intelligent, the patriotic, the virtuous and deserving—and not a boon to be bestowed on a people too ignorant, degraded and vicious, to be capable either of appreciating or of enjoying it....

There is another error, not less great and dangerous, usually associated with the one which has just been considered. I refer to the opinion, that liberty and equality are so intimately united, that liberty cannot be perfect without perfect equality. That they are united to a certain extent—and that equality of citizens, in the eyes of the law, is essential to liberty in a popular government, is conceded. But to go further, and make equality of condition essential to liberty, would be to destroy both liberty and progress. The reason is, that inequality of condition, while it is a necessary consequence of liberty, is, at the same time, indispensable to progress. In order to understand why this is so, it is necessary to bear in mind, that the main spring to progress is, the desire of individuals to better their condition; and that the strongest impulse which can be given to it is, to leave individuals free to exert themselves in the manner they may deem best for that purpose, as far at least as it can be done consistently with the ends for which government is ordained—and to secure to all the fruits of their exertions.

Now, as individuals differ greatly from each other, in intelligence, sagacity, energy, perseverance, skill, habit of industry and economy, physical power, position and opportunity—the necessary effect of leaving all free to exert themselves to better their condition, must be a corresponding inequality between those who may possess these qualities and advantages in a high degree, and those who may be deficient in them. The only means by which this result can be prevented are, either to impose such restrictions on the exertions of those who may possess them in a high degree, as will place them on a level with those who do not; or to deprive them of the fruits of their exertions. But to impose such restrictions on them would be destructive of liberty—while, to deprive them of the fruits of their exertions, could be to destroy the desire of bettering their condition. It is, indeed, his inequality of condition between the front and rear ranks, in the march of progress, which gives so strong an impulse to the former to maintain their position, and to the latter to press forward into their files. This gives to progress its greatest impulse. To force the front rank back to the rear, or attempt to push forward the rear into line with the front, by the interposition of the government, would put an end to the impulse, and effectually arrest the march of progress.

These great and dangerous errors have their origin in the prevalent opinion that all men are born free and equal—than which nothing can be more unfounded and false. It rests upon the assumption of a fact, which is contrary to universal observation, in whatever light it may be regarded. It is, indeed, difficult to explain

how an opinion so destitute of all sound season, ever could have been so extensively entertained, unless we regard it as being confounded with another, which has some semblance of truth—but which, when properly understood, is not less false and dangerous. I defer to the assertion, that all men are equal in the state of nature; meaning, by a state of nature, a state of individuality, supposed to have existed prior to the social and political state; and in which men lived apart and independent of each other. If such a state ever did exist, all men would save been, indeed, free and equal in it; that is, free to do as they pleased, and exempt from the authority or control of others—as, by supposition, it existed anterior to society and government. But such a state is purely hypothetical. It never did, nor can exist; as it is inconsistent with the preservation and perpetuation of the race. It is, therefore, a great misnomer to call it the state of nature. Instead of being the natural state of man, it is, of all conceivable states, the most opposed to his nature—most repugnant to his feelings, and most incompatible with his wants.

His natural state is, the social and political—the one for which his Creator made him, and the only one in which he can preserve and perfect his race. As, then, there never was such a state as the, so-called, state of nature, and never can be, it follows, that men, instead of being born in it, are born in the social and political state; and of course, instead of being born free and equal, are born subject, not only to parental authority, but to the laws and institutions of the country where born, and under whose protection they draw their first breath....

It follows, from all that has been said, that the more perfectly a government combines power and liberty—that is, the greater its power and the more enlarged and secure the liberty of individuals, the more perfectly it fulfills the ends for which government is ordained. To show, then, that the government of the concurrent majority is better calculated to fulfill them than that of the numerical, it is only necessary to explain why the former is better suited to combine a higher degree of power and a wider scope of liberty than the latter. I shall begin with the former. The concurrent majority, then, is better suited to enlarge and secure the bounds of liberty, because it is better suited to prevent government from passing beyond its proper limits, and to restrict it to its primary end—the protection of the community. But in doing this, it leaves, necessarily, all beyond it open and free to individual exertions; and thus enlarges and secures the sphere of liberty to the greatest extent which the condition of the community will admit, as has been explained. The tendency of government to pass beyond its proper limits is what exposes liberty to danger, and renders it insecure; and it is the strong counteraction of governments of the concurrent majority to this tendency which makes them so favorable to liberty. On the contrary, those of the numerical, instead of opposing and counteracting this tendency, add to it increased strength, in consequence of the violent party struggles incident to them, as has been fully explained. And hence their encroachments on liberty, and the danger to which it is exposed under such governments.

So great, indeed, is the difference between the two in this respect, that liberty is little more than a name under all governments of the absolute form, including that of the numerical majority; and can only have a secure and durable existence under those of the concurrent or constitutional form. The latter, by giving to each portion of the community which may be unequally affected by its action, a negative on the others, prevents all partial or local legislation, and restricts its action to such measures as are designed for the protection and the good of the whole. In doing this, it secures, at the same time, the rights and liberty of the people, regarded individually; as each portion consists of those who, whatever may be the diversity of interests among themselves, have the same interest in reference to the action of the government. Such being the case, the interest of each individual may be safely confided to the majority, or voice of his portion, against that of all others, and, of course, the government itself. It is only through an organism which vests

each with a negative, in some one form or another, that those who have like interests in preventing the government from passing beyond its proper sphere, and encroaching on the rights and liberty of individuals, can cooperate peaceably and effectually in resisting the encroachments of power, and thereby preserve their rights and liberty. Individual resistance is too feeble, and the difficulty of concert and co-operation too great, unaided by such an organism, to oppose, successfully, the organized power of government, with all the means of the community at its disposal; especially in populous countries of great extent, where concert and co-operation are almost impossible. Even when the oppression of the government comes to be too great to be borne, and force is resorted to in order to overthrow it, the result is rarely ever followed by the establishment of liberty. The force sufficient to overthrow an oppressive government is usually sufficient to establish one equally, or more, oppressive in its place. And hence, in no governments, except those that rest on the principle of the concurrent or constitutional majority, can the people guard their liberty against power; and hence, also, when lost, the great difficulty and uncertainty of regaining it by force. It may be further affirmed, that, being more favorable to the enlargement and security of liberty, governments of the concurrent, must necessarily be more favorable to progress, development, improvement, and civilization....



## II. Henry David Thoreau on Civil Disobedience

### Henry David Thoreau (1817-1862)

Born in 1817 in Concord, Massachusetts, Thoreau graduated Harvard and taught elementary school. He became friends with Ralph Waldo Emerson, who encouraged his literary talents. Thoreau shared Emerson's belief in Transcendentalism, a 19th century movement based on the belief that personal reflection and not organized religion was essential to spiritual fulfillment.

On July 4, 1845, Thoreau declared independence from society and moved into a small cabin in wooded property owned by Emerson. He lived on what he grew or found in the woods. He refused to pay taxes because of his opposition to slavery and the US war with Mexico. Convicted of failing to pay taxes, Thoreau spent a night in jail before a relative paid his debt. He wrote the essay "On Resistance to Civil Government" to justify his refusal to pay taxes, and it came to be known as "On Civil Disobedience."

Thoreau ended his life as a hermit after two years and returned to society, where he continued to write. He became a land surveyor and died the year after the Civil War began.

### On Civil Disobedience (1849)

Thoreau's essay reflects two important themes in American political theory. The first is the skepticism about whether unconstrained majority rule should be the basis of government. Like Tocqueville, Thoreau claimed that majority rule is essentially the triumph of force over right, as the justification for majority rule is essentially that the majority is stronger than a minority. The second theme is the belief that individuals who cannot change government policy through the political process are justified in peacefully violating laws that they believe unjust, as long as they willingly accept the punishment for such violations. Thoreau's philosophy of non-violent civil disobedience inspired many future Americans, most notably Martin Luther King, Jr.

I heartily accept the motto "That government is best which governs least"; and I should like to see it acted up to more readily and systematically. Carried out, it finally amounts to this, which also I believe, "That government is best which governs not at all"; and when men are prepared for it, that will be the kind

of government which they will have. Government is at best but an expedient; but most governments are usually, and all governments are sometimes, inexpedient. The objections which have been brought against a standing army, and they are many and weighty, and deserve to prevail, may also at last be brought against a standing government. The standing army is only an arm of the standing government. The government itself, which is only the mode which the people have chosen to execute their will, is equally liable to be abused and perverted before the people can act through it. Witness the present Mexican War, the work of comparatively a few individuals using the standing government as their tool; for, in the outset, the people would not have consented to this measure.

This American government—what is it but a tradition, though a recent one, endeavoring to transmit itself unimpaired to posterity, but each instant losing some of its integrity? It has not the vitality and force of a single living man; for a single man can bend it to his will. It is a sort of wooden gun to the people themselves; and, if ever they should use it in earnest as a real one against each other, it will surely split. But it is not the less necessary for this; for the people must have some complicated machinery or other, and hear its din, to satisfy that idea of government which they have. Governments show thus how successfully men can be imposed on, even impose on themselves, for their own advantage. It is excellent, we must all allow, yet this government never of itself furthered any enterprise, but by the alacrity with which it got out of its way. It does not keep the country free. It does not settle the West. It does not educate. The character inherent in the American people has done all that has been accomplished; and it would have done somewhat more, if the government had not sometimes got in its way. For government is an expedient by which men would fain succeed in letting one another alone; and, as has been said, when it is most expedient, the governed are most let alone by it. Trade and commerce, if they were not made of India rubber, would never manage to bounce over the obstacles which legislators are continually putting in their way; and, if one were to judge these men wholly by the effects of their actions, and not partly by their intentions, they would deserve to be classed and punished with those mischievous persons who put obstructions on the railroads.

But, to speak practically and as a citizen, unlike those who call themselves no-government men, I ask for, not *at once* no government, but at once a better government. Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it.

After all, the practical reason why, when the power is once in the hands of the people, a majority are permitted, and for a long period continue, to rule, is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rule in all cases cannot be based on justice, even as far as men understand it. Can there not be a government in which majorities do not virtually decide right and wrong, but conscience?—in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume, is to do at any time what I think right. It is truly enough said, that a corporation has no conscience; but a corporation of conscientious men is a corporation with a conscience. Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice. A common and natural result of an undue respect for law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys and all, marching in admirable order over hill and dale to the wars, against their wills, aye, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart. They have no doubt that it is a damnable business in which they are concerned;

they are all peaceably inclined. Now, what are they? Men at all? or small moveable forts and magazines, at the service of some unscrupulous man in power?...

The mass of men serve the State thus, not as men mainly, but as machines, with their bodies. They are the standing army, and the militia, jailers, constables, posse comitatus, etc. In most cases there is no free exercise whatever of the judgment or of the moral sense; but they put themselves on a level with wood and earth and stones; and wooden men can perhaps be manufactured that will serve the purpose as well. Such command no more respect than men of straw, or a lump of dirt. They have the same sort of worth only as horses and dogs. Yet such as these even are commonly esteemed good citizens. Others, as most legislators, politicians, lawyers, ministers, and officeholders, serve the State chiefly with their heads; and, as they rarely make any moral distinctions, they are as likely to serve the devil, without intending it, as God. A very few, as heroes, patriots, martyrs, reformers in the great sense, and men, serve the State with their consciences also, and so necessarily resist it for the most part; and they are commonly treated by it as enemies....

How does it become a man to behave toward this American government to-day? I answer that he cannot without disgrace be associated with it. I cannot for an instant recognize that political organization as my government which is the slave's government also.

All men recognize the right of revolution; that is, the right to refuse allegiance to and to resist the government, when its tyranny or its inefficiency are great and unendurable. But almost all say that such is not the case now. But such was the case, they think, in the Revolution of '75. If one were to tell me that this was a bad government because it taxed certain foreign commodities brought to its ports, it is most probable that I should not make an ado about it, for I can do without them: all machines have their friction; and possibly this does enough good to counterbalance the evil. At any rate, it is a great evil to make a stir about it. But when the friction comes to have its machine, and oppression and robbery are organized, I say, let us not have such a machine any longer. In other words, when a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize. What makes this duty the more urgent is the fact, that the country so overrun is not our own, but ours is the invading army.

There are thousands who are in opinion opposed to slavery and to the war, who yet in effect do nothing to put an end to them; who, esteeming themselves children of Washington and Franklin, sit down with their hands in their pockets, and say that they know not what to do, and do nothing; who even postpone the question of freedom to the question of free-trade, and quietly read the prices-current along with the latest advices from Mexico, after dinner, and, it may be, fall asleep over them both. What is the price-current of an honest man and patriot today? They hesitate, and they regret, and sometimes they petition; but they do nothing in earnest and with effect. They will wait, well disposed, for others to remedy the evil, that they may no longer have it to regret. At most, they give only a cheap vote, and a feeble countenance and Godspeed, to the right, as it goes by them. There are nine hundred and ninety-nine patrons of virtue to one virtuous man; but it is easier to deal with the real possessor of a thing than with the temporary guardian of it.

All voting is a sort of gaming, like chequers or backgammon, with a slight moral tinge to it, a playing with right and wrong, with moral questions; and betting naturally accompanies it. The character of the voters is not staked. I cast my vote, perchance, as I think right; but I am not vitally concerned that that right should prevail. I am willing to leave it to the majority. Its obligation, therefore, never exceeds that of expediency. Even voting for the right is doing nothing for it. It is only expressing to men feebly your desire that it should prevail. A wise man will not leave the right to the mercy of chance, not wish it to prevail through the power

of the majority. There is but little virtue in the action of masses of men. When the majority shall at length vote for the abolition of slavery, it will be because they are indifferent to slavery, or because there is but little slavery left to be abolished by their vote. They will then be the only slaves. Only his vote can hasten the abolition of slavery who asserts his own freedom by his vote....

It is not a man's duty, as a matter of course, to devote himself to the eradication of any, even the most enormous wrong; he may still properly have other concerns to engage him; but it is his duty, at least, to wash his hands of it, and, if he gives it no thought longer, not to give it practically his support.... The broadest and most prevalent error requires the most disinterested virtue to sustain it. The slight reproach to which the virtue of patriotism is commonly liable, the noble are most likely to incur. Those who, while they disapprove of the character and measures of a government, yield to it their allegiance and support, are undoubtedly its most conscientious supporters, and so frequently the most serious obstacles to reform. Some are petitioning the State to dissolve the Union, to disregard the requisitions of the President. Why do they not dissolve it themselves—the union between themselves and the State—and refuse to pay their quota into its treasury? Do not they stand in the same relation to the State, that the State does to the Union? And have not the same reasons prevented the State from resisting the Union, which have prevented them from resisting the State?...

Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. It makes it worse. Why is it not more apt to anticipate and provide for reform? Why does it not cherish its wise minority? Why does it cry and resist before it is hurt? Why does it not encourage its citizens to be on the alert to point out its faults, and do better than it would have them? Why does it always crucify Christ, and excommunicate Copernicus and Luther, and pronounce Washington and Franklin rebels?...

Let your life be a counter friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn. As for adopting the ways which the State has provided for remedying the evil, I know not of such ways. They take too much time, and a man's life will be gone. I have other affairs to attend to. I came into this world, not chiefly to make this a good place to live in, but to live in it, be it good or bad. A man has not everything to do, but something; and because he cannot do everything, it is not necessary that he should do something wrong. It is not my business to be petitioning the governor or the legislature any more than it is theirs to petition me; and, if they should not hear my petition, what should I do then? But in this case the State has provided no way: its very Constitution is the evil....

I meet this American government, or its representative the State government, directly, and face to face, once a year, no more, in the person of its tax-gatherer; this is the only mode in which a man situated as I am necessarily meets it; and it then says distinctly, Recognize me; and the simplest, the most effectual, and, in the present posture of affairs, the indispensablest mode of treating with it on this head, of expressing your little satisfaction with and love for it, is to deny it then. My civil neighbor, the tax-gatherer, is the very man I have to deal with—for it is, after all, with men and not with parchment that I quarrel—and he has voluntarily chosen to be an agent of the government. How shall he ever know well what he is and does as an officer of the government, or as a man, until he is obliged to consider whether he shall treat me, his neighbor, for whom he has respect, as a neighbor and well-disposed man, or as a maniac and disturber of the peace, and see if he can get over this obstruction to his neighborliness without a ruder and more impetuous

thought or speech corresponding with his action? I know this well, that if one thousand, if one hundred, if ten men whom I could name—if ten honest men only—aye, if one honest man, in this State of Massachusetts, ceasing to hold slaves, were actually to withdraw from this copartnership, and be locked up in the county jail therefor, it would be the abolition of slavery in America. For it matters not how small the beginning may seem to be: what is once well done is done for ever...

Under a government which imprisons any unjustly, the true place for a just man is also a prison. The proper place to-day, the only place which Massachusetts has provided for her freer and less desponding spirits, is in her prisons, to be put out and locked out of the State by her own act, as they have already put themselves out by their principles. It is there that the fugitive slave, and the Mexican prisoner on parole, and the Indian come to plead the wrongs of his race, should find them; on that separate, but more free and honorable ground, where the State places those who are not with her, against her—the only house in a slave-state in which a free man can abide with honor. If any think that their influence would be lost there, and their voices no longer afflict the ear of the State, that they would not be as an enemy within its walls, they do not know by how much truth is stronger than error, nor how much more eloquently and effectively he can combat injustice who has experienced a little in his own person. Cast your whole vote, not a strip of paper merely, but your whole influence. A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs by its whole weight. If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose. If a thousand men were not to pay their tax-bills this year, that would not be a violent and bloody measure, as it would be to pay them, and enable the State to commit violence and shed innocent blood. This is, in fact, the definition of a peaceable revolution if any such is possible. If the tax-gatherer, or any other public officer, asks me, as one has done, "But what shall I do?" my answer is, "If you really wish to do anything, resign your office." When the subject has refused allegiance, and the officer has resigned his office, then the revolution is accomplished...

When I converse with the freest of my neighbors, I perceive that, whatever they may say about the magnitude and seriousness of the question, and their regard for the public tranquillity, the long and the short of the matter is, that they cannot spare the protection of the existing government, and they dread the consequences of disobedience to it to their property and families. For my own part, I should not like to think that I ever rely on the protection of the State. But, if I deny the authority of the State when it presents its tax-bill, it will soon take and waste all my property, and so harass me and my children without end. This is hard. This makes it impossible for a man to live honestly and at the same time comfortably in outward respects....

I have paid no poll-tax for six years. I was put into jail once on this account, for one night; and, as I stood considering the walls of solid stone, two or three feet thick, the door of wood and iron, a foot thick, and the iron grating which strain the light, I could not help being struck with the foolishness of that institution which treated me as if I were mere flesh and blood and bones, to be locked up. I wondered that it should have concluded at length that this was the best use it could put me and had never thought to avail itself of my services in some way. I saw that, if there was a wall of stone between me and my townsmen, there was a still more difficult one to climb or break through, before they could get to be as free as I was. I did not for a moment feel confined, and the walls seemed a great waste of stone and mortar. I felt as if I alone of all my townsmen had paid my tax. They plainly did not know how to treat me, but behaved like persons who are underbred. In every threat and in every compliment there was a blunder; for they thought that my chief desire was to stand the other side of that stone wall. I could not but smile to see how industriously they locked the door on my meditations, which followed them out again without let or hinderance, and they

were really all that was dangerous. As they could not reach me, they had resolved to punish my body; just as boys, if they cannot come at some person against whom they have a spite, will abuse his dog. I saw that the State was half-witted, that it was timid as a lone woman with her silver spoons, and that it did not know its friends from its foes, and I lost all my remaining respect for it, and pitied it.

Thus the State never intentionally confronts a man's sense, intellectual or moral but only his body, his senses. It is not armed with superior wit or honesty, but with superior physical strength...

The authority of government, even such as I am willing to submit to—for I will cheerfully obey those who know and can do better than I, and in many things even those who neither know or can do so well—is still an impure one: to be strictly just, it must have the sanction and consent of the governed. It can have no pure right over my person and property but what I concede to it. The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual. Is a democracy such as we know it, the last improvement possible in government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State, until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose, if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow-men. A State which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious State, which also I have imagined, but not yet anywhere seen.

# 12. Elizabeth Cady Stanton's Declaration of Independence for Women

## Elizabeth Cady Stanton (1815-1902)

Elizabeth Cady was born to wealthy parents in Johnstown, New York, and educated at the prestigious Emma Willard School. She married a prominent abolitionist, Henry Stanton, and honeymooned with him in England. While there she attended the World Slavery Convention, but was forced to sit apart from the male delegates and behind a curtain. Later, she credited her experience at this convention with inspiring her to become an advocate for women's suffrage.

Stanton had seven children, which prevented her from travelling to campaign for female equality. This did not stop her from organizing the first women's rights convention in her hometown of Seneca Falls, New York, in 1848. She also worked extensively with Susan B. Anthony in promoting women's suffrage. She became the first woman to run for Congress in 1866, arguing that there was nothing in Article I that barred women from serving in Congress. She also opposed the Fifteenth Amendment on the grounds that women deserved the vote as much as former slaves, and promoted a Sixteenth Amendment to grant women the vote. This would eventually become the Nineteenth Amendment, which was ratified by Congress in 1920.

## Seneca Falls Declaration of Sentiments (1848)

At the Seneca Falls convention, Elizabeth Stanton presented a Declaration of Sentiments modeled on the Declaration of Independence. Her Declaration began with a philosophical statement of the natural equality of men and women. She listed 18 grievances against patriarchal American society, the same number as the original Declaration. She presented ten resolutions that she derived from the premise of female equality that concerned the establishment of political and legal equality for women. Most of these would not be achieved until the 20th century.

When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, but one

to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes that impel them to such a course.

We hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed. Whenever any form of Government becomes destructive of these ends, it is the right of those who suffer from it to refuse allegiance to it, and to insist upon the institution of a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of the women under this government, and such is now the necessity which constrains them to demand the equal station to which they are entitled.

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world.

He has never permitted her to exercise her inalienable right to the elective franchise.

He has compelled her to submit to laws, in the formation of which she had no voice.

He has withheld from her rights which are given to the most ignorant and degraded men—both natives and foreigners.

Having deprived her of this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.

He has made her, if married, in the eye of the law, civilly dead.

He has taken from her all right in property, even to the wages she earns.

He has made her, morally, an irresponsible being, as she can commit many crimes with impunity, provided they be done in the presence of her husband. In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming, to all intents and purposes, her master—the law giving him power to deprive her of her liberty, and to administer chastisement.

He has so framed the laws of divorce, as to what shall be the proper causes of divorce; in case of separation, to whom the guardianship of the children shall be given; as to be wholly regardless of the happiness of women—the law, in all cases, going upon the false supposition of the supremacy of man, and giving all power into his hands.

After depriving her of all rights as a married woman, if single and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it.

He has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration. He closes against her all the avenues to wealth and distinction, which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known.

He has denied her the facilities for obtaining a thorough education—all colleges being closed against her.

He allows her in Church as well as State, but a subordinate position, claiming Apostolic authority for her



exclusion from the ministry, and, with some exceptions, from any public participation in the affairs of the Church.

He has created a false public sentiment, by giving to the world a different code of morals for men and women, by which moral delinquencies which exclude women from society, are not only tolerated but deemed of little account in man.

He has usurped the prerogative of Jehovah himself, claiming it as his right to assign for her a sphere of action, when that belongs to her conscience and her God.

He has endeavored, in every way that he could to destroy her confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life.

Now, in view of this entire disfranchisement of one-half the people of this country, their social and religious degradation,—in view of the unjust laws above mentioned, and because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of these United States.

In entering upon the great work before us, we anticipate no small amount of misconception, misrepresentation, and ridicule; but we shall use every instrumentality within our power to effect our object. We shall employ agents, circulate tracts, petition the State and national Legislatures, and endeavor to enlist the pulpit and the press in our behalf. We hope this Convention will be followed by a series of Conventions, embracing every part of the country.

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*Whereas*, the great precept of nature is conceded to be, “that man shall pursue his own true and substantial happiness,” Blackstone, in his Commentaries, remarks, that this law of Nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity if contrary to this, and such of them as are valid, derive all their force, and all their validity, and all their authority, mediately and immediately, from this original;

*Therefore, Resolved*, That such laws as conflict, in any way, with the true and substantial happiness of woman, are contrary to the great precept of nature, and of no validity; for this is “superior in obligation to any other.”

*Resolved*, That all laws which prevent woman from occupying such a station in society as her conscience shall dictate, or which place her in a position inferior to that of man, are contrary to the great precept of nature, and therefore of no force or authority.

*Resolved*, That woman is man’s equal—was intended to be so by the Creator, and the highest good of the race demands that she should be recognized as such.

*Resolved*, That the women of this country ought to be enlightened in regard to the laws under which they live, that they may no longer publish their degradation, by declaring themselves satisfied with their present position, nor their ignorance, by asserting that they have all the rights they want.

*Resolved*, That inasmuch as man, while claiming for himself intellectual superiority, does accord to woman moral superiority, it is pre-eminently his duty to encourage her to speak, and teach, as she has an opportunity, in all religious assemblies.

*Resolved*, That the same amount of virtue, delicacy, and refinement of behavior, that is required of woman in the social state, should also be required of man, and the same transgressions should be visited with equal severity on both man and woman.

*Resolved*, That the objection of indelicacy and impropriety, which is so often brought against woman when

she addresses a public audience, comes with a very ill grace from those who encourage, by their attendance, her appearance on the stage, in the concert, or in the feats of the circus.

*Resolved*, That woman has too long rested satisfied in the circumscribed limits which corrupt customs and a perverted application of the Scriptures have marked out for her, and that it is time she should move in the enlarged sphere which her great Creator has assigned her.

*Resolved*, That it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise.

*Resolved*, That the equality of human rights results necessarily from the fact of the identity of the race in capabilities and responsibilities.

*Resolved, therefore*, That, being invested by the Creator with the same capabilities, and the same consciousness of responsibility for their exercise, it is demonstrably the right and duty of woman, equally with man, to promote every righteous cause, by every righteous means; and especially in regard to the great subjects of morals and religion, it is self-evidently her right to participate with her brother in teaching them, both in private and in public, by writing and by speaking, by any instrumentalities proper to be used, and in any assemblies proper to be held; and this being a self-evident truth, growing out of the divinely implanted principles of human nature, any custom or authority adverse to it, whether modern or wearing the hoary sanction of antiquity, is to be regarded as self-evident falsehood, and at war with the interests of mankind.



## UNIT III

# CONFLICT, DISAGGREGATION, CIVIL WAR

The 1830s saw two new parties develop—the Democrats and the Whigs. But neither could provide an answer to the problem of slavery, which Frederick Douglass addresses in the first reading in this unit. As part of the Compromise of 1850, Congress adopted a fugitive slave law that penalized state officials who interfered with the return of runaway slaves and paid judges more for certifying the return of a slave than for setting the person free. Many northerners refused to comply with this law and helped slaves escape through the “Underground Railway.” Southerners criticized the federal government for not doing more to return escaped slaves.

In the north, abolitionist demands led the Whig Party to splinter in 1854, paving the way for a new Republican Party devoted to abolishing slavery. The Democratic Party offered the alternative of “popular sovereignty,” which meant allowing each state or territory to decide whether slavery would be permitted within its boundaries. With no legislative solution in sight, the Supreme Court attempted to permanently deny blacks citizenship when it decided *Scott v. Sanford* in 1857. Chief Justice Taney’s opinion was based on a one-sided view of history, and Associate Justice Benjamin Curtis demonstrated the fallacies of his reasoning.

The Dred Scott decision made slavery the main issue in the 1860 presidential election. Illinois Republican presidential candidate Abraham Lincoln argued in his Cooper Union Address that Dred Scott needed to be reversed since it was inconsistent with the nation’s founding principles. This speech convinced abolitionists that he deserved their support and set Lincoln on the path to the Republican nomination for president. The Democratic Party splintered when Southern delegates twice walked out of the nominating convention after it failed to endorse stronger protections for slavery. The 1860 presidential election featured a four-way contest between Lincoln, two Democrats (Stephen Douglas from the north and John Breckenridge from the south) and John Bell from a third party that urged the adoption of a constitutional amendment protecting slavery. The election of Abraham Lincoln—who received only 40% of the popular vote—triggered secession conventions in numerous states.

The crisis grew worse in the four months between Lincoln’s election and inauguration. Democratic President James Buchanan’s last State of the Union Address in December 1860 suggested that if the Union did not enforce laws requiring the return of escaped slaves, the southern states would have no other choice than to secede. Soon after his address, South Carolina passed the first secession resolution in US history. Lincoln’s Inaugural Address denied the possibility of secession and suggested the Union could continue to exist with slavery. The Civil War broke out five weeks after he took office.

Soon after conflict began—and more states seceded—Lincoln suspended habeas corpus in Maryland. He did not wait until Congress had approved this measure, and Chief Justice Taney held in *ex parte Merryman* that this violated the Constitution. Lincoln ignored Taney’s decision, and he eventually obtained the consent of Congress for the suspension in August 1861. As the war continued, Lincoln suspended more constitutional rights in pursuit of victory, including jailing critics of his policies, shutting down newspapers, and using military commissions to try northern civilians suspected of disloyalty. He justified these policies in a July 1863 letter to Erastus Corning and others, likening American citizens to a sick patient unable to decide upon the best course of treatment. He claimed that it was his duty to preserve the Union even if it meant temporarily abrogating constitutional rights. Lincoln professed his willingness to transfer power to a successor if he lost the 1864 presidential election, but made a fair election impossible because he continued

to detain many of his critics until after his reelection was assured. The unit ends with Lincoln's attempt at reconciliation in his Second Inaugural Address.

# 13. Frederick Douglass: What Independence Day Means to Enslaved Persons

## Frederick Douglass (1817-1895)

Frederick Bailey was born into slavery on a plantation in the Eastern Shore of Maryland. He grew up in Baltimore and secretly learned to read and write. At age 19, he fell in love with Anna Murray, a free black woman, and they planned his escape from enslavement. He dressed in a sailor's uniform and caught a northbound train, eventually meeting Anna in New York. They married and settled in New Bedford, Massachusetts, where he adopted the surname Douglass.

He became a minister and an anti-slavery crusader, travelling widely to give speeches on the injustice of slavery. He spent two years in the United Kingdom, during which time his supporters raised funds to legally purchase his freedom. He returned to the US in 1847, started an abolitionist newspaper, and participated in the Underground Railroad. After the Civil War, he continued to fight for equal rights and ran for vice president on a ticket with Victoria Woodhull in the 1872 Presidential election. He died of a heart attack in 1895.

## What to a Slave is the Fourth of July? (1852)

Frederick Douglass was also an advocate of women's suffrage. He often spoke to women's groups, and on July 5, 1852 gave an address to the Rochester Anti-Slavery Sewing Society that was later entitled "What to the Slave is the Fourth of July?" Douglass criticized the hypocrisy of a nation founded on liberty and equality denying these rights through slavery, and argued that Americans failed to take these ideals seriously in maintaining slavery. He showed how American laws implicitly recognized the humanity of slaves but treated them as property, and forced Americans to assist bounty-hunters who sought to return persons alleged to be escaped slaves to their masters. He also attacked recent changes in law that made it more difficult to abolish slavery, and expressed hope that the US would soon follow the UK in abolishing slavery. His oration is often cited as one of the greatest anti-slavery arguments made in antebellum America.

...This, for the purpose of this celebration, is the 4th of July. It is the birthday of your National Independence, and of your political freedom. This, to you, is what the Passover was to the emancipated people of God. It

carries your minds back to the day, and to the act of your great deliverance; and to the signs, and to the wonders, associated with that act, and that day. This celebration also marks the beginning of another year of your national life; and reminds you that the Republic of America is now 76 years old. I am glad, fellow-citizens, that your nation is so young. Seventy-six years, though a good old age for a man, is but a mere speck in the life of a nation. Three score years and ten is the allotted time for individual men; but nations number their years by thousands. According to this fact, you are, even now, only in the beginning of your national career, still lingering in the period of childhood. I repeat, I am glad this is so. There is hope in the thought, and hope is much needed, under the dark clouds which lower above the horizon. The eye of the reformer is met with angry flashes, portending disastrous times; but his heart may well beat lighter at the thought that America is young, and that she is still in the impressible stage of her existence. May he not hope that high lessons of wisdom, of justice and of truth, will yet give direction to her destiny? Were the nation older, the patriot's heart might be sadder, and the reformer's brow heavier. Its future might be shrouded in gloom, and the hope of its prophets go out in sorrow. There is consolation in the thought that America is young....

76 years ago, the people of this country were British subjects. The style and title of your "sovereign people" (in which you now glory) was not then born. You were under the British Crown. Your fathers esteemed the English Government as the home government; and England as the fatherland. This home government, you know, although a considerable distance from your home, did, in the exercise of its parental prerogatives, impose upon its colonial children, such restraints, burdens and limitations, as, in its mature judgment, it deemed wise, right and proper.

But, your fathers, who had not adopted the fashionable idea of this day of the infallibility of government, and the absolute character of its acts, presumed to differ from the home government in respect to the wisdom and the justice of some of those burdens and restraints. They went so far in their excitement as to pronounce the measures of government unjust, unreasonable, and oppressive, and altogether such as ought not to be quietly submitted to....

Feeling themselves harshly and unjustly treated by the home government, your fathers, like men of honesty, and men of spirit, earnestly sought redress. They petitioned and remonstrated; they did so in a decorous, respectful, and loyal manner. Their conduct was wholly unexceptionable. This, however, did not answer the purpose. They saw themselves treated with sovereign indifference, coldness and scorn. Yet they persevered. They were not the men to look back....

Oppression makes a wise man mad. Your fathers were wise men, and if they did not go mad, they became restive under this treatment. They felt themselves the victims of grievous wrongs, wholly incurable in their colonial capacity. With brave men there is always a remedy for oppression. Just here, the idea of a total separation of the colonies from the crown was born! It was a startling idea, much more so, than we, at this distance of time, regard it. The timid and the prudent (as has been intimated) of that day, were, of course, shocked and alarmed by it....

On the 2d of July, 1776, the old Continental Congress, to the dismay of the lovers of ease, and the worshipers of property, clothed that dreadful idea with all the authority of national sanction. They did so in the form of a resolution; and as we seldom hit upon resolutions, drawn up in our day whose transparency is at all equal to this, it may refresh your minds and help my story if I read it. "Resolved, That these united colonies are, and of right, ought to be free and Independent States; that they are absolved from all allegiance to the British Crown; and that all political connection between them and the State of Great Britain is, and ought to be, dissolved."

Citizens, your fathers made good that resolution. They succeeded; and today you reap the fruits of their

success. The freedom gained is yours; and you, therefore, may properly celebrate this anniversary. The 4th of July is the first great fact in your nation's history—the very ring-bolt in the chain of your yet undeveloped destiny....

Fellow-citizens, I am not wanting in respect for the fathers of this republic. The signers of the Declaration of Independence were brave men. They were great men too—great enough to give fame to a great age. It does not often happen to a nation to raise, at one time, such a number of truly great men. The point from which I am compelled to view them is not, certainly, the most favorable; and yet I cannot contemplate their great deeds with less than admiration. They were statesmen, patriots and heroes, and for the good they did, and the principles they contended for, I will unite with you to honor their memory.

They loved their country better than their own private interests; and, though this is not the highest form of human excellence, all will concede that it is a rare virtue, and that when it is exhibited, it ought to command respect. He who will, intelligently, lay down his life for his country, is a man whom it is not in human nature to despise. Your fathers staked their lives, their fortunes, and their sacred honor, on the cause of their country. In their admiration of liberty, they lost sight of all other interests.

They were peace men; but they preferred revolution to peaceful submission to bondage. They were quiet men; but they did not shrink from agitating against oppression. They showed forbearance; but that they knew its limits. They believed in order; but not in the order of tyranny. With them, nothing was “settled” that was not right. With them, justice, liberty and humanity were “final”; not slavery and oppression. You may well cherish the memory of such men. They were great in their day and generation. Their solid manhood stands out the more as we contrast it with these degenerate times....

Fellow-citizens, pardon me, allow me to ask, why am I called upon to speak here today? What have I, or those I represent, to do with your national independence? Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us? and am I, therefore, called upon to bring our humble offering to the national altar, and to confess the benefits and express devout gratitude for the blessings resulting from your independence to us?

Would to God, both for your sakes and ours, that an affirmative answer could be truthfully returned to these questions!... But, such is not the state of the case. I say it with a sad sense of the disparity between us. I am not included within the pale of this glorious anniversary! Your high independence only reveals the immeasurable distance between us. The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought life and healing to you, has brought stripes and death to me. This Fourth [of] July is yours, not mine. You may rejoice, I must mourn. To drag a man in fetters into the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony. Do you mean, citizens, to mock me, by asking me to speak today? If so, there is a parallel to your conduct. And let me warn you that it is dangerous to copy the example of a nation whose crimes, lowering up to heaven, were thrown down by the breath of the Almighty, burying that nation in irrecoverable ruin! I can today take up the plaintive lament of a peeled and woe-smitten people!

“By the rivers of Babylon, there we sat down. Yea! we wept when we remembered Zion. We hanged our harps upon the willows in the midst thereof. For there, they that carried us away captive, required of us a song; and they who wasted us required of us mirth, saying, Sing us one of the songs of Zion. How can we sing the Lord's song in a strange land? If I forget thee, O Jerusalem, let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth.”

Fellow-citizens; above your national, tumultuous joy, I hear the mournful wail of millions! whose chains,



heavy and grievous yesterday, are, to-day, rendered more intolerable by the jubilee shouts that reach them. If I do forget, if I do not faithfully remember those bleeding children of sorrow this day, “may my right hand forget her cunning, and may my tongue cleave to the roof of my mouth!” To forget them, to pass lightly over their wrongs, and to chime in with the popular theme, would be treason most scandalous and shocking, and would make me a reproach before God and the world. My subject, then fellow-citizens, is American slavery. I shall see, this day, and its popular characteristics, from the slave’s point of view. Standing, there, identified with the American bondman, making his wrongs mine, I do not hesitate to declare, with all my soul, that the character and conduct of this nation never looked blacker to me than on this 4th of July! Whether we turn to the declarations of the past, or to the professions of the present, the conduct of the nation seems equally hideous and revolting. America is false to the past, false to the present, and solemnly binds herself to be false to the future. Standing with God and the crushed and bleeding slave on this occasion, I will, in the name of humanity which is outraged, in the name of liberty which is fettered, in the name of the constitution and the Bible, which are disregarded and trampled upon, dare to call in question and to denounce, with all the emphasis I can command, everything that serves to perpetuate slavery—the great sin and shame of America! “I will not equivocate; I will not excuse”; I will use the severest language I can command; and yet not one word shall escape me that any man, whose judgment is not blinded by prejudice, or who is not at heart a slaveholder, shall not confess to be right and just.

But I fancy I hear some one of my audience say, it is just in this circumstance that you and your brother abolitionists fail to make a favorable impression on the public mind. Would you argue more, and denounce less, would you persuade more, and rebuke less, your cause would be much more likely to succeed. But, I submit, where all is plain there is nothing to be argued. What point in the anti-slavery creed would you have me argue? On what branch of the subject do the people of this country need light? Must I undertake to prove that the slave is a man? That point is conceded already. Nobody doubts it. The slaveholders themselves acknowledge it in the enactment of laws for their government. They acknowledge it when they punish disobedience on the part of the slave. There are seventy-two crimes in the State of Virginia, which, if committed by a black man, (no matter how ignorant he be), subject him to the punishment of death; while only two of the same crimes will subject a white man to the like punishment. What is this but the acknowledgement that the slave is a moral, intellectual and responsible being? The manhood of the slave is conceded. It is admitted in the fact that Southern statute books are covered with enactments forbidding, under severe fines and penalties, the teaching of the slave to read or to write. When you can point to any such laws, in reference to the beasts of the field, then I may consent to argue the manhood of the slave. When the dogs in your streets, when the fowls of the air, when the cattle on your hills, when the fish of the sea, and the reptiles that crawl, shall be unable to distinguish the slave from a brute, there will I argue with you that the slave is a man!

For the present, it is enough to affirm the equal manhood of the Negro race. Is it not astonishing that, while we are ploughing, planting and reaping, using all kinds of mechanical tools, erecting houses, constructing bridges, building ships, working in metals of brass, iron, copper, silver and gold; that, while we are reading, writing and cyphering, acting as clerks, merchants and secretaries, having among us lawyers, doctors, ministers, poets, authors, editors, orators and teachers; that, while we are engaged in all manner of enterprises common to other men, digging gold in California, capturing the whale in the Pacific, feeding sheep and cattle on the hill-side, living, moving, acting, thinking, planning, living in families as husbands, wives and children, and, above all, confessing and worshipping the Christian’s God, and looking hopefully for life and immortality beyond the grave, we are called upon to prove that we are men!

Would you have me argue that man is entitled to liberty? that he is the rightful owner of his own body? You have already declared it....

What, am I to argue that it is wrong to make men brutes, to rob them of their liberty, to work them without wages, to keep them ignorant of their relations to their fellow men, to beat them with sticks, to flay their flesh with the lash, to load their limbs with irons, to hunt them with dogs, to sell them at auction, to sunder their families, to knock out their teeth, to burn their flesh, to starve them into obedience and submission to their masters? Must I argue that a system thus marked with blood, and stained with pollution, is wrong? No! I will not. I have better employments for my time and strength than such arguments would imply.

What, then, remains to be argued? Is it that slavery is not divine; that God did not establish it; that our doctors of divinity are mistaken? There is blasphemy in the thought. That which is inhuman, cannot be divine! Who can reason on such a proposition? They that can, may; I cannot. The time for such argument is past.

At a time like this, scorching irony, not convincing argument, is needed. O! had I the ability, and could I reach the nation's ear, I would, today, pour out a fiery stream of biting ridicule, blasting reproach, withering sarcasm, and stern rebuke. For it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind, and the earthquake. The feeling of the nation must be quickened; the conscience of the nation must be roused; the propriety of the nation must be startled; the hypocrisy of the nation must be exposed; and its crimes against God and man must be proclaimed and denounced.

What, to the American slave, is your 4th of July? I answer: a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciations of tyrants, brass fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade, and solemnity, are, to him, mere bombast, fraud, deception, impiety, and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices, more shocking and bloody, than are the people of these United States, at this very hour.

Go where you may, search where you will, roam through all the monarchies and despotisms of the old world, travel through South America, search out every abuse, and when you have found the last, lay your facts by the side of the everyday practices of this nation, and you will say with me, that, for revolting barbarity and shameless hypocrisy, America reigns without a rival.

Take the American slave-trade, which, we are told by the papers, is especially prosperous just now. Ex-Senator Benton tells us that the price of men was never higher than now. He mentions the fact to show that slavery is in no danger. This trade is one of the peculiarities of American institutions. It is carried on in all the large towns and cities in one-half of this confederacy; and millions are pocketed every year, by dealers in this horrid traffic. In several states, this trade is a chief source of wealth. It is called (in contradistinction to the foreign slave-trade) “the internal slave trade.” It is, probably, called so, too, in order to divert from it the horror with which the foreign slave-trade is contemplated. That trade has long since been denounced by this government, as piracy. It has been denounced with burning words, from the high places of the nation, as an execrable traffic. To arrest it, to put an end to it, this nation keeps a squadron, at immense cost, on the coast of Africa. Everywhere, in this country, it is safe to speak of this foreign slave-trade, as a most inhuman traffic, opposed alike to the laws of God and of man. The duty to extirpate and destroy it, is admitted even by our doctors of divinity. In order to put an end to it, some of these last have consented that their colored brethren (nominally free) should leave this country, and establish themselves on the western

coast of Africa! It is, however, a notable fact that, while so much execration is poured out by Americans upon those engaged in the foreign slave-trade, the men engaged in the slave-trade between the states pass without condemnation, and their business is deemed honorable.

Behold the practical operation of this internal slave-trade, the American slave-trade, sustained by American politics and American religion. Here you will see men and women reared like swine for the market. You know what is a swine-drover? I will show you a man-drover. They inhabit all our Southern States. They perambulate the country, and crowd the highways of the nation, with droves of human stock. You will see one of these human flesh-jobbers, armed with pistol, whip and bowie-knife, driving a company of a hundred men, women, and children, from the Potomac to the slave market at New Orleans. These wretched people are to be sold singly, or in lots, to suit purchasers. They are food for the cotton-field, and the deadly sugar-mill. Mark the sad procession, as it moves wearily along, and the inhuman wretch who drives them.... Tell me citizens, where, under the sun, you can witness a spectacle more fiendish and shocking. Yet this is but a glance at the American slave-trade, as it exists, at this moment, in the ruling part of the United States....

But a still more inhuman, disgraceful, and scandalous state of things remains to be presented. By an act of the American Congress, not yet two years old, slavery has been nationalized in its most horrible and revolting form. By that act, Mason & Dixon's line has been obliterated; New York has become as Virginia; and the power to hold, hunt, and sell men, women, and children as slaves remains no longer a mere state institution, but is now an institution of the whole United States. The power is co-extensive with the Star-Spangled Banner and American Christianity. Where these go, may also go the merciless slave-hunter. Where these are, man is not sacred. He is a bird for the sportsman's gun. By that most foul and fiendish of all human decrees, the liberty and person of every man are put in peril. Your broad republican domain is hunting ground for men. Not for thieves and robbers, enemies of society, merely, but for men guilty of no crime. Your lawmakers have commanded all good citizens to engage in this hellish sport. Your President, your Secretary of State, your lords, nobles, and ecclesiastics, enforce, as a duty you owe to your free and glorious country, and to your God, that you do this accursed thing. Not fewer than forty Americans have, within the past two years, been hunted down and, without a moment's warning, hurried away in chains, and consigned to slavery and excruciating torture. Some of these have had wives and children, dependent on them for bread; but of this, no account was made. The right of the hunter to his prey stands superior to the right of marriage, and to all rights in this republic, the rights of God included! For black men there are neither law, justice, humanity, nor religion. The Fugitive Slave Law makes mercy to them a crime; and bribes the judge who tries them. An American judge gets ten dollars for every victim he consigns to slavery, and five when he fails to do so. The oath of any two villains is sufficient, under this hell-black enactment, to send the most pious and exemplary black man into the remorseless jaws of slavery! His own testimony is nothing. He can bring no witnesses for himself. The minister of American justice is bound by the law to hear but one side; and that side, is the side of the oppressor. Let this damning fact be perpetually told. Let it be thundered around the world, that, in tyrant-killing, king-hating, people-loving, democratic, Christian America, the seats of justice are filled with judges, who hold their offices under an open and palpable bribe, and are bound, in deciding in the case of a man's liberty, hear only his accusers!

In glaring violation of justice, in shameless disregard of the forms of administering law, in cunning arrangement to entrap the defenseless, and in diabolical intent, this Fugitive Slave Law stands alone in the annals of tyrannical legislation. I doubt if there be another nation on the globe, having the brass and the baseness to put such a law on the statute-book....

[T]he church of this country is not only indifferent to the wrongs of the slave, it actually takes sides with

the oppressors. It has made itself the bulwark of American slavery, and the shield of American slave-hunters. Many of its most eloquent Divines, who stand as the very lights of the church, have shamelessly given the sanction of religion and the Bible to the whole slave system. They have taught that man may, properly, be a slave; that the relation of master and slave is ordained of God; that to send back an escaped bondman to his master is clearly the duty of all the followers of the Lord Jesus Christ; and this horrible blasphemy is palmed off upon the world for Christianity.

For my part, I would say, welcome infidelity! welcome atheism! welcome anything! in preference to the gospel, as preached by those Divines! They convert the very name of religion into an engine of tyranny, and barbarous cruelty, and serve to confirm more infidels, in this age, than all the infidel writings of Thomas Paine, Voltaire, and Bolingbroke, put together, have done! These ministers make religion a cold and flinty-hearted thing, having neither principles of right action, nor bowels of compassion. They strip the love of God of its beauty, and leave the throng of religion a huge, horrible, repulsive form. It is a religion for oppressors, tyrants, man-stealers, and thugs. It is not that "pure and undefiled religion" which is from above, and which is "first pure, then peaceable, easy to be entreated, full of mercy and good fruits, without partiality, and without hypocrisy," but a religion which favors the rich against the poor; which exalts the proud above the humble; which divides mankind into two classes, tyrants and slaves; which says to the man in chains, stay there; and to the oppressor, oppress on; it is a religion which may be professed and enjoyed by all the robbers and enslavers of mankind; it makes God a respecter of persons, denies his fatherhood of the race, and tramples in the dust the great truth of the brotherhood of man....

The American church is guilty, when viewed in connection with what it is doing to uphold slavery; but it is superlatively guilty when viewed in connection with its ability to abolish slavery. The sin of which it is guilty is one of omission as well as of commission. Albert Barnes but uttered what the common sense of every man at all observant of the actual state of the case will receive as truth, when he declared that "There is no power out of the church that could sustain slavery an hour, if it were not sustained in it..."

One is struck with the difference between the attitude of the American church towards the anti-slavery movement, and that occupied by the churches in England towards a similar movement in that country. There, the church, true to its mission of ameliorating, elevating, and improving the condition of mankind, came forward promptly, bound up the wounds of the West Indian slave, and restored him to his liberty. There, the question of emancipation was a high[ly] religious question. It was demanded, in the name of humanity, and according to the law of the living God... [T]he anti-slavery movement in this country will cease to be an anti-church movement, when the church of this country shall assume a favorable, instead of a hostile position towards that movement.

Americans! Your republican politics, not less than your republican religion, are flagrantly inconsistent. You boast of your love of liberty, your superior civilization, and your pure Christianity, while the whole political power of the nation (as embodied in the two great political parties), is solemnly pledged to support and perpetuate the enslavement of three millions of your countrymen. You hurl your anathemas at the crowned headed tyrants of Russia and Austria, and pride yourselves on your Democratic institutions, while you yourselves consent to be the mere tools and bodyguards of the tyrants of Virginia and Carolina. You invite to your shores fugitives of oppression from abroad, honor them with banquets, greet them with ovations, cheer them, toast them, salute them, protect them, and pour out your money to them like water; but the fugitives from your own land you advertise, hunt, arrest, shoot and kill.... You declare, before the world, and are understood by the world to declare, that you "hold these truths to be self evident, that all men are created equal; and are endowed by their Creator with certain inalienable rights; and that, among these are,

life, liberty, and the pursuit of happiness"; and yet, you hold securely, in a bondage which, according to your own Thomas Jefferson, "is worse than ages of that which your fathers rose in rebellion to oppose," a seventh part of the inhabitants of your country....

But it is answered in reply to all this, that precisely what I have now denounced is, in fact, guaranteed and sanctioned by the Constitution of the United States; that the right to hold and to hunt slaves is a part of that Constitution framed by the illustrious Fathers of this Republic....

[I]nstead of being the honest men I have before declared them to be, they were the veriest imposters that ever practiced on mankind. This is the inevitable conclusion, and from it there is no escape. But I differ from those who charge this baseness on the framers of the Constitution of the United States. It is a slander upon their memory, at least, so I believe.

Fellow-citizens! there is no matter in respect to which, the people of the North have allowed themselves to be so ruinously imposed upon, as that of the pro-slavery character of the Constitution. In that instrument I hold there is neither warrant, license, nor sanction of the hateful thing; but, interpreted as it ought to be interpreted, the Constitution is a glorious liberty document. Read its preamble, consider its purposes. Is slavery among them? Is it at the gateway? or is it in the temple? It is neither. While I do not intend to argue this question on the present occasion, let me ask, if it be not somewhat singular that, if the Constitution were intended to be, by its framers and adopters, a slave-holding instrument, why neither slavery, slaveholding, nor slave can anywhere be found in it.

Now, take the constitution according to its plain reading, and I defy the presentation of a single pro-slavery clause in it. On the other hand it will be found to contain principles and purposes, entirely hostile to the existence of slavery....

[I]n conclusion, notwithstanding the dark picture I have this day presented of the state of the nation, I do not despair of this country. There are forces in operation, which must inevitably work the downfall of slavery. "The arm of the Lord is not shortened," and the doom of slavery is certain. I, therefore, leave off where I began, with hope. While drawing encouragement from the Declaration of Independence, the great principles it contains, and the genius of American Institutions, my spirit is also cheered by the obvious tendencies of the age. Nations do not now stand in the same relation to each other that they did ages ago. No nation can now shut itself up from the surrounding world, and trot round in the same old path of its fathers without interference.... The arm of commerce has borne away the gates of the strong city. Intelligence is penetrating the darkest corners of the globe. It makes its pathway over and under the sea, as well as on the earth. Wind, steam, and lightning are its chartered agents. Oceans no longer divide, but link nations together. From Boston to London is now a holiday excursion. Space is comparatively annihilated. Thoughts expressed on one side of the Atlantic are, distinctly heard on the other. The far off and almost fabulous Pacific rolls in grandeur at our feet. The Celestial Empire, the mystery of ages, is being solved. The fiat of the Almighty, "Let there be Light," has not yet spent its force. No abuse, no outrage whether in taste, sport or avarice, can now hide itself from the all-pervading light....

# 14. The Supreme Court Decides the Fate of Dred Scott

## Roger Taney (1777-1864)

Roger Taney (pronounced TAW-ney) was born to a wealthy, slave-owning family in Maryland, and graduated Dickinson College. He apprenticed with a judge and became an attorney in 1799. He was elected to two terms in the Maryland State Senate and appointed Attorney General in 1827.

Taney supported Andrew Jackson's campaigns and joined his new Democratic Party. After Jackson asked his cabinet to resign in 1831, Taney became US Attorney General in 1831. Three years later, Jackson nominated him as Treasury Secretary so he could transfer funds out of the national bank. Whig opposition made him the first cabinet nominee to be rejected by the Senate. However, the Democrats won the 1834 elections, and in 1835 he was chosen to replace John Marshall as Chief Justice. In the 29 years he served as Chief Justice—still second only to Marshall—Taney was a strong supporter of states' rights and limited presidential power. He actively opposed Abraham Lincoln's actions in suspending habeas corpus and in recognizing a war against the Confederacy. He remained on the Court until his death in 1864.

## Benjamin Curtis (1809-1874)

The son of a sea captain, Benjamin Curtis was the first Supreme Court Justice to graduate from law school (Harvard). He became a successful lawyer and joined the Whig Party. Elected to the Massachusetts House of Representatives in 1849, he helped modernize the state's judicial procedures.

Curtis was appointed to the Supreme Court by President Millard Fillmore in 1851. His political views were opposed to the Court's Democratic majority, and he was one of two justices to dissent in *Scott v. Sanford*. This led to internal discord, which greatly upset Curtis. He resigned several months later and returned to private practice.

He later served as chief defense counsel to the Senate Republicans in the trial of Andrew Johnson, who was

so impressed that he nominated Curtis as Attorney General. Curtis refused. He ran unsuccessfully for senator in 1874 and died later that year.

## *Scott v. Sanford (1857)*

Dred Scott was born into slavery on the plantation of Peter Blow in Virginia around 1795. In 1833, he was sold to John Emerson, a surgeon in the US army, who took him with him when he served in the free state of Illinois and the free territory of Wisconsin. This journey entitled Scott to freedom under both state and territorial law, but he was unaware of this until after Emerson's death. In 1846, Scott filed a lawsuit in Missouri state court seeking a declaration that he was a free man. When the case was first filed, he would have been freed under Missouri law because he had travelled to free territory. However, Scott lost his case because his attorney had relied on hearsay evidence to prove that he was a slave.

Scott appealed and won a new trial, but it did not take place until four years later. This time trial judge Alexander Hamilton awarded him freedom. However, his current owner appealed to the Missouri Supreme Court, which reversed because Missouri no longer recognized travel to free states as conferring free status. Scott was then sold to John Sandford in New York, and Scott's attorney filed his case in federal circuit court on grounds of diversity of citizenship. This court found that the Missouri Court had correctly interpreted state law, and thus Scott was not entitled to freedom. Prominent attorney Montgomery Blair volunteered his time to appeal the loss to the Supreme Court.

Taney wrote the Court's opinion for a 7-2 majority, which held that Scott was not a citizen because—contrary to the historical record—the Constitution never contemplated that blacks could ever be citizens. Since that meant he could not sue in federal court, Taney could have dismissed the case without writing more. But he wanted to put an end to public pressure on Congress to abolish slavery, so he extended his analysis to argue—without any evidence—that the Constitution did not authorize Congress to regulate territories acquired after 1787, as Article IV, section 3 (the Territorial Regulation Clause) only authorized regulation of territories owned by the United States at the time of ratification. Furthermore, Congress had no power to free slaves from bondage without paying their owners compensation, as required by the Just Compensation Clause of the Fifth Amendment. This decision meant that there was no constitutional method of ending slavery short of amending the Constitution, which was impossible due to the strength of the South in Congress.

Curtis dissented in *Scott v. Sanford* on the grounds that there were no constitutional reasons why blacks could not become citizens or why Congress could not prohibit slavery in federal territories. He also rejected Taney's conclusion that the Territorial Regulation Clause did not apply to territories acquired by the United States after the ratification of the constitution.

### **Chief Justice Taney's Opinion**

The question is simply this: can a negro whose ancestors were imported into this country and sold as slaves become a member of the political community formed and brought into existence by the Constitution

of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen, one of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution?...

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or lawmaking power, to those who formed the sovereignty and framed the Constitution. The duty of the court is to interpret the instrument they have framed with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted...

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State whose rights and liberties had been outraged by the English Government, and who declared their independence and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence and when the Constitution of the United States was framed and adopted...

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics which no one thought of disputing or supposed to be open to dispute, and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion....



The legislation of the different colonies furnishes positive and indisputable proof of this fact... [These laws] were still in force when the Revolution began, and are a faithful index to the state of feeling towards the class of persons of whom they speak, and of the position they occupied throughout the thirteen colonies, in the eyes and thoughts of the men who framed the Declaration of Independence and established the State Constitutions and Governments. They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage. And no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma of the deepest degradation was fixed upon the whole race....

This state of public opinion had undergone no change when the Constitution was adopted....

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption. It is not only the same in words, but the same in meaning, and delegates the same powers to the Government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty....

The act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the have of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;' but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more....

The language used in the clause, the arrangement and combination of the powers, and the somewhat

unusual phraseology it uses, when it speaks of the political power to be exercised in the government of the territory, all indicate the design and meaning of the clause to be such as we have mentioned. It does not speak of *any* territory, nor of *Territories*, but uses language which, according to its legitimate meaning, points to a particular thing. The power is given in relation only to *the* territory of the United States—that is, to a territory then in existence, and then known or claimed as the territory of the United States. It begins its enumeration of powers by that of disposing, in other words, making sale of the lands, or raising money from them, which, as we have already said, was the main object of the cession, and which is accordingly the first thing provided for in the article. It then gives the power which was necessarily associated with the disposition and sale of the lands—that is, the power of making needful rules and regulations respecting the territory. And whatever construction may now be given to these words, every one, we think, must admit that they are not the words usually employed by statesmen in giving supreme power of legislation. They are certainly very unlike the words used in the power granted to legislate over territory which the new Government might afterwards itself obtain by cession from a State, either for its seat of Government, or for forts, magazines, arsenals, dock yards, and other needful buildings....

The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it....

Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law....

The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under Territorial Government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the General Government might attempt, under the plea of implied or incidental powers. And if Congress itself cannot do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorize a Territorial Government to exercise them. It could confer no power on any local Government, established by its authority, to violate the provisions of the Constitution....

And, upon a full and careful consideration of the subject, the court is of opinion, that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts, and consequently that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous.

### Justice Benjamin Curtis' dissent

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens....

Did the Constitution of the United States deprive them or their descendants of citizenship?

That Constitution was ordained and established by the people of the United States, through the action, in each State, or those persons who were qualified by its laws to act thereon in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified by law to act on this subject. These colored persons were not only included in the body of "the people of the United States" by whom the Constitution was ordained and established, but, in at least five of the States, they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strange if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.

I can find nothing in the Constitution which, *proprio vigore*, deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its adoption, nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its Constitution and laws. And my opinion is that, under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States....

That Congress has some power to institute temporary Governments over the territory, I believe all agree; and, if it be admitted that the necessity of some power to govern the territory of the United States could not and did not escape the attention of the Convention and the people, and that the necessity is so great, that, in the absence of any express grant, it is strong enough to raise an implication of the existence of that power, it would seem to follow that it is also strong enough to afford material aid in construing an express grant of power respecting that territory; and that they who maintain the existence of the power, without finding any words at all in which it is conveyed, should be willing to receive a reasonable interpretation of language of the Constitution, manifestly intended to relate to the territory, and to convey to Congress some authority concerning it....

At the time of the adoption of the Constitution, the United States held a great tract of country northwest of the Ohio; another tract, then of unknown extent, ceded by South Carolina; and a confident expectation was then entertained, and afterwards realized, that they then were or would become the owners of other great tracts, claimed by North Carolina and Georgia. These ceded tracts lay within the limits of the United States, and out of the limits of any particular State; and the cessions embraced the civil and political jurisdiction, and so much of the soil as had not previously been granted to individuals.

These words, "territory belonging to the United States," were not used in the Constitution to describe an abstraction, but to identify and apply to these actual subjects matter then existing and belonging to the

United States, and other similar subjects which might afterwards be acquired; and this being so, all the essential qualities and incidents attending such actual subjects are embraced within the words ‘territory belonging to the United States,’ as fully as if each of those essential qualities and incidents had been specifically described....

I construe this clause, therefore, as if it had read, Congress shall have power to make all needful rules and regulations respecting those tracts of country, out of the limits of the several States, which the United States have acquired, or may hereafter acquire, by cessions, as well of the jurisdiction as of the soil, so far as the soil may be the property of the party making the cession, at the time of making it....

It will not be questioned that, when the Constitution of the United States was framed and adopted, the allowance and the prohibition of negro slavery were recognized subjects of municipal legislation; every State had in some measure acted thereon; and the only legislative act concerning the territory—the ordinance of 1787, which had then so recently been passed—contained a prohibition of slavery. The purpose and object of the clause being to enable Congress to provide a body of municipal law for the government of the settlers, the allowance or the prohibition of slavery comes within the known and recognized scope of that purpose and object.

To engraft on any instrument a substantive exception not found in it, must be admitted to be a matter attended with great difficulty. And the difficulty increases with the importance of the instrument, and the magnitude and complexity of the interests involved in its construction. To allow this to be done with the Constitution, upon reasons purely political, renders its judicial interpretation impossible—because judicial tribunals, as such, cannot decide upon political considerations. Political reasons have not the requisite certainty to afford rules of juridical interpretation. They are different in different men. They are different in the same men at different times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean....

While the regulation is one “respecting the territory,” while it is, in the judgment of Congress, “a needful regulation,” and is thus completely within the words of the grant, while no other clause of the Constitution can be shown, which requires the insertion of an exception respecting slavery, and while the practical construction for a period of upwards of fifty years forbids such an exception, it would, in my opinion, violate every sound rule of interpretation to force that exception into the Constitution upon the strength of abstract political reasoning, which we are bound to believe the people of the United States thought insufficient to induce them to limit the power of Congress, because what they have said contains no such limitation....

Is it conceivable that the Constitution has conferred the right on every citizen to become a resident on the territory of the United States with his slaves, and there to hold them as such, but has neither made nor provided for any municipal regulations which are essential to the existence of slavery?

Is it not more rational to conclude that they who framed and adopted the constitution were aware that persons held to service under the laws of a State are property only to the extent and under the conditions fixed by those laws; that they must cease to be available as property, when their owners voluntarily place them permanently within another jurisdiction, where no municipal laws on the subject of slavery exist.... If citizens of the United States have the right to take their slaves to a Territory, and hold them there as slaves, without regard to the laws of the Territory, I suppose this right is not to be restricted to the citizens of

slaveholding States. A citizen of a State which does not tolerate slavery can hardly be denied the power of doing the same thing. And what law of slavery does either take with him to the Territory? If it be said to be those laws respecting slavery which existed in the particular State from which each slave last came, what an anomaly is this? Where else can we find, under the law of any civilized country, the power to introduce and permanently continue diverse systems of foreign municipal law, for holding persons in slavery?

# 15. Abraham Lincoln Challenges Slavery

## Abraham Lincoln (1809-1865)

Born on a farm in Kentucky, Abraham Lincoln grew up in poverty with minimal formal education. After his family moved to Illinois, he operated a general store and read law in his spare time. He was admitted to the Illinois bar in 1836 and went into private practice. He joined the Whig Party and served one term as a US representative between 1847-49, after which he returned to his law practice.

When the Whig Party split over the issue of slavery in 1854, Lincoln joined the anti-slavery Republicans, who founded a new political party. He unsuccessfully sought a seat in the US Senate that year and again in 1858, when his debates against Stephen Douglas brought him national prominence. His election as president in 1860 spurred seven southern states to secede and form the Confederate States of America, which proclaimed its existence less than a month before Lincoln took office.

Lincoln led the United States throughout the Civil War, and won reelection in 1864. Shortly after Gen. Robert E. Lee's surrender brought an end to the war, Lincoln became the first US President to be assassinated.

## Cooper Union Address (1860)

When Abraham Lincoln spoke at the Cooper Union Institute in February 1860, he was a candidate for the Republican nomination for president. Lincoln's main objective was to show that the Republicans were not radicals or revolutionaries for opposing slavery, as their opponents had claimed. Instead, they sought to pursue the values enshrined in the Constitution. Lincoln did this in the context of criticizing the Supreme Court's holding in *Scott v. Sanford* that the Constitution did not authorize Congress to abolish slavery in US territories acquired after 1787. Lincoln considered a series of votes taken by the Constitution's framers over the period between 1787 and 1820 to show that 21 of 23 framers who made recorded votes believed that the Constitution imposed no limits on such actions. Lincoln expressed the hope that the Supreme Court would reconsider this part of its decision upon review of the historical record.

According to Lincoln, the Republicans' appeal to framers' intent made them the true conservatives. The Southern Democrats, who supported a variety of proposals to protect slavery in perpetuity, were thus radicals

because their actions were at odds with the principles upon which the Constitution was based. Having refuted the Southerners' interpretation, he concluded that the only way to appease Southerners would be to "cease to call slavery *wrong*, and join them in calling it *right*," something that would violate the "moral, social, and political responsibilities" of the Republicans. Lincoln's rousing refutation of the Southerners' demand for compromise gained him substantial attention and is widely seen as a pivotal moment in Lincoln's campaign for the Republican nomination.

...In his speech last autumn, at Columbus, Ohio, as reported in "The New-York Times," Senator Douglas said: "Our fathers, when they framed the Government under which we live, understood this question just as well, and even better, than we do now."

I fully indorse this, and I adopt it as a text for this discourse. I so adopt it because it furnishes a precise and an agreed starting point for a discussion between Republicans and that wing of the Democracy headed by Senator Douglas. It simply leaves the inquiry: "What was the understanding those fathers had of the question mentioned?"...

Who were our fathers that framed the Constitution? I suppose the "thirty-nine" who signed the original instrument may be fairly called our fathers who framed that part of the present Government. It is almost exactly true to say they framed it, and it is altogether true to say they fairly represented the opinion and sentiment of the whole nation at that time. Their names, being familiar to nearly all, and accessible to quite all, need not now be repeated. I take these "thirty-nine," for the present, as being "our fathers who framed the Government under which we live."

What is the question which, according to the text, those fathers understood "just as well, and even better than we do now?" It is this: Does the proper division of local from federal authority, or anything in the Constitution, forbid our *Federal Government* to control as to slavery in our *Federal Territories*?

Upon this, Senator Douglas holds the affirmative, and Republicans the negative. This affirmation and denial form an issue; and this issue—this question—is precisely what the text declares our fathers understood "better than we."

Let us now inquire whether the "thirty-nine," or any of them, ever acted upon this question; and if they did, how they acted upon it—how they expressed that better understanding?...

The question of federal control of slavery in the territories, seems not to have been directly before the Convention which framed the original Constitution; and hence it is not recorded that the "thirty-nine," or any of them, while engaged on that instrument, expressed any opinion on that precise question.

In 1789, by the first Congress which sat under the Constitution, an act was passed to enforce the Ordinance of '87, including the prohibition of slavery in the Northwestern Territory. The bill for this act was reported by one of the "thirty-nine," Thomas Fitzsimmons, then a member of the House of Representatives from Pennsylvania. It went through all its stages without a word of opposition, and finally passed both branches without yeas and nays, which is equivalent to a unanimous passage. In this Congress there were sixteen of the thirty-nine fathers who framed the original Constitution....

This shows that, in their understanding, no line dividing local from federal authority, nor anything in the Constitution, properly forbade Congress to prohibit slavery in the federal territory; else both their fidelity to correct principle, and their oath to support the Constitution, would have constrained them to oppose the prohibition.

Again, George Washington, another of the "thirty-nine," was then President of the United States, and,

as such approved and signed the bill; thus completing its validity as a law, and thus showing that, in his understanding, no line dividing local from federal authority, nor anything in the Constitution, forbade the Federal Government, to control as to slavery in federal territory....

In 1803, the Federal Government purchased the Louisiana country. Our former territorial acquisitions came from certain of our own States; but this Louisiana country was acquired from a foreign nation. In 1804, Congress gave a territorial organization to that part of it which now constitutes the State of Louisiana. New Orleans, lying within that part, was an old and comparatively large city. There were other considerable towns and settlements, and slavery was extensively and thoroughly intermingled with the people.... This act also was passed without yeas and nays. In the Congress which passed it, there were two of the "thirty-nine." ... They would not have allowed it to pass without recording their opposition to it, if, in their understanding, it violated either the line properly dividing local from federal authority, or any provision of the Constitution....

The cases I have mentioned are the only acts of the "thirty-nine," or of any of them, upon the direct issue, which I have been able to discover... The true number of those of the "thirty-nine" whom I have shown to have acted upon the question, which, by the text, they understood better than we, is twenty-three, leaving sixteen not shown to have acted upon it in any way.

Here, then, we have twenty-three out of our thirty-nine fathers "who framed the government under which we live," who have, upon their official responsibility and their corporal oaths, acted upon the very question which the text affirms they "understood just as well, and even better than we do now;" and twenty-one of them—a clear majority of the whole "thirty-nine"—so acting upon it as to make them guilty of gross political impropriety and willful perjury, if, in their understanding, any proper division between local and federal authority, or anything in the Constitution they had made themselves, and sworn to support, forbade the Federal Government to control as to slavery in the federal territories. Thus the twenty-one acted; and, as actions speak louder than words, so actions, under such responsibility, speak still louder...

The remaining sixteen of the "thirty-nine," so far as I have discovered, have left no record of their understanding upon the direct question of federal control of slavery in the federal territories. But there is much reason to believe that their understanding upon that question would not have appeared different from that of their twenty-three compeers, had it been manifested at all..

The sum of the whole is, that of our thirty-nine fathers who framed the original Constitution, twenty-one—a clear majority of the whole—certainly understood that no proper division of local from federal authority, nor any part of the Constitution, forbade the Federal Government to control slavery in the federal territories; while all the rest probably had the same understanding. Such, unquestionably, was the understanding of our fathers who framed the original Constitution; and the text affirms that they understood the question "better than we."

But, so far, I have been considering the understanding of the question manifested by the framers of the original Constitution. In and by the original instrument, a mode was provided for amending it; and, as I have already stated, the present frame of "the Government under which we live" consists of that original, and twelve amendatory articles framed and adopted since. Those who now insist that federal control of slavery in federal territories violates the Constitution, point us to the provisions which they suppose it thus violates; and, as I understand, that all fix upon provisions in these amendatory articles, and not in the original instrument. The Supreme Court, in the Dred Scott case, plant themselves upon the fifth amendment, which provides that no person shall be deprived of "life, liberty or property without due process of law;" while Senator Douglas and his peculiar adherents plant themselves upon the tenth amendment, providing that



“the powers not delegated to the United States by the Constitution” “are reserved to the States respectively, or to the people.”

Now, it so happens that these amendments were framed by the first Congress which sat under the Constitution—the identical Congress which passed the act already mentioned, enforcing the prohibition of slavery in the Northwestern Territory. Not only was it the same Congress, but they were the identical, same individual men who, at the same session, and at the same time within the session, had under consideration, and in progress toward maturity, these Constitutional amendments, and this act prohibiting slavery in all the territory the nation then owned. The Constitutional amendments were introduced before, and passed after the act enforcing the Ordinance of '87; so that, during the whole pendency of the act to enforce the Ordinance, the Constitutional amendments were also pending.

The seventy-six members of that Congress, including sixteen of the framers of the original Constitution, as before stated, were pre-eminently our fathers who framed that part of “the Government under which we live,” which is now claimed as forbidding the Federal Government to control slavery in the federal territories.

Is it not a little presumptuous in any one at this day to affirm that the two things which that Congress deliberately framed, and carried to maturity at the same time, are absolutely inconsistent with each other? And does not such affirmation become impudently absurd when coupled with the other affirmation from the same mouth, that those who did the two things, alleged to be inconsistent, understood whether they really were inconsistent better than we— better than he who affirms that they are inconsistent?...

Now, and here, let me guard a little against being misunderstood. I do not mean to say we are bound to follow implicitly in whatever our fathers did. To do so, would be to discard all the lights of current experience—to reject all progress—all improvement. What I do say is, that if we would supplant the opinions and policy of our fathers in any case, we should do so upon evidence so conclusive, and argument so clear, that even their great authority, fairly considered and weighed, cannot stand; and most surely not in a case whereof we ourselves declare they understood the question better than we....

Let all who believe that “our fathers, who framed the Government under which we live, understood this question just as well, and even better, than we do now,” speak as they spoke, and act as they acted upon it. This is all Republicans ask—all Republicans desire—in relation to slavery. As those fathers marked it, so let it be again marked, as an evil not to be extended, but to be tolerated and protected only because of and so far as its actual presence among us makes that toleration and protection a necessity. Let all the guarantees those fathers gave it, be, not grudgingly, but fully and fairly, maintained. For this Republicans contend, and with this, so far as I know or believe, they will be content.

And now, if they would listen—as I suppose they will not—I would address a few words to the Southern people....

Some of you delight to flaunt in our faces the warning against sectional parties given by Washington in his Farewell Address. Less than eight years before Washington gave that warning, he had, as President of the United States, approved and signed an act of Congress, enforcing the prohibition of slavery in the Northwestern Territory, which act embodied the policy of the Government upon that subject up to and at the very moment he penned that warning; and about one year after he penned it, he wrote Lafayette that he considered that prohibition a wise measure, expressing in the same connection his hope that we should at some time have a confederacy of free States.

Bearing this in mind, and seeing that sectionalism has since arisen upon this same subject, is that warning a weapon in your hands against us, or in our hands against you? Could Washington himself speak, would he cast the blame of that sectionalism upon us, who sustain his policy, or upon you who repudiate it? We

respect that warning of Washington, and we commend it to you, together with his example pointing to the right application of it.

But you say you are conservative—eminently conservative—while we are revolutionary, destructive, or something of the sort. What is conservatism? Is it not adherence to the old and tried, against the new and untried? We stick to, contend for, the identical old policy on the point in controversy which was adopted by “our fathers who framed the Government under which we live;” while you with one accord reject, and scout, and spit upon that old policy, and insist upon substituting something new. True, you disagree among yourselves as to what that substitute shall be. You are divided on new propositions and plans, but you are unanimous in rejecting and denouncing the old policy of the fathers. Some of you are for reviving the foreign slave trade; some for a Congressional Slave-Code for the Territories; some for Congress forbidding the Territories to prohibit Slavery within their limits; some for maintaining Slavery in the Territories through the judiciary; some for the “gur-reat pur-rinciple” that “if one man would enslave another, no third man should object,” fantastically called “Popular Sovereignty;” but never a man among you is in favor of federal prohibition of slavery in federal territories, according to the practice of “our fathers who framed the Government under which we live.” Not one of all your various plans can show a precedent or an advocate in the century within which our Government originated. Consider, then, whether your claim of conservatism for yourselves, and your charge or destructiveness against us, are based on the most clear and stable foundations....

You charge that we stir up insurrections among your slaves. We deny it; and what is your proof? Harper’s Ferry! John Brown!! John Brown was no Republican; and you have failed to implicate a single Republican in his Harper’s Ferry enterprise. If any member of our party is guilty in that matter, you know it or you do not know it. If you do know it, you are inexcusable for not designating the man and proving the fact. If you do not know it, you are inexcusable for asserting it, and especially for persisting in the assertion after you have tried and failed to make the proof. You need to be told that persisting in a charge which one does not know to be true, is simply malicious slander....

Slave insurrections are no more common now than they were before the Republican party was organized. What induced the Southampton insurrection, twenty-eight years ago, in which, at least three times as many lives were lost as at Harper’s Ferry? You can scarcely stretch your very elastic fancy to the conclusion that Southampton was “got up by Black Republicanism.” In the present state of things in the United States, I do not think a general, or even a very extensive slave insurrection is possible. The indispensable concert of action cannot be attained. The slaves have no means of rapid communication; nor can incendiary freemen, black or white, supply it. The explosive materials are everywhere in parcels; but there neither are, nor can be supplied, the indispensable connecting trains....

John Brown’s effort was peculiar. It was not a slave insurrection. It was an attempt by white men to get up a revolt among slaves, in which the slaves refused to participate. In fact, it was so absurd that the slaves, with all their ignorance, saw plainly enough it could not succeed...

And how much would it avail you, if you could, by the use of John Brown, Helper’s Book, and the like, break up the Republican organization? Human action can be modified to some extent, but human nature cannot be changed. There is a judgment and a feeling against slavery in this nation, which cast at least a million and a half of votes. You cannot destroy that judgment and feeling—that sentiment—by breaking up the political organization which rallies around it. You can scarcely scatter and disperse an army which has been formed into order in the face of your heaviest fire; but if you could, how much would you gain by forcing the sentiment which created it out of the peaceful channel of the ballot-box, into some other channel? What

would that other channel probably be? Would the number of John Browns be lessened or enlarged by the operation?

But you will break up the Union rather than submit to a denial of your Constitutional rights. That has a somewhat reckless sound; but it would be palliated, if not fully justified, were we proposing, by the mere force of numbers, to deprive you of some right, plainly written down in the Constitution. But we are proposing no such thing.

When you make these declarations, you have a specific and well-understood allusion to an assumed Constitutional right of yours, to take slaves into the federal territories, and to hold them there as property. But no such right is specifically written in the Constitution. That instrument is literally silent about any such right. We, on the contrary, deny that such a right has any existence in the Constitution, even by implication.

Your purpose, then, plainly stated, is that you will destroy the Government, unless you be allowed to construe and enforce the Constitution as you please, on all points in dispute between you and us. You will rule or ruin in all events.

This, plainly stated, is your language. Perhaps you will say the Supreme Court has decided the disputed Constitutional question in your favor. Not quite so. But waiving the lawyer's distinction between dictum and decision, the Court have decided the question for you in a sort of way. The Court have substantially said, it is your Constitutional right to take slaves into the federal territories, and to hold them there as property. When I say the decision was made in a sort of way, I mean it was made in a divided Court, by a bare majority of the Judges, and they not quite agreeing with one another in the reasons for making it; that it is so made as that its avowed supporters disagree with one another about its meaning, and that it was mainly based upon a mistaken statement of fact—the statement in the opinion that “the right of property in a slave is distinctly and expressly affirmed in the Constitution.”

An inspection of the Constitution will show that the right of property in a slave is not “*distinctly and expressly* affirmed” in it. Bear in mind, the Judges do not pledge their judicial opinion that such right is *impliedly* affirmed in the Constitution; but they pledge their veracity that it is “*distinctly and expressly*” affirmed there—“distinctly,” that is, not mingled with anything else—“expressly,” that is, in words meaning just that, without the aid of any inference, and susceptible of no other meaning....

When this obvious mistake of the Judges shall be brought to their notice, is it not reasonable to expect that they will withdraw the mistaken statement, and reconsider the conclusion based upon it?....

A few words now to Republicans. It is exceedingly desirable that all parts of this great Confederacy shall be at peace, and in harmony, one with another. Let us Republicans do our part to have it so. Even though much provoked, let us do nothing through passion and ill temper. Even though the southern people will not so much as listen to us, let us calmly consider their demands, and yield to them if, in our deliberate view of our duty, we possibly can. Judging by all they say and do, and by the subject and nature of their controversy with us, let us determine, if we can, what will satisfy them.

Will they be satisfied if the Territories be unconditionally surrendered to them? We know they will not. In all their present complaints against us, the Territories are scarcely mentioned. Invasions and insurrections are the rage now. Will it satisfy them, if, in the future, we have nothing to do with invasions and insurrections? We know it will not. We so know, because we know we never had anything to do with invasions and insurrections; and yet this total abstaining does not exempt us from the charge and the denunciation.

The question recurs, what will satisfy them? Simply this: We must not only let them alone, but we must somehow, convince them that we do let them alone. This, we know by experience, is no easy task. We have

been so trying to convince them from the very beginning of our organization, but with no success. In all our platforms and speeches we have constantly protested our purpose to let them alone; but this has had no tendency to convince them. Alike unavailing to convince them, is the fact that they have never detected a man of us in any attempt to disturb them.

These natural, and apparently adequate means all failing, what will convince them? This, and this only: cease to call slavery *wrong*, and join them in calling it *right*. And this must be done thoroughly—done in *acts* as well as in *words*. Silence will not be tolerated—we must place ourselves avowedly with them. Senator Douglas' new sedition law must be enacted and enforced, suppressing all declarations that slavery is wrong, whether made in politics, in presses, in pulpits, or in private. We must arrest and return their fugitive slaves with greedy pleasure. We must pull down our Free State constitutions. The whole atmosphere must be disinfected from all taint of opposition to slavery, before they will cease to believe that all their troubles proceed from us.

I am quite aware they do not state their case precisely in this way. Most of them would probably say to us, "Let us alone, do nothing to us, and say what you please about slavery." But we do let them alone—have never disturbed them—so that, after all, it is what we say, which dissatisfies them. They will continue to accuse us of doing, until we cease saying.

I am also aware they have not, as yet, in terms, demanded the overthrow of our Free-State Constitutions. Yet those Constitutions declare the wrong of slavery, with more solemn emphasis, than do all other sayings against it; and when all these other sayings shall have been silenced, the overthrow of these Constitutions will be demanded, and nothing be left to resist the demand. It is nothing to the contrary, that they do not demand the whole of this just now. Demanding what they do, and for the reason they do, they can voluntarily stop nowhere short of this consummation. Holding, as they do, that slavery is morally right, and socially elevating, they cannot cease to demand a full national recognition of it, as a legal right, and a social blessing.

Nor can we justifiably withhold this, on any ground save our conviction that slavery is wrong. If slavery is right, all words, acts, laws, and constitutions against it, are themselves wrong, and should be silenced, and swept away. If it is right, we cannot justly object to its nationality—its universality; if it is wrong, they cannot justly insist upon its extension—its enlargement. All they ask, we could readily grant, if we thought slavery right; all we ask, they could as readily grant, if they thought it wrong. Their thinking it right, and our thinking it wrong, is the precise fact upon which depends the whole controversy. Thinking it right, as they do, they are not to blame for desiring its full recognition, as being right; but, thinking it wrong, as we do, can we yield to them? Can we cast our votes with their view, and against our own? In view of our moral, social, and political responsibilities, can we do this?

Wrong as we think slavery is, we can yet afford to let it alone where it is, because that much is due to the necessity arising from its actual presence in the nation; but can we, while our votes will prevent it, allow it to spread into the National Territories, and to overrun us here in these Free States? If our sense of duty forbids this, then let us stand by our duty, fearlessly and effectively. Let us be diverted by none of those sophistical contrivances wherewith we are so industriously plied and belabored.... Let us have faith that might makes right, and in that faith, let us, to the end, dare to do our duty as we understand it.

## First Inaugural Address (1861)

On the day Abraham Lincoln took office, he faced a nation divided into two, with seven states having seceded and several more contemplating leaving the Union. He contended that the US Constitution does not justify secession, and that his duty to take care that the laws be enforced required him to oppose it. He rejected the Supreme Court's decision in *Scott v. Sanford*, but reiterated that it was not his objective to abolish slavery, and that he was willing to permit it to continue if the seceded states returned. He also made practical objections to the separation of the southern states into a different country. He offered little to conciliate the CSA, and six weeks later the Civil War began.

In compliance with a custom as old as the Government itself, I appear before you to address you briefly and to take in your presence the oath prescribed by the Constitution of the United States to be taken by the President before he enters on the execution of this office....

Apprehension seems to exist among the people of the Southern States that by the accession of a Republican Administration their property and their peace and personal security are to be endangered. There has never been any reasonable cause for such apprehension. Indeed, the most ample evidence to the contrary has all the while existed and been open to their inspection. It is found in nearly all the published speeches of him who now addresses you. I do but quote from one of those speeches when I declare that "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so."

Those who nominated and elected me did so with full knowledge that I had made this and many similar declarations and had never recanted them; and more than this, they placed in the platform for my acceptance, and as a law to themselves and to me, the clear and emphatic resolution which I now read: "Resolved, That the maintenance inviolate of the rights of the States, and especially the right of each State to order and control its own domestic institutions according to its own judgment exclusively, is essential to that balance of power on which the perfection and endurance of our political fabric depend; and we denounce the lawless invasion by armed force of the soil of any State or Territory, no matter what pretext, as among the gravest of crimes."

I now reiterate these sentiments...

There is much controversy about the delivering up of fugitives from service or labor. The clause I now read is as plainly written in the Constitution as any other of its provisions: "No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

It is scarcely questioned that this provision was intended by those who made it for the reclaiming of what we call fugitive slaves; and the intention of the lawgiver is the law. All members of Congress swear their support to the whole Constitution—to this provision as much as to any other. To the proposition, then, that slaves whose cases come within the terms of this clause "shall be delivered up" their oaths are unanimous.

Now, if they would make the effort in good temper, could they not with nearly equal unanimity frame and pass a law by means of which to keep good that unanimous oath?

There is some difference of opinion whether this clause should be enforced by national or by State authority, but surely that difference is not a very material one. If the slave is to be surrendered, it can be of but little consequence to him or to others by which authority it is done. And should anyone in any case be content that his oath shall go unkept on a merely unsubstantial controversy as to how it shall be kept?

Again: In any law upon this subject ought not all the safeguards of liberty known in civilized and humane jurisprudence to be introduced, so that a free man be not in any case surrendered as a slave? And might it not be well at the same time to provide by law for the enforcement of that clause in the Constitution which guarantees that “the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States”?

I take the official oath to-day with no mental reservations and with no purpose to construe the Constitution or laws by any hypercritical rules; and while I do not choose now to specify particular acts of Congress as proper to be enforced, I do suggest that it will be much safer for all, both in official and private stations, to conform to and abide by all those acts which stand unrepealed than to violate any of them trusting to find impunity in having them held to be unconstitutional.

It is seventy-two years since the first inauguration of a President under our National Constitution. During that period fifteen different and greatly distinguished citizens have in succession administered the executive branch of the Government. They have conducted it through many perils, and generally with great success. Yet, with all this scope of precedent, I now enter upon the same task for the brief constitutional term of four years under great and peculiar difficulty. A disruption of the Federal Union, heretofore only menaced, is now formidably attempted.

I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.

Again: If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it?

Descending from these general principles, we find the proposition that in legal contemplation the Union is perpetual confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was “to form a more perfect Union.”

But if destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.

It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances.

I therefore consider that in view of the Constitution and the laws the Union is unbroken, and to the extent

of my ability, I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States...

In doing this there needs to be no bloodshed or violence, and there shall be none unless it be forced upon the national authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government and to collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere. Where hostility to the United States in any interior locality shall be so great and universal as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right may exist in the Government to enforce the exercise of these offices, the attempt to do so would be so irritating and so nearly impracticable withal that I deem it better to forego for the time the uses of such offices.

The mails, unless repelled, will continue to be furnished in all parts of the Union. So far as possible the people everywhere shall have that sense of perfect security which is most favorable to calm thought and reflection. The course here indicated will be followed unless current events and experience shall show a modification or change to be proper, and in every case and exigency my best discretion will be exercised, according to circumstances actually existing and with a view and a hope of a peaceful solution of the national troubles and the restoration of fraternal sympathies and affections.

That there are persons in one section or another who seek to destroy the Union at all events and are glad of any pretext to do it I will neither affirm nor deny; but if there be such, I need address no word to them. To those, however, who really love the Union may I not speak?

Before entering upon so grave a matter as the destruction of our national fabric, with all its benefits, its memories, and its hopes, would it not be wise to ascertain precisely why we do it? Will you hazard so desperate a step while there is any possibility that any portion of the ills you fly from have no real existence? Will you, while the certain ills you fly to are greater than all the real ones you fly from, will you risk the commission of so fearful a mistake?

All profess to be content in the Union if all constitutional rights can be maintained. Is it true, then, that any right plainly written in the Constitution has been denied? I think not. Happily, the human mind is so constituted that no party can reach to the audacity of doing this. Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. If by the mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might in a moral point of view justify revolution; certainly would if such right were a vital one. But such is not our case. All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guaranties and prohibitions, in the Constitution that controversies never arise concerning them. But no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate nor any document of reasonable length contain express provisions for all possible questions. Shall fugitives from labor be surrendered by national or by State authority? The Constitution does not expressly say. May Congress prohibit slavery in the Territories? The Constitution does not expressly say. Must Congress protect slavery in the Territories? The Constitution does not expressly say.

From questions of this class spring all our constitutional controversies, and we divide upon them into majorities and minorities. If the minority will not acquiesce, the majority must, or the Government must cease. There is no other alternative, for continuing the Government is acquiescence on one side or the other. If a minority in such case will secede rather than acquiesce, they make a precedent which in turn

will divide and ruin them, for a minority of their own will secede from them whenever a majority refuses to be controlled by such minority. For instance, why may not any portion of a new confederacy a year or two hence arbitrarily secede again, precisely as portions of the present Union now claim to secede from it? All who cherish disunion sentiments are now being educated to the exact temper of doing this.

Is there such perfect identity of interests among the States to compose a new union as to produce harmony only and prevent renewed secession?

Plainly the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism. Unanimity is impossible. The rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left.

I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court, nor do I deny that such decisions must be binding in any case upon the parties to a suit as to the object of that suit, while they are also entitled to very high respect and consideration in all parallel cases by all other departments of the Government. And while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time, the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made in ordinary litigation between parties in personal actions the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal. Nor is there in this view any assault upon the court or the judges. It is a duty from which they may not shrink to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

One section of our country believes slavery is right and ought to be extended, while the other believes it is wrong and ought not to be extended. This is the only substantial dispute. The fugitive-slave clause of the Constitution and the law for the suppression of the foreign slave trade are each as well enforced, perhaps, as any law can ever be in a community where the moral sense of the people imperfectly supports the law itself. The great body of the people abide by the dry legal obligation in both cases, and a few break over in each. This, I think, can not be perfectly cured, and it would be worse in both cases after the separation of the sections than before. The foreign slave trade, now imperfectly suppressed, would be ultimately revived without restriction in one section, while fugitive slaves, now only partially surrendered, would not be surrendered at all by the other.

Physically speaking, we cannot separate. We cannot remove our respective sections from each other nor build an impassable wall between them. A husband and wife may be divorced and go out of the presence and beyond the reach of each other, but the different parts of our country cannot do this. They cannot but remain face to face, and intercourse, either amicable or hostile, must continue between them. Is it possible, then, to make that intercourse more advantageous or more satisfactory after separation than before? Can aliens make treaties easier than friends can make laws? Can treaties be more faithfully enforced between aliens than laws can among friends? Suppose you go to war, you cannot fight always; and when, after much loss on both sides and no gain on either, you cease fighting, the identical old questions, as to terms of intercourse, are again upon you.

This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary



of the existing Government, they can exercise their constitutional right of amending it or their revolutionary right to dismember or overthrow it. I cannot be ignorant of the fact that many worthy and patriotic citizens are desirous of having the National Constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself; and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to either accept or refuse. I understand a proposed amendment to the Constitution—which amendment, however, I have not seen—has passed Congress, to the effect that the Federal Government shall never interfere with the domestic institutions of the States, including that of persons held to service. To avoid misconstruction of what I have said, I depart from my purpose not to speak of particular amendments so far as to say that, holding such a provision to now be implied constitutional law, I have no objection to its being made express and irrevocable.

The Chief Magistrate derives all his authority from the people, and they have referred none upon him to fix terms for the separation of the States. The people themselves can do this if also they choose, but the Executive as such has nothing to do with it. His duty is to administer the present Government as it came to his hands and to transmit it unimpaired by him to his successor.

Why should there not be a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world? In our present differences, is either party without faith of being in the right? If the Almighty Ruler of Nations, with His eternal truth and justice, be on your side of the North, or on yours of the South, that truth and that justice will surely prevail by the judgment of this great tribunal of the American people.

By the frame of the Government under which we live this same people have wisely given their public servants but little power for mischief, and have with equal wisdom provided for the return of that little to their own hands at very short intervals. While the people retain their virtue and vigilance no Administration by any extreme of wickedness or folly can very seriously injure the Government in the short space of four years.

My countrymen, one and all, think calmly and well upon this whole subject. Nothing valuable can be lost by taking time. If there be an object to hurry any of you in hot haste to a step which you would never take deliberately, that object will be frustrated by taking time; but no good object can be frustrated by it. Such of you as are now dissatisfied still have the old Constitution unimpaired, and, on the sensitive point, the laws of your own framing under it; while the new Administration will have no immediate power, if it would, to change either. If it were admitted that you who are dissatisfied hold the right side in the dispute, there still is no single good reason for precipitate action. Intelligence, patriotism, Christianity, and a firm reliance on Him who has never yet forsaken this favored land are still competent to adjust in the best way all our present difficulty.

In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The Government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the Government, while I shall have the most solemn one to “preserve, protect, and defend it.”

I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have

strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

# 16. James Buchanan's Response to Secession

## James Buchanan (1791-1868)

James Buchanan was born in a log cabin in Pennsylvania and graduated Dickinson College in 1809. He apprenticed with a lawyer in Lancaster and opened his own practice after he was admitted to the bar in 1812. Elected to the House of Representatives in 1820, he later joined Andrew Jackson in organizing the Democratic Party and was rewarded with the position of Ambassador to Russia in 1832.

Buchanan was elected to the Senate in 1836. He served for eight years before President James K. Polk selected him as Secretary of State in 1845. He unsuccessfully sought the Democratic nomination for president in 1848 and 1852, when Franklin Pierce was selected as the Democratic nominee. After serving as Pierce's Ambassador to Great Britain, Buchanan wrested the Democratic nomination from him in 1856. He won 174 of 296 electoral votes in a three-way race to become president in 1857. A supporter of slavery, he helped Chief Justice Taney gain support for his opinion in *Scott v. Sanford* and ended his presidency by refusing to intervene in the secession of seven southern states.

## State of the Union Address (1860)

In the 19th century, it was customary for presidents to give their State of the Union Address in December, at the beginning of the congressional session. When this time came, the election of Lincoln was certain, and several states had already called secession conventions, though none had yet seceded. Buchanan argued that the Constitution has no provision for secession, and therefore it is not a choice that states could make. However, he admitted that he had no power to take military action to stop their secession without the authorization of Congress, something he knew that he could never obtain.

Buchanan's support for the southern states is clearly conveyed by his admonition that the slavery question can be settled peacefully if the northern states accepted the Supreme Court's decision in *Scott v. Sanford*. He urged states to comply with the Fugitive Slave Act, which required them to return all runaway slaves to their owners. He suggested that if incoming President Lincoln was unwilling to enforce this law, the southern states would be justified in leaving the Union.

Throughout the year since our last meeting the country has been eminently prosperous in all its material interests. The general health has been excellent, our harvests have been abundant, and plenty smiles throughout the land. Our commerce and manufactures have been prosecuted with energy and industry, and have yielded fair and ample returns. In short, no nation in the tide of time has ever presented a spectacle of greater material prosperity than we have done until within a very recent period.

Why is it, then, that discontent now so extensively prevails, and the Union of the States, which is the source of all these blessings, is threatened with destruction?

The long-continued and intemperate interference of the Northern people with the question of slavery in the Southern States has at length produced its natural effects. The different sections of the Union are now arrayed against each other, and the time has arrived, so much dreaded by the Father of his Country, when hostile geographical parties have been formed.

I have long foreseen and often forewarned my countrymen of the now impending danger. This does not proceed solely from the claim on the part of Congress or the Territorial legislatures to exclude slavery from the Territories, nor from the efforts of different States to defeat the execution of the fugitive-slave law. All or any of these evils might have been endured by the South without danger to the Union (as others have been) in the hope that time and reflection might apply the remedy. The immediate peril arises not so much from these causes as from the fact that the incessant and violent agitation of the slavery question throughout the North for the last quarter of a century has at length produced its malign influence on the slaves and inspired them with vague notions of freedom. Hence a sense of security no longer exists around the family altar. This feeling of peace at home has given place to apprehensions of servile insurrections. Many a matron throughout the South retires at night in dread of what may befall herself and children before the morning. Should this apprehension of domestic danger, whether real or imaginary, extend and intensify itself until it shall pervade the masses of the Southern people, then disunion will become inevitable. Self-preservation is the first law of nature, and has been implanted in the heart of man by his Creator for the wisest purpose; and no political union, however fraught with blessings and benefits in all other respects, can long continue if the necessary consequence be to render the homes and the firesides of nearly half the parties to it habitually and hopelessly insecure. Sooner or later the bonds of such a union must be severed. It is my conviction that this fatal period has not yet arrived, and my prayer to God is that He would preserve the Constitution and the Union throughout all generations.

But let us take warning in time and remove the cause of danger. It cannot be denied that for five and twenty years the agitation at the North against slavery has been incessant. In 1835 pictorial handbills and inflammatory appeals were circulated extensively throughout the South of a character to excite the passions of the slaves, and, in the language of General Jackson, "to stimulate them to insurrection and produce all the horrors of a servile war." This agitation has ever since been continued by the public press, by the proceedings of State and county conventions and by abolition sermons and lectures. The time of Congress has been occupied in violent speeches on this never-ending subject, and appeals, in pamphlet and other forms, indorsed by distinguished names, have been sent forth from this central point and spread broadcast over the Union.

How easy would it be for the American people to settle the slavery question forever and to restore peace and harmony to this distracted country! They, and they alone, can do it. All that is necessary to accomplish the object, and all for which the slave States have ever contended, is to be let alone and permitted to manage their domestic institutions in their own way. As sovereign States, they, and they alone, are responsible

before God and the world for the slavery existing among them. For this the people of the North are not more responsible and have no more fight to interfere than with similar institutions in Russia or in Brazil.

Upon their good sense and patriotic forbearance I confess I still greatly rely. Without their aid it is beyond the power of any President, no matter what may be his own political proclivities, to restore peace and harmony among the States. Wisely limited and restrained as is his power under our Constitution and laws, he alone can accomplish but little for good or for evil on such a momentous question.

And this brings me to observe that the election of any one of our fellow-citizens to the office of President does not of itself afford just cause for dissolving the Union. This is more especially true if his election has been effected by a mere plurality, and not a majority of the people, and has resulted from transient and temporary causes, which may probably never again occur. In order to justify a resort to revolutionary resistance, the Federal Government must be guilty of “a deliberate, palpable, and dangerous exercise” of powers not granted by the Constitution.

The late Presidential election, however, has been held in strict conformity with its express provisions. How, then, can the result justify a revolution to destroy this very Constitution? Reason, justice, a regard for the Constitution, all require that we shall wait for some overt and dangerous act on the part of the President elect before resorting to such a remedy. It is said, however, that the antecedents of the President-elect have been sufficient to justify the fears of the South that he will attempt to invade their constitutional rights. But are such apprehensions of contingent danger in the future sufficient to justify the immediate destruction of the noblest system of government ever devised by mortals? From the very nature of his office and its high responsibilities he must necessarily be conservative. The stern duty of administering the vast and complicated concerns of this Government affords in itself a guaranty that he will not attempt any violation of a clear constitutional right.

After all, he is no more than the chief executive officer of the Government. His province is not to make but to execute the laws. And it is a remarkable fact in our history that, notwithstanding the repeated efforts of the antislavery party, no single act has ever passed Congress, unless we may possibly except the Missouri compromise, impairing in the slightest degree the rights of the South to their property in slaves; and it may also be observed, judging from present indications, that no probability exists of the passage of such an act by a majority of both Houses, either in the present or the next Congress....

It is alleged as one cause for immediate secession that the Southern States are denied equal rights with the other States in the common Territories. But by what authority are these denied? Not by Congress, which has never passed, and I believe never will pass, any act to exclude slavery from these Territories; and certainly not by the Supreme Court, which has solemnly decided that slaves are property, and, like all other property, their owners have a right to take them into the common Territories and hold them there under the protection of the Constitution.

So far then, as Congress is concerned, the objection is not to anything they have already done, but to what they may do hereafter. It will surely be admitted that this apprehension of future danger is no good reason for an immediate dissolution of the Union. It is true that the Territorial legislature of Kansas, on the 23d February, 1860, passed in great haste an act over the veto of the governor declaring that slavery “is and shall be forever prohibited in this Territory.” Such an act, however, plainly violating the rights of property secured by the Constitution, will surely be declared void by the judiciary whenever it shall be presented in a legal form.

Only three days after my inauguration the Supreme Court of the United States solemnly adjudged that this power did not exist in a Territorial legislature. Yet such has been the factious temper of the times that the

correctness of this decision has been extensively impugned before the people, and the question has given rise to angry political conflicts throughout the country. Those who have appealed from this judgment of our highest constitutional tribunal to popular assemblies would, if they could, invest a Territorial legislature with power to annul the sacred rights of property. This power Congress is expressly forbidden by the Federal Constitution to exercise. Every State legislature in the Union is forbidden by its own constitution to exercise it. It cannot be exercised in any State except by the people in their highest sovereign capacity, when framing or amending their State constitution. In like manner it can only be exercised by the people of a Territory represented in a convention of delegates for the purpose of framing a constitution preparatory to admission as a State into the Union. Then, and not until then, are they invested with power to decide the question whether slavery shall or shall not exist within their limits...

The most palpable violations of constitutional duty which have yet been committed consist in the acts of different State legislatures to defeat the execution of the fugitive-slave law. It ought to be remembered, however, that for these acts neither Congress nor any President can justly be held responsible. Having been passed in violation of the Federal Constitution, they are therefore null and void. All the courts, both State and national, before whom the question has arisen have from the beginning declared the fugitive-slave law to be constitutional. The single exception is that of a State court in Wisconsin, and this has not only been reversed by the proper appellate tribunal, but has met with such universal reprobation that there can be no danger from it as a precedent. The validity of this law has been established over and over again by the Supreme Court of the United States with perfect unanimity.... Here, then, a clear case is presented in which it will be the duty of the next President, as it has been my own, to act with vigor in executing this supreme law against the conflicting enactments of State legislatures. Should he fail in the performance of this high duty, he will then have manifested a disregard of the Constitution and laws, to the great injury of the people of nearly one-half of the States of the Union. But are we to presume in advance that he will thus violate his duty? This would be at war with every principle of justice and of Christian charity. Let us wait for the overt act. The fugitive-slave law has been carried into execution in every contested case since the commencement of the present Administration, though often, it is to be regretted, with great loss and inconvenience to the master and with considerable expense to the Government. Let us trust that the State legislatures will repeal their unconstitutional and obnoxious enactments. Unless this shall be done without unnecessary delay, it is impossible for any human power to save the Union.

The Southern States, standing on the basis of the Constitution, have right to demand this act of justice from the States of the North. Should it be refused, then the Constitution, to which all the States are parties, will have been willfully violated by one portion of them in a provision essential to the domestic security and happiness of the remainder. In that event the injured States, after having first used all peaceful and constitutional means to obtain redress, would be justified in revolutionary resistance to the Government of the Union.

I have purposely confined my remarks to revolutionary resistance, because it has been claimed within the last few years that any State, whenever this shall be its sovereign will and pleasure, may secede from the Union in accordance with the Constitution and without any violation of the constitutional rights of the other members of the Confederacy; that as each became parties to the Union by the vote of its own people assembled in convention, so any one of them may retire from the Union in a similar manner by the vote of such a convention.

In order to justify secession as a constitutional remedy, it must be on the principle that the Federal Government is a mere voluntary association of States, to be dissolved at pleasure by any one of the

contracting parties. If this be so, the Confederacy is a rope of sand, to be penetrated and dissolved by the first adverse wave of public opinion in any of the States. In this manner our thirty-three States may resolve themselves into as many petty, jarring, and hostile republics, each one retiring from the Union without responsibility whenever any sudden excitement might impel them to such a course. By this process a Union might be entirely broken into fragments in a few weeks which cost our forefathers many years of toil, privation, and blood to establish.

Such a principle is wholly inconsistent with the history as well as the character of the Federal Constitution. After it was framed with the greatest deliberation and care it was submitted to conventions of the people of the several States for ratification. Its provisions were discussed at length in these bodies, composed of the first men of the country. Its opponents contended that it conferred powers upon the Federal Government dangerous to the rights of the States, whilst its advocates maintained that under a fair construction of the instrument there was no foundation for such apprehensions. In that mighty struggle between the first intellects of this or any other country it never occurred to any individual, either among its opponents or advocates, to assert or even to intimate that their efforts were all vain labor, because the moment that any State felt herself aggrieved she might secede from the Union. What a crushing argument would this have proved against those who dreaded that the rights of the States would be endangered by the Constitution! The truth is that it was not until many years after the origin of the Federal Government that such a proposition was first advanced. It was then met and refuted by the conclusive arguments of General Jackson, who in his message of the 16th of January, 1833, transmitting the nullifying ordinance of South Carolina to Congress, employs the following language: "The right of the people of a single State to absolve themselves at will and without the consent of the other States from their most solemn obligations, and hazard the liberties and happiness of the millions composing this Union, can not be acknowledged. Such authority is believed to be utterly repugnant both to the principles upon which the General Government is constituted and to the objects which it is expressly formed to attain."

It is not pretended that any clause in the Constitution gives countenance to such a theory. It is altogether rounded upon inference; not from any language contained in the instrument itself, but from the sovereign character of the several States by which it was ratified. But is it beyond the power of a State, like an individual, to yield a portion of its sovereign rights to secure the remainder? In the language of Mr. Madison, who has been called the father of the Constitution: "It was formed by the States; that is, by the people in each of the States acting in their highest sovereign capacity, and formed, consequently, by the same authority which formed the State constitutions. Nor is the Government of the United States, created by the Constitution, less a government, in the strict sense of the term, within the sphere of its powers than the governments created by the constitutions of the States are within their several spheres. It is, like them, organized into legislative, executive, and judiciary departments. It operates, like them directly on persons and things, and, like them, it has at command a physical force for executing the powers committed to it."

It was intended to be perpetual, and not to be annulled at the pleasure of any one of the contracting parties. The old Articles of Confederation were entitled "Articles of Confederation and Perpetual Union between the States," and by the thirteenth article it is expressly declared that "the articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual." The preamble to the Constitution of the United States, having express reference to the Articles of Confederation, recites that it was established "in order to form a more perfect union." And yet it is contended that this "more perfect union" does not include the essential attribute of perpetuity.

But that the Union was designed to be perpetual appears conclusively from the nature and extent of the

powers conferred by the Constitution on the Federal Government. These powers embrace the very highest attributes of national sovereignty. They place both the sword and the purse under its control...

In order still further to secure the uninterrupted exercise of these high powers against State interposition, it is provided that: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

The solemn sanction of religion has been superadded to the obligations of official duty, and all Senators and Representatives of the United States, all members of State legislatures, and all executive and judicial officers, "both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution..."

This Government, therefore, is a great and powerful Government, invested with all the attributes of sovereignty over the special subjects to which its authority extends. Its framers never intended to implant in its bosom the seeds of its own destruction, nor were they at its creation guilty of the absurdity of providing for its own dissolution. It was not intended by its framers to be the baseless fabric of a vision, which at the touch of the enchanter would vanish into thin air, but a substantial and mighty fabric, capable of resisting the slow decay of time and of defying the storms of ages. Indeed, well may the jealous patriots of that day have indulged fears that a Government of such high powers might violate the reserved rights of the States, and wisely did they adopt the rule of a strict construction of these powers to prevent the danger. But they did not fear, nor had they any reason to imagine, that the Constitution would ever be so interpreted as to enable any State by her own act, and without the consent of her sister States, to discharge her people from all or any of their federal obligations.

It may be asked, then, Are the people of the States without redress against the tyranny and oppression of the Federal Government? By no means. The right of resistance on the part of the governed against the oppression of their governments can not be denied. It exists independently of all constitutions, and has been exercised at all periods of the world's history. Under it old governments have been destroyed and new ones have taken their place. It is embodied in strong and express language in our own Declaration of Independence. But the distinction must ever be observed that this is revolution against an established government, and not a voluntary secession from it by virtue of an inherent constitutional right. In short, let us look the danger fairly in the face. Secession is neither more nor less than revolution. It may or it may not be a justifiable revolution, but still it is revolution.

What, in the meantime, is the responsibility and true position of the Executive? He is bound by solemn oath, before God and the country, "to take care that the laws be faithfully executed," and from this obligation he can not be absolved by any human power. But what if the performance of this duty, in whole or in part, has been rendered impracticable by events over which he could have exercised no control? Such at the present moment is the case throughout the State of South Carolina so far as the laws of the United States to secure the administration of justice by means of the Federal judiciary are concerned. All the Federal officers within its limits through whose agency alone these laws can be carried into execution have already resigned. We no longer have a district judge, a district attorney, or a marshal in South Carolina. In fact, the whole machinery of the Federal Government necessary for the distribution of remedial justice among the people has been demolished, and it would be difficult, if not impossible, to replace it.

The only acts of Congress on the statute book bearing upon this subject are those of February 28, 1795, and March 3, 1807. These authorize the President, after he shall have ascertained that the marshal, with his posse



comitatus, is unable to execute civil or criminal process in any particular case, to call forth the militia and employ the Army and Navy to aid him in performing this service, having first by proclamation commanded the insurgents “to disperse and retire peaceably to their respective abodes within a limited time.” This duty cannot by possibility be performed in a State where no judicial authority exists to issue process, and where there is no marshal to execute it, and where, even if there were such an officer, the entire population would constitute one solid combination to resist him.

The bare enumeration of these provisions proves how inadequate they are without further legislation to overcome a united opposition in a single State, not to speak of other States who may place themselves in a similar attitude. Congress alone has power to decide whether the present laws can or can not be amended so as to carry out more effectually the objects of the Constitution....

The question fairly stated is, Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw or has actually withdrawn from the Confederacy? If answered in the affirmative, it must be on the principle that the power has been conferred upon Congress to declare and to make war against a State. After much serious reflection I have arrived at the conclusion that no such power has been delegated to Congress or to any other department of the Federal Government. It is manifest upon an inspection of the Constitution that this is not among the specific and enumerated powers granted to Congress, and it is equally apparent that its exercise is not “necessary and proper for carrying into execution” any one of these powers. So far from this power having been delegated to Congress, it was expressly refused by the Convention which framed the Constitution.

It appears from the proceedings of that body that on the 31st May, 1787, the clause “authorizing an exertion of the force of the whole against a delinquent State” came up for consideration. Mr. Madison opposed it in a brief but powerful speech, from which I shall extract but a single sentence. He observed: “The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound.” Upon his motion the clause was unanimously postponed, and was never, I believe, again presented....

Without descending to particulars, it may be safely asserted that the power to make war against a State is at variance with the whole spirit and intent of the Constitution. Suppose such a war should result in the conquest of a State; how are we to govern it afterwards? Shall we hold it as a province and govern it by despotic power? In the nature of things, we could not by physical force control the will of the people and compel them to elect Senators and Representatives to Congress and to perform all the other duties depending upon their own volition and required from the free citizens of a free State as a constituent member of the Confederacy.

But if we possessed this power, would it be wise to exercise it under existing circumstances? The object would doubtless be to preserve the Union. War would not only present the most effectual means of destroying it, but would vanish all hope of its peaceable reconstruction. Besides, in the fraternal conflict a vast amount of blood and treasure would be expended, rendering future reconciliation between the States impossible. In the meantime, who can foretell what would be the sufferings and privations of the people during its existence?

The fact is that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it can not live in the affections of the people, it must one day perish. Congress possesses many means of preserving it by conciliation, but the sword was not placed in their hand to preserve it by force....

It is not every wrong—nay, it is not every grievous wrong—which can justify a resort to such a fearful

alternative. This ought to be the last desperate remedy of a despairing people, after every other constitutional means of conciliation had been exhausted. We should reflect that under this free Government there is an incessant ebb and flow in public opinion. The slavery question, like everything human, will have its day. I firmly believe that it has reached and passed the culminating point. But if in the midst of the existing excitement the Union shall perish, the evil may then become irreparable.

Congress can contribute much to avert it by proposing and recommending to the legislatures of the several States the remedy for existing evils which the Constitution has itself provided for its own preservation. This has been tried at different critical periods of our history, and always with eminent success. It is to be found in the fifth article, providing for its own amendment....

This is the very course which I earnestly recommend in order to obtain an “explanatory amendment” of the Constitution on the subject of slavery. This might originate with Congress or the State legislatures, as may be deemed most advisable to attain the object. The explanatory amendment might be confined to the final settlement of the true construction of the Constitution on three special points:

1. An express recognition of the right of property in slaves in the States where it now exists or may hereafter exist.
2. The duty of protecting this right in all the common Territories throughout their Territorial existence, and until they shall be admitted as States into the Union, with or without slavery, as their constitutions may prescribe.
3. A like recognition of the right of the master to have his slave who has escaped from one State to another restored and “delivered up” to him, and of the validity of the fugitive-slave law enacted for this purpose, together with a declaration that all State laws impairing or defeating this right are violations of the Constitution, and are consequently null and void....

It ought not to be doubted that such an appeal to the arbitrament established by the Constitution itself would be received with favor by all the States of the Confederacy. In any event, it ought to be tried in a spirit of conciliation before any of these States shall separate themselves from the Union....

# 17. South Carolina's Secession Resolution

## South Carolina Secession Resolution

After Lincoln won the 1860 Presidential election, the leaders of southern slave-holding states reached the conclusion that he was likely to take actions that would imperil their ability to maintain slavery. They called for elections to secession conventions, which opened in December 1860. South Carolina was the first state to secede, passing its resolution on Christmas Eve. Six more states also voted to secede before Lincoln was inaugurated on March 4, 1861.

### **South Carolina Secession Resolution (December 24, 1860)**

The people of the State of South Carolina, in Convention assembled, on the 26th day of April, A.D., 1852, declared that the frequent violations of the Constitution of the United States, by the Federal Government, and its encroachments upon the reserved rights of the States, fully justified this State in then withdrawing from the Federal Union; but in deference to the opinions and wishes of the other slaveholding States, she forbore at that time to exercise this right. Since that time, these encroachments have continued to increase, and further forbearance ceases to be a virtue.

And now the State of South Carolina having resumed her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the nations of the world, that she should declare the immediate causes which have led to this act.

In the year 1765, that portion of the British Empire embracing Great Britain, undertook to make laws for the government of that portion composed of the thirteen American Colonies. A struggle for the right of self-government ensued, which resulted, on the 4th of July, 1776, in a Declaration, by the Colonies, "that they are, and of right ought to be, FREE AND INDEPENDENT STATES; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

They further solemnly declared that whenever any "form of government becomes destructive of the ends for which it was established, it is the right of the people to alter or abolish it, and to institute a new government." Deeming the Government of Great Britain to have become destructive of these ends, they declared that the Colonies "are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

In pursuance of this Declaration of Independence, each of the thirteen States proceeded to exercise its separate sovereignty; adopted for itself a Constitution, and appointed officers for the administration of government in all its departments—Legislative, Executive and Judicial. For purposes of defense, they united their arms and their counsels; and, in 1778, they entered into a League known as the Articles of

Confederation, whereby they agreed to entrust the administration of their external relations to a common agent, known as the Congress of the United States, expressly declaring, in the first Article “that each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not, by this Confederation, expressly delegated to the United States in Congress assembled.”

Under this Confederation the war of the Revolution was carried on, and on the 3rd of September, 1783, the contest ended, and a definite Treaty was signed by Great Britain, in which she acknowledged the independence of the Colonies in the following terms: “ARTICLE 1- His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be FREE, SOVEREIGN AND INDEPENDENT STATES; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety and territorial rights of the same and every part thereof.”

Thus were established the two great principles asserted by the Colonies, namely: the right of a State to govern itself; and the right of a people to abolish a Government when it becomes destructive of the ends for which it was instituted. And concurrent with the establishment of these principles, was the fact, that each Colony became and was recognized by the mother Country a FREE, SOVEREIGN AND INDEPENDENT STATE.

In 1787, Deputies were appointed by the States to revise the Articles of Confederation, and on 17th September, 1787, these Deputies recommended for the adoption of the States, the Articles of Union, known as the Constitution of the United States.

The parties to whom this Constitution was submitted, were the several sovereign States; they were to agree or disagree, and when nine of them agreed the compact was to take effect among those concurring; and the General Government, as the common agent, was then invested with their authority.

If only nine of the thirteen States had concurred, the other four would have remained as they then were—separate, sovereign States, independent of any of the provisions of the Constitution. In fact, two of the States did not accede to the Constitution until long after it had gone into operation among the other eleven; and during that interval, they each exercised the functions of an independent nation.

By this Constitution, certain duties were imposed upon the several States, and the exercise of certain of their powers was restrained, which necessarily implied their continued existence as sovereign States. But to remove all doubt, an amendment was added, which declared that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people. On the 23d May, 1788, South Carolina, by a Convention of her People, passed an Ordinance assenting to this Constitution, and afterwards altered her own Constitution, to conform herself to the obligations she had undertaken.

Thus was established, by compact between the States, a Government with definite objects and powers, limited to the express words of the grant. This limitation left the whole remaining mass of power subject to the clause reserving it to the States or to the people, and rendered unnecessary any specification of reserved rights.

We hold that the Government thus established is subject to the two great principles asserted in the Declaration of Independence; and we hold further, that the mode of its formation subjects it to a third fundamental principle, namely: the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part

of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.

In the present case, that fact is established with certainty. We assert that fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations, and we refer to their own Statutes for the proof.

The Constitution of the United States, in its fourth Article, provides as follows: “No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.”

This stipulation was so material to the compact, that without it that compact would not have been made. The greater number of the contracting parties held slaves, and they had previously evinced their estimate of the value of such a stipulation by making it a condition in the Ordinance for the government of the territory ceded by Virginia, which now composes the States north of the Ohio River.

The same article of the Constitution stipulates also for rendition by the several States of fugitives from justice from the other States.

The General Government, as the common agent, passed laws to carry into effect these stipulations of the States. For many years these laws were executed. But an increasing hostility on the part of the non-slaveholding States to the institution of slavery, has led to a disregard of their obligations, and the laws of the General Government have ceased to effect the objects of the Constitution. The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Michigan, Wisconsin and Iowa, have enacted laws which either nullify the Acts of Congress or render useless any attempt to execute them. In many of these States the fugitive is discharged from service or labor claimed, and in none of them has the State Government complied with the stipulation made in the Constitution. The State of New Jersey, at an early day, passed a law in conformity with her constitutional obligation; but the current of anti-slavery feeling has led her more recently to enact laws which render inoperative the remedies provided by her own law and by the laws of Congress. In the State of New York even the right of transit for a slave has been denied by her tribunals; and the States of Ohio and Iowa have refused to surrender to justice fugitives charged with murder, and with inciting servile insurrection in the State of Virginia. Thus the constituted compact has been deliberately broken and disregarded by the non-slaveholding States, and the consequence follows that South Carolina is released from her obligation.

The ends for which the Constitution was framed are declared by itself to be “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.” These ends it endeavored to accomplish by a Federal Government, in which each State was recognized as an equal, and had separate control over its own institutions. The right of property in slaves was recognized by giving to free persons distinct political rights, by giving them the right to represent, and burthening them with direct taxes for three-fifths of their slaves; by authorizing the importation of slaves for twenty years; and by stipulating for the rendition of fugitives from labor.

We affirm that these ends for which this Government was instituted have been defeated, and the Government itself has been made destructive of them by the action of the non-slaveholding States. Those States have assume the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of

societies, whose avowed object is to disturb the peace and to eloin the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.

For twenty-five years this agitation has been steadily increasing, until it has now secured to its aid the power of the common Government. Observing the *forms* of the Constitution, a sectional party has found within that Article establishing the Executive Department, the means of subverting the Constitution itself. A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the high office of President of the United States, whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common Government, because he has declared that that "Government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction.

This sectional combination for the submersion of the Constitution, has been aided in some of the States by elevating to citizenship, persons who, by the supreme law of the land, are incapable of becoming citizens; and their votes have been used to inaugurate a new policy, hostile to the South, and destructive of its beliefs and safety.

On the 4th day of March next, this party will take possession of the Government. It has announced that the South shall be excluded from the common territory, that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States.

The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy.

Sectional interest and animosity will deepen the irritation, and all hope of remedy is rendered vain, by the fact that public opinion at the North has invested a great political error with the sanction of more erroneous religious belief.

We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do.

# 18. The Chief Justice Condemns President Lincoln's Actions

## *Ex Parte Merryman (1861)*

Shortly after the first shots were fired in the Civil War, President Lincoln authorized the army to indefinitely detain all persons suspected of interfering with railroad operations in Maryland. Among those arrested was John Merryman, who asked his attorney to seek his release through a writ of habeas corpus. Chief Justice Roger Taney (profiled earlier) received the petition in his capacity as Circuit Justice and ordered the army to produce Merryman to federal court in Baltimore. Since Taney would have released Merryman because no charges were pending, Lincoln ordered the army not to produce Merryman. Instead, Merryman was detained indefinitely at Fort McHenry. Upon learning that the government had refused to follow his order, Taney issued an opinion claiming that Lincoln's actions were an unconstitutional imposition of martial law because he had suspended habeas corpus without the consent of Congress.

Before the Chief Justice of the Supreme Court of the United States, at Chambers.

The application in this case for a writ of *habeas corpus* is made to me under the 14th section of the Judiciary Act of 1789, which renders effectual for the citizen the constitutional privilege of the *habeas corpus*. That act gives to the Courts of the United States, as well as to each Justice of the Supreme Court, and to every District Judge, power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment. The petition was presented to me at Washington, under the impression that I would order the prisoner to be brought before me there, but as he was confined in Fort McHenry, at the city of Baltimore, which is in my circuit, I resolved to hear it in the latter city, as obedience to the writ, under such circumstances, would not withdraw Gen. Cadwalader, who had him in charge, from the limits of his military command.

The petition presents the following case: The petitioner resides in Maryland, in Baltimore county. While peaceably in his own house, with his family, it was at two o'clock, on the morning of the 25th of May, 1861, entered by an armed force, professing to act under military orders. He was then compelled to rise from his bed, taken into custody, and conveyed to Fort McHenry, where he is imprisoned by the commanding officer, without warrant from any lawful authority.

The commander of the fort, Gen. George Cadwalader, by whom he is detained in confinement, in his return to the writ, does not deny any of the facts alleged in the petition. He states that the prisoner was arrested by order of Gen. Keim, of Pennsylvania, and conducted as a prisoner to Fort McHenry by his order, and placed in his (Gen. Cadwalader's) custody, to be there detained by him as a prisoner.

A copy of the warrant, or order, under which the prisoner was arrested, was demanded by his counsel,

and refused. And it is not alleged in the return that any specific act, constituting an offense against the laws of the United States, has been charged against him upon oath; but he appears to have been arrested upon general charges of treason and rebellion, without proof, and without giving the names of the witnesses, or specifying the acts, which, in the judgment of the military officer, constituted these crimes. And having the prisoner thus in custody upon these vague and unsupported accusations, he refuses to obey the writ of *habeas corpus*, upon the ground that he is duly authorized by the President to suspend it....

The case, then, is simply this: A military officer residing in Pennsylvania issues an order to arrest a citizen of Maryland, upon vague and indefinite charges, without any proof, so far as appears. Under this order his house is entered in the night; he is seized as a prisoner, and conveyed to Fort McHenry, and there kept in close confinement. And when a *habeas corpus* is served on the commanding officer, requiring him to produce the prisoner before a Justice of the Supreme Court, in order that he may examine into the legality of the imprisonment, the answer of the officer is that he is authorized by the President to suspend the writ of *habeas corpus* at his discretion, and, in the exercise of that discretion, suspends it in this case, and on that ground refuses obedience to the writ.

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of *habeas corpus* himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey judicial process that may be served upon him.

No official notice has been given to the courts of justice, or to the public, by proclamation or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise, for I had supposed it to be one of those points of constitutional law upon which there is no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended except by act of Congress....

The clause in the Constitution which authorizes the suspension of the privilege of the writ of *habeas corpus* is in the ninth section of the first article. This article is devoted to the Legislative Department of the United States, and has not the slightest reference to the Executive Department.... a clause is inserted giving Congress "the power to make all laws which may be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof"...

[T]his clause is immediately followed by an enumeration of certain subjects to which the powers of legislation shall not extend; and the great importance which the framers of the Constitution attached to the privilege of the writ of *habeas corpus*, to protect the liberty of the citizen, is proved by the fact that its suspension, except in cases of invasion and rebellion, is first in the list of prohibited powers; and even in these cases the power is denied and its exercise prohibited unless the public safety shall require it. It is true that in the cases mentioned Congress is of necessity the judge of whether the public safety does or does not require it; and its judgment is conclusive. But the introduction of these words is a standing admonition to the legislative body of the danger of suspending it and of the extreme caution they should exercise before they give the Government of the United States such power over the liberty of a citizen.

It is the second article of the Constitution that provides for the organization of the Executive Department, and enumerates the powers conferred on it, and prescribes its duties. And if the high power over the liberty of the citizens now claimed was intended to be conferred on the President, it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the exercise of the power...



And the only power, therefore, which the President possesses, where the “life, liberty, or property” of a private citizen is concerned, is the power and duty prescribed in the third section of the second article, which requires “that he shall take care that the laws be faithfully executed.” He is not authorized to execute them himself, or through agents or officers, civil or military, appointed by himself, but he is to take care that they be faithfully carried into execution as they are expounded and adjudged by the coordinate branch of the Government to which that duty is assigned by the Constitution. It is thus made his duty to come in aid of the judicial authority, if it shall be resisted by a force too strong to be overcome without the assistance of the Executive arm. But in exercising this power, he acts in subordination to judicial authority, assisting it to execute its process and enforce its judgments.

With such provisions in the Constitution, expressed in language too clear to be misunderstood by anyone, I can see no ground whatever for supposing that the President, in any emergency or in any state of things, can authorize the suspension of the privilege of the writ of *habeas corpus*, or arrest a citizen, except in aid of the judicial power. He certainly does not faithfully execute the laws if he takes upon himself legislative power by suspending the writ of *habeas corpus*--and the judicial power, also, by arresting and imprisoning a person without due process of law. Nor can any argument be drawn from the nature of sovereignty, or the necessities of government for self-defense, in times of tumult and danger. The Government of the United States is one of delegated and limited powers. It derives its existence and authority altogether from the Constitution, and neither of its branches--executive, legislative or judicial--can exercise any of the powers of government beyond those specified and granted. For the tenth article of the amendments to the Constitution, in express terms, provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.”

To guide me to a right conclusion, I have the *Commentaries on the Constitution of the United States* of the late Mr. Justice Story, not only one of the most eminent jurists of the age, but for a long time one of the brightest ornaments of the Supreme Court of the United States, and also the clear and authoritative decision of that Court itself, given more than half a century since, and conclusively establishing the principles I have above stated. Mr. Justice Story, speaking in his *Commentaries*, of the *habeas corpus* clause in the Constitution, says: “It is obvious that cases of a peculiar emergency may arise, which may justify, nay, even require, the temporary suspension of any right to the writ. But as it has frequently happened in foreign countries, and even in England, that the writ has, upon various pretexts and occasions, been suspended, whereby persons apprehended upon suspicion have suffered a long imprisonment, sometimes from design, and sometimes because they were forgotten, the right to suspend it is expressly confined to cases of rebellion or invasion, where the public safety may require it. A very just and wholesome restraint, which cuts down at a blow a fruitful means of oppression, capable of being abused in bad times to the worst of purposes. Hitherto no suspension of the writ has ever been authorized by Congress since the establishment of the Constitution. It would seem, as the power is given to Congress to suspend the writ of *habeas corpus* in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body.”

And Chief Justice Marshall, in delivering the opinion of the Supreme Court in the case *ex parte Bollman and Swartwout*, uses this decisive language: “It may be worthy of remark, that this act was passed by the First Congress of the United States, sitting under a Constitution which had declared ‘that the privilege of the writ of *habeas corpus* should not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.’ Acting under the immediate influence of this injunction, they must have felt with peculiar force the obligation of providing efficient means by which this great constitutional privilege should receive

life and activity; for if the means be not in existence, the privilege itself would be lost, although no law for its suspension should be enacted. Under the impression of this obligation they give to all the courts the power of awarding 'writs of *habeas corpus*.... If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States, it is for the Legislature to say so. That question depends on political considerations, on which the Legislature is to decide. Until the legislative will be expressed, this court can only see its duty, and must obey the laws."

But the documents before me show that the military authority in this case has gone far beyond the mere suspension of the privilege of the writ of *habeas corpus*. It has, by force of arms, thrust aside the judicial authorities and officers to whom the Constitution has confided the power and duty of interpreting and administering the laws, and substituted a military government in its place, to be administered and executed by military officers. For at the time these proceedings were had against John Merryman, the District Judge of Maryland—the commissioner appointed under the act of Congress—the District Attorney and the Marshal, all resided in the city of Baltimore, a few miles only from the home of the prisoner. Up to that time there had never been the slightest resistance or obstruction to the process of any Court or judicial officer of the United States in Maryland, except by the military authority. And if a military officer, or any other person, had reason to believe that the prisoner had committed any offence against the laws of the United States, it was his duty to give information of the fact and the evidence to support it to the District Attorney, and it would then have become the duty of that officer to bring the matter before the District Judge or Commissioner, and if there was sufficient legal evidence to justify his arrest, the Judge or Commissioner would have issued his warrant to the Marshal to arrest him, and, upon the hearing of the party, would have held him to bail, or committed him for trial, according to the character of the offense as it appeared in the testimony, or would have discharged him immediately if there was not sufficient evidence to support the accusation. There was no danger of any obstruction or resistance to the action of the civil authorities, and therefore no reason whatever for the interposition of the military. And yet, under these circumstances, a military officer, stationed in Pennsylvania, without giving any information to the District Attorney, and without any application to the judicial authorities, assumes to himself the judicial power in the District of Maryland; undertakes to decide what constitutes the crime of treason or rebellion; what evidence (if, indeed, he required any) is sufficient to support the accusation and justify the commitment; and commits the party, without having a hearing even before himself, to close custody in a strongly garrisoned fort, to be there held, it would seem, during the pleasure of those who committed him.

The Constitution provides, as I have before said, that "no person shall be deprived of life, liberty, or property, without due process of law." It declares that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." It provides that the party accused shall be entitled to a speedy trial in a court of justice.

And these great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of *habeas corpus*, by a military order, supported by force of arms. Such is the case now before me; and I can only say that if the authority which the Constitution has confided to the judiciary department and judicial officers may thus upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a Government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the army officer in whose military district he may happen to be found.

In such a case my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer on me, but that power has been resisted by a force too strong for me to overcome. It is possible that the officer who has incurred this grave responsibility may have misunderstood his instructions, and exceeded the authority intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the District of Maryland, and direct the clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfilment of his constitutional obligation to “take care that the laws be faithfully executed,” to determine what measures he will take to cause the civil process of the United States to be respected and enforced.

# 19. Lincoln Justifies the Suppression of Rights

## Letter to Erastus Corning and Others (1863)

Abraham Lincoln (profiled earlier) responded to those who criticized his widespread detention of critics and his use of military tribunals to try them without juries. The next reading is a letter he wrote to Erastus Corning and others after they had passed a resolution at a meeting in upstate New York criticizing his policies. Lincoln laid out his justification for unilaterally suspending habeas corpus, which is that during cases of war or rebellion constitutional rights can be suspended to save the union. He analogized the Union to a sick patient who must trust the measures of a doctor to save his life. He claimed that the Constitution could easily be restored when the Civil War ended. He found no value in critical speech during wartime, and argued that those who did not actively support the United States' war efforts should be regarded as its enemies.

Your letter of May 19th. enclosing the resolutions of a public meeting held at Albany, N.Y. on the 16th of the same month, was received several days ago.

The resolutions, as I understand them, are resolvable into two propositions—first, the expression of a purpose to sustain the cause of the Union, to secure peace through victory, and to support the administration in every constitutional, and lawful measure to suppress the rebellion; and secondly, a declaration of censure upon the administration for supposed unconstitutional action such as the making of military arrests.

And, from the two propositions a third is deduced, which is, that the gentlemen composing the meeting are resolved on doing their part to maintain our common government and country, despite the folly or wickedness, as they may conceive, of any administration. This position is eminently patriotic, and as such, I thank the meeting, and congratulate the nation for it. My own purpose is the same; so that the meeting and myself have a common object, and can have no difference, except in the choice of means or measures, for effecting that object.

And here I ought to close this paper, and would close it, if there were no apprehension that more injurious consequences, than any merely personal to myself, might follow the censures systematically cast upon me for doing what, in my view of duty, I could not forbear. The resolutions promise to support me in every constitutional and lawful measure to suppress the rebellion; and I have not knowingly employed, nor shall knowingly employ, any other. But the meeting, by their resolutions, assert and argue, that certain military arrests and proceedings following them for which I am ultimately responsible, are unconstitutional. I think they are not. The resolutions quote from the constitution, the definition of treason; and also the limiting safe-guards and guarantees therein provided for the citizen, on trials for treason, and on his being held to answer for capital or otherwise infamous crimes, and, in criminal prosecutions, his right to a speedy and public trial by an impartial jury. They proceed to resolve “That these safe-guards of the rights of the citizen against the pretensions of arbitrary power, were intended more *especially* for his protection in times

of civil commotion.” And, apparently, to demonstrate the proposition, the resolutions proceed “They were secured substantially to the English people, *after* years of protracted civil war, and were adopted into our constitution at the *close* of the revolution.” Would not the demonstration have been better, if it could have been truly said that these safe-guards had been adopted, and applied *during* the civil wars and *during* our revolution, instead of *after* the one, and at the *close* of the other. I too am devotedly for them *after* civil war, and *before* civil war, and at all times “except when, in cases of Rebellion or Invasion, the public Safety may require” their suspension. The resolutions proceed to tell us that these safe-guards “have stood the test of seventy-six years of trial, under our republican system, under circumstances which show that while they constitute the foundation of all free government, they are the elements of the enduring stability of the Republic.” No one denies that they have so stood the test up to the beginning of the present rebellion if we except a certain matter at New-Orleans hereafter to be mentioned; nor does any one question that they will stand the same test much longer after the rebellion closes. But these provisions of the constitution have no application to the case we have in hand, because the arrests complained of were not made for treason—that is, not for *the* treason defined in the constitution, and upon the conviction of which, the punishment is death—nor yet were they made to hold persons to answer for any capital, or otherwise infamous crimes; nor were the proceedings following, in any constitutional or legal sense, “criminal prosecutions.” The arrests were made on totally different grounds, and the proceedings following, accorded with the grounds of the arrests. Let us consider the real case with which we are dealing, and apply to it the parts of the constitution plainly made for such cases.

Prior to my installation here it had been inculcated that any State had a lawful right to secede from the national Union; and that it would be expedient to exercise the right, whenever the devotees of the doctrine should fail to elect a President to their own liking. I was elected contrary to their liking; and accordingly, so far as it was legally possible, they had taken seven states out of the Union, had seized many of the United States Forts, and had fired upon the United States’ Flag, all before I was inaugurated; and, of course, before I had done any official act whatever. The rebellion, thus began soon ran into the present civil war; and, in certain respects, it began on very unequal terms between the parties. The insurgents had been preparing for it more than thirty years, while the government had taken no steps to resist them. The former had carefully considered all the means which could be turned to their account. It undoubtedly was a well pondered reliance with them that in their own unrestricted effort to destroy Union, constitution, and law, all together, the government would, in great degree, be restrained by the same constitution and law, from arresting their progress. Their sympathizers pervaded all departments of the government, and nearly all communities of the people. From this material, under cover of “Liberty of speech” “Liberty of the press” and “*Habeas corpus*” they hoped to keep on foot amongst us a most efficient corps of spies, informers, suppliers, and aiders and abettors of their cause in a thousand ways. They knew that in times such as they were inaugurating, by the constitution itself, the “*Habeas corpus*” might be suspended; but they also knew they had friends who would make a question as to *who* was to suspend it; meanwhile their spies and others might remain at large to help on their cause. Or if, as has happened, the executive should suspend the writ, without ruinous waste of time, instances of arresting innocent persons might occur, as are always likely to occur in such cases; and then a clamor could be raised in regard to this, which might be, at least, of some service to the insurgent cause. It needed no very keen perception to discover this part of the enemies’ program, so soon as by open hostilities their machinery was fairly put in motion. Yet, thoroughly imbued with a reverence for the guaranteed rights of individuals, I was slow to adopt the strong measures, which by degrees I have been forced to regard as being within the exceptions of the constitution, and as indispensable

to the public Safety. Nothing is better known to history than that courts of justice are utterly incompetent to such cases. Civil courts are organized chiefly for trials of individuals, or, at most, a few individuals acting in concert; and this in quiet times, and on charges of crimes well defined in the law. Even in times of peace, bands of horse-thieves and robbers frequently grow too numerous and powerful for the ordinary courts of justice. But what comparison, in numbers, have such bands ever borne to the insurgent sympathizers even in many of the loyal states? Again, a jury too frequently have at least one member, more ready to hang the panel than to hang the traitor. And yet again, he who dissuades one man from volunteering, or induces one soldier to desert, weakens the Union cause as much as he who kills a union soldier in battle. Yet this dissuasion, or inducement, may be so conducted as to be no defined crime of which any civil court would take cognizance.

Ours is a case of Rebellion—so called by the resolutions before me—in fact, a clear, flagrant, and gigantic case of Rebellion; and the provision of the constitution that “The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion, the public Safety may require it” is the provision which specially applies to our present case. This provision plainly attests the understanding of those who made the constitution that ordinary courts of justice are inadequate to “cases of Rebellion”—attests their purpose that in such cases, men may be held in custody whom the courts acting on ordinary rules, would discharge. Habeas Corpus, does not discharge men who are proved to be guilty of defined crime; and its suspension is allowed by the constitution on purpose that, men may be arrested and held, who cannot be proved to be guilty of defined crime, “when, in cases of Rebellion or Invasion the public Safety may require it.” This is precisely our present case—a case of Rebellion, wherein the public Safety does require the suspension. Indeed, arrests by process of courts, and arrests in cases of rebellion, do not proceed altogether upon the same basis. The former is directed at the small percentage of ordinary and continuous perpetration of crime; while the latter is directed at sudden and extensive uprisings against the government, which, at most, will succeed or fail, in no great length of time. In the latter case, arrests are made, not so much for what has been done, as for what probably would be done. The latter is more for the preventive, and less for the vindictive, than the former. In such cases the purposes of men are much more easily understood, than in cases of ordinary crime. The man who stands by and says nothing, when the peril of his government is discussed, cannot be misunderstood. If not hindered, he is sure to help the enemy. Much more, if he talks ambiguously—talks for his country with “buts” and “ifs” and “ands.” Of how little value the constitutional provision I have quoted will be rendered, if arrests shall never be made until defined crimes shall have been committed, may be illustrated by a few notable examples. Gen. John C. Breckenridge, Gen. Robert E. Lee, Gen. Joseph E. Johnston, Gen. John B. Magruder, Gen. William B. Preston, Gen. Simon B. Buckner, and Commodore [Franklin] Buchanan, now occupying the very highest places in the rebel war service, were all within the power of the government since the rebellion began, and were nearly as well known to be traitors then as now. Unquestionably if we had seized and held them, the insurgent cause would be much weaker. But no one of them had then committed any crime defined in the law. Every one of them if arrested would have been discharged on Habeas Corpus, were the writ allowed to operate. In view of these and similar cases, I think the time not unlikely to come when I shall be blamed for having made too few arrests rather than too many.

By the third resolution the meeting indicate their opinion that military arrests may be constitutional in localities where rebellion actually exists; but that such arrests are unconstitutional in localities where rebellion, or insurrection, does not actually exist. They insist that such arrests shall not be made “outside of the lines of necessary military occupation, and the scenes of insurrection” In as much, however, as the constitution itself makes no such distinction, I am unable to believe that there is any such constitutional

distinction. I concede that the class of arrests complained of, can be constitutional only when, in cases of Rebellion or Invasion, the public Safety may require them; and I insist that in such cases, they are constitutional *whenever* the public safety does require them—as well in places to which they may prevent the rebellion extending, as in those where it may be already prevailing—as well where they may restrain mischievous interference with the raising and supplying of armies, to suppress the rebellion, as where the rebellion may actually be—as well where they may restrain the enticing men out of the army, as where they would prevent mutiny in the army—equally constitutional at all places where they will conduce to the public Safety, as against the dangers of Rebellion or Invasion.

Take the particular case mentioned by the meeting. They assert in substance that Mr. Vallandigham was by a military commander, seized and tried “for no other reason than words addressed to a public meeting, in criticism of the course of the administration, and in condemnation of the military orders of that general.” Now, if there be no mistake about this—if this assertion is the truth and the whole truth—if there was no other reason for the arrest, then I concede that the arrest was wrong. But the arrest, as I understand, was made for a very different reason. Mr. Vallandigham avows his hostility to the war on the part of the Union; and his arrest was made because he was laboring, with some effect, to prevent the raising of troops, to encourage desertions from the army, and to leave the rebellion without an adequate military force to suppress it. He was not arrested because he was damaging the political prospects of the administration, or the personal interests of the commanding general; but because he was damaging the army, upon the existence, and vigor of which, the life of the nation depends. He was warring upon the military; and this gave the military constitutional jurisdiction to lay hands upon him. If Mr. Vallandigham was not damaging the military power of the country, then his arrest was made on mistake of fact, which I would be glad to correct, on reasonably satisfactory evidence.

I understand the meeting, whose resolutions I am considering, to be in favor of suppressing the rebellion by military force—by armies. Long experience has shown that armies cannot be maintained unless desertion shall be punished by the severe penalty of death. The case requires, and the law and the constitution, sanction this punishment. Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert? This is none the less injurious when effected by getting a father, or brother, or friend, into a public meeting, and there working upon his feeling, till he is persuaded to write the soldier boy, that he is fighting in a bad cause, for a wicked administration of a contemptible government, too weak to arrest and punish him if he shall desert. I think that in such a case, to silence the agitator, and save the boy, is not only constitutional, but, withal, a great mercy.

If I be wrong on this question of constitutional power, my error lies in believing that certain proceedings are constitutional when, in cases of rebellion or Invasion, the public Safety requires them, which would not be constitutional when, in absence of rebellion or invasion, the public Safety does not require them—in other words, that the constitution is not in its application in all respects the same, in cases of Rebellion or invasion, involving the public Safety, as it is in times of profound peace and public security. The constitution itself makes the distinction; and I can no more be persuaded that the government can constitutionally take no strong measure in time of rebellion, because it can be shown that the same could not be lawfully taken in time of peace, than I can be persuaded that a particular drug is not good medicine for a sick man, because it can be shown to not be good food for a well one. Nor am I able to appreciate the danger, apprehended by the meeting, that the American people will, by means of military arrests during the rebellion, lose the right of public discussion, the liberty of speech and the press, the law of evidence, trial by jury, and Habeas corpus, throughout the indefinite peaceful future which I trust lies before them, any more than I am able to believe

that a man could contract so strong an appetite for emetics during temporary illness, as to persist in feeding upon them through the remainder of his healthful life.

In giving the resolutions that earnest consideration which you request of me, I cannot overlook the fact that the meeting speak as "Democrats." Nor can I, with full respect for their known intelligence, and the fairly presumed deliberation with which they prepared their resolutions, be permitted to suppose that this occurred by accident, or in any way other than that they preferred to designate themselves "democrats" rather than "American citizens." In this time of national peril I would have preferred to meet you upon a level one step higher than any party platform; because I am sure that from such more elevated position, we could do better battle for the country we all love, than we possibly can from those lower ones, where from the force of habit, the prejudices of the past, and selfish hopes of the future, we are sure to expend much of our ingenuity and strength, in finding fault with, and aiming blows at each other. But since you have denied me this, I will yet be thankful, for the country's sake, that not all democrats have done so. He on whose discretionary judgment Mr. Vallandigham was arrested and tried, is a democrat, having no old party affinity with me; and the judge who rejected the constitutional view expressed in these resolutions, by refusing to discharge Mr. V. on Habeas Corpus, is a democrat of better days than these, having received his judicial mantle at the hands of President Jackson. And still more, of all those democrats who are nobly exposing their lives and shedding their blood on the battlefield, I have learned that many approve the course taken with Mr. V. while I have not heard of a single one condemning it. I cannot assert that there are none such....

After the battle of New-Orleans, and while the fact that the treaty of peace had been concluded, was well known in the city, but before official knowledge of it had arrived, Gen. Jackson still maintained martial, or military law. Now, that it could be said the war was over, the clamor against martial law, which had existed from the first, grew more furious. Among other things a Mr. Louiallier published a denunciatory newspaper article. Gen. Jackson arrested him. A lawyer by the name of Morel procured the U.S. Judge Hall to order a writ of Habeas Corpus to release Mr. Louiallier. Gen. Jackson arrested both the lawyer and the judge. A Mr. Hollander ventured to say of some part of the matter that "it was a dirty trick." Gen. Jackson arrested him. When the officer undertook to serve the writ of Habeas Corpus, Gen. Jackson took it from him, and sent him away with a copy. Holding the judge in custody a few days, the general sent him beyond the limits of his encampment, and set him at liberty, with an order to remain till the ratification of peace should be regularly announced, or until the British should have left the Southern coast. A day or two more elapsed, the ratification of the treaty of peace was regularly announced, and the judge and others were fully liberated. A few days more, and the judge called Gen. Jackson into court and fined him a thousand dollars, for having arrested him and the others named. The general paid the fine, and there the matter rested for nearly thirty years, when congress refunded principal and interest. The late Senator Douglas, then in the House of Representatives, took a leading part in the debate, in which the constitutional question was much discussed. I am not prepared to say whom the Journals would show to have voted for the measure.

It may be remarked: First, that we had the same constitution then, as now. Secondly, that we then had a case of Invasion, and that now we have a case of Rebellion, and: Thirdly, that the permanent right of the people to public discussion, the liberty of speech and the press, the trial by jury, the law of evidence, and the Habeas Corpus, suffered no detriment whatever by that conduct of Gen. Jackson, or it's subsequent approval by the American congress.

And yet, let me say that in my own discretion, I do not know whether I would have ordered the arrest of Mr. V. While I cannot shift the responsibility from myself, I hold that, as a general rule, the commander in the



field is the better judge of the necessity in any particular case. Of course I must practice a general directory and revisory power in the matter.

One of the resolutions expresses the opinion of the meeting that arbitrary arrests will have the effect to divide and distract those who should be united in suppressing the rebellion; and I am specifically called on to discharge Mr. Vallandigham. I regard this as, at least, a fair appeal to me, on the expediency of exercising a constitutional power which I think exists. In response to such appeal I have to say it gave me pain when I learned that Mr. V. had been arrested—that is, I was pained that there should have seemed to be a necessity for arresting him—and that it will afford me great pleasure to discharge him so soon as I can, by any means, believe the public safety will not suffer by it. I further say, that as the war progress, it appears to me, opinion, and action, which were in great confusion at first, take shape, and then fall into more regular channels; so that the necessity for arbitrary dealing with them gradually decreases. I have every reason to desire that it would cease altogether; and far from the least is my regard for the opinions and wishes of those who, like the meeting in Albany, declare their purpose to sustain the government in every constitutional and lawful measure to suppress the rebellion. Still, I must continue to do so much as may seem required by the public safety.

## Second Inaugural Address (1865)

Shortly before he was assassinated, Lincoln gave his second inaugural address, which historian Gary Wills called his greatest speech. Lincoln portrayed the immense loss that the country suffered as the consequence of rebel states placing the defense of slavery above defense of the Union. Nevertheless, he called on Americans not to impose a vindictive peace and “bind up the nation’s wounds” “with malice toward none, with charity for all.” One wonders if he also sought forgiveness for those whose rights he had violated through the suspension of habeas corpus.

At this second appearing to take the oath of the Presidential office there is less occasion for an extended address than there was at the first. Then a statement somewhat in detail of a course to be pursued seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of this great conflict which is of primary concern to the nation as a whole, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself, and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it, all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to saving the Union without war, insurgent agents were in the city seeking to destroy it without war—seeking to dissolve the Union and divide effects by negotiation. Both parties deprecated war, but one of them would make war rather than let the nation survive, and the other would accept war rather than let it perish. And the war came.

One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the Government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense cometh." If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.



## UNIT IV

# RECONSTITUTING THE NATION

This unit addresses various attempts to reconstitute the Union that had ruptured during the Civil War. While slavery ended with the ratification of the Thirteenth Amendment in 1865, ex-slaves faced many difficulties in using their new freedom. Former Confederate States attempted to restore white supremacy by enacting a series of “black codes” that drastically limited the employment opportunities of blacks. They were also barred from voting, serving in government and owning weapons. Congress responded by treating the former Confederate States as federal territories and placing them under military government. Eventually Congress adopted two constitutional amendments to permanently protect people of color. The Fourteenth Amendment, ratified in 1868, granted citizenship to all persons born in the US. It also prevented states from abridging the “privileges or immunities of citizens of the United States” or denying anyone due process or equal protection of the laws. The Fifteenth Amendment prevented states from denying citizens the right to vote on the basis of race, color or previous condition of servitude.

For a short time, it appeared as if Reconstruction might work. The former Confederate States were readmitted after they ratified the Fourteenth Amendment, and blacks were elected to local and state governments and even to Congress. However, whites used threats and violence to force most black officials out of their government positions, and when Reconstruction ended in 1877 the governments of southern states were entirely white. The Supreme Court interpreted the Fourteenth Amendment as having only limited effect on the states, and by the 1890s most southern states had established segregated public institutions that would later serve as models for both Hitler’s Nazi Party and the apartheid regime in South Africa. The Court’s decision in *Plessy v. Ferguson* illustrates the Court’s unwillingness to use the Constitution to establish political equality between blacks and whites.

Women seeking the right to vote were similarly disappointed after the Civil War. Representative Benjamin Butler promoted women’s suffrage and asked Victoria Woodhull to become the first woman to testify before Congress. She argued that a textual analysis of both the Fourteenth and Fifteenth Amendments supported the view that the Constitution now granted women the right to vote. But Congress did not seriously engage with her arguments and women’s suffrage would have to wait another half-century. Women’s equality was held back on other grounds as well. In 1873, the Supreme Court held in *Bradwell v. Illinois* that the Constitution did not bar Illinois from denying women the right to practice law even if they met all legal requirements. The fact that under common law women had no right to practice law was sufficient for the Court to find that the Illinois legislature had acted reasonably.

Another major subject of debate in postbellum America was the role that government should play in the economy. Since Andrew Jackson introduced the “spoils system” in the 1830s, public administration had been corrupted by political leaders who hired government employees based on personal loyalty rather than fidelity to the law. Many believed that the spoils system inhibited economic success and equal opportunity. Believers in minimal government regulation promoted a philosophy of *laissez-faire* that is illustrated by the selection from Yale Professor William Graham Sumner. Their opponents contended that the government was promoting the interests of the wealthy, and that progress meant doing more for those less well off. Brown Professor Lester Ward argued that government should promote the welfare of all rather than just powerful economic interests.



## 20. Victoria Woodhull Finds Constitutional Protection for Women's Suffrage

### Victoria Woodhull (1838-1927)

Born in Homer, Ohio, Victoria Claflin was raised in an abusive family and received little formal education. To escape her family she married her doctor at age 15, but it was not a successful marriage. She worked a variety of jobs—including one as a spiritual medium—and spent time advocating for reform of divorce laws that made it difficult for her to leave her marriage.

After the Civil War, she relocated to New York City. She and her sister became acquaintances of Cornelius Vanderbilt, who provided them investment advice. His stock tips allowed them to make almost \$700,000 in six weeks. She used the money to open the first female-owned brokerage house on Wall Street. She also started a newspaper that advocated for women's suffrage. Massachusetts Representative Benjamin Butler sponsored a constitutional amendment to give women the right to vote, and Woodhull became the first woman to testify before Congress in 1873.

Woodhull parlayed the fame she gained from her testimony into becoming the first woman to run for president, even though she had not yet reached the minimum age of 35. Her running mate was Frederick Douglass, who became the first black to run for vice president. Woodhull gained the endorsement of the Equal Rights Party, but failed to garner much popular support. She moved to the UK four years after her unsuccessful candidacy and lived to see both the UK and US grant women the right to vote.

### On Constitutional Equality (1873)

The next reading is Woodhull's ground-breaking congressional testimony. She argued that the Fourteenth Amendment made all women citizens and that read with the Fifteenth did not allow the states to deny women the right to vote. Woodhull wove traditional arguments for women's suffrage into her reinterpretation of the constitutional amendments. She ended by calling for women to convene their own constitutional convention if Congress failed to heed their call for the right to vote.

I have no doubt it seems strange to many of you that a woman should appear before the people in this public

manner for political purposes, and it is due both to you and myself that I should give my reasons for so doing.

On the 19th of December, 1870, I memorialized Congress, setting forth what I believed to be the truth and right regarding Equal Suffrage for all citizens. This memorial was referred to the Judiciary Committees of Congress. On the 12th of January I appeared before the House Judiciary Committee and submitted to them the Constitutional and Legal points upon which I predicated such equality. [On] January 20th Mr. Bingham, on behalf of the majority of said Committee, submitted his report to the House in which, while he admitted all my basic propositions, Congress was recommended to take no action. February 1st Messrs. Loughridge and Butler of said Committee submitted a report in their own behalf, which fully sustained the positions. I assumed and recommended that Congress *should* pass a Declaratory Act, forever settling the mooted question of suffrage.

Thus it is seen that equally able men differ upon a simple point of Constitutional Law, and it is fair to presume that Congress will also differ *when* these Reports come up for action. That a proposition involving such momentous results as this, should receive a one-third vote upon first coming before Congress has raised it an importance, which spreads alarm on all sides among the opposition. So long as it was not made to appear that women were denied Constitutional rights, no opposition was aroused; but now that new light is shed, by which it is seen that such is the case, all the Conservative weapons of bitterness, hatred and malice are marshalled in the hope to extinguish it, before it can enlighten the masses of the people, who are always true to freedom and justice.

Public opinion is against Equality, but it is simply from prejudice, which requires but to be informed to pass away. No greater prejudice exists against equality than there did against the proposition that the world was a globe. This passed away under the influence of better information, so also will present prejudice pass, when better informed upon the question of equality....

I come before you to declare that my sex are entitled to the inalienable right to life, liberty and the pursuit of happiness. The first two I cannot be deprived of except for cause and by due process of law; but upon the last, a right is usurped to place restrictions so general as to include the whole of my sex, and for which no reasons of public good can be assigned. I ask the right to pursue happiness by having a voice in that government to which I am accountable. I have not forfeited that right, still I am denied. Was assumed arbitrary authority ever more arbitrarily exercised? In practice, then, our laws are false to the principles which we profess. I have the right to life, to liberty, unless I forfeit it by an infringement upon others' rights, in which case the State becomes the arbiter and deprives me of them for the public good. I also have the right to pursue happiness, unless I forfeit it in the same way, and am denied it accordingly. It cannot be said, with any justice, that my pursuit of happiness in voting for any man for office, would be an infringement of one of his rights as a citizen or as an individual. I hold, then, that in denying me this right without my having forfeited it, that departure is made from the principles of the Constitution, and also from the true principles of government, for I am denied a right born with me, and which is inalienable. Nor can it be objected that women had no part in organizing this government. They were not denied. Today we seek a voice in government and *are* denied. There are *thousands* of male citizens in the country who seldom or never vote. They are not denied: they pursue happiness by not voting. Could it be assumed, because this body of citizens do not choose to exercise the right to vote, that they could be *permanently* denied the exercise thereof? *If not, neither* should it be assumed to deny women, who wish to vote, the right to do so.

And were it true that a majority of women do not wish to vote, it would be *no* reason why those who do, should be denied. If a right exist, and only *one in a million* desires to exercise it, *no* government should deny

its enjoyment to that one. If the thousands of men who do not choose to vote should send their petitions to Congress, asking them to prevent others who do vote from so doing, would they listen to them? I went before Congress, to ask for myself and others of my sex, who wish to pursue our happiness by participating in government, protection in such pursuit, and I was told that Congress has not the necessary power....

What is government, and *what* a Republican form of government? Government is national existence organized. Government of some form exists everywhere, but none would assume to say that the government of *China* is similar to that of *England*, or that of *Germany* to that of the *United States*. When government is fashioned *for* the people it is not a republican form, but when fashioned *by* the people it is a republican government. *Our* form of government is supposed to emanate from the people, and whatever control it possesses *over* the people is supposed to be exercised by and with their consent; and even more than this, *by their direct will and wish*. If, at any time, there are powers exercised by a government which emanates from, and is dependent upon, the will of the people, which the majority of the people do not desire to be continued, they have it in their power, and it is their duty, to compel their suspension. If, at any time, the majority of the people from whom has emanated, and who support a republican form of government, desire that it should assume *new* functions, exercise more extended control or provide for *new* circumstances, *not* existent at its primary organization, they have the power and it is their duty to *compel* their government to take such action as is necessary to secure the form that shall be acceptable.

The people are virtually the government, and it is simply the concentration and expression of their will and wisdom through which they assume form as a body politic or as a nation. The government is an embodiment of the people, and as *they* change so also must it change. In this significant fact lie all the true beauty and wisdom of our form of polity....

Now, if a people—an aggregate of individuals—not having a government, undertake to construct one, wherein but *one-half* should engage, the *other* half taking no part therein, and its functions should be exercised over the *whole*, it is *plain* that so far as the non-engaged part would be concerned, it would be an usurped authority that dispossessed them of the inherent right which all people have in organized government. But so long as the unconsulted part quietly acquiesce in such a government, there could be none to question its right to control. At the moment, however, when the unconsulted portion should demur from such government, they would begin to assert the right to self-government, possessed equally by all. The fact that such right had not been made known by expression, could in no wise invalidate it. It would remain an inherent possession, and whenever expressed it could be maintained and enjoyed.

The condition of the people of this country today is this: I and others of my sex find ourselves controlled by a form of government in the inauguration of which we had no voice, and in whose administration we are denied the right to participate, though we are a large part of the people of this country....

When our fathers launched “Taxation without representation is tyranny” against King George, were they consistent? Certainly. Were they justified? Yes; for out of it came our national independence. The Revolutionary war, which gave our country independence, grew from this tyranny. Was that war justifiable? Most assuredly it was. We find that the same declarations of tyranny were raised by Congress in the lengthy discussions upon enfranchising the negro. Such sentiments as the following were often repeated, and with great effect: “A considerable part of the people of the United States embraced under the preamble to the Constitution, ‘We, the people,’ are left without representation in the government; but, nevertheless, held within the grasp of taxation of all kinds, direct and indirect, tariff and excise, State and national. This is tyranny, or else our fathers were wrong when they protested against a kindred injustice....

Could *stronger words* than these be found or used in favor of universal suffrage? They applied with



sufficient force *then* to rouse a few men, whose souls were fired with its injustice, to resist a powerful oppressor. It was one of the most forcible arguments by which the cause of the negro was advocated. Is it any less forcible in its application to women? Is the tyranny now exercised over women under, as some say, the authority of the government—but we say, without any authority—any less tyrannous than that over our fathers? or than that of the negro, for whom many plead so earnestly? Or is *nothing* tyranny for women? If a civil right is “not worth a rush” to a *man* when he is taxed and not represented, how much is it worth to a woman? If a “man’s liberty is gone,” and he is “at the mercy of others” when thus taxed, what becomes of *woman’s* under the same tyranny? If “every man of sound mind should note,” by what principle can every *woman* of sound mind be deprived of voting?....

Franklin said, “That every man of the community, except infants, insane people and criminals, is of common right, and by the laws of God, a freeman, and entitled to the free enjoyment of liberty. *That freedom or liberty consists in having an actual share in the appointment of those who frame the laws, and who are to be the guardians of every man, for the all of one man is as dear to him as the all of another man; and the poor man has an equal right, but more need, to have representatives than the rich one.*” “That they who have no voice nor vote in the election of representatives do not enjoy liberty, but are *absolutely enslaved*; for to be enslaved is to have governors whom others have set over us.”

If freedom consists in having an *actual share* in appointing those who frame the laws, are not the women of this country in absolute *bondage*, and can government, in the face of the XV Amendment, assume to deny them the right to vote, being in this “condition of servitude?” According to Franklin we are absolutely enslaved, for there *are* “governors set over us by other men,” and we are “subject to the laws” they make. Is not Franklin good authority in matters of freedom? Again, rehearsing the arguments that have emanated from Congress and applying them to the present case, we learn that “It is idle to show that, in certain instances, the fathers failed to apply the sublime principles which they declared. Their failure can be *no* apology for those on whom the duty is now cast.” Shall it be an apology *now*? Shall the omission of others to do justice keep the government from measuring it to those who now cry out for it? I went before Congress like Richelieu to his king asking for justice. Will they deny it as he did until the exigencies of the case compel them?

I *am* subject to tyranny! I am taxed in every conceivable way. For publishing a paper I must pay—for engaging in the banking and brokerage business I must pay—of what it is my fortune to acquire each year I must turn over a certain per cent—I must pay high prices for tea, coffee and sugar: to *all* these must I submit, that *men’s* government may be maintained, a government in the administration of which I am denied a voice, and from its edicts there is no appeal....

To be compelled to submit to *these* extortions that *such* ends may be gained, upon *any* pretext or under *any* circumstances, is bad enough: but to be compelled to submit to them, and also denied the right to cast my vote *against* them, is a tyranny *more* odious than that which, being rebelled against, gave this country independence....

Therefore it is, that instead of growing in republican liberty, we are departing from it. From an unassuming, acquiescent part of society, woman has gradually passed to an individualized human being, and as she has advanced, one after another evident right of the common people has been accorded to her. She has now become so *much* individualized as to demand the full and unrestrained exercise of *all* the rights which can be predicated of a people constructing a government based on individual sovereignty. She asks it, and shall Congress deny her?

The formal abolition of slavery created several millions of male negro citizens, who, a portion of the

acknowledged citizens assumed to say, were not entitled to equal rights with themselves. To get over this difficulty, Congress in its wisdom saw fit to propose a XIV Amendment to the Constitution, which passed into a law by ratification by the States. Sec. I. of the Amendment declares: "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 and immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty and property without due process of law, nor deny any person within its jurisdiction the equal protection of the law."

But there is an objection raised to our broad interpretation of this Amendment, and that is obtained from the wording of the second section thereof: "But whenever the right to vote," etc., "is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States," etc., etc., "the basis of representation then shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age." Consistency is said to be a bright jewel when possessed, but I doubt its possession by those who have the boldness to advance *this* as an argument in opposition to this point. We surely have a right to use the logic of objectors in interpreting their own propositions, and we therefore reply, *ita lex scripta est*. If the Constitution mean *nothing* but what is expressed, how can it be presumed to infer anything from the use of the word *male* in this second section, except what it expresses? The *right* of women to vote, or the *denial* of that right to them, is *not* involved by this section under the furthest fetched application....

Being citizens, women are of the "sovereign people," and entitled to the enjoyment of an *entire equality of privileges, civil and political*."

After the adoption of the XIV Amendment it was found that still more legislation was required to secure the exercise of the right to vote to all who by it were declared to be citizens, and the following comprehensive amendment was passed by Congress and ratified by the States: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude"...

I now come to the previous condition of servitude, and there is much *more* in this than is at first apparent. We had become so accustomed to regard African slavery as servitude that we forgot there were other conditions of servitude besides. Slavery or a condition of servitude is, plainly speaking, subjection to the will of others. The negroes were subject to the will of their masters, were in a condition of servitude and had no power or authority as citizens over themselves.

I make the plain and broad assertion, that the women of this country are as *much* subject to men as the slaves were to their masters. The extent of the subjection may be less and its severity milder, but it is a complete subjection nevertheless. What can women do that men deny them? What could not the slave have done if not denied?

It is not the women who are happily situated, whose husbands hold positions of honor and trust, who are blessed by the bestowal of wealth, comforts and ease that I plead for. These do not feel their condition of servitude any more than the happy, well-treated slave felt her condition. Had slavery been of this kind it is at least questionable if it would not still have been in existence; but it was not all of this kind. Its barbarities, horrors and inhumanities roused the blood of some who were free, and by their efforts the male portion of a race were elevated by Congress to the exercise of the rights of citizenship. Thus would I have Congress regard woman, and shape their action, *not* from the condition of those who are so well cared for as not to

wish a change to enlarge their sphere of action, but for the *toiling female millions*, who have human rights which should be respected....

It is said the Amendment does not give anyone the right to vote. Suppose we admit that for a moment. I think men will desire to disown it. If the XIV and XV Amendments give none the right to vote, let me ask them where they obtain their right to vote? Do they get it from the Constitution? Nowhere does it say "the right to vote," except in this XV Amendment. Do they vote by right, or is this another usurpation which they exercise? Where do they get their right to vote? I will tell them where they get their right to vote. They inherit it from their God, and every one of the sovereign people inherits it from the same infinite source, Who knows no such ignoble limitation as that of sex. The right to vote is *higher* than State laws, *higher* than countries' constitutions. I can neither be given nor taken by laws or by constitutions. These are but means for its exercise, and when our laws and constitutions shall have been reduced to *this* standard we shall have a republican form of government, and not till then....

There is but one construction the language of this Amendment is susceptible of, and this becomes apparent if the section is properly rendered. It simply means that the right to vote shall not be denied on account of race to anybody. By the interpolation of this word the sense of this Amendment is complete and unmistakable. From the simple negative it changes it to an all-powerful command, by which the sovereign people declare that the right to vote shall not be denied by the United States nor by any State to any person of any race.

We are now prepared to dispose of the sex argument. If the right to vote shall not be denied to any person of any race, how shall it be denied to the female part of all races? Even if it could be denied on account of sex, I ask, what warrant men have to presume that it is the *female* sex to whom such denial can be made instead of the *male* sex? Men, you are wrong, and you stand convicted before the world of denying me, a woman, the right to vote, not by any right of law, but simply because you have usurped the power so to do, just as all other tyrants in all ages have, to rule their subjects. The extent of the tyranny in either case being limited only by the power to enforce it....

The first official duty of every Congressman is to take a solemn oath to support and give vitality to the Constitution of the United States, not as they would, or might wish it to be, but as it is. That constitution declares that women are citizens, and that citizens shall not be denied the right to vote. In the face of these facts, how can they, with that oath recorded, deliberately set at naught these plain declarations?

I went before Congress to demand a right, and memorialized them, setting forth my grievances, and frankly and fully to the extent of my ability I endeavored to make my claim clear. This is a vital matter, fraught with more momentous events than have ever yet dawned upon the world. Through it civilization will make a giant stride from barbarism toward perfection—a stride which will land the human race near the haven where every person living will become a law unto himself, where there shall be no need of Constitutions, Houses of Congress and Executives, such as are necessary now. They regarding it as I do, it becomes to me the most sacred duty of my life to attain to my rights under the Constitution...

If Congress refuse to listen to and grant what women ask, there is but one course left them to pursue. Women have no government. Men have organized a government, and they maintain it to the utter exclusion of women. Women are as much members of the nation as men are, and they have the same human right to govern themselves which men have. Men have none but an usurped right to the arbitrary control of women. Shall free, intelligent, reasoning, thinking women longer submit to being robbed of their common rights. Men fashioned a government based on their own *enunciation* of principles: that taxation without representation is tyranny; and that all just government exists by the consent of the governed. Proceeding

upon *these* axioms, they formed a Constitution declaring all persons to be citizens, that one of the rights of a citizen is the right to vote, and that no power within the nation shall either make or enforce laws interfering with the citizen's rights. And yet men deny women the first and greatest of all the rights of citizenship, the right to vote.

Under such glaring inconsistencies, such unwarrantable tyranny, such unscrupulous despotism. What is there left women to do but to become the mothers of the future government.

*We will have our rights.* We say no longer by your leave. We have besought, argued and convinced, but we have failed; *and we will not fail...*

There is one alternative left, and we have resolved on that. This convention is for the purpose of this declaration. As surely as one year passes, from this day, and this right is not fully, frankly and unequivocally considered, we shall proceed to call another convention expressly to frame a new constitution and to erect a new government, complete in all its parts, and to take measures to maintain it as effectually as men do theirs.

If for people to govern themselves is so unimportant a matter as men now assert it to be, they could not justify themselves in interfering. If, on the contrary, it is the important thing we conceive it to be, they can but applaud us for exercising our right.

We mean treason; we mean secession, and on a thousand times grander scale than was that of the South. We are plotting revolution; we will overslough this bogus republic and plant a government of righteousness in its stead, which shall not only profess to derive its power from the consent of the governed, but shall do so in reality.

We rebel against, denounce and defy this arbitrary, usurping and tyrannical government which has been framed and imposed on us without our consent, and even without so much as entertaining the idea that it was or could be of the slightest consequence what we should think of it, or how our interests should be affected by it, or even that we existed at all, except in the simple case in which we might be found guilty of some offense against its behests, when it has not failed to visit on us its sanctions with as much rigor as if we owed rightful allegiance to it; which we do not, and which, in the future, we will not even pretend to do.

This new government, if we are compelled to form it, shall be in principles largely like that government which the better inspirations of our fathers compelled them to indite in terms in the Constitution, but from which they and their sons have so scandalously departed in their legal constructions and actual practice. It shall be applicable, not to women alone, but to all persons who shall transfer their allegiance to it, and shall be in every practicable way a higher and more scientific development of the governmental idea.

We have learned the imperfections of men's government, by lessons of bitter injustice, and hope to build so well that men will desert from the less to the more perfect....

## 21. The Supreme Court Approves a State Ban on Female Attorneys

### *Bradwell v. Illinois (1873)*

Despite the arguments of Virginia Woodhull and others, the states failed to enfranchise women or give them rights equal to those of men. The Supreme Court was also unwilling to extend the Equal Protection Clause to give women equal rights. In this case, the Court refused to overturn an Illinois rule that barred women from practicing law. However, the adverse response to Justice Joseph Bradley's concurring opinion encouraged the Illinois legislature to pass a law authorizing women who had passed the Illinois bar to be admitted to the practice of law.

Mrs. Myra Bradwell, residing in the State of Illinois, made application to the judges of the Supreme Court of that state for a license to practice law. She accompanied her petition with the usual certificate from an inferior court of her good character, and that on due examination she had been found to possess the requisite qualifications. Pending this application, she also filed an affidavit to the effect "that she was born in the State of Vermont; that she was (had been) a citizen of that state; that she is now a citizen of the United States, and has been for many years past a resident of the City of Chicago, in the State of Illinois."

And with this affidavit she also filed a paper asserting that, under the foregoing facts, she was entitled to the license prayed for by virtue of the second section of the fourth article of the Constitution of the United States, and of the fourteenth article of amendment of that instrument.

...On Mrs. Bradwell's application first coming before the court, the license was refused, and it was stated as a sufficient reason that under the decisions of the Supreme Court of Illinois, the applicant "as a married woman would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client."

After the announcement of this decision, Mrs. Bradwell, admitting that she was a married woman—though she expressed her belief that such fact did not appear in the record—filed a printed argument in which her right to admission, notwithstanding that fact, was earnestly and ably maintained. The court thereupon gave an opinion in writing. Extracts are here given:

"Our statute provides that no person shall be permitted to practice as an attorney or counselor at law without having previously obtained a license for that purpose from two of the justices of the Supreme Court. By the second section of the act, it is provided that no person shall be entitled to receive a license until he shall have obtained a certificate from the court of some county of his good moral character, and this is the only express limitation upon the exercise of the power thus entrusted to this Court. In all other respects it is left to our discretion to establish the rules by which admission to this office shall be determined. But

this discretion is not an arbitrary one, and must be held subject to at least two limitations. One is that the court should establish such terms of admission as will promote the proper administration of justice; the second that it should not admit any persons or class of persons who are not intended by the legislature to be admitted, even though their exclusion is not expressly required by the statute.”

“The substance of the last limitation is simply that this important trust reposed in us should be exercised in conformity with the designs of the power creating it.”

“Whether, in the existing social relations between men and women, it would promote the proper administration of justice, and the general well being of society, to permit women to engage in the trial of cases at the bar, is a question opening a wide field of discussion, upon which it is not necessary for us to enter. It is sufficient to say that, in our opinion, the other implied limitation upon our power, to which we have above referred, must operate to prevent our admitting women to the office of attorney at law. If we were to admit them, we should be exercising the authority conferred upon us in a manner which, we are fully satisfied, was never contemplated by the legislature.”

“It is to be remembered that at the time this statute was enacted we had, by express provision, adopted the common law of England, and, with three exceptions, the statutes of that country passed prior to the fourth year of James the First, so far as they were applicable to our condition.”

“It is to be also remembered that female attorneys at law were unknown in England, and a proposition that a woman should enter the courts of Westminster Hall in that capacity, or as a barrister, would have created hardly less astonishment than one that she should ascend the bench of bishops, or be elected to a seat in the House of Commons.”...

“That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth.”

“In view of these facts, we are certainly warranted in saying that when the legislature gave to this Court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended to women.”

The court having thus denied the application, Mrs. Bradwell brought the case here....

### **Opinion of Justice Samuel Miller**

...The Fourteenth Amendment declares that citizens of the United States are citizens of the state within which they reside; therefore the plaintiff was, at the time of making her application, a citizen of the United States and a citizen of the State of Illinois....

In regard to that amendment counsel for the plaintiff in this Court truly says that there are certain privileges and immunities which belong to a citizen of the United States as such; otherwise it would be nonsense for the Fourteenth Amendment to prohibit a state from abridging them, and he proceeds to argue that admission to the bar of a state of a person who possesses the requisite learning and character is one of those which a state may not deny.

In this latter proposition we are not able to concur with counsel. We agree with him that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a state is forbidden to abridge. But the right to admission to practice in the courts of a state is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any state, or in any case, to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the state and federal courts, who were not citizens of the United States or of any state. But on whatever basis this right

may be placed, so far as it can have any relation to citizenship at all, it would seem that, as to the courts of a state, it would relate to citizenship of the state, and as to federal courts, it would relate to citizenship of the United States.... [T]he right to control and regulate the granting of license to practice law in the courts of a state is one of those powers which are not transferred for its protection to the federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license.

### **Concurring Opinion of Justice Bradley**

I concur in the judgment of the Court in this case, by which the judgment of the Supreme Court of Illinois is affirmed, but not for the reasons specified in the opinion just read.

The claim of the plaintiff, who is a married woman, to be admitted to practice as an attorney and counselor at law is based upon the supposed right of every person, man or woman, to engage in any lawful employment for a livelihood. The Supreme Court of Illinois denied the application on the ground that, by the common law, which is the basis of the laws of Illinois, only men were admitted to the bar, and the legislature had not made any change in this respect, but had simply provided that no person should be admitted to practice as attorney or counselor without having previously obtained a license for that purpose from two justices of the Supreme Court, and that no person should receive a license without first obtaining a certificate from the court of some county of his good moral character. In other respects, it was left to the discretion of the court to establish the rules by which admission to the profession should be determined. The court, however, regarded itself as bound by at least two limitations. One was that it should establish such terms of admission as would promote the proper administration of justice, and the other that it should not admit any persons, or class of persons, not intended by the legislature to be admitted, even though not expressly excluded by statute. In view of this latter limitation the court felt compelled to deny the application of females to be admitted as members of the bar. Being contrary to the rules of the common law and the usages of Westminster Hall from time immemorial, it could not be supposed that the legislature had intended to adopt any different rule.

The claim that under the Fourteenth Amendment of the Constitution, which declares that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, the statute law of Illinois, or the common law prevailing in that state, can no longer be set up as a barrier against the right of females to pursue any lawful employment for a livelihood (the practice of law included), assumes that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation, or employment in civil life.

It certainly cannot be affirmed, as an historical fact, that this has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her

head and representative in the social state, and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most states. One of these is that a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counselor.

It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.

The humane movements of modern society, which have for their object the multiplication of avenues for woman's advancement, and of occupations adapted to her condition and sex, have my heartiest concurrence. But I am not prepared to say that it is one of her fundamental rights and privileges to be admitted into every office and position, including those which require highly special qualifications and demanding special responsibilities. In the nature of things, it is not every citizen of every age, sex, and condition that is qualified for every calling and position. It is the prerogative of the legislator to prescribe regulations founded on nature, reason, and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence. This fairly belongs to the police power of the state, and, in my opinion, in view of the peculiar characteristics, destiny, and mission of woman, it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men, and shall receive the benefit of those energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex.

For these reasons, I think that the laws of Illinois now complained of are not obnoxious to the charge of abridging any of the privileges and immunities of citizens of the United States.



## 22. The Supreme Court Approves Government-mandated Segregation

### Henry Brown (1836-1913)

Henry Brown was born to a wealthy Massachusetts family and educated at Yale. He moved to Michigan in 1860 and practiced law for 15 years while teaching at the University of Michigan Law School. He spent another 15 years serving as a federal district court judge in Detroit. President Benjamin Harrison appointed Brown to the Supreme Court, and he took office in 1891. Brown is best known for writing the Court's opinion in *Plessy v. Ferguson*, discussed below, and in two of the *Insular Cases*, which held that residents of US territories lack constitutional rights equal to residents of the mainland United States.

### John Marshall Harlan (1833-1911)

John Marshall Harlan was the son of a prominent Whig politician who served in the House of Representatives. He was born in Kentucky and educated at Center College and Transylvania University, where he studied law. He served in the Union army for two years before returning to Kentucky to become State Attorney General. After the war, he joined the Republican Party and twice ran for governor, losing both times. His work for the party brought him to the attention of President Rutherford Hayes, who nominated him to the Supreme Court in 1877. He served for almost 34 years, and as of 2024 has the sixth-longest tenure of any Justice. He is known mostly for dissents that supported equal civil rights and strong federal regulatory power. His most famous dissent was in *Plessy v. Ferguson*.

## *Plessy v. Ferguson* (1896)

Louisiana passed a law in 1890 requiring that all trains that passed through the state maintain separate seating areas for white and “colored” people, with the latter term encompassing people who had a non-white parent, grandparent, or great grandparent. In practice, the railroad only policed the white areas, which meant that if the train was crowded whites could sit in the colored section but not the reverse. Louisiana railroads objected to this law not because they opposed racial discrimination, but because it reduced their ability to sell every ticket on every train. They decided to challenge the constitutionality of the law, and recruited Homer Plessy, who was classified as colored because both of his parents had black ancestors.

By a vote of 8-1, the Court held that because the Louisiana law required “equal accommodations,” mandating separation by race or color did not violate the Equal Protection Clause. Justice Henry Brown’s decision for an 8-1 majority did not discuss whether the conditions of the white and colored areas were equal (they were almost always better for whites). He found that the Equal Protection Clause required only formal legal equality, not social equality between races. Justice John Marshall Harlan was the lone dissenter, insisting that the Equal Protection Clause meant that government decisions and regulations had to be “color-blind.” He accurately predicted how *Plessy v. Ferguson* would come to be seen in the next century.

### **Justice Henry Brown’s opinion**

This case turns upon the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. The first section of the statute enacts “that all railway companies carrying passengers in their coaches in this state, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations.

The petition for the writ of prohibition averred that petitioner was seven-eighths Caucasian and one-eighth African blood; that the mixture of colored blood was not discernible in him; and that he was entitled to every right, privilege, and immunity secured to citizens of the United States of the white race; and that, upon such theory, he took possession of a vacant seat in a coach where passengers of the white race were accommodated, and was ordered by the conductor to vacate said coach, and take a seat in another, assigned to persons of the colored race, and, having refused to comply with such demand, he was forcibly ejected, with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated the above act....

The object of the [14th] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in

the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced....

In the *Civil Rights Cases*, it was held that an act of congress entitling all persons within the jurisdiction of the United States to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theaters, and other places of public amusement, and made applicable to citizens of every race and color, regardless of any previous condition of servitude, was unconstitutional and void, upon the ground that the fourteenth amendment was prohibitory upon the states only, and the legislation authorized to be adopted by congress for enforcing it was not direct legislation on matters respecting which the states were prohibited from making or enforcing certain laws, or doing certain acts, but was corrective legislation, such as might be necessary or proper for counter-acting and redressing the effect of such laws or acts. In delivering the opinion of the court, Mr. Justice Bradley observed that the fourteenth amendment “does not invest congress with power to legislate upon subjects that are within the domain of state legislation, but to provide modes of relief against state legislation or state action of the kind referred to. It does not authorize congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges, and by power given to congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect.”

...So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the fourteenth amendment than the acts of congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races

are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals....

Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.

#### **Justice John Marshall Harlan's dissent**

Under this statute, no colored person is permitted to occupy a seat in a coach assigned to white persons; nor any white person to occupy a seat in a coach assigned to colored persons. The managers of the railroad are not allowed to exercise any discretion in the premises, but are required to assign each passenger to some coach or compartment set apart for the exclusive use of his race. If a passenger insists upon going into a coach or compartment not set apart for persons of his race, he is subject to be fined, or to be imprisoned in the parish jail. Penalties are prescribed for the refusal or neglect of the officers, directors, conductors, and employees of railroad companies to comply with the provisions of the act....

While there may be in Louisiana persons of different races who are not citizens of the United States, the words in the act "white and colored races" necessarily include all citizens of the United States of both races residing in that state. So that we have before us a state enactment that compels, under penalties, the separation of the two races in railroad passenger coaches, and makes it a crime for a citizen of either race to enter a coach that has been assigned to citizens of the other race. Thus, the state regulates the use of a public highway by citizens of the United States solely upon the basis of race. However apparent the injustice of such legislation may be, we have only to consider whether it is consistent with the constitution of the United States....

In respect of civil rights, common to all citizens, the constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by everyone within the United States.

The thirteenth amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. This court has so adjudged. But, that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the fourteenth amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty, by declaring that ... "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship....

These notable additions to the fundamental law were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems. They had, as this court has said, a common purpose, namely, to secure "to a race recently emancipated, a race that through many generations

have been held in slavery, all the civil rights that the superior race enjoy.” They declared, in legal effect, this court has further said, “that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states; and in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.” We also said: “The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy; and discriminations which are steps towards reducing them to the condition of a subject race.” It was, consequently, adjudged that a state law that excluded citizens of the colored race from juries because of their race, however well qualified in other respects to discharge the duties of jurymen, was repugnant to the fourteenth amendment. *Strauder v. West Virginia* [1880]...

[I]t is not within the power of a state to prohibit colored citizens, because of their race, from participating as jurors in the administration of justice. It was said in argument that the statute of Louisiana does not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Everyone knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. Railroad corporations of Louisiana did not make discrimination among whites in the matter of commodation for travelers. The thing to accomplish was, under the guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while traveling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. The fundamental objection, therefore, to the statute, is that it interferes with the personal freedom of citizens.... If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so; and no government, proceeding alone on grounds of race, can prevent it without infringing the personal liberty of each.

It is one thing for railroad carriers to furnish, or to be required by law to furnish, equal accommodations for all whom they are under a legal duty to carry. It is quite another thing for government to forbid citizens of the white and black races from traveling in the same public conveyance, and to punish officers of railroad companies for permitting persons of the two races to occupy the same passenger coach. If a state can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street, and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in street cars or in open vehicles on a public road or street? Why may it not require sheriffs to assign whites to one side of a court room, and blacks to the other? And why may it not also prohibit the commingling of the two races in the galleries of legislative halls or in public assemblages convened for the consideration of the political questions of the day? Further, if this statute of Louisiana is consistent with the personal liberty of citizens, why may not the state require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics?

The answer given at the argument to these questions was that regulations of the kind they suggest would be unreasonable, and could not, therefore, stand before the law. Is it meant that the determination of questions of legislative power depends upon the inquiry whether the statute whose validity is questioned is, in the judgment of the courts, a reasonable one, taking all the circumstances into consideration? A statute

may be unreasonable merely because a sound public policy forbade its enactment. But I do not understand that the courts have anything to do with the policy or expediency of legislation. A statute may be valid, and yet, upon grounds of public policy, may well be characterized as unreasonable. Mr. Sedgwick correctly states the rule when he says that, the legislative intention being clearly ascertained, "the courts have no other duty to perform than to execute the legislative will, without any regard to their views as to the wisdom or justice of the particular enactment." There is a dangerous tendency in these latter days to enlarge the functions of the courts, by means of judicial interference with the will of the people as expressed by the legislature. Our institutions have the distinguishing characteristic that the three departments of government are coordinate and separate. Each must keep within the limits defined by the constitution. And the courts best discharge their duty by executing the will of the law-making power, constitutionally expressed, leaving the results of legislation to be dealt with by the people through their representatives....

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*.... The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution. It cannot be justified upon any legal ground.

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens—our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done.

## 23. William Graham Sumner: The Case for Limited Government

### William Graham Sumner (1840-1910)

Born in 1840 in Hartford, Connecticut, William Graham Sumner earned his undergraduate degree from Yale before undertaking graduate study at the Universities of Geneva, Gottingen, and Oxford. He became an Episcopal priest in New York City, but after a few years realized that he preferred teaching to the ministry. He returned to Yale as a professor in 1872 and taught there continuously until his retirement in 1909.

Sumner was a believer in the minimalist state advocated by British political philosopher Herbert Spencer. Sumner taught that the state should encourage hard work and self-reliance by allowing the free market to determine the allocation of resources. He was one of the leading defenders of *laissez-faire*, which was the belief that government should abstain from intrusive regulation of the economy in order to promote maximal freedom and the accumulation of private wealth.

### What Social Classes Owe to Each Other (1883)

In his most famous book, Sumner used the figure of the Forgotten Man to illustrate how government policies intended to benefit certain groups failed to take into account the harm they caused to others. Economic regulation and redistributive taxation harmed hard-working individuals by transferring their wealth to those whom government officials deemed more deserving. At a time of rapid economic expansion in the US, his attack on interventionist government gained many adherents, especially in the Republican Party. His arguments would be reprised in the 20th century by Ronald Reagan.

...As an abstraction, the State is to me only All-of-us. In practice—that is, when it exercises will or adopts a line of action—it is only a little group of men chosen in a very haphazard way by the majority of us to perform certain services for all of us. The majority do not go about their selection very rationally, and they are almost always disappointed by the results of their own operation. Hence “the State,” instead of offering resources of

wisdom, right reason, and pure moral sense beyond what the average of us possess, generally offers much less of all those things. Furthermore, it often turns out in practice that “the State” is not even the known and accredited servants of the State, but, as has been well said, is only some obscure clerk, hidden in the recesses of a Government bureau, into whose power the chance has fallen for the moment to pull one of the stops which control the Government machine....

If anybody is to benefit from the actions of the state it must be Some-of-us. If, then, the question is raised, What ought the State to do for labor, for trade, for manufactures, for the poor, for the learned professions? etc., etc.—that is, for a class or an interest—it is really the question, What ought All-of-us to do for Some-of-us? But Some-of-us are included in All-of-us and, so far as they get the benefit of their own efforts, it is the same as if they worked for themselves, and they may be cancelled out of All-of-us. Then the question which remains is, What ought Some-of-us to do for Others-of-us? or, What do social classes owe to each other?

I now propose to try to find out whether there is any class in society which lies under the duty and burden of fighting the battles of life for any other class, or of solving social problems for the satisfaction of any other class; also, whether there is any class which has the right to formulate demands on “society”—that is, on other classes; also, whether there is anything but a fallacy and a superstition in the notion that “the State” owes anything to anybody except peace, order, and the guarantees of rights....

It is commonly asserted that there are in the United States no classes, and any allusion to classes is resented. On the other hand, we constantly read and hear discussions of social topics in which the existence of social classes is assumed as a simple fact. “The poor,” “the weak,” “the laborers,” are expressions which are used as if they had exact and well-understood definition. Discussions are made to bear upon the assumed rights, wrongs, and misfortunes of certain social classes; and all public speaking and writing consists, in a large measure, of the discussion of general plans for meeting the wishes of classes of people who have not been able to satisfy their own desires. These classes are sometimes discontented, and sometimes not... When the people whose claims we are considering are told to apply themselves to these tasks they become irritated and feel almost insulted. They formulate their claims as rights against society—that is, against some other men. In their view they have a right, not only to *pursue* happiness, but to *get* it; and if they fail to get it, they think they have a claim to the aid of other men—that is, to the labor and self-denial of other men—to get it for them. They find orators and poets who tell them that they have grievances, so long as they have unsatisfied desires.

Now, if there are groups of people who have a claim to other people’s labor and self-denial, and if there are other people whose labor and self-denial are liable to be claimed by the first groups, then there certainly are “classes,” and classes of the oldest and most vicious type. For a man who can command another man’s labor and self-denial for the support of his own existence is a privileged person of the highest species conceivable on earth. Princes and paupers meet on this plane, and no other men are on it at all. On the other hand, a man whose labor and self-denial may be diverted from his maintenance to that of some other man is not a free man, and approaches more or less toward the position of a slave. Therefore we shall find that, in all the notions which we are to discuss, this elementary contradiction, that there are classes and that there are not classes, will produce repeated confusion and absurdity. We shall find that, in our efforts to eliminate the old vices of class government, we are impeded and defeated by new products of the worst class theory. We shall find that all the schemes for producing equality and obliterating the organization of society produce a new differentiation based on the worst possible distinction—the right to claim and the duty to give one man’s effort for another man’s satisfaction. We shall find that every effort to realize equality necessitates a sacrifice of liberty....



The humanitarians, philanthropists, and reformers, looking at the facts of life as they present themselves, find enough which is sad and unpromising in the condition of many members of society. They see wealth and poverty side by side. They note great inequality of social position and social chances. They eagerly set about the attempt to account for what they see, and to devise schemes for remedying what they do not like. In their eagerness to recommend the less fortunate classes to pity and consideration they forget all about the rights of other classes; they gloss over all the faults of the classes in question, and they exaggerate their misfortunes and their virtues. They invent new theories of property, distorting rights and perpetrating injustice, as any one is sure to do who sets about the re-adjustment of social relations with the interests of one group distinctly before his mind, and the interests of all other groups thrown into the background.... In all these schemes and projects the organized intervention of society through the State is either planned or hoped for, and the State is thus made to become the protector and guardian of certain classes. The agents who are to direct the State action are, of course, the reformers and philanthropists. Their schemes, therefore, may always be reduced to this type—that A and B decide what C shall do for D. It will be interesting to inquire, at a later period of our discussion, who C is, and what the effect is upon him of all these arrangements. In all the discussions attention is concentrated on A and B, the noble social reformers, and on D, the “poor man.” I call C the Forgotten Man, because I have never seen that any notice was taken of him in any of the discussions. When we have disposed of A, B, and D we can better appreciate the case of C, and I think that we shall find that he deserves our attention, for the worth of his character and the magnitude of his unmerited burdens. Here it may suffice to observe that, on the theories of the social philosophers to whom I have referred, we should get a new maxim of judicious living: Poverty is the best policy. If you get wealth, you will have to support other people; if you do not get wealth, it will be the duty of other people to support you.

No doubt one chief reason for the unclear and contradictory theories of class relations lies in the fact that our society, largely controlled in all its organization by one set of doctrines, still contains survivals of old social theories which are totally inconsistent with the former. In the Middle Ages men were united by custom and prescription into associations, ranks, guilds, and communities of various kinds. These ties endured as long as life lasted. Consequently society was dependent, throughout all its details, on status, and the tie, or bond, was sentimental. In our modern state, and in the United States more than anywhere else, the social structure is based on contract, and status is of the least importance. Contract, however, is rational—even rationalistic. It is also realistic, cold, and matter-of-fact. A contract relation is based on a sufficient reason, not on custom or prescription. It is not permanent. It endures only so long as the reason for it endures. In a state based on contract sentiment is out of place in any public or common affairs. It is relegated to the sphere of private and personal relations, where it depends not at all on class types, but on personal acquaintance and personal estimates. The sentimentalists among us always seize upon the survivals of the old order. They want to save them and restore them. Much of the loose thinking also which troubles us in our social discussions arises from the fact that men do not distinguish the elements of status and of contract which may be found in our society.

Whether social philosophers think it desirable or not, it is out of the question to go back to status or to the sentimental relations which once united baron and retainer, master and servant, teacher and pupil, comrade and comrade. That we have lost some grace and elegance is undeniable. That life once held more poetry and romance is true enough. But it seems impossible that anyone who has studied the matter should doubt that we have gained immeasurably, and that our farther gains lie in going forward, not in going backward. The feudal ties can never be restored. If they could be restored they would bring back personal caprice,

favoritism, sycophancy, and intrigue. A society based on contract is a society of free and independent men, who form ties without favor or obligation, and cooperate without cringing or intrigue. A society based on contract, therefore, gives the utmost room and chance for individual development, and for all the self-reliance and dignity of a free man. That a society of free men, co-operating under contract, is by far the strongest society which has ever yet existed; that no such society has ever yet developed the full measure of strength of which it is capable; and that the only social improvements which are now conceivable lie in the direction of more complete realization of a society of free men united by contract, are points which cannot be controverted. It follows, however, that one man, in a free state, cannot claim help from, and cannot be charged to give help to, another. To understand the full meaning of this assertion it will be worthwhile to see what a free democracy is...

The notion of a free state is entirely modern. It has been developed with the development of the middle class, and with the growth of a commercial and industrial civilization. Horror at human slavery is not a century old as a common sentiment in a civilized state. The idea of the "free man," as we understand it, is the product of a revolt against medieval and feudal ideas; and our notion of equality, when it is true and practical, can be explained only by that revolt. It was in England that the modern idea found birth. It has been strengthened by the industrial and commercial development of that country. It has been inherited by all the English-speaking nations, who have made liberty real because they have inherited it, not as a notion, but as a body of institutions. It has been borrowed and imitated by the military and police states of the European continent so fast as they have felt the influence of the expanding industrial civilization; but they have realized it only imperfectly, because they have no body of local institutions or traditions, and it remains for them as yet too much a matter of "declarations" and pronouncements.

The notion of civil liberty which we have inherited is that of a *status created for the individual by laws and institutions, the effect of which is that each man is guaranteed the use of all his own powers exclusively for his own welfare*. It is not at all a matter of elections, or universal suffrage, or democracy. All institutions are to be tested by the degree to which they guarantee liberty. It is not to be admitted for a moment that liberty is a means to social ends, and that it may be impaired for major considerations. Anyone who so argues has lost the bearing and relation of all the facts and factors in a free state. A human being has a life to live, a career to run. He is a centre of powers to work, and of capacities to suffer. What his powers may be—whether they can carry him far or not; what his chances may be, whether wide or restricted; what his fortune may be, whether to suffer much or little—are questions of his personal destiny which he must work out and endure as he can; but for all that concerns the bearing of the society and its institutions upon that man, and upon the sum of happiness to which he can attain during his life on earth, the product of all history and all philosophy up to this time is summed up in the doctrine, that he should be left free to do the most for himself that he can, and should be guaranteed the exclusive enjoyment of all that he does. If the society—that is to say, in plain terms, if his fellow men, either individually, by groups, or in a mass—impinge upon him otherwise than to surround him with neutral conditions of security, they must do so under the strictest responsibility to justify themselves. Jealousy and prejudice against all such interferences are high political virtues in a free man. It is not at all the function of the State to make men happy. They must make themselves happy in their own way, and at their own risk. The functions of the State lie entirely in the conditions or chances under which the pursuit of happiness is carried on, so far as those conditions or chances can be affected by civil organization. Hence, liberty for labor and security for earnings are the ends for which civil institutions exist, not means which may be employed for ulterior ends...

A free man in a free democracy has no duty whatever toward other men of the same rank and standing,

except respect, courtesy, and goodwill. We cannot say that there are no classes, when we are speaking politically, and then say that there are classes, when we are telling A what it is his duty to do for B. In a free state every man is held and expected to take care of himself and his family, to make no trouble for his neighbor, and to contribute his full share to public interests and common necessities. If he fails in this he throws burdens on others. He does not there-by acquire rights against the others. On the contrary, he only accumulates obligations toward them; and if he is allowed to make his deficiencies a ground of new claims, he passes over into the position of a privileged or petted person—emancipated from duties, endowed with claims. This is the inevitable result of combining democratic political theories with humanitarian social theories. It would be aside from my present purpose to show, but it is worth noticing in passing, that one result of such inconsistency must surely be to undermine democracy, to increase the power of wealth in the democracy, and to hasten the subjection of democracy to plutocracy; for a man who accepts any share which he has not earned in another man's capital cannot be an independent citizen....

When a community establishes universal suffrage, it is as if it said to each newcomer, or to each young man: "We give you every chance that anyone else has. Now come along with us; take care of yourself, and contribute your share to the burdens which we all have to bear in order to support social institutions." Certainly, liberty, and universal suffrage, and democracy are not pledges of care and protection, but they carry with them the exaction of individual responsibility. The State gives equal rights and equal chances just because it does not mean to give anything else. It sets each man on his feet, and gives him leave to run, just because it does not mean to carry him. Having obtained his chances, he must take upon himself the responsibility for his own success or failure. It is a pure misfortune to the community, and one which will redound to its injury, if any man has been endowed with political power who is a heavier burden than he was before; but it cannot be said that there is any new *duty* created for the good citizens toward the bad by the fact that the bad citizens are a harm to the State....

The history of the human race is one long story of attempts by certain persons and classes to obtain control of the power of the State, so as to win earthly gratifications at the expense of others. People constantly assume that there is something metaphysical and sentimental about government. At bottom there are two chief things with which government has to deal. They are the property of men and the honor of women. These it has to defend against crime. The capital which ... is the condition of all welfare on earth, the fortification of existence, and the means of growth, is an object of cupidity. Some want to get it without paying the price of industry and economy. In ancient times they made use of force. They organized bands of robbers. They plundered laborers and merchants. Chief of all, however, they found that means of robbery which consisted in gaining control of the civil organization—the State—and using its poetry and romance as a glamour under cover of which they made robbery lawful. They developed high-spun theories of nationality, patriotism, and loyalty. They took all the rank, glory, power, and prestige of the great civil organization, and they took all the rights. They threw on others the burdens and the duties....

In its turn wealth is now becoming a power in the State, and, like every other power, it is liable to abuse unless restrained by checks and guarantees. There is an insolence of wealth, as there is an insolence of rank. A plutocracy might be even far worse than an aristocracy. Aristocrats have always had their class vices and their class virtues. They have always been, as a class, chargeable with licentiousness and gambling. They have, however, as a class, despised lying and stealing. They have always pretended to maintain a standard of honor, although the definition and the code of honor have suffered many changes and shocking deterioration. The middle class has always abhorred gambling and licentiousness, but it has not always been strict about truth and pecuniary fidelity...

The consequence is, that the wealth-power has been developed, while the moral and social sanctions by which that power ought to be controlled have not yet been developed. A plutocracy would be a civil organization in which the power resides in wealth, in which a man might have whatever he could buy, in which the rights, interests, and feelings of those who could not pay would be overridden....

In the United States the opponent of plutocracy is democracy. Nowhere else in the world has the power of wealth come to be discussed in its political aspects as it is here.... Democracy itself, however, is new and experimental. It has not yet existed long enough to find its appropriate forms. It has no prestige from antiquity such as aristocracy possesses. It has, indeed, none of the surroundings which appeal to the imagination. On the other hand, democracy is rooted in the physical, economic, and social circumstances of the United States. This country cannot be other than democratic for an indefinite period in the future. Its political processes will also be republican. The affection of the people for democracy makes them blind and uncritical in regard to it, and they are as fond of the political fallacies to which democracy lends itself as they are of its sound and correct interpretation, or fonder. Can democracy develop itself and at the same time curb plutocracy?...

If charters have been given which confer undue powers, who gave them? Our legislators did. Who elected these legislators? We did. If we are a free, self-governing people, we must understand that it costs vigilance and exertion to be self-governing. It costs far more vigilance and exertion to be so under the democratic form, where we have no aids from tradition or prestige, than under other forms. If we are a free, self-governing people, we can blame nobody but ourselves for our misfortunes. No one will come to help us out of them. It will do no good to heap law upon law, or to try by constitutional provisions simply to abstain from the use of powers which we find we always abuse. How can we get bad legislators to pass a law which shall hinder bad legislators from passing a bad law? That is what we are trying to do by many of our proposed remedies.... The plan of electing men to represent us who systematically surrender public to private interests, and then trying to cure the mischief by newspaper and platform declamation against capital and corporations, is an entire failure.

The new foes must be met, as the old ones were met—by institutions and guarantees. The problem of civil liberty is constantly renewed. Solved once, it re-appears in a new form. The old constitutional guarantees were all aimed against king and nobles. New ones must be invented to hold the power of wealth to that responsibility without which no power whatever is consistent with liberty. The judiciary has given the most satisfactory evidence that it is competent to the new duty which devolves upon it. The courts have proved, in every case in which they have been called upon, that there are remedies, that they are adequate, and that they can be brought to bear upon the cases. The chief needs seem to be more power of voluntary combination and co-operation among those who are aggrieved. Such co-operation is a constant necessity under free self-government; and when, in any community, men lose the power of voluntary co-operation in furtherance or defense of their own interests, they deserve to suffer, with no other remedy than newspaper denunciations and platform declamations. Of course, in such a state of things, political mountebanks come forward and propose fierce measures which can be paraded for political effect. Such measures would be hostile to all our institutions, would destroy capital, overthrow credit, and impair the most essential interests of society. On the side of political machinery there is no ground for hope, but only for fear. On the side of constitutional guarantees and the independent action of self-governing freemen there is every ground for hope....

The greatest reforms which could now be accomplished would consist in undoing the work of statesmen in the past, and the greatest difficulty in the way of reform is to find out how to undo their work without

injury to what is natural and sound. All this mischief has been done by men who sat down to consider the problem (as I heard an apprentice of theirs once express it), What kind of a society do we want to make? When they had settled this question *a priori* to their satisfaction, they set to work to make their ideal society, and today we suffer the consequences. Human society tries hard to adapt itself to any conditions in which it finds itself, and we have been warped and distorted until we have got used to it, as the foot adapts itself to an ill-made boot. Next, we have come to think that that is the right way for things to be; and it is true that a change to a sound and normal condition would for a time hurt us, as a man whose foot has been distorted would suffer if he tried to wear a well-shaped boot. Finally, we have produced a lot of economists and social philosophers who have invented sophisms for fitting our thinking to the distorted facts.

Society needs first of all to be freed from these meddlers—that is, to be let alone. Here we are, then, once more back at the old doctrine—*Laissez faire*. Let us translate it into blunt English, and it will read, Mind your own business. It is nothing but the doctrine of liberty. Let every man be happy in his own way. If his sphere of action and interest impinges on that of any other man, there will have to be compromise and adjustment. Wait for the occasion. Do not attempt to generalize those interferences or to plan for them *a priori*. We have a body of laws and institutions which have grown up as occasion has occurred for adjusting rights. Let the same process go on. Practice the utmost reserve possible in your interferences even of this kind, and by no means seize occasion for interfering with natural adjustments. Try first long and patiently whether the natural adjustment will not come about through the play of interests and the voluntary concessions of the parties.

The type and formula of most schemes of philanthropy or humanitarianism is this: A and B put their heads together to decide what C shall be made to do for D. The radical vice of all these schemes, from a sociological point of view, is that C is not allowed a voice in the matter, and his position, character, and interests, as well as the ultimate effects on society through C's interests, are entirely overlooked. I call C the Forgotten Man. For once let us look him up and consider his case, for the characteristic of all social doctors is, that they fix their minds on some man or group of men whose case appeals to the sympathies and the imagination, and they plan remedies addressed to the particular trouble; they do not understand that all the parts of society hold together, and that forces which are set in action act and react throughout the whole organism, until an equilibrium is produced by a re-adjustment of all interests and rights. They therefore ignore entirely the source from which they must draw all the energy which they employ in their remedies, and they ignore all the effects on other members of society than the ones they have in view. They are always under the dominion of the superstition of government, and, forgetting that a government produces nothing at all, they leave out of sight the first fact to be remembered in all social discussion—that the State cannot get a cent for any man without taking it from some other man, and this latter must be a man who has produced and saved it. This latter is the Forgotten Man....

For our present purpose it is most important to notice that if we lift any man up we must have a fulcrum, or point of reaction. In society that means that to lift one man up we push another down. The schemes for improving the condition of the working classes interfere in the competition of workmen with each other. The beneficiaries are selected by favoritism, and are apt to be those who have recommended themselves to the friends of humanity by language or conduct which does not betoken independence and energy. Those who suffer a corresponding depression by the interference are the independent and self-reliant, who once more are forgotten or passed over; and the friends of humanity once more appear, in their zeal to help somebody, to be trampling on those who are trying to help themselves....

If there were such things as natural rights, the question would arise, Against whom are they good? Who

has the corresponding obligation to satisfy these rights? There can be no rights against Nature, except to get out of her whatever we can, which is only the fact of the struggle for existence stated over again. The common assertion is, that the rights are good against society; that is, that society is bound to obtain and secure them for the persons interested. Society, however, is only the persons interested plus some other persons; and as the persons interested have by the hypothesis failed to win the rights, we come to this, that natural rights are the claims which certain persons have by prerogative against some other persons. Such is the actual interpretation in practice of natural rights—claims which some people have by prerogative on other people.

This theory is a very far-reaching one, and of course it is adequate to furnish a foundation for a whole social philosophy. In its widest extension it comes to mean that if any man finds himself uncomfortable in this world, it must be somebody else's fault, and that somebody is bound to come and make him comfortable. Now, the people who are most uncomfortable in this world (for if we should tell all our troubles it would not be found to be a very comfortable world for anybody) are those who have neglected their duties, and consequently have failed to get their rights. The people who can be called upon to serve the uncomfortable must be those who have done their duty, as the world goes, tolerably well. Consequently the doctrine which we are discussing turns out to be in practice only a scheme for making injustice prevail in human society by reversing the distribution of rewards and punishments between those who have done their duty and those who have not....

The greatest social evil with which we have to contend is jobbery. Whatever there is in legislative charters, watering stocks, etc., etc., which is objectionable, comes under the head of jobbery. Jobbery is any scheme which aims to gain, not by the legitimate fruits of industry and enterprise, but by extorting from somebody a part of his product under guise of some pretended industrial undertaking. Of course it is only a modification when the undertaking in question has some legitimate character, but the occasion is used to graft upon it devices for obtaining what has not been earned. Jobbery is the vice of plutocracy, and it is the especial form under which plutocracy corrupts a democratic and republican form of government. The United States is deeply afflicted with it, and the problem of civil liberty here is to conquer it. It affects everything which we really need to have done to such an extent that we have to do without public objects which we need through fear of jobbery. Our public buildings are jobs—not always, but often. They are not needed, or are costly beyond all necessity or even decent luxury. Internal improvements are jobs. They are not made because they are needed to meet needs which have been experienced. They are made to serve private ends, often incidentally the political interests of the persons who vote the appropriations.... The Federal Government is called upon to buy or hire unsalable ships, to build canals which will not pay, to furnish capital for all sorts of experiments, and to provide capital for enterprises of which private individuals will win the profits. All this is called “developing our resources,” but it is, in truth, the great plan of all living on each other.

Now, the plan of plundering each other produces nothing. It only wastes. All the material over which the protected interests wrangle and grab must be got from somebody outside of their circle. The talk is all about the American laborer and American industry, but in every case in which there is not an actual production of wealth by industry there are two laborers and two industries to be considered—the one who gets and the one who gives. Every protected industry has to plead, as the major premise of its argument, that any industry which does not pay *ought* to be carried on at the expense of the consumers of the product, and, as its minor premise, that the industry in question does not pay; that is, that it cannot reproduce a capital equal in value to that which it consumes plus the current rate of profit. Hence every such industry must be a

parasite on some other industry. What is the other industry? Who is the other man? This, the real question, is always overlooked.

In all jobbery the case is the same. There is a victim somewhere who is paying for it all. The doors of waste and extravagance stand open, and there seems to be a general agreement to squander and spend. It all belongs to somebody. There is somebody who had to contribute it, and who will have to find more. Nothing is ever said about him. Attention is all absorbed by the clamorous interests, the importunate petitioners, the plausible schemers, the pitiless bores. Now, who is the victim? He is the Forgotten Man. If we go to find him, we shall find him hard at work tilling the soil to get out of it the fund for all the jobbery, the object of all the plunder, the cost of all the economic quackery, and the pay of all the politicians and statesman who have sacrificed his interests to his enemies. We shall find him an honest, sober, industrious citizen, unknown outside his little circle, paying his debts and his taxes, supporting the church and the school, reading his party newspaper, and cheering for his pet politician.

It is the Forgotten Man who is threatened by every extension of the paternal theory of government. It is he who must work and pay. When, therefore, the statesmen and social philosophers sit down to think what the State can do or ought to do, they really mean to decide what the Forgotten Man shall do. What the Forgotten Man wants, therefore, is a fuller realization of constitutional liberty. He is suffering from the fact that there are yet mixed in our institutions medieval theories of protection, regulation, and authority, and modern theories of independence and individual liberty and responsibility. The consequence of this mixed state of things is, that those who are clever enough to get into control use the paternal theory by which to measure their own rights—that is, they assume privileges; and they use the theory of liberty to measure their own duties—that is, when it comes to the duties, they want to be “let alone.” The Forgotten Man never gets into control. He has to pay both ways. His rights are measured to him by the theory of liberty—that is, he has only such as he can conquer; his duties are measured to him on the paternal theory—that is, he must discharge all which are laid upon him, as is the fortune of parents....

We each owe to the other mutual redress of grievances... Every honest citizen of a free state owes it to himself, to the community, and especially to those who are at once weak and wronged, to go to their assistance and to help redress their wrongs. Whenever a law or social arrangement acts so as to injure any one, and that one the humblest, then there is a duty on those who are stronger, or who know better, to demand and fight for redress and correction. When generalized this means that it is the duty of All-of-us (that is, the State) to establish justice for all, from the least to the greatest, and in all matters. This, however, is no new doctrine. It is only the old, true, and indisputable function of the State; and in working for a redress of wrongs and a correction of legislative abuses, we are only struggling to a fuller realization of it—that is, working to improve civil government.

We each owe it to the other to guarantee rights. Rights do not pertain to *results*, but only to *chances*. They pertain to the *conditions* of the struggle for existence, not to any of the results of it; to the *pursuit* of happiness, not to the possession of happiness. It cannot be said that each one has a right to have some property, because if one man had such a right some other man or men would be under a corresponding obligation to provide him with some property. Each has a right to acquire and possess property if he can. It is plain what fallacies are developed when we overlook this distinction. Those fallacies run through *all* socialistic schemes and theories. If we take rights to pertain to results, and then say that rights must be equal, we come to say that men have a right to be equally happy, and so on in all the details. Rights should be equal, because they pertain to chances, and all ought to have equal chances so far as chances are provided or limited by the action of society. This, however, will not produce equal results, but it is right just because

it will produce unequal results—that is, results which shall be proportioned to the merits of individuals. We each owe it to the other to guarantee mutually the chance to earn, to possess, to learn, to marry, etc., etc., against any interference which would prevent the exercise of those rights by a person who wishes to prosecute and enjoy them in peace for the pursuit of happiness. If we generalize this, it means that All-of-us ought to guarantee rights to each of us. But our modern free, constitutional States are constructed entirely on the notion of rights, and we regard them as performing their functions more and more perfectly according as they guarantee rights in consonance with the constantly corrected and expanded notions of rights from one generation to another. Therefore, when we say that we owe it to each other to guarantee rights we only say that we ought to prosecute and improve our political science....



## 24. Lester Ward: Why Government Regulation is Beneficial

### Lester Ward (1844-1913)

Born in Joliet, Illinois, Lester Ward fought in the Civil War and then moved to Washington, DC. He studied at what is now George Washington University, obtaining three degrees, including one in law. He spent almost four decades working for the federal government as a geologist. Only in retirement did he turn his full attention to the field of sociology, teaching at Brown University and serving as the first president of the American Sociological Association. Throughout his years in federal employment Ward read and published extensively in the nascent field of sociology. He sought to identify laws that could be harnessed to achieve social good, and promoted the term “sociocracy” as the application of sociological principles to political problems.

### Plutocracy and Paternalism (1895)

In this excerpt, Ward responded to arguments supporting *laissez-faire* as the dominant government policy. In answering Sumner’s arguments, Ward identified the hypocrisy of businesses that lobby for limited intervention while seeking laws that protect their own industries from competition. He contended that the purported choice between plutocracy and paternalism evaporated once business practices were unmasked as products of government favoritism toward wealthy campaign contributors.

To judge from the tone of the popular press, the country would seem to be between the devil of state interference and the deep sea of gold. The two epithets “plutocracy” and “paternalism,” so freely applied, are intended to characterize the worst tendencies of the times in these two opposite directions, and are calculated to engender the bitterest feelings in the public mind. If such a thing were possible, it would certainly be useful, standing aloof from the contest, to make a cool, unbiased analysis of the true meaning of these terms in their relation to the existing state of affairs...

Justly or unjustly, society has made wealth a measure of work. It is easy on general principles to prove that it is not such a measure. Everyone is personally cognizant to cases to the contrary. All will admit that, taken in the abstract, the principle is unsound, and yet all act upon it. Not rationally, not perhaps consciously, but

still they do it. It is “human nature” to respect those who have, and to care little for those who have not. There is a sort of feeling that if one is destitute there must be a reason for it. It is inevitably ascribed to some personal deficit. In a word, absence of means is, in one form or another, made to stand for absence of merit. Its cause is looked for in character. This is most clearly seen in the marked contrast between the indisposition to help the unsuccessful, and the willingness to help the successful. Aside from the prospect of a quid pro quo, no one wants to waste time, energy, or money on what is worthless—and possession is the primary test of worth....

Thus it comes about that wealth, in the existing state of society, is a tremendous power. It gives not only ease, plenty, luxury, but, what is infinitely more, the respect of all and the envy of the less favored. It gives, in a word, superiority; and the strongest craving of a man’s nature is, in one way or another, to be set over his fellows. When all this is considered, the futility of the proposal if certain reformers to eradicate the passion for proprietary acquisition becomes apparent. It may be assumed that this passion will continue for an indefinite period to be the ruling element of the industrial state. That it has done and is still doing incalculable service to society few will deny. That it may continue to be useful to the end of our present industrial era will probably be admitted by all but a small class....

So much for plutocracy. Let us now turn to the other pole of public opinion and inquire into the meaning of “paternalism.” Literally, of course, paternalism in government would be restricted to cases in which the governing power is vested in a single person, who may be regarded as well-disposed and seeking to rule his subjects for their own good, as a father governs his children. But a ruling family, or even a large ruling class, may be supposed to govern from similar motives. In either case the governed are not supposed to have any voice in the matter, but are cared for like children by the assumed wisdom of their rulers. How far from true paternalism is anything that exists in this or any other civilized country today may therefore be readily seen. No one will claim that there is any danger, in a representative government with universal suffrage, of any such state being brought about. This shows at the outset that the term is not used in its original and correct sense, but is merely borrowed and applied as a stigma to certain tendencies in republican governments which the users of it do not approve. What are these tendencies? In general it may be said that they are tendencies toward the assumption by the state of functions that are now entrusted to private enterprise.

On the one hand, it is logically argued that the indefinite extension of such powers would eventuate in the most extreme socialistic system—the conduct of all business by the state. On the other hand it is shown with equal logic that the entire relinquishment of the functions which the state has already assumed would be the abolition of the state itself. The extremists of one party would land us in socialism; those of the other, in anarchy. But on one side it is said by the more moderate that the true function of government is the protection of society, to which it is replied by the other that such extension of governmental powers is in the interest of production, viz., protection against the undue rapacity of private enterprise. Here, as almost everywhere else in the realm of politics, it is a question of quantity and not of quality. It is not a difference in principle, but in policy. It is the degree to which the fundamental principle of all government is to be carried out....

The first law of economics is that everyone may be depended upon at all times to seek his greatest gain. It is both natural and right that the individual should be ever seeking to acquire for himself and his; and this rather irrespective of the rest of the world. It was so in the olden time, when physical strength was almost the only force. It is so today, when business shrewdness is practically supreme. Government was instituted to protect the weak from the strong in this universal struggle to possess; or, what is the same thing, to protect society at large. Originally it was occupied solely with abuses caused by brute force. It is still, so

far as this primary function of enforcing justice is concerned ... but any advantage gained by cunning, by superior knowledge—if it be only technicalities of the law—is not a crime, though its spirit be as bad as that of highway robbery and its consequences a thousand times worse.

From this point of view, then, modern society is suffering from the very opposite of paternalism, from under-government, from the failure of government to keep pace with the change which civilization has wrought in substituting intellectual for physical qualities as the workers of injustice. Government today is powerless to perform its primary and original function of protecting society. There was a time when brigandage stalked abroad throughout Europe and no one was safe in life or property.... Plutocracy is the modern brigandage and can be dislodged only by the same power, the power of the state. All the evils of society are the result of the free flow of natural propensities. The purpose of government is, as far as may be, to prevent this from causing injustice. The physical passions of men are natural and healthy, but they cannot be allowed to go unbridled.... The true function of government is not to fetter but to liberate the forces of society, not to diminish but to increase their effectiveness. Unbridled competition destroys itself. The only competition that endures is that which goes on under judicious regulation.

If, then, the danger of plutocracy is so largely due to insufficient government, where is the tendency to paternalism in the sense of too much government? This opens up the last and most important aspect of the subject. If there were no influences at work in society but those of unaided nature; if we had a pure physiocracy or government of nature, such as prevails among wild animals, and the weak were thereby sacrificed that the strong might survive to beget the strong, and thus elevate the race along the lines of evolution—however great this hardship, we might resign ourselves to it as part of the great cosmic scheme. But ... in the actual state of society it is not even those who, from this biological point of view, are the fittest, that become in fact the recipients of the greatest favors at the hands of society. That is due to the creation, by society itself, of artificial conditions that destroy the balance of forces and completely nullify all the beneficial effects that are secured by the operation of the natural law on the lower plane....

What, in the last analysis, are these social conditions? They are at bottom integral parts of government. They are embodied in law. Largely they consist of statute law. Where this is wanting they rest on judicial decisions, often immemorial, and belonging to the *lex non scripta*. In a word, they constitute the great system of jurisprudence relating to property and business, gradually built up through the ages to make men secure in their possessions and safe in their business transactions, but which in our day, owing to entirely changed industrial conditions, had become the means of throwing unlimited opportunities in the way of some and of barring out all the rest from all opportunities.... It legalizes and promotes trusts and combinations; subsidizes corporations, and then absolves them from their obligations; sustains stock-watering schemes and all forms of speculation; grants without compensation the most valuable franchise, often in perpetuity....

One of the greatest needs of an industrious people is a safe and profitable investment of their surplus earnings. In the existing condition of things they are driven into the stock market. In a few rare cases the stocks taken prove good. In still rarer cases—such as the first telephone shares—they become enormously productive. But in the great majority of cases they first fluctuate and finally fall below par, often to mere nominal value. There seems to be nothing to prevent the directors of these concerns from manipulating the shares so as first to enrich themselves and then to leave the business a wreck.... If the state cannot really require a safe guarantee to investors, or prohibit such insecure organizations, it can at least offer, in the form of national savings banks, an opportunity for prudent people to make a safe disposition of their surplus funds; and this has been done in nearly every country except the United States....

The very possession of wealth is only made possible by government. The safe conduct of all business depends upon the certain protection of law. The most powerful business combinations take place under legal forms. Even dishonest and swindling schemes, so long as they violate no penal statute, are protected by law. Speculation in the necessities of life is legitimate business, and is upheld by the officers of the law though it result in famine....

And now, mark: The charge of paternalism is chiefly made by the class that enjoys the largest share of government protection. Those who denounce state interference are the ones who most frequently and successfully invoke it. The cry of *laissez faire* mainly goes up from the ones who, if really “let alone,” would instantly lose their wealth-absorbing power....

Nothing is more obvious today than the signal inability of capital and private enterprise to take care of themselves unaided by the state; and while they are incessantly denouncing “paternalism”—by which they mean the claim of the defenseless laborer and artisan to a share in this lavish state protection—they are all the while besieging legislatures for relief from their own incompetency, and “pleading the baby act” through a trained body of lawyers and lobbyists. The dispensing of national pap to this class should rather be called “maternalism,” to which a square, open and dignified paternalism would be infinitely preferable....

The degree to which the citizen is protected in the secure enjoyment of his possessions is a fair measure of the state of civilization, but this protection must apply as rigidly to the poor man’s possessions as to those of the rich man, In the present system the latter is not only encouraged, but actually tempted to exploit the former.... [T]he time has arrived when a part at least of this paternal solicitude on the part of government should be diverted from the monopolistic element and bestowed upon the general public. If we must have paternalism, there should be no partiality shown in the family.



## UNIT V

# THE PROGRESSIVE ERA AND POLITICAL REFORM

Political corruption was pervasive after the Civil War. Since government employees were hired on the basis of political affiliation, they had little incentive to prioritize the law over doing what their political bosses directed them to do. Votes were often bought for a \$2.50 coin known as the “quarter-eagle.” With no limits on how much wealthy corporations could contribute to favored candidates, it was easy for them to purchase what Will Rogers would later refer to as “the best Congress money can buy.” This meant little legislative concern for safe working conditions, shorter regular hours, and fair wages.

This unit presents the work of several Americans whose work can be characterized as “progressive.” This means that they focused on applying a scientific approach to public policy to solve social ills. Lincoln Steffens identified the problem as the conflation of business and politics; since businesses were largely unregulated and could deceive consumers with impunity, Americans had come to view politics as a similar no-holds-barred activity. Upton Sinclair gained fame as a “muckraker” by taking a job in the meatpacking industry and uncovering the various ways that it sold spoiled meat to the public while preventing government oversight and regulatory legislation. Through their writings, progressives such as Steffens and Sinclair alerted Americans to the need for political reform.

Other progressives sought to implement reforms that would restore the value of equality under the law. Their major targets were the corrupt spoils system that based employment on subservience to political leaders rather than the law, and unregulated businesses that pursued profit through practices that harmed consumers and exploited laborers. Herbert Croly argued that “The Promise of American Life”—which he interpreted as a fair opportunity for all to pursue happiness—required reducing the role of money in politics and regulating businesses in the public interest. This is what President Theodore Roosevelt sought to do in his political career, as he initiated numerous reforms that reduced the power of businesses to operate with impunity. His 1910 speech at Osawatimie, Kansas, suggested that he been elected president in 1912 he would have done far more to pursue this goal. However, his vision of the US was founded upon the belief that white Anglo-Saxons were a superior race and justified in controlling other racial groups through restrictive legislation and discriminatory practices.

President Woodrow Wilson shared many of Theodore Roosevelt’s racial prejudices, which he implemented by resegregating federal offices and maintaining a segregated military. His progressive vision involved the US spreading democracy throughout the world in the interest of establishing a firm foundation for peace. He spent much of his presidency trying to establish a worldwide organization that could settle international disputes through rational discussion rather than war. He outlined these goals in a speech he gave three months before the United States entered World War I. Although the Senate refused to join the League of Nations, Wilson insisted to the end of his presidency that the US could best promote peace by improving its domestic programs to show that democratic government could succeed in maintaining order and promoting social progress.



## 25. Lincoln Steffens and the Need for Government Reform

### Lincoln Steffens (1860-1936)

Lincoln Steffens was born to a wealthy family in San Francisco, and raised in Sacramento in a house that is now the California Governor's mansion. He graduated the University of California at Berkeley before becoming a journalist in New York. He achieved national renown while working for McClure's magazine in 1902-1905 investigating political corruption. Several of his "muckraking" articles would later be published in *The Shame of the Cities*, from which this reading is drawn. He continued to advocate for political reform throughout his life, and travelled to Mexico and Russia to report on the revolutions taking place there. He eventually returned to California, where he continued to be involved in liberal causes before he died at age 70.

### Introduction to *The Shame of the Cities* (1904)

Steffens prefaced his investigation of political corruption by identifying what he saw as the cause of rampant political corruption in American cities: the people's belief that government was just another type of business that one entered for personal profit. He saw the failure of citizens to insist that the government pursue the public interest as a reason why corruption flourished, and he sought to convince the public that if government officials were held accountable for their misdeeds, responsible leaders could be found. He concluded that corruption will continue unless the public is willing to insist on honest government.

The misgovernment of the American people is misgovernment by the American people.... [O]ur egotism is that which deplores our politics and lauds our business. This is the wail of the typical American citizen. Now, the typical American citizen is the business man. The typical business man is a bad citizen; he is busy. If he is a "big business man" and very busy, he does not neglect, he is busy with politics, oh, very busy and very businesslike. I found him buying boodlers in St. Louis, defending grafters in Minneapolis, originating corruption in Pittsburgh, sharing with bosses in Philadelphia, deploring reform in Chicago, and beating good government with corruption funds in New York. He is a self-righteous fraud, this business man. He is the



chief source of corruption, and it were a boon if he would neglect politics. But he is not the business man that neglects politics; that worthy is the good citizen, the typical business man. He too is busy, he is the one that has no use and therefore no time for politics. When his neglect has permitted bad government to go so far that he can be stirred to action, he is unhappy, and he looks around for a cure that shall be quick, so that he may hurry back to the shop. Naturally, too, when he talks politics, he talks shop. His patent remedy is quack; it is business.

“Give us a business man,” he says (“like me,” he means). “Let him introduce business methods into politics and government; then I shall be left alone to attend to my business.”

There is hardly an office from United States Senator down to Alderman in any part of the country to which the business man has not been elected; yet politics remains corrupt, government pretty bad, and the selfish citizen has to hold himself in readiness like the old volunteer firemen to rush forth at any hour, in any weather, to prevent the fire; and he goes out sometimes and he puts out the fire (after the damage is done) and he goes back to the shop sighing for the business man in politics. The business man has failed in politics as he has in citizenship. Why?

Because politics is business. That’s what’s the matter with it. That’s what’s the matter with everything,—art, literature, religion, journalism, law, medicine,—they’re all business, and all—as you see them. Make politics a sport, as they do in England, or a profession, as they do in Germany, and we’ll have—well, something else than we have now,—if we want it, which is another question. But don’t try to reform politics with the banker, the lawyer, and the dry-goods merchant, for these are business men and there are two great hindrances to their achievement of reform: one is that they are different from, but no better than, the politicians; the other is that politics is not “their line.” There are exceptions both ways. Many politicians have gone out into business and done well (Tammany ex-mayors, and nearly all the old bosses of Philadelphia are prominent financiers in their cities), and businessmen have gone into politics and done well (Mark Hanna, for example). They haven’t reformed their adopted trades, however, though they have sometimes sharpened them most pointedly. The politician is a business man with a specialty. When a business man of some other line learns the business of politics, he is a politician, and there is not much reform left in him. Consider the United States Senate, and believe me.

The commercial spirit is the spirit of profit, not patriotism; of credit, not honor; of individual gain, not national prosperity; of trade and dickering, not principle. “My business is sacred,” says the business man in his heart. “Whatever prospers my business, is good; it must be. Whatever hinders it, is wrong; it must be. A bribe is bad, that is, it is a bad thing to take; but it is not so bad to give one, not if it is necessary to my business.” “Business is business” is not a political sentiment, but our politician has caught it. He takes essentially the same view of the bribe, only he saves his self-respect by piling all his contempt upon the bribe-giver, and he has the great advantage of candor....

But there is hope, not alone despair, in the commercialism of our politics. If our political leaders are to be always a lot of political merchants, they will supply any demand we may create. All we have to do is to establish a steady demand for good government. The boss has us split up into parties. To him parties are nothing but means to his corrupt ends. He “bolts” his party, but we must not; the bribe-giver changes his party, from one election to another, from one county to another, from one city to another, but the honest voter must not. Why? Because if the honest voter cared no more for his party than the politician and the grafter, then the honest vote would govern, and that would be bad—for graft. It is idiotic, this devotion to a machine that is used to take our sovereignty from us. If we would leave parties to the politicians, and would vote not for the party, not even for men, but for the city, and the State, and the nation, we should rule

parties, and cities, and States, and nation. If we would vote in mass on the more promising ticket, or, if the two are equally bad, would throw out the party that is in, and wait till the next election and then throw out the other party that is in—then, I say, the commercial politician would feel a demand for good government and he would supply it. That process would take a generation or more to complete, for the politicians now really do not know what good government is. But it has taken as long to develop bad government, and the politicians know what that is. If it would not “go,” they would offer something else, and, if the demand were steady, they, being so commercial, would “deliver the goods.”

But do the people want good government? Tammany says they don't. Are the people honest? Are the people better than Tammany? Are they better than the merchant and the politician? Isn't our corrupt government, after all, representative?

...[T]he contemned methods of our despised politics are the master methods of our braggart business, and the corruption that shocks us in public affairs we practice ourselves in our private concerns. There is no essential difference between the pull that gets your wife into society or a favorable review for your book, and that which gets a heeler into office, a thief out of jail, and a rich man's son on the board of directors of a corporation; none between the corruption of a labor union, a bank, and a political machine; none between a dummy director of a trust and the caucus-bound member of a legislature; none between a labor boss like Sam Parks, a boss of banks like John D. Rockefeller, a boss of railroads like J. P. Morgan, and a political boss like Matthew S. Quay. The boss is not a political, he is an American institution, product of a freed people that have not the spirit to be free.

And it's all a moral weakness; a weakness right where we think we are strongest. Oh, we are good—on Sunday, and we are “fearfully patriotic” on the Fourth of July. But the bribe we pay to the janitor to prefer our interests to the landlord's, is the little brother of the bribe passed to the alderman to sell a city street, and the father of the air-brake stock assigned to the president of a railroad to have this life-saving invention adopted on his road. And as for graft, railroad passes, saloon and bawdy-house blackmail, and watered stock, all these belong to the same family. We are pathetically proud of our democratic institutions and our republican form of government, of our grand Constitution and our just laws. We are a free and sovereign people, we govern ourselves and the government is ours. But that is the point. We are responsible, not our leaders, since we follow them. We *let* them divert our loyalty from the United States to some “party”; we *let* them boss the party and turn our municipal democracies into autocracies and our republican nation into a plutocracy. We cheat our government and we let our leaders loot it, and we let them wheedle and bribe our sovereignty from us. True, they pass for us strict laws, but we are content to let them pass also bad laws, giving away public property in exchange; and our good, and often impossible, laws we allow to be used for oppression and blackmail. And what can we say? We break our own laws and rob our own government, the lady at the custom-house, the lyncher with his rope, and the captain of industry with his bribe and his rebate. The spirit of graft and of lawlessness is the American spirit....

The people are not innocent. That is the only “news” in all the journalism of these articles....

The real triumph of the year's work [researching corruption in American municipal government] was the complete demonstration it has given, in a thousand little ways, that our shamelessness is superficial, that beneath it lies a pride which, being real, may save us yet. And it is real. The grafters who said you may put the blame anywhere but on the people, where it belongs, and that Americans can be moved only by flattery—they lied. They lied about themselves. They, too, are American citizens; they too, are of the people; and some of them also were reached by shame. The great truth I tried to make plain was that...bribery is no ordinary felony, but treason, that the “corruption which breaks out here and there and now and then”

is not an occasional offense, but a common practice, and that the effect of it is literally to change the form of our government from one that is representative of the people to an oligarchy, representative of special interests. Some politicians have seen that this is so, and it bothers them. I think I prize more highly than any other of my experiences the half-dozen times when grafting politicians I had “roasted,” as they put it, called on me afterwards to say, in the words of one who spoke with a wonderful solemnity: “You are right. I never thought of it that way, but it’s right. I don’t know whether you can do anything, but you’re right, dead right. And I’m all wrong. We’re all, all wrong. I don’t see how we can stop it now; I don’t see how I can change. I can’t, I guess. No, I can’t, not now....”

## 26. Upton Sinclair Exposes the Jungle

### Upton Sinclair (1878-1968)

Upton Sinclair was born in Baltimore, Maryland. He became an insatiable reader at an early age, and did not attend school until age 10. After his parents moved to New York City, he entered City College at age 14 and began selling his writing to pay for tuition. After graduating, he attended Columbia Law School, but dropped out to pursue a writing career. Sinclair published several books while in his twenties, and moved to Chicago to take a job in the meatpacking industry in order to obtain background material for a novel on the subject. *The Jungle* became a best-seller upon publication in 1906.

Sinclair continued to expose the greed of American industries, which led him to become a fervent advocate of socialism. He later moved to California and ran for public office several times, always unsuccessfully. He continued to write and support socialist causes until his death at age 90.

### *The Jungle* (1906)

*The Jungle* is a novel about the experience of a Lithuanian family that emigrates to Chicago in pursuit of a better life. Protagonist Jurgis Rudkis takes a job at a large meatpacking plant and endures horrible working conditions at a time when there were no laws mandating safe working conditions. Throughout the novel, Sinclair detailed the unsanitary practices of the meat industry and how it disguised the spoiled meat it sold. He also illustrated how the industry bribed government officials to overlook their practices and fire inspectors who were too vigilant. Sinclair vividly portrayed how the meatpackers suffered disabling injuries on the job that limited permanently crippled them and cut short their working lives. Sinclair concluded the novel by depicting Jurgis Rudkis' indoctrination into socialism and how it enlightened his understanding of American politics and business. Rudkis came to see that socialist reforms were necessary to restrain the evils of unregulated capitalism. While *The Jungle* did not convince Americans to become socialists, its plea for worker safety regulation led Congress to pass the Pure Food and Drug Act and the Meat Inspection Act later in 1906.

There was scarcely a thing needed in the business that Durham and Company did not make for themselves. There was a great steam power plant and an electricity plant. There was a barrel factory, and a boiler-repair shop. There was a building to which the grease was piped, and made into soap and lard; and then there

was a factory for making lard cans, and another for making soap boxes. There was a building in which the bristles were cleaned and dried, for the making of hair cushions and such things; there was a building where the skins were dried and tanned, there was another where heads and feet were made into glue, and another where bones were made into fertilizer. No tiniest particle of organic matter was wasted in Durham's. Out of the horns of the cattle they made combs, buttons, hairpins, and imitation ivory; out of the shinbones and other big bones they cut knife and toothbrush handles, and mouthpieces for pipes; out of the hoofs they cut hairpins and buttons, before they made the rest into glue. From such things as feet, knuckles, hide clippings, and sinews came such strange and unlikely products as gelatin, isinglass, and phosphorus, bone black, shoe blacking, and bone oil. They had curled-hair works for the cattle tails, and a "wool pullery" for the sheepskins; they made pepsin from the stomachs of the pigs, and albumen from the blood, and violin strings from the ill-smelling entrails. When there was nothing else to be done with a thing, they first put it into a tank and got out of it all the tallow and grease, and then they made it into fertilizer. All these industries were gathered into buildings near by, connected by galleries and railroads with the main establishment; and it was estimated that they had handled nearly a quarter of a billion of animals since the founding of the plant by the elder Durham a generation and more ago. If you counted with it the other big plants—and they were now really all one—it was, so Jokubas informed them, the greatest aggregation of labor and capital ever gathered in one place. It employed thirty thousand men; it supported directly two hundred and fifty thousand people in its neighborhood, and indirectly it supported half a million. It sent its products to every country in the civilized world, and it furnished the food for no less than thirty million people!

To all of these things our friends would listen open-mouthed—it seemed to them impossible of belief that anything so stupendous could have been devised by mortal man. That was why to Jurgis it seemed almost profanity to speak about the place as did Jokubas, skeptically; it was a thing as tremendous as the universe—the laws and ways of its working no more than the universe to be questioned or understood. All that a mere man could do, it seemed to Jurgis, was to take a thing like this as he found it, and do as he was told; to be given a place in it and a share in its wonderful activities was a blessing to be grateful for, as one was grateful for the sunshine and the rain. Jurgis was even glad that he had not seen the place before meeting with his triumph, for he felt that the size of it would have overwhelmed him. But now he had been admitted—he was a part of it all! He had the feeling that this whole huge establishment had taken him under its protection, and had become responsible for his welfare. So guileless was he, and ignorant of the nature of business, that he did not even realize that he had become an employee of Brown's, and that Brown and Durham were supposed by all the world to be deadly rivals—were even required to be deadly rivals by the law of the land, and ordered to try to ruin each other under penalty of fine and imprisonment!...

And there were things even stranger than this, according to the gossip of the men. The packers had secret mains, through which they stole billions of gallons of the city's water. The newspapers had been full of this scandal—once there had even been an investigation, and an actual uncovering of the pipes; but nobody had been punished, and the thing went right on. And then there was the condemned meat industry, with its endless horrors. The people of Chicago saw the government inspectors in Packingtown, and they all took that to mean that they were protected from diseased meat; they did not understand that these hundred and sixty-three inspectors had been appointed at the request of the packers, and that they were paid by the United States government to certify that all the diseased meat was kept in the state. They had no authority beyond that; for the inspection of meat to be sold in the city and state the whole force in Packingtown consisted of three henchmen of the local political machine! And shortly afterward one of these, a physician, made the discovery that the carcasses of steers which had been condemned as tubercular by the

government inspectors, and which therefore contained ptomaines, which are deadly poisons, were left upon an open platform and carted away to be sold in the city; and so he insisted that these carcasses be treated with an injection of kerosene—and was ordered to resign the same week! So indignant were the packers that they went farther, and compelled the mayor to abolish the whole bureau of inspection; so that since then there has not been even a pretense of any interference with the graft. There was said to be two thousand dollars a week hush money from the tubercular steers alone; and as much again from the hogs which had died of cholera on the trains, and which you might see any day being loaded into boxcars and hauled away to a place called Globe, in Indiana, where they made a fancy grade of lard.

Jurgis heard of these things little by little, in the gossip of those who were obliged to perpetrate them. It seemed as if every time you met a person from a new department, you heard of new swindles and new crimes. There was, for instance, a Lithuanian who was a cattle butcher for the plant where Marija had worked, which killed meat for canning only; and to hear this man describe the animals which came to his place would have been worthwhile for a Dante or a Zola. It seemed that they must have agencies all over the country, to hunt out old and crippled and diseased cattle to be canned. There were cattle which had been fed on “whisky-malt,” the refuse of the breweries, and had become what the men called “steerly”—which means covered with boils. It was a nasty job killing these, for when you plunged your knife into them they would burst and splash foul-smelling stuff into your face; and when a man’s sleeves were smeared with blood, and his hands steeped in it, how was he ever to wipe his face, or to clear his eyes so that he could see? It was stuff such as this that made the “embalmed beef” that had killed several times as many United States soldiers as all the bullets of the Spaniards; only the army beef, besides, was not fresh canned, it was old stuff that had been lying for years in the cellars.

Then one Sunday evening, Jurgis sat puffing his pipe by the kitchen stove, and talking with an old fellow whom Jonas had introduced, and who worked in the canning rooms at Durham’s; and so Jurgis learned a few things about the great and only Durham canned goods, which had become a national institution. They were regular alchemists at Durham’s; they advertised a mushroom-catsup, and the men who made it did not know what a mushroom looked like. They advertised “potted chicken,”—and it was like the boardinghouse soup of the comic papers, through which a chicken had walked with rubbers on. Perhaps they had a secret process for making chickens chemically—who knows? said Jurgis’ friend; the things that went into the mixture were tripe, and the fat of pork, and beef suet, and hearts of beef, and finally the waste ends of veal, when they had any. They put these up in several grades, and sold them at several prices; but the contents of the cans all came out of the same hopper. And then there was “potted game” and “potted grouse,” “potted ham,” and “deviled ham”—de-vyled, as the men called “De-vyled” ham was made out of the waste ends of smoked beef that were too small to be sliced by the machines; and also tripe, dyed with chemicals so that it would not show white; and trimmings of hams and corned beef; and potatoes, skins and all; and finally the hard cartilaginous gullets of beef, after the tongues had been cut out. All this ingenious mixture was ground up and flavored with spices to make it taste like something. Anybody who could invent a new imitation had been sure of a fortune from old Durham, said Jurgis’ informant; but it was hard to think of anything new in a place where so many sharp wits had been at work for so long; where men welcomed tuberculosis in the cattle they were feeding, because it made them fatten more quickly; and where they bought up all the old rancid butter left over in the grocery stores of a continent, and “oxidized” it by a forced-air process, to take away the odor, recharged it with skim milk, and sold it in bricks in the cities! Up to a year or two ago it had been the custom to kill horses in the yards—ostensibly for fertilizer; but after long agitation the newspapers had been able to make the public realize that the horses were being canned. Now it was against the law

to kill horses in Packingtown, and the law was really complied with—for the present, at any rate. Any day, however, one might see sharp-horned and shaggy-haired creatures running with the sheep and yet what a job you would have to get the public to believe that a good part of what it buys for lamb and mutton is really goat's flesh!...

There was another interesting set of statistics that a person might have gathered in Packington—those of the various afflictions of the workers. When Jurgis had first inspected the packing plants with Szedvilas, he had marveled while he listened to the tale of all the things that were made out of the carcasses of animals, and of all the lesser industries that were maintained there; now he found that each one of these lesser industries was a separate little inferno, in its way as horrible as the killing beds, the source and fountain of them all. The workers in each of them had their own peculiar diseases. And the wandering visitor might be skeptical about all the swindles, but he could not be skeptical about these, for the worker bore the evidence of them about on his own person—generally he had only to hold out his hand.

There were the men in the pickle rooms, for instance, where old Antanas had gotten his death; scarce a one of these that had not some spot of horror on his person. Let a man so much as scrape his finger pushing a truck in the pickle rooms, and he might have a sore that would put him out of the world; all the joints in his fingers might be eaten by the acid, one by one. Of the butchers and floorsmen, the beef-boners and trimmers, and all those who used knives, you could scarcely find a person who had the use of his thumb; time and time again the base of it had been slashed, till it was a mere lump of flesh against which the man pressed the knife to hold it. The hands of these men would be criss-crossed with cuts, until you could no longer pretend to count them or to trace them. They would have no nails,—they had worn them off pulling hides; their knuckles were swollen so that their fingers spread out like a fan. There were men who worked in the cooking rooms, in the midst of steam and sickening odors, by artificial light; in these rooms the germs of tuberculosis might live for two years, but the supply was renewed every hour. There were the beef-luggers, who carried two-hundred-pound quarters into the refrigerator-cars; a fearful kind of work, that began at four o'clock in the morning, and that wore out the most powerful men in a few years. There were those who worked in the chilling rooms, and whose special disease was rheumatism; the time limit that a man could work in the chilling rooms was said to be five years. There were the wool-pluckers, whose hands went to pieces even sooner than the hands of the pickle men; for the pelts of the sheep had to be painted with acid to loosen the wool, and then the pluckers had to pull out this wool with their bare hands, till the acid had eaten their fingers off. There were those who made the tins for the canned meat; and their hands, too, were a maze of cuts, and each cut represented a chance for blood poisoning. Some worked at the stamping machines, and it was very seldom that one could work long there at the pace that was set, and not give out and forget himself and have a part of his hand chopped off. There were the “hoisters,” as they were called, whose task it was to press the lever which lifted the dead cattle off the floor. They ran along upon a rafter, peering down through the damp and the steam; and as old Durham's architects had not built the killing room for the convenience of the hoisters, at every few feet they would have to stoop under a beam, say four feet above the one they ran on; which got them into the habit of stooping, so that in a few years they would be walking like chimpanzees. Worst of any, however, were the fertilizer men, and those who served in the cooking rooms. These people could not be shown to the visitor, for the odor of a fertilizer man would scare any ordinary visitor at a hundred yards, and as for the other men, who worked in tank rooms full of steam, and in some of which there were open vats near the level of the floor, their peculiar trouble was that they fell into the vats; and when they were fished out, there was never enough of them left to be worth

exhibiting,—sometimes they would be overlooked for days, till all but the bones of them had gone out to the world as Durham's Pure Leaf Lard!...

Jonas had told them how the meat that was taken out of pickle would often be found sour, and how they would rub it up with soda to take away the smell, and sell it to be eaten on free-lunch counters; also of all the miracles of chemistry which they performed, giving to any sort of meat, fresh or salted, whole or chopped, any color and any flavor and any odor they chose. In the pickling of hams they had an ingenious apparatus, by which they saved time and increased the capacity of the plant—a machine consisting of a hollow needle attached to a pump; by plunging this needle into the meat and working with his foot, a man could fill a ham with pickle in a few seconds. And yet, in spite of this, there would be hams found spoiled, some of them with an odor so bad that a man could hardly bear to be in the room with them. To pump into these the packers had a second and much stronger pickle which destroyed the odor—a process known to the workers as “giving them thirty per cent.” Also, after the hams had been smoked, there would be found some that had gone to the bad. Formerly these had been sold as “Number Three Grade,” but later on some ingenious person had hit upon a new device, and now they would extract the bone, about which the bad part generally lay, and insert in the hole a white-hot iron. After this invention there was no longer Number One, Two, and Three Grade—there was only Number One Grade. The packers were always originating such schemes—they had what they called “boneless hams,” which were all the odds and ends of pork stuffed into casings; and “California hams,” which were the shoulders, with big knuckle joints, and nearly all the meat cut out; and fancy “skinned hams,” which were made of the oldest hogs, whose skins were so heavy and coarse that no one would buy them—that is, until they had been cooked and chopped fine and labeled “head cheese!”

It was only when the whole ham was spoiled that it came into the department of Elzbieta. Cut up by the two-thousand-revolutions-a-minute flyers, and mixed with half a ton of other meat, no odor that ever was in a ham could make any difference. There was never the least attention paid to what was cut up for sausage; there would come all the way back from Europe old sausage that had been rejected, and that was moldy and white—it would be dosed with borax and glycerine, and dumped into the hoppers, and made over again for home consumption. There would be meat that had tumbled out on the floor, in the dirt and sawdust, where the workers had tramped and spit uncounted billions of consumption germs.

There would be meat stored in great piles in rooms; and the water from leaky roofs would drip over it, and thousands of rats would race about on it. It was too dark in these storage places to see well, but a man could run his hand over these piles of meat and sweep off handfuls of the dried dung of rats. These rats were nuisances, and the packers would put poisoned bread out for them; they would die, and then rats, bread, and meat would go into the hoppers together. This is no fairy story and no joke; the meat would be shoveled into carts, and the man who did the shoveling would not trouble to lift out a rat even when he saw one—there were things that went into the sausage in comparison with which a poisoned rat was a tidbit. There was no place for the men to wash their hands before they ate their dinner, and so they made a practice of washing them in the water that was to be ladled into the sausage. There were the butt-ends of smoked meat, and the scraps of corned beef, and all the odds and ends of the waste of the plants, that would be dumped into old barrels in the cellar and left there. Under the system of rigid economy which the packers enforced, there were some jobs that it only paid to do once in a long time, and among these was the cleaning out of the waste barrels. Every spring they did it; and in the barrels would be dirt and rust and old nails and stale water—and cartload after cartload of it would be taken up and dumped into the hoppers with fresh meat, and sent out to the public's breakfast. Some of it they would make into “smoked” sausage—but as the smoking took time, and was therefore expensive, they would call upon their chemistry department, and preserve it with borax



and color it with gelatine to make it brown. All of their sausage came out of the same bowl, but when they came to wrap it they would stamp some of it “special,” and for this they would charge two cents more a pound....

The Socialists were organized in every civilized nation; it was an international political party, said Ostrinski, the greatest the world had ever known. It numbered thirty million of adherents, and it cast eight million votes. It had started its first newspaper in Japan, and elected its first deputy in Argentina; in France it named members of cabinets, and in Italy and Australia it held the balance of power and turned out ministries. In Germany, where its vote was more than a third of the total vote of the empire, all other parties and powers had united to fight it. It would not do, Ostrinski explained, for the proletariat of one nation to achieve the victory, for that nation would be crushed by the military power of the others; and so the Socialist movement was a world movement, an organization of all mankind to establish liberty and fraternity. It was the new religion of humanity—or you might say it was the fulfillment of the old religion, since it implied but the literal application of all the teachings of Christ.

Until long after midnight Jurgis sat lost in the conversation of his new acquaintance. It was a most wonderful experience to him—an almost supernatural experience. It was like encountering an inhabitant of the fourth dimension of space, a being who was free from all one’s own limitations. For four years, now, Jurgis had been wondering and blundering in the depths of a wilderness; and here, suddenly, a hand reached down and seized him, and lifted him out of it, and set him upon a mountain-top, from which he could survey it all—could see the paths from which he had wandered, the morasses into which he had stumbled, the hiding places of the beasts of prey that had fallen upon him. There were his Packingtown experiences, for instance—what was there about Packingtown that Ostrinski could not explain! To Jurgis the packers had been equivalent to fate; Ostrinski showed him that they were the Beef Trust. They were a gigantic combination of capital, which had crushed all opposition, and overthrown the laws of the land, and was preying upon the people. Jurgis recollected how, when he had first come to Packingtown, he had stood and watched the hog-killing, and thought how cruel and savage it was, and come away congratulating himself that he was not a hog; now his new acquaintance showed him that a hog was just what he had been—one of the packers’ hogs. What they wanted from a hog was all the profits that could be got out of him; and that was what they wanted from the workingman, and also that was what they wanted from the public. What the hog thought of it, and what he suffered, were not considered; and no more was it with labor, and no more with the purchaser of meat. That was true everywhere in the world, but it was especially true in Packingtown; there seemed to be something about the work of slaughtering that tended to ruthlessness and ferocity—it was literally the fact that in the methods of the packers a hundred human lives did not balance a penny of profit. When Jurgis had made himself familiar with the Socialist literature, as he would very quickly, he would get glimpses of the Beef Trust from all sorts of aspects, and he would find it everywhere the same; it was the incarnation of blind and insensate Greed. It was a monster devouring with a thousand mouths, trampling with a thousand hoofs; it was the Great Butcher—it was the spirit of Capitalism made flesh. Upon the ocean of commerce it sailed as a pirate ship; it had hoisted the black flag and declared war upon civilization. Bribery and corruption were its everyday methods. In Chicago the city government was simply one of its branch offices; it stole billions of gallons of city water openly, it dictated to the courts the sentences of disorderly strikers, it forbade the mayor to enforce the building laws against it. In the national capital it had power to prevent inspection of its product, and to falsify government reports; it violated the rebate laws, and when an investigation was threatened it burned its books and sent its criminal agents out of the country. In the commercial world it was a Juggernaut car; it wiped out thousands of businesses every

year, it drove men to madness and suicide. It had forced the price of cattle so low as to destroy the stock-raising industry, an occupation upon which whole states existed; it had ruined thousands of butchers who had refused to handle its products. It divided the country into districts, and fixed the price of meat in all of them; and it owned all the refrigerator cars, and levied an enormous tribute upon all poultry and eggs and fruit and vegetables. With the millions of dollars a week that poured in upon it, it was reaching out for the control of other interests, railroads and trolley lines, gas and electric light franchises—it already owned the leather and the grain business of the country. The people were tremendously stirred up over its encroachments, but nobody had any remedy to suggest; it was the task of Socialists to teach and organize them, and prepare them for the time when they were to seize the huge machine called the Beef Trust, and use it to produce food for human beings and not to heap up fortunes for a band of pirates. It was long after midnight when Jurgis lay down upon the floor of Ostrinski's kitchen; and yet it was an hour before he could get to sleep, for the glory of that joyful vision of the people of Packingtown marching in and taking possession of the Union Stockyards!

# 27. Herbert Croly: The Promise of American Life

## Herbert Croly (1869-1930)

Herbert Croly was the son of two New York City journalists. After dropping out of Harvard, he edited an architectural magazine before moving to an artists' colony in Cornish, New Hampshire. There he wrote the book *The Promise of American Life*, which argued that ensuring the pursuit of happiness for all required that the US share its national wealth with those less-well-off. Croly's endorsement of a welfare system challenged Americans' historic reluctance to establish a safety-net for all persons in need.

In 1914, he and Walter Lippmann founded *The New Republic*, which quickly became the leading progressive magazine in the country. Croly's ideas fell out of favor in the 1920s, and he suffered a massive stroke in 1928 that led to his death two years later. Nevertheless, many of his ideas for reform would become part of Franklin Roosevelt's New Deal.

## *The Promise of American Life* (1909)

Herbert Croly's 1909 book *The Promise of American Life* identified freedom, economic prosperity, and equality as the goals of the United States. The proliferation of large corporations had created vast inequalities between the few rich and the many poor. Furthermore, the spoils system created a class of politicians that enriched themselves through their continued control of government offices. This meant that there were few opportunities for political outsiders to influence government policy participate. The consequence is that many opportunities for economic success were closed to most people despite their best efforts. As a result, they were effectively precluded from reaching the promise about which Croly wrote.

Croly called for a resurgence of popular sovereignty and a greater respect for democratic values. He believed the US would be strengthened by measures that redistributed wealth (such as taxation of large inheritances) and imposed safety and health regulations on business. He saw poverty as an obstacle to the preservation of democracy and promoted public assistance for the needy. He also supported political reform that promoted democracy by reducing the role of money in the electoral process. These reforms sought to achieve greater effective equality by expanding each person's opportunity for achieving what he called the "promise of

American life”—a true opportunity to pursue happiness. Croly’s call for a “Square Deal” would be adopted by Theodore Roosevelt in his 1912 presidential campaign.

...[T]he American Promise has undergone certain important changes since the establishment of our national independence. When the colonists succeeded in emancipating themselves from political allegiance to Great Britain, they were confronted by the task of organizing a stable and efficient government without encroaching on the freedom, which was even at that time traditionally associated with American life. The task was by no means an easy one, and required for its performance the application of other political principles than that of freedom. The men who were responsible for this great work were not, perhaps, entirely candid in recognizing the profound modifications in their traditional ideas which their constructive political work had implied; but they were at all events fully aware of the great importance of their addition to the American idea. That idea, while not ceasing to be at bottom economic, became more than ever political and social in its meaning and contents. The Land of Freedom became in the course of time also the Land of Equality. The special American political system ... was made explicitly, if not uncompromisingly, democratic; and the success of this democratic political system was indissolubly associated in the American mind with the persistence of abundant and widely distributed economic prosperity. Our democratic institutions became in a sense the guarantee that prosperity would continue to be abundant and accessible. In case the majority of good Americans were not prosperous, there would be grave reasons for suspecting that our institutions were not doing their duty.

The more consciously democratic Americans became, however, the less they were satisfied with a conception of the Promised Land, which went no farther than a pervasive economic prosperity guaranteed by free institutions. The amelioration promised to aliens and to future Americans was to possess its moral and social aspects. The implication was, and still is, that by virtue of the more comfortable and less trammled lives which Americans were enabled to lead, they would constitute a better society and would become in general a worthier set of men. The confidence which American institutions placed in the American citizen was considered equivalent to a greater faith in the excellence of human nature. In our favored land political liberty and economic opportunity were by a process of natural education inevitably making for individual and social amelioration.... The people were to be trusted rather than suspected and disciplined. They must be tied to their country by the strong bond of self-interest. Give them a fair chance, and the natural goodness of human nature would do the rest. Individual and public interest will, on the whole, coincide, provided no individuals are allowed to have special privileges. Thus the American system will be predestined to success by its own adequacy, and its success will constitute an enormous stride towards human amelioration. Just because our system is at bottom a thorough test of the ability of human nature to respond admirably to a fair chance, the issue of the experiment is bound to be of more than national importance. The American system stands for the highest hope of an excellent worldly life that mankind has yet ventured—the hope that men can be improved without being fettered, that they can be saved without even vicariously being nailed to the cross.

Such are the claims advanced on behalf of the American system; and within certain limits this system has made good. Americans have been more than usually prosperous. They have been more than usually free. They have, on the whole, made their freedom and prosperity contribute to a higher level of individual and

social excellence. Most assuredly the average Americanized American is neither a more intelligent, a wiser, nor a better man than the average European; but he is likely to be a more energetic and hopeful one. Out of a million well-established Americans, taken indiscriminately from all occupations and conditions, compared to a corresponding assortment of Europeans, a larger proportion of the former will be leading alert, active, and useful lives. Within a given social area there will be a smaller amount of social wreckage and a larger amount of wholesome and profitable achievement. The mass of the American people is, on the whole, more deeply stirred, more thoroughly awake, more assertive in their personal demands, and more confident of satisfying them. In a word, they are more alive, and they must be credited with the moral and social benefit attaching to a larger amount of vitality.

Furthermore, this greater individual vitality, although intimately connected with the superior agricultural and industrial opportunities of a new country, has not been due exclusively to such advantages. Undoubtedly the vast areas of cheap and fertile land which have been continuously available for settlement have contributed, not only to the abundance of American prosperity, but also to the formation of American character and institutions; and undoubtedly many of the economic and political evils which are now becoming offensively obtrusive are directly or indirectly derived from the gradual monopolization of certain important economic opportunities. Nevertheless, these opportunities could never have been converted so quickly into substantial benefits had it not been for our more democratic political and social forms. A privileged class does not secure itself in the enjoyment of its advantages merely by legal intrenchments. It depends quite as much upon disqualifying the "lower classes" from utilizing their opportunities by a species of social inhibition.... Our democratic prohibition of any but occasional social distinctions and our democratic dislike to any suggestion of authentic social inferiority have contributed as essentially to the fluid and elastic substance of American life as have its abundant and accessible economic opportunities....

The moral and social aspiration proper to American life is, of course, the aspiration vaguely described by the word democratic; and the actual achievement of the American nation points towards an adequate and fruitful definition of the democratic ideal. Americans are usually satisfied by a most inadequate verbal description of democracy, but their national achievement implies one which is much more comprehensive and formative. In order to be true to their past, the increasing comfort and economic independence of an ever-increasing proportion of the population must be secured, and it must be secured by a combination of individual effort and proper political organization. Above all, however, this economic and political system must be made to secure results of moral and social value. It is the seeking of such results which converts democracy from a political system into a constructive social ideal; and the more the ideal significance of the American national Promise is asserted and emphasized, the greater will become the importance of securing these moral and social benefits.

The fault in the vision of our national future possessed by the ordinary American does not consist in the expectation of some continuity of achievement. It consists rather in the expectation that the familiar benefits will continue to accumulate automatically. In his mind the ideal Promise is identified with the processes and conditions which hitherto have very much simplified its fulfillment, and he fails sufficiently to realize that the conditions and processes are one thing and the ideal Promise quite another. Moreover, these underlying social and economic conditions are themselves changing, in such wise that hereafter the ideal Promise, instead of being automatically fulfilled, may well be automatically stifled. For two generations and more the American people were, from the economic point of view, most happily situated. They were able, in a sense, to slide downhill into the valley of fulfillment. Economic conditions were such that, given a fair start, they could scarcely avoid reaching a desirable goal. But such is no longer the case. Economic

conditions have been profoundly modified, and American political and social problems have been modified with them. The Promise of American life must depend less than it did upon the virgin wilderness and the Atlantic Ocean, for the virgin wilderness has disappeared, and the Atlantic Ocean has become merely a big channel. The same results can no longer be achieved by the same easy methods. Ugly obstacles have jumped into view, and ugly obstacles are peculiarly dangerous to a person who is sliding down hill. The man who is clambering up hill is in a much better position to evade or overcome them. Americans will possess a safer as well as a worthier vision of their national Promise as soon as they give it a house on a hill-top rather than in a valley....

A numerous and powerful group of reformers has been collecting whose whole political policy and action is based on the conviction that the “common people” have not been getting the Square Deal to which they are entitled under the American system; and these reformers are carrying with them a constantly increasing body of public opinion. A considerable proportion of the American people is beginning to exhibit economic and political, as well as personal, discontent. A generation ago the implication was that if a man remained poor and needy, his poverty was his own fault, because the American system was giving all its citizens a fair chance. Now, however, the discontented poor are beginning to charge their poverty to an unjust political and economic organization, and reforming agitators do not hesitate to support them in this contention. Manifestly a threatened obstacle has been raised against the anticipated realization of our national Promise. Unless the great majority of Americans not only have, but believe they have, a fair chance, the better American future will be dangerously compromised....

The substance of our national Promise has consisted, as we have seen, of an improving popular economic condition, guaranteed by democratic political institutions, and resulting in moral and social amelioration. These manifold benefits were to be obtained merely by liberating the enlightened self-interest of the American people. The beneficent result followed inevitably from the action of wholly selfish motives—provided, of course, the democratic political system of equal rights was maintained in its integrity. The fulfillment of the American Promise was considered inevitable because it was based upon a combination of self-interest and the natural goodness of human nature. On the other hand, if the fulfillment of our national Promise can no longer be considered inevitable, if it must be considered as equivalent to a conscious national purpose instead of an inexorable national destiny, the implication necessarily is that the trust reposed in individual self-interest has been in some measure betrayed. No preestablished harmony can then exist between the free and abundant satisfaction of private needs and the accomplishment of a morally and socially desirable result. The Promise of American life is to be fulfilled—not merely by a maximum amount of economic freedom, but by a certain measure of discipline; not merely by the abundant satisfaction of individual desires, but by a large measure of individual subordination and self-denial. And this necessity of subordinating the satisfaction of individual desires to the fulfillment of a national purpose is attached particularly to the absorbing occupation of the American people—the occupation, viz.: of accumulating wealth. The automatic fulfillment of the American national Promise is to be abandoned, if at all, precisely because the traditional American confidence in individual freedom has resulted in a morally and socially undesirable distribution of wealth....

[T]he political corruption, the unwise economic organization, and the legal support afforded to certain economic privileges are all under existing conditions due to the malevolent social influence of individual and incorporated American wealth; and it is equally true that these abuses, and the excessive “money power” with which they are associated, have originated in the peculiar freedom which the American tradition and organization have granted to the individual. Up to a certain point that freedom has been and still is

beneficial. Beyond that point it is not merely harmful; it is by way of being fatal. Efficient regulation there must be; and it must be regulation which will strike, not at the symptoms of the evil, but at its roots. The existing concentration of wealth and financial power in the hands of a few irresponsible men is the inevitable outcome of the chaotic individualism of our political and economic organization, while at the same time it is inimical to democracy, because it tends to erect political abuses and social inequalities into a system. The inference which follows may be disagreeable, but it is not to be escaped. In becoming responsible for the subordination of the individual to the demand of a dominant and constructive national purpose, the American state will in effect be making itself responsible for a morally and socially desirable distribution of wealth....

The introduction of the spoils system was due to the perverted application of kindred ideas. The emoluments of office loomed large among the good things of life to the pioneer Democrat; and such emoluments differed from other economic rewards, in that they were necessarily at the disposal of the political organization. The public offices constituted the tangible political patrimony of the American people. It was not enough that they were open to everybody. They must actually be shared by almost everybody. The terms of all elected officials must be short, so that as many good democrats as possible could occupy an easy chair in the house of government; and officials must for similar reasons be appointed for only short terms. Traditional practice at Washington disregarded these obvious inferences from the principles of true democracy. Until the beginning of Jackson's first administration the offices in the government departments had been appropriated by a few bureaucrats who had grown old at their posts; and how could such a permanent appropriation be justified? The pioneer Democrat believed that he was as competent to do the work as any member of an office-holding clique, so that when he came into power, he corrected what seemed to him to be a genuine abuse in the traditional way of distributing the American political patrimony. He could not understand that training, special ability, or long experience constituted any special claim upon a public office, or upon any other particular opportunity or salary. One democrat was as good as another, and deserved his share of the rewards of public service. The state could not undertake to secure a good living to all good democrats, but, when properly administered, it could prevent any appropriation by a few people of the public payroll.

In the long run the effect of the spoils system was, of course, just the opposite of that anticipated by the early Jacksonian Democrats. It merely substituted one kind of office-holding privilege for another. It helped to build up a group of professional politicians who became in their turn an office-holding clique—the only difference being that one man in his political life held, not one, but many offices. Yet the Jacksonian Democrat undoubtedly believed, when he introduced the system into the Federal civil service, that he was carrying out a desirable reform along strictly democratic lines. He was betrayed into such an error by the narrowness of his own experience and of his intellectual outlook. His experience had been chiefly that of frontier life, in which the utmost freedom of economic and social movement was necessary; and he attempted to apply the results of this limited experience to the government of a complicated social organism whose different parts had very different needs. The direct results of the attempt were very mischievous. He fastened upon the American public service a system of appointment which turned political office into the reward of partisan service, which made it unnecessary for the public officials to be competent and impossible for them to be properly experienced, and which contributed finally to the creation of a class of office-holding politicians....

The object of the Jacksonian Democrat in framing constitutions of this kind was to keep political power in the hands of the "plain people," and to forestall the domination of administrative and legislative specialists.

The effect was precisely the opposite. They afforded the political specialist a wonderful opportunity. The ordinary American could not pretend to give as much time to politics as the smooth operation of this complicated machine demanded; and little by little there emerged in different parts of the country a class of politicians who spent all their time in nominating and electing candidates to these numerous offices. The officials so elected, instead of being responsible to the people, were responsible to the men to whom they owed their offices; and their own individual official power was usually so small that they could not put what little independence they possessed to any good use. As a matter of fact, they used their official powers chiefly for the benefit of their creators. They appointed to office the men whom the “Bosses” selected. They passed the measures which the machine demanded. In this way the professional politician gradually obtained a stock of political goods wherewith to maintain and increase his power. Reinforced by the introduction of the spoils system first into the state and then into the Federal civil services, a process of local political organization began after 1830 to make rapid headway. Local leaders appeared in different parts of the country who little by little relieved the farmer and the business man of the cares and preoccupations of government. In the beginning the most efficient of these politicians were usually Jacksonian Democrats, and they ruled both in the name of the people and by virtue of a sturdy popular following. They gradually increased in power, until in the years succeeding the war they became the dominant influence in local American politics, and had won the right to be called something which they would never have dared to call themselves, viz. a governing class....

This alliance between the political machines and the big corporations—particularly those who operate railroads or control municipal franchises—was an alliance between two independent and coordinate powers in the kingdom of American practical affairs. The political “Boss” did not create the industrial leader for his own good purposes. Neither did the industrial leader create the machine and its “Boss,” although he has done much to confirm the latter’s influence. Each of them saw an opportunity to turn to his own account the individualistic “freedom” of American politics and industry. Each of them was enabled by the character of our political traditions to obtain an amount of power which the originators of those political ideas never anticipated, and which, if not illegal, was entirely outside the law. It so happened that the kind of power which each obtained was very useful to the other. A corporation which derived its profits from public franchises, or from a business transacted in many different states, found the purchase of a local or state machine well within its means and well according to its interests. The professional politicians who had embarked in politics as a business and who were making what they could out of it for themselves and their followers, could not resist this unexpected and lucrative addition to their market. But it must be remembered that the alliance was founded on interest rather than association, on mutual agreement rather than on any effective subordination one to another. A certain change in conditions might easily make their separate interests diverge, and abstract all the profits from their traffic. If anything happened, for instance, to make inter-state railroad corporations less dependent on the state governments, they would no longer need the expense of subsidizing the state machines. There are signs at the present time that these interests are diverging, and that such alliances will be less dangerous in the future than they have been in the past. But even if the alliance is broken, the peculiar unofficial organization of American industry and politics will persist, and will constitute, both in its consequences and its significance, two of our most important national problems.

It would be as grave a mistake, however, absolutely to condemn this process of political organization as it would absolutely to condemn the process of industrial organization. The huge corporation and the political machine were both created to satisfy a real and a permanent need—the needs of specialized leadership and



associated action in these two primary American activities. That in both of these cases the actual method of organization has threatened vital public interests, and even the very future of democracy has been due chiefly to the disregard by the official American political system of the necessity and the consequences of specialized leadership and associated action. The political system was based on the assumption that the individualism it encouraged could be persuaded merely by the power of words to respect the public interest, that public officials could be deprived of independence and authority for the real benefit of the “plain people,” and that the “plain people” would ask nothing from the government but their legal rights. These assumptions were all erroneous; and when associated action and specialized leadership became necessary in local American politics, the leaders and their machine took advantage of the defective official system to build up an unofficial system, better suited to actual popular needs. The “people” wanted the government to do something for them, and the politicians made their living and served their country by satisfying the want. To be sure, the “people” they benefited were a small minority of the whole population whose interests were far from being the public interest; but it was none the less natural that the people, whoever they were, should want the government to do more for them than to guarantee certain legal rights, and it was inevitable that they should select leaders who could satisfy their positive, if selfish, needs....

The reformers have come partly to realize that the Jeffersonian policy of drift must be abandoned. They no longer expect the American ship of state by virtue of its own righteous framework to sail away to a safe harbor in the Promised Land. They understand that there must be a vigorous and conscious assertion of the public as opposed to private and special interests, and that the American people must to a greater extent than they have in the past subordinate the latter to the former. They behave as if the American ship of state will hereafter require careful steering; and a turn or two at the wheel has given them some idea of the course they must set. On the other hand, even the best of them have not learned the name of its ultimate destination, the full difficulties of the navigation, or the stern discipline which may eventually be imposed upon the ship's crew....

Democracy as most frequently understood is essentially and exhaustively defined as a matter of popular government; and such a definition raises at once a multitude of time-honored, but by no means superannuated, controversies. The constitutional liberals in England, in France, and in this country have always objected to democracy as so understood, because of the possible sanction it affords for the substitution of a popular despotism in the place of the former royal or oligarchic despotisms. From their point of view individual liberty is the greatest blessing which can be secured to a people by a government; and individual liberty can be permanently guaranteed only in case political liberties are in theory and practice subordinated to civil liberties. Popular political institutions constitute a good servant, but a bad master. When introduced in moderation they keep the government of a country in close relation with well-informed public opinion, which is a necessary condition of political sanitation; but if carried too far, such institutions compromise the security of the individual and the integrity of the state. They erect a power in the state, which in theory is unlimited and which constantly tends in practice to dispense with restrictions. A power which is theoretically absolute is under no obligation to respect the rights either of individuals or minorities; and sooner or later such power will be used for the purpose of opposing the individual. The only way to secure individual liberty is, consequently, to organize a state in which the Sovereign power is deprived of any national excuse or legal opportunity of violating certain essential individual rights....

To be sure, a democracy may impose rules of action upon itself—as the American democracy did in accepting the Federal Constitution. But in adopting the Federal Constitution the American people did not abandon either its responsibilities or rights as Sovereign. Difficult as it may be to escape from the legal

framework defined in the Constitution, that body of law in theory remains merely an instrument which was made for the people and which if necessary can and will be modified. A people, to whom was denied the ultimate responsibility for its welfare, would not have obtained the prime condition of genuine liberty. Individual freedom is important, but more important still is the freedom of a whole people to dispose of its own destiny; and I do not see how the existence of such an ultimate popular political freedom and responsibility can be denied by anyone who has rejected the theory of a divinely appointed political order. The fallibility of human nature being what it is, the practical application of this theory will have its grave dangers; but these dangers are only evaded and postponed by a failure to place ultimate political responsibility where it belongs....

If, however, democracy does not mean anything less than popular Sovereignty, it assuredly does mean something more. It must at least mean an expression of the Sovereign will, which will not contradict and destroy the continuous existence of its own Sovereign power.... A particular group of political institutions or course of political action may, then, be representative of the popular will, and yet may be undemocratic. Popular Sovereignty is self-contradictory, unless it is expressed in a manner favorable to its own perpetuity and integrity.

The assertion of the doctrine of popular Sovereignty is, consequently, rather the beginning than the end of democracy. There can be no democracy where the people do not rule; but government by the people is not necessarily democratic. The popular will must in a democratic state be expressed somehow in the interest of democracy itself; and we have not traveled very far towards a satisfactory conception of democracy until this democratic purpose has received some definition. In what way must a democratic state behave in order to contribute to its own integrity?

The ordinary American answer to this question is contained in the assertion of Lincoln, that our government is "dedicated to the proposition that all men are created equal." Lincoln's phrasing of the principle was due to the fact that the obnoxious and undemocratic system of negro slavery was uppermost in his mind when he made his Gettysburg address; but he meant by his assertion of the principle of equality substantially what is meant today by the principle of "equal rights for all and special privileges for none." Government by the people has its natural and logical complement in government for the people. Every state with a legal framework must grant certain rights to individuals; and every state, in so far as it is efficient, must guarantee to the individual that his rights, as legally defined, are secure. But an essentially democratic state consists in the circumstance that all citizens enjoy these rights equally. If any citizen or any group of citizens enjoys by virtue of the law any advantage over their fellow citizens, then the most sacred principle of democracy is violated. On the other hand, a community in which no man or no group of men are granted by law any advantage over their fellow-citizens is the type of the perfect and fruitful democratic state. Society is organized politically for the benefit of all the people. Such an organization may permit radical differences among individuals in the opportunities and possessions they actually enjoy; but no man would be able to impute his own success or failure to the legal framework of society. Every citizen would be getting a "Square Deal."

Such is the idea of the democratic state, which the majority of good Americans believe to be entirely satisfactory. It should endure indefinitely, because it seeks to satisfy every interest essential to associated life. The interest of the individual is protected, because of the liberties he securely enjoys. The general social interest is equally well protected, because the liberties enjoyed by one or by a few are enjoyed by all. Thus the individual and the social interests are automatically harmonized. The virile democrat in pursuing his own interest "under the law" is contributing effectively to the interest of society, while the social interest

consists precisely in the promotion of these individual interests, in so far as they can be equally exercised. The divergent demands of the individual and the social interest can be reconciled by grafting the principle of equality on the thrifty tree of individual rights, and the ripe fruit thereof can be gathered merely by shaking the tree.

It must be immediately admitted, also, that the principle of equal rights, like the principle of ultimate popular political responsibility is the expression of an essential aspect of democracy. There is no room for permanent legal privileges in a democratic state. Such privileges may be and frequently are defended on many excellent grounds. They may unquestionably contribute for a time to social and economic efficiency and to individual independence. But whatever advantage may be derived from such permanent discriminations must be abandoned by a democracy. It cannot afford to give any one class of its citizens a permanent advantage or to others a permanent grievance. It ceases to be a democracy, just as soon as any permanent privileges are conferred by its institutions or its laws; and this equality of right and absence of permanent privilege is the expression of a fundamental social interest.

But the principle of equal rights, like the principle of ultimate popular political responsibility, is not sufficient; and because of its insufficiency results in certain dangerous ambiguities and self-contradictions. American political thinkers have always repudiated the idea that by equality of rights they meant anything like equality of performance or power. The utmost varieties of individual power and ability are bound to exist and are bound to bring about many different levels of individual achievement. Democracy both recognizes the right of the individual to use his powers to the utmost, and encourages him to do so by offering a fair field and, in cases of success, an abundant reward. The democratic principle requires an equal start in the race, while expecting at the same time an unequal finish. But Americans who talk in this way seem wholly blind to the fact that under a legal system which holds private property sacred there may be equal rights, but there cannot possibly be any equal opportunities for exercising such rights. The chance which the individual has to compete with his fellows and take a prize in the race is vitally affected by material conditions over which he has no control. It is as if the competitor in a Marathon cross country run were denied proper nourishment or proper training, and was obliged to toe the mark against rivals who had every benefit of food and discipline. Under such conditions he is not as badly off as if he were entirely excluded from the race. With the aid of exceptional strength and intelligence he may overcome the odds against him and win out. But it would be absurd to claim, because all the rivals toed the same mark, that a man's victory or defeat depended exclusively on his own efforts. Those who have enjoyed the benefits of wealth and thorough education start with an advantage which can be overcome only in very exceptional men—men so exceptional, in fact, that the average competitor without such benefits feels himself disqualified for the contest.

Because of the ambiguity indicated above, different people with different interests, all of them good patriotic Americans, draw very different inferences from the doctrine of equal rights. The man of conservative ideas and interests means by the rights, which are to be equally exercised, only those rights which are defined and protected by the law—the more fundamental of which are the rights to personal freedom and to private property. The man of radical ideas, on the other hand, observing, as he may very clearly, that these equal rights cannot possibly be made really equivalent to equal opportunities, bases upon the same doctrine a more or less drastic criticism of the existing economic and social order and sometimes of the motives of its beneficiaries and conservators. The same principle, differently interpreted, is the foundation of American political orthodoxy and American political heterodoxy. The same measure of reforming legislation, such as the new Inter-state Commerce Law, seems to one party a wholly inadequate

attempt to make the exercise of individual rights a little more equal, while it seems to others an egregious violation of the principle itself. What with reforming legislation on the one hand and the lack of it on the other, the once sweet air of the American political mansion is soured by complaints. Privileges and discriminations seem to lurk in every political and economic corner. The “people” are appealing to the state to protect them against the usurpations of the corporations and the Bosses. The government is appealing to the courts to protect the shippers against the railroads. The corporations are appealing to the Federal courts to protect them from the unfair treatment of state legislatures. Employers are fighting trades-unionism, because it denies equal rights to their employers. The unionists are entreating public opinion to protect them against the unfairness of “government by injunction.” To the free trader the whole protectionist system seems a flagrant discrimination on behalf of a certain portion of the community. Everybody seems to be clamoring for a “Square Deal” but nobody seems to be getting it.

The ambiguity of the principle of equal rights and the resulting confusion of counsel are so obvious that there must be some good reason for their apparently unsuspected existence. The truth is that Americans have not readjusted their political ideas to the teaching of their political and economic experience. For a couple of generations after Jefferson had established the doctrine of equal rights as the fundamental principle of the American democracy, the ambiguity resident in the application of the doctrine was concealed. The Jacksonian Democrats, for instance, who were constantly nosing the ground for a scent of unfair treatment, could discover no example of political privileges, except the continued retention of their offices by experienced public servants; and the only case of economic privilege of which they were certain was that of the National Bank. The fact is, of course, that the great majority of Americans were getting a “Square Deal” as long as the economic opportunities of a new country had not been developed and appropriated. Individual and social interest did substantially coincide as long as so many opportunities were open to the poor and untrained man, and as long as the public interest demanded first of all the utmost celerity of economic development. But, as we have seen in a preceding chapter, the economic development of the country resulted inevitably in a condition which demanded on the part of the successful competitor either increasing capital, improved training, or a larger amount of ability and energy. With the advent of comparative economic and social maturity, the exercise of certain legal rights became substantially equivalent to the exercise of a privilege; and if equality of opportunity was to be maintained, it could not be done by virtue of non-interference...

The principle of equal rights has always appealed to its more patriotic and sensible adherents as essentially an impartial rule of political action—one that held a perfectly fair balance between the individual and society, and between different and hostile individual and class interests. But as a fundamental principle of democratic policy it is as ambiguous in this respect as it is in other respects. In its traditional form and expression it has concealed an extremely partial interest under a formal proclamation of impartiality. The political thinker who popularized it in this country was not concerned fundamentally with harmonizing the essential interest of the individual with the essential popular or social interest. Jefferson’s political system was intended for the benefit only of a special class of individuals, viz., those average people who would not be helped by any really formative rule or method of discrimination. In practice it has proved to be inimical to individual liberty, efficiency, and distinction. An insistent demand for equality, even in the form of a demand for equal rights, inevitably has a negative and limiting effect upon the free and able exercise of individual opportunities. From the Jeffersonian point of view democracy would incur a graver danger from a violation of equality than it would profit from a triumphant assertion of individual liberty. Every opportunity for the edifying exercise of power, on the part either of an individual, a group of individuals, or the state is by

its very nature also an opportunity for its evil exercise. The political leader whose official power depends upon popular confidence may betray the trust. The corporation employing thousands of men and supplying millions of people with some necessary service or commodity may reduce the cost of production only for its own profit. The state may use its great authority chiefly for the benefit of special interests. The advocate of equal rights is preoccupied by these opportunities for the abusive exercise of power, because from his point of view rights exercised in the interest of inequality have ceased to be righteous. He distrusts those forms of individual and associated activity which give any individual or association substantial advantages over their associates. He becomes suspicious of any kind of individual and social distinction with the nature and effects of which he is not completely familiar.

A democracy of equal rights may tend to encourage certain expressions of individual liberty; but they are few in number and limited in scope. It rejoices in the freedom of its citizens, provided this freedom receives certain ordinary expressions. It will follow a political leader, like Jefferson or Jackson, with a blind confidence of which a really free democracy would not be capable, because such leaders are, or claim to be in every respect, except their prominence, one of the "people." Distinction of this kind does not separate a leader from the majority. It only ties them together more firmly. It is an acceptable assertion of individual liberty, because it is liberty converted by its exercise into a kind of equality. In the same way the American democracy most cordially admired for a long time men, who pursued more energetically and successfully than their fellows, ordinary business occupations, because they believed that such familiar expressions of individual liberty really tended towards social and industrial homogeneity. Herein they were mistaken; but the supposition was made in good faith, and it constitutes the basis of the Jeffersonian Democrat's illusion in reference to his own interest in liberty. He dislikes or ignores liberty, only when it looks in the direction of moral and intellectual emancipation. In so far as his influence has prevailed, Americans have been encouraged to think those thoughts and to perform those acts which everybody else is thinking and performing.

The effect of a belief in the principle of "equal rights" on freedom is, however, most clearly shown by its attitude toward Democratic political organization and policy. A people jealous of their rights are not sufficiently afraid of special individual efficiency and distinction to take very many precautions against it. They greet it oftener with neglect than with positive coercion. Jeffersonian Democracy is, however, very much afraid of any examples of associated efficiency. Equality of rights is most in danger of being violated when the exercise of rights is associated with power, and any unusual amount of power is usually derived from the association of a number of individuals for a common purpose. The most dangerous example of such association is not, however, a huge corporation or a labor union; it is the state. The state cannot be bound hand and foot by the law, as can a corporation, because it necessarily possesses some powers of legislation; and the power to legislate inevitably escapes the limitation of the principle of equal rights. The power to legislate implies the power to discriminate; and the best way consequently for a good democracy of equal rights to avoid the danger of discrimination will be to organize the state so that its power for ill will be rigidly restricted. The possible preferential interference on the part of a strong and efficient government must be checked by making the government feeble and devoid of independence. The less independent and efficient the several departments of the government are permitted to become, the less likely that the government as a whole will use its power for anything but a really popular purpose.

In the foregoing type of political organization, which has been very much favored by the American democracy, the freedom of the official political leader is sacrificed for the benefit of the supposed freedom of that class of equalized individuals known as the "people," but by the "people" Jefferson and his followers

have never meant all the people or the people as a whole. They have meant a sort of apotheosized majority—the people in so far as they could be generalized and reduced to an average. The interests of this class were conceived as inimical to any discrimination which tended to select peculiarly efficient individuals or those who were peculiarly capable of social service. The system of equal rights, particularly in its economic and political application *has* worked for the benefit of such a class, but rather in its effect upon American intelligence and morals, than in its effect upon American political and economic development. The system, that is, has only partly served the purpose of its founder and his followers, and it has failed because it did not bring with it any machinery adequate even to its own insipid and barren purposes. Even the meager social interest which Jefferson concealed under cover of his demand for equal rights could not be promoted without some effective organ of social responsibility; and the Democrats of today are obliged, as we have seen, to invoke the action of the central government to destroy those economic discriminations which its former inaction had encouraged. But even so the traditional democracy still retains its dislike of centralized and socialized responsibility. It consents to use the machinery of the government only for a negative or destructive object. Such must always be the case as long as it remains true to its fundamental principle. That principle defines the social interest merely in the terms of an indiscriminate individualism—which is the one kind of individualism murderous to both the essential individual and the essential social interest.

The net result has been that wherever the attempt to discriminate in favor of the average or indiscriminate individual has succeeded, it has succeeded at the expense of individual liberty, efficiency, and distinction; but it has more often failed than succeeded. Whenever the exceptional individual has been given any genuine liberty, he has inevitably conquered. That is the whole meaning of the process of economic and social development traced in certain preceding chapters. The strong and capable men not only conquer, but they seek to perpetuate their conquests by occupying all the strategic points in the economic and political battle-field—whereby they obtain certain more or less permanent advantages over their fellow-democrats. Thus in so far as the equal rights are freely exercised, they are bound to result in inequalities; and these inequalities are bound to make for their own perpetuation, and so to provoke still further discrimination. Wherever the principle has been allowed to mean what it seems to mean, it has determined and encouraged its own violation. The marriage which it is supposed to consecrate between liberty and equality gives birth to unnatural children, whose nature it is to devour one or the other of their parents....

[R]eally sincere followers of Jefferson are obliged to admit the superior political wisdom of Hamilton's principle of national responsibility, and once they have made this admission, they have implicitly abandoned their contention that the doctrine of equal rights is a sufficient principle of democratic political action. They have implicitly accepted the idea that the public interest is to be asserted, not merely by equalizing individual rights, but by controlling individuals in the exercise of those rights. The national public interest has to be affirmed by positive and aggressive fiction. The nation has to have a will and a policy as well as the individual; and this policy can no longer be confined to the merely negative task of keeping individual rights from becoming in any way privileged.

The arduous and responsible political task which a nation in its collective capacity must seek to perform is that of selecting among the various prevailing ways of exercising individual rights those which contribute to national perpetuity and integrity. Such selection implies some interference with the natural course of popular notion; and that interference is always costly and may be harmful either to the individual or the social interest must be frankly admitted. He would be a foolish Hamiltonian who would claim that a state, no matter how efficiently organized and ably managed, will not make serious and perhaps enduring mistakes; but he can answer that inaction and irresponsibility are more costly and dangerous than intelligent and

responsible interference. The practice of non-interference is just as selective in its effects as the practice of state interference. It means merely that the nation is willing to accept the results of natural selection instead of preferring to substitute the results of artificial selection. In one way or another a nation is bound to recognize the results of selection. The Hamiltonian principle of national responsibility recognizes the inevitability of selection; and since it is inevitable, is not afraid to interfere on behalf of the selection of the really fittest. If a selective policy is pursued in good faith and with sufficient intelligence, the nation will at least be learning from its mistakes. It should find out gradually the kind and method of selection, which is most desirable, and how far selection by non-interference is to be preferred to active selection....

The situation which these laws are supposed to meet is always the same. A certain number of individuals enjoy, in the beginning, equal opportunities to perform certain acts; and in the competition resulting therefrom some of these individuals or associations obtain advantages over their competitors, or over their fellow-citizens whom they employ or serve. Sometimes these advantages and the practices whereby they are obtained are profitable to a larger number of people than they injure. Sometimes the reverse is true. In either event the state is usually asked to interfere by the class whose economic position has been compromised. It by no means follows that the state should acquiesce in this demand.... Any genuine measure of economic or political reform will, of course, give certain individuals better opportunities than those they have been recently enjoying, but it will reach this result only by depriving other individuals of advantages which they have earned.

Impartiality is the duty of the judge rather than the statesman, of the courts rather than the government. The state which proposes to draw a ring around the conflicting interests of its citizens and interfere only on behalf of a fair fight will be obliged to interfere constantly and will never accomplish its purpose. In economic warfare, the fighting can never be fair for long, and it is the business of the state to see that its own friends are victorious. It holds, if you please, itself a hand in the game. The several players are playing, not merely with one another, but with the political and social bank. The security and perpetuity of the state and of the individual in so far as he is a social animal, depend upon the victory of the national interest—as represented both in the assurance of the national profit and in the domination of the nation's friends. It is in the position of the bank at Monte Carlo, which does not pretend to play fair, but which frankly promulgates rules advantageous to itself. Considering the percentage in its favor and the length of its purse, it cannot possibly lose. It is not really gambling; and it does not propose to take any unnecessary risks. Neither can a state, democratic or otherwise, which believes in its own purpose. While preserving at times an appearance of impartiality so that its citizens may enjoy for a while a sense of the reality of their private game, it must on the whole make the rules in its own interest. It must help those men to win who are most capable of using their winnings for the benefit of society....

The fundamental political and social problem of a democracy may be summarized in the following terms. A democracy, like every political and social group, is composed of individuals, and must be organized for the benefit of its constituent members. But the individual has no chance of effective personal power except by means of the secure exercise of certain personal rights. Such rights, then, must be secured and exercised; yet when they are exercised, their tendency is to divide the community into divergent classes. Even if enjoyed with some equality in the beginning, they do not continue to be equally enjoyed, but make towards discriminations advantageous to a minority. The state, as representing the common interest, is obliged to admit the inevitability of such classifications and divisions, and has itself no alternative but to exercise a decisive preference on behalf of one side or the other. A well-governed state will use its power to promote edifying and desirable discriminations. But if discriminations tend to divide the community, and the state

itself cannot do more than select among the various possible cases of discrimination those which it has some reason to prefer, how is the solidarity of the community to be preserved? And above all, how is a democratic community, which necessarily includes everybody in its benefits and responsibilities, to be kept well united? Such a community must retain an ultimate bond of union which counteracts the divergent effect of the discriminations, yet which at the same time is not fundamentally hostile to individual liberties.

The clew to the best available solution of the problem is supplied by a consideration of the precise manner, in which the advantages derived from the efficient exercise of liberties become inimical to a wholesome social condition. The hostility depends, not upon the existence of such advantageous discriminations for a time, but upon their persistence for too long a time. When, either from natural or artificial causes, they are properly selected, they contribute at the time of their selection both to individual and to social efficiency. They have been earned, and it is both just and edifying that, in so far as they have been earned, they should be freely enjoyed. On the other hand, they should not, so far as possible, be allowed to outlast their own utility. They must continue to be earned. It is power and opportunity enjoyed without being earned which help to damage the individual—both the individuals who benefit and the individuals who consent—and which tend to loosen the ultimate social bond. A democracy, no less than a monarchy or an aristocracy, must recognize political, economic, and social discriminations, but it must also manage to withdraw its consent whenever these discriminations show any tendency to excessive endurance. The essential wholeness of the community depends absolutely on the ceaseless creation of a political, economic, and social aristocracy and their equally incessant replacement.

Both in its organization and in its policy a democratic state has consequently to seek two different but supplementary objects. It is the function of such a state to represent the whole community; and the whole community includes the individual as well as the mass, the many as well as the few. The individual is merged in the mass, unless he is enabled to exercise efficiently and independently his own private and special purposes. He must not only be permitted, he must be encouraged to earn distinction; and the best way in which he can be encouraged to earn distinction is to reward distinction both by abundant opportunity and cordial appreciation. Individual distinction, resulting from the efficient performance of special work, is not only the foundation of all genuine individuality, but is usually of the utmost social value. In so far as it is efficient, it has a tendency to be constructive. It both inserts some member into the social edifice which forms for the time being a desirable part of the whole structure, but it tends to establish a standard of achievement which may well form a permanent contribution to social amelioration. It is useful to the whole community, not because it is derived from popular sources or conforms to popular standards, but because it is formative and so helps to convert the community into a well-formed whole....

That certain existing American fortunes have in their making been of the utmost benefit to the whole economic organism is to my mind unquestionably the fact. Men like Mr. J. Pierpont Morgan, Mr. Andrew Carnegie, Mr. James J. Hill, and Mr. Edward Harriman have in the course of their business careers contributed enormously to American economic efficiency. They have been overpaid for their services, but that is irrelevant to the question immediately under consideration. It is sufficient that their economic power has been just as much earned by substantial service as was the political power of a man like Andrew Jackson; and if our country is to continue its prosperous economic career, it must retain an economic organization which will offer to men of this stamp the opportunity and the inducement to earn distinction. The rule which has already been applied to the case of political power applies, also, to economic power. Individuals should enjoy as much freedom from restraint, as much opportunity, and as much responsibility as is necessary for the efficient performance of their work. Opinions will differ as to the extent of this



desirable independence and its associated responsibility. The American millionaire and his supporters claim, of course, that any diminution of opportunity and independence would be fatal. To dispute this inference, however, does not involve the abandonment of the rule itself. A democratic economic system, even more than a democratic political system, must delegate a large share of responsibility and power to the individual, but under conditions, if possible, which will really make for individual efficiency and distinction.

The grievance which a democrat may feel towards the existing economic system is that it makes only partially for genuine individual economic efficiency and distinction. The political power enjoyed by an individual American rarely endures long enough to survive its own utility. But economic power can in some measure at least be detached from its creator. Let it be admitted that the man who accumulates \$50,000,000 in part earns it, but how about the man who inherits it? The inheritor of such a fortune, like the inheritor of a ducal title, has an opportunity thrust upon him. He succeeds to a colossal economic privilege which he has not earned and for which he may be wholly incompetent. He rarely inherits with the money the individual ability possessed by its maker, but he does inherit a "money power" wholly independent of his own qualifications or deserts. By virtue of that power alone he is in a position in some measure to exploit his fellow-countrymen. Even though a man of very inferior intellectual and moral caliber, he is able vastly to increase his fortune through the information and opportunity which that fortune bestows upon him, and without making any individual contribution to the economic organization of the country. His power brings with it no personal dignity or efficiency; and for the whole material and meaning of his life he becomes as much dependent upon his millions as a nobleman upon his title. The money which was a source of distinction to its creator becomes in the course of time a source of individual demoralization to its inheritor. His life is organized for the purpose of spending a larger income than any private individual can really need; and his intellectual point of view is bounded by his narrow experience and his class interests.

No doubt the institution of private property, necessitating, as it does, the transmission to one person of the possessions and earnings of another, always involves the inheritance of unearned power and opportunity. But the point is that in the case of very large fortunes the inherited power goes far beyond any legitimate individual needs, and in the course of time can hardly fail to corrupt its possessors. The creator of a large fortune may well be its master; but its inheritor will, except in the case of exceptionally able individuals, become its victim, and most assuredly the evil social effects are as bad as the evil individual effects. The political bond which a democracy seeks to create depends for its higher value upon an effective social bond. Gross inequalities in wealth, wholly divorced from economic efficiency on the part of the rich, as effectively loosen the social bond as do gross inequalities of political and social standing.... They breed class envy on one side, and class contempt on the other; and the community is either divided irremediably by differences of interest and outlook, or united, if at all, by snobbish servility.

If the integrity of a democracy is injured by the perpetuation of unearned economic distinctions, it is also injured by extreme poverty, whether deserved or not. A democracy which attempted to equalize wealth would incur the same disastrous fate as a democracy which attempted to equalize political power; but a democracy can no more be indifferent to the distribution of wealth than it can to the distribution of the suffrage. In a wholesome democracy every male adult should participate in the ultimate political responsibility, partly because of the political danger of refusing participation to the people, and partly because of the advantages to be derived from the political union of the whole people. So a wholesome democracy should seek to guarantee to every male adult a certain minimum of economic power and responsibility. No doubt it is much easier to confer the suffrage on the people than it is to make poverty a negligible social factor; but the difficulty of the task does not make it the less necessary. It stands to

reason that in the long run the people who possess the political power will want a substantial share of the economic fruits. A prudent democracy should anticipate this demand. Not only does any considerable amount of grinding poverty constitute a grave social danger in a democratic state, but so, in general, does a widespread condition of partial economic privation. The individuals constituting a democracy lack the first essential of individual freedom when they cannot escape from a condition of economic dependence.

The American democracy has confidently believed in the fatal prosperity enjoyed by the people under the American system. In the confidence of that belief it has promised to Americans a substantial satisfaction of their economic needs; and it has made that promise an essential part of the American national idea. The promise has been measurably fulfilled hitherto, because the prodigious natural resources of a new continent were thrown open to anybody with the energy to appropriate them. But those natural resources have now in large measure passed into the possession of individuals, and American statesmen can no longer count upon them to satisfy the popular hunger for economic independence. An ever larger proportion of the total population of the country is taking to industrial occupations, and an industrial system brings with it much more definite social and economic classes, and a diminution of the earlier social homogeneity. The contemporary wage-earner is no longer satisfied with the economic results of being merely an American citizen. His union is usually of more obvious use to him than the state, and he is tending to make his allegiance to his union paramount to his allegiance to the state. This is only one of many illustrations that the traditional American system has broken down. The American state can regain the loyal adherence of the economically less independent class only by positive service. What the wage-earner needs, and what it is to the interest of a democratic state he should obtain, is a constantly higher standard of living. The state can help him to conquer a higher standard of living without doing any necessary injury to his employers and with a positive benefit to general economic and social efficiency. If it is to earn the loyalty of the wage-earners, it must recognize the legitimacy of his demand, and make the satisfaction of it an essential part of its public policy.

The American state is dedicated to such a duty, not only by its democratic purpose, but by its national tradition. So far as the former is concerned, it is absurd and fatal to ask a popular majority to respect the rights of a minority, when those rights are interpreted so as seriously to hamper, if not to forbid, the majority from obtaining the essential condition of individual freedom and development—viz. the highest possible standard of living. But this absurdity becomes really critical and dangerous, in view of the fact that the American people, particularly those of alien birth and descent, have been explicitly promised economic freedom and prosperity. The promise was made on the strength of what was believed to be an inexhaustible store of natural opportunities; and it will have to be kept even when those natural resources are no longer to be had for the asking. It is entirely possible, of course, that the promise can never be kept—that its redemption will prove to be beyond the patience, the power, and the wisdom of the American people and their leaders; but if it is not kept, the American commonwealth will no longer continue to be a democracy....

The subordination of the machinery of democracy to its purpose and the comprehension within that purpose of the higher interests both of the individual and society, is not only exclusive of many partial and erroneous ideas, but demands both a reconstructive programme and an efficient organization. A government by the people, which seeks an organization and a policy beneficial to the individual and to society, is confronted by a task as responsible and difficult as you please; but it is a specific task which demands the adoption of certain specific and positive means. Moreover it is a task which the American democracy has never sought consciously to achieve. American democrats have always hoped for individual and social amelioration as the result of the operation of their democratic system; but if any such result

was to follow, its achievement was to be a happy accident. The organization and policy of a democracy should leave the individual and society to seek their own amelioration. The democratic state should never discriminate in favor of anything or anybody. It should only discriminate against all sorts of privilege. Under the proposed definition, on the other hand, popular government is to make itself expressly and permanently responsible for the amelioration of the individual and society; and a necessary consequence of this responsibility is an adequate organization and a reconstructive policy.

The majority of good Americans will doubtless consider that the reconstructive policy, already indicated, is flagrantly socialistic both in its methods and its objects; and if any critic likes to fasten the stigma of socialism upon the foregoing conception of democracy, I am not concerned with dodging the odium of the word. The proposed definition of democracy is socialistic, if it is socialistic to consider democracy inseparable from a candid, patient, and courageous attempt to advance the social problem towards a satisfactory solution. It is also socialistic in case socialism cannot be divorced from the use, wherever necessary, of the political organization in all its forms to realize the proposed democratic purpose....

A democracy dedicated to individual and social betterment is necessarily individualist as well as socialist. It has little interest in the mere multiplication of average individuals, except in so far as such multiplication is necessary to economic and political efficiency; but it has the deepest interest in the development of a higher quality of individual self-expression. There are two indispensable economic conditions of qualitative individual self-expression. One is the preservation of the institution of private property in some form, and the other is the radical transformation of its existing nature and influence. A democracy certainly cannot fulfill its mission without the eventual assumption by the state of many functions now performed by individuals, and without becoming expressly responsible for an improved distribution of wealth; but if any attempt is made to accomplish these results by violent means, it will most assuredly prove to be a failure. An improvement in the distribution of wealth or in economic efficiency which cannot be accomplished by purchase on the part of the state or by a legitimate use of the power of taxation, must be left to the action of time, assisted, of course, by such arrangements as are immediately practical. But the amount of actual good to the individual and society which can be effected *at any one time* by an alteration in the distribution of wealth is extremely small; and the same statement is true of any proposed state action in the interest of the democratic purpose. Consequently, while responsible state action is an essential condition of any steady approach to the democratic consummation, such action will be wholly vain unless accompanied by a larger measure of spontaneous individual amelioration. In fact, one of the strongest arguments on behalf of a higher and larger conception of state responsibilities in a democracy is that the candid, courageous, patient, and intelligent attempt to redeem those responsibilities provides one of the highest types of individuality—viz. the public-spirited man with a personal opportunity and a task which should be enormously stimulating and edifying....

If a people, in becoming more of a nation, become for that very reason more of a democracy, the realization of the democratic purpose is not rendered any easier, but democracy is provided with a simplified, a consistent, and a practicable programme. An alliance is established thereby between the two dominant political and social forces in modern life. The suspicion with which aggressive advocates of the national principle have sometimes regarded democracy would be shown to have only a conditional justification; and the suspicion with which many ardent democrats have regarded aggressive nationalism would be similarly disarmed. A democrat, so far as the statement is true, could trust the fate of his cause in each particular state to the friends of national progress... In fact, the first duty of a good democrat would be that of rendering to his country loyal patriotic service. Democrats would abandon the task of making

over the world to suit their own purposes, until they had come to a better understanding with their own countrymen. One's democracy, that is, would begin at home and it would for the most part stay at home; and the cause of national well-being would derive invaluable assistance from the loyal coöperation of good democrats....

Americans have always been both patriotic and democratic, just as they have always been friendly both to liberty and equality, but in neither case have they brought the two ideas or aspirations into mutually helpful relations. As democrats they have often regarded nationalism with distrust, and have consequently deprived their patriotism of any sufficient substance and organization. As nationalists they have frequently regarded essential aspects of democracy with a wholly unnecessary and embarrassing suspicion. They have been after a fashion Hamiltonian, and Jeffersonian after more of a fashion; but they have never recovered from the initial disagreement between Hamilton and Jefferson. If there is any truth in the idea of a constructive relation between democracy and nationality this disagreement must be healed. They must accept both principles loyally and unreservedly; and by such acceptance their "noble national theory" will obtain a wholly unaccustomed energy and integrity. The alliance between the two principles will not leave either of them intact; but it will necessarily do more harm to the Jeffersonian group of political ideas than it will to the Hamiltonian. The latter's nationalism can be adapted to democracy without an essential injury to itself, but the former's democracy cannot be nationalized without being transformed.... It must cease to be a democracy of indiscriminate individualism; and become one of selected individuals who are obliged constantly to justify their selection; and its members must be united not by a sense of joint irresponsibility, but by a sense of joint responsibility for the success of their political and social ideal. They must become, that is, a democracy devoted to the welfare of the whole people by means of a conscious labor of individual and social improvement; and that is precisely the sort of democracy which demands for its realization the aid of the Hamiltonian nationalistic organization and principle.

# 28. Theodore Roosevelt: Making the American Dream a Reality

## Theodore Roosevelt (1858-1919)

Born in New York City to wealthy parents, Theodore Roosevelt overcame poor childhood health through rigorous physical training while he was home-schooled. Roosevelt graduated Harvard in 1880 and briefly attended Columbia Law School before dropping out to enter politics. He was elected to the New York State Assembly and rose to Republican majority leader at the age of 24. After serving several terms and running unsuccessfully for Mayor of New York, he moved to North Dakota and became a rancher for several years.

Roosevelt reentered politics in 1889 when President Benjamin Harrison named him to the US Civil Service Commission. He resigned in 1895 to become New York City Police Commissioner. His political stature rose rapidly thereafter, as he became Assistant Navy Secretary in 1897, Governor of New York in 1899, and vice president in 1901. Six months later, the assassination of William McKinley elevated him to the presidency. After serving the remainder of McKinley's term, Roosevelt easily won a full term in the 1904 election. In 1906, he was awarded the Nobel Prize for his mediation of the Russo-Japanese War. He chose not to run again in 1908, but four years later he challenged his successor William Howard Taft for the Republican presidential nomination. Although he failed to gain the nomination, he ran as the "Bull Moose" candidate and finished second to Woodrow Wilson.

Throughout his entire life, Roosevelt was a prolific writer. He wrote 18 books, most on military history or scientific subjects. He also wrote numerous magazine essays and book reviews. In his early works, he advocated limited government since it created opportunities for personal initiative. He praised the westward expansion of the United States for the opportunity it gave Americans to create prosperity. Once he became president, his views changed, and he rejected *laissez-faire* for extensive government control of the economy and environment.

## The New Nationalism (1910)

In 1910, Theodore Roosevelt gave a speech at the opening of a monument to anti-slavery activist John Brown at Osawatomie, Kansas. Roosevelt called for a fundamental change in the role of the federal government—one

that embodied many of the desires of Progressives. Creating the “square deal”—an equal opportunity for all to succeed—meant imposing redistributive taxation on income and inheritance, and protecting workers from the adverse effects of dangerous working conditions. Roosevelt advocated using the power of the federal government to regulate corporate practices and hold corporate executives personally liable for legal violations. While the Republican Party rejected Roosevelt’s Progressive ideas, they would reappear two decades later in the campaign platform of his fifth cousin Franklin, a Democrat.

I do not speak of this struggle of the past merely from the historic standpoint. Our interest is primarily in the application today of the lessons taught by the contest a half a century ago. It is of little use for us to pay lip-loyalty to the mighty men of the past unless we sincerely endeavor to apply to the problems of the present precisely the qualities which in other crises enabled the men of that day to meet those crises. It is half melancholy and half amusing to see the way in which well-meaning people gather to do honor to the men who, in company with John Brown, and under the lead of Abraham Lincoln, faced and solved the great problems of the nineteenth century, while, at the same time, these same good people nervously shrink from, or frantically denounce, those who are trying to meet the problems of the twentieth century in the spirit which was accountable for the successful solution of the problems of Lincoln’s time.

Of that generation of men to whom we owe so much, the man to whom we owe most is, of course, Lincoln. Part of our debt to him is because he forecast our present struggle and saw the way out. He said: “I hold that while man exists it is his duty to improve not only his own condition, but to assist in ameliorating mankind.” And again: “Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration.”

If that remark was original with me, I should be even more strongly denounced as a Communist agitator than I shall be anyhow. It is Lincoln’s. I am only quoting it; and that is one side; that is the side the capitalist should hear. Now, let the working man hear his side.

“Capital has its rights, which are as worthy of protection as any other rights.... Nor should this lead to a war upon the owners of property. Property is the fruit of labor; ... property is desirable; is a positive good in the world.”

And then comes a thoroughly Lincoln-like sentence: “Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built.”

It seems to me that, in these words, Lincoln took substantially the attitude that we ought to take; he showed the proper sense of proportion in his relative estimates of capital and labor, of human rights and property rights. Above all, in this speech, as in many others, he taught a lesson in wise kindness and charity; an indispensable lesson to us of today. But this wise kindness and charity never weakened his arm or numbed his heart. We cannot afford weakly to blind ourselves to the actual conflict which faces us today. The issue is joined, and we must fight or fail.

In every wise struggle for human betterment one of the main objects, and often the only object, has been to achieve in large measure equality of opportunity. In the struggle for this great end, nations rise from barbarism to civilization, and through it people press forward from one stage of enlightenment to the next. One of the chief factors in progress is the destruction of special privilege. The essence of any struggle for healthy liberty has always been, and must always be, to take from some one man or class of men the right

to enjoy power, or wealth, or position, or immunity, which has not been earned by service to his or their fellows. That is what you fought for in the Civil War, and that is what we strive for now.

At many stages in the advance of humanity, this conflict between the men who possess more than they have earned and the men who have earned more than they possess is the central condition of progress. In our day it appears as the struggle of freemen to gain and hold the right of self-government as against the special interests, who twist the methods of free government into machinery for defeating the popular will. At every stage, and under all circumstances, the essence of the struggle is to equalize opportunity, destroy privilege, and give to the life and citizenship of every individual the highest possible value both to himself and to the commonwealth. That is nothing new....

Practical equality of opportunity for all citizens, when we achieve it, will have two great results. First, every man will have a fair chance to make of himself all that in him lies; to reach the highest point to which his capacities, unassisted by special privilege of his own and unhampered by the special privilege of others, can carry him, and to get for himself and his family substantially what he has earned. Second, equality of opportunity means that the commonwealth will get from every citizen the highest service of which he is capable. No man who carries the burden of the special privileges of another can give to the commonwealth that service to which it is fairly entitled.

I stand for the square deal. But when I say that I am for the square deal, I mean not merely that I stand for fair play under the present rules of the game, but that I stand for having those rules changed so as to work for a more substantial equality of opportunity and of reward for equally good service. One word of warning, which, I think, is hardly necessary in Kansas. When I say I want a square deal for the poor man, I do not mean that I want a square deal for the man who remains poor because he has not got the energy to work for himself....

Now, this means that our government, National and State, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics. That is one of our tasks today. Every special interest is entitled to justice—full, fair, and complete—and, now, mind you, if there were any attempt by mob-violence to plunder and work harm to the special interest, whatever it may be, that I most dislike, and the wealthy man, whomsoever he may be, for whom I have the greatest contempt, I would fight for him, and you would if you were worth your salt. He should have justice. For every special interest is entitled to justice, but not one is entitled to a vote in Congress, to a voice on the bench, or to representation in any public office. The Constitution guarantees protection to property, and we must make that promise good. But it does not give the right of suffrage to any corporation.

The true friend of property, the true conservative, is he who insists that property shall be the servant and not the master of the commonwealth; who insists that the creature of man's making shall be the servant and not the master of the man who made it. The citizens of the United States must effectively control the mighty commercial forces which they have called into being.

There can be no effective control of corporations while their political activity remains. To put an end to it will be neither a short nor an easy task, but it can be done.

We must have complete and effective publicity of corporate affairs, so that the people may know beyond peradventure whether the corporations obey the law and whether their management entitles them to the confidence of the public. It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes; it is still more necessary that such laws should be thoroughly

enforced. Corporate expenditures for political purposes, and especially such expenditures by public-service corporations, have supplied one of the principal sources of corruption in our political affairs.

It has become entirely clear that we must have government supervision of the capitalization, not only of public-service corporations, including, particularly, railways, but of all corporations doing an interstate business. I do not wish to see the nation forced into the ownership of the railways if it can possibly be avoided, and the only alternative is thoroughgoing and effective legislation, which shall be based on a full knowledge of all the facts, including a physical valuation of property....

We have come to recognize that franchises should never be granted except for a limited time, and never without proper provision for compensation to the public. It is my personal belief that the same kind and degree of control and supervision which should be exercised over public-service corporations should be extended also to combinations which control necessities of life, such as meat, oil, or coal, or which deal in them on an important scale. I have no doubt that the ordinary man who has control of them is much like ourselves. I have no doubt he would like to do well, but I want to have enough supervision to help him realize that desire to do well.

I believe that the officers, and, especially, the directors, of corporations should be held personally responsible when any corporation breaks the law.

Combinations in industry are the result of an imperative economic law which cannot be repealed by political legislation. The effort at prohibiting all combination has substantially failed. The way out lies, not in attempting to prevent such combinations, but in completely controlling them in the interest of the public welfare. For that purpose the Federal Bureau of Corporations is an agency of first importance. Its powers, and, therefore, its efficiency, as well as that of the Interstate Commerce Commission, should be largely increased....

The absence of effective State, and, especially, national, restraint upon unfair money-getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need to is to change the conditions which enable these men to accumulate power which it is not for the general welfare that they should hold or exercise. We grudge no man a fortune which represents his own power and sagacity, when exercised with entire regard to the welfare of his fellows.... It is not even enough that it should have been gained without doing damage to the community. We should permit it to be gained only so long as the gaining represents benefit to the community. This, I know, implies a policy of a far more active governmental interference with social and economic conditions in this country than we have yet had, but I think we have got to face the fact that such an increase in governmental control is now necessary.

No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered-not gambling in stocks, but service rendered. The really big fortune, the swollen fortune, by the mere fact of its size, acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means. Therefore, I believe in a graduated income tax on big fortunes, and in another tax which is far more easily collected and far more effective-a graduated inheritance tax on big fortunes, properly safeguarded against evasion, and increasing rapidly in amount with the size of the estate....

I believe that the natural resources must be used for the benefit of all our people, and not monopolized for the benefit of the few, and here again is another case in which I am accused of taking a revolutionary attitude. People forget now that one hundred years ago there were public men of good character who advocated the nation selling its public lands in great quantities, so that the nation could get the most money



out of it, and giving it to the men who could cultivate it for their own uses. We took the proper democratic ground that the land should be granted in small sections to the men who were actually to till it and live on it. Now, with the water-power, with the forests, with the mines, we are brought face to face with the fact that there are many people who will go with us in conserving the resources only if they are to be allowed to exploit them for their benefit. That is one of the fundamental reasons why the special interests should be driven out of politics. Of all the questions which can come before this nation, short of the actual preservation of its existence in a great war, there is none which compares in importance with the great central task of leaving this land even a better land for our descendants than it is for us, and training them into a better race to inhabit the land and pass it on. Conservation is a great moral issue, for it involves the patriotic duty of insuring the safety and continuance of the nation. Let me add that the health and vitality of our people are at least as well worth conserving as their forests, waters, lands, and minerals, and in this great work the national government must bear a most important part....

We are face to face with new conceptions of the relations of property to human welfare, chiefly because certain advocates of the rights of property as against the rights of men have been pushing their claims too far. The man who wrongly holds that every human right is secondary to his profit must now give way to the advocate of human welfare, who rightly maintains that every man holds his property subject to the general right of the community to regulate its use to whatever degree the public welfare may require it.

But I think we may go still further. The right to regulate the use of wealth in the public interest is universally admitted. Let us admit also the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good. The fundamental thing to do for every man is to give him a chance to reach a place in which he will make the greatest possible contribution to the public welfare. Understand what I say there. Give him a chance, not push him up if he will not be pushed. Help any man who stumbles; if he lies down, it is a poor job to try to carry him; but if he is a worthy man, try your best to see that he gets a chance to show the worth that is in him. No man can be a good citizen unless he has a wage more than sufficient to cover the bare cost of living, and hours of labor short enough so after his day's work is done he will have time and energy to bear his share in the management of the community, to help in carrying the general load. We keep countless men from being good citizens by the conditions of life by which we surround them. We need comprehensive workman's compensation acts, both State and national laws to regulate child labor and work for women, and, especially, we need in our common schools not merely education in book-learning, but also practical training for daily life and work. We need to enforce better sanitary conditions for our workers and to extend the use of safety appliances for workers in industry and commerce, both within and between the States. Also, friends, in the interest of the working man himself, we need to set our faces like flint against mob-violence just as against corporate greed; against violence and injustice and lawlessness by wage-workers just as much as against lawless cunning and greed and selfish arrogance of employers....

National efficiency has many factors. It is a necessary result of the principle of conservation widely applied. In the end, it will determine our failure or success as a nation. National efficiency has to do, not only with natural resources and with men, but it is equally concerned with institutions. The State must be made efficient for the work which concerns only the people of the State; and the nation for that which concerns all the people. There must remain no neutral ground to serve as a refuge for lawbreakers, and especially for lawbreakers of great wealth, who can hire the vulpine legal cunning which will teach them how to avoid both jurisdictions. It is a misfortune when the national legislature fails to do its duty in providing a national

remedy, so that the only national activity is the purely negative activity of the judiciary in forbidding the State to exercise power in the premises.

I do not ask for the over centralization; but I do ask that we work in a spirit of broad and far-reaching nationalism where we work for what concerns our people as a whole. We are all Americans. Our common interests are as broad as the continent. I speak to you here in Kansas exactly as I would speak in New York or Georgia, for the most vital problems are those which affect us all alike. The National Government belongs to the whole American people, and where the whole American people are interested, that interest can be guarded effectively only by the National Government. The betterment which we seek must be accomplished, I believe, mainly through the National Government.

The American people are right in demanding that New Nationalism, without which we cannot hope to deal with new problems. The New Nationalism puts the national need before sectional or personal advantage. It is impatient of the utter confusion that results from local legislatures attempting to treat national issues as local issues. It is still more impatient of the impotence which springs from over division of governmental powers, the impotence which makes it possible for local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. This New Nationalism regards the executive power as the steward of the public welfare. It demands of the judiciary that it shall be interested primarily in human welfare rather than in property, just as it demands that the representative body shall represent all the people rather than any one class or section of the people....

If our political institutions were perfect, they would absolutely prevent the political domination of money in any part of our affairs. We need to make our political representatives more quickly and sensitively responsive to the people whose servants they are. More direct action by the people in their own affairs under proper safeguards is vitally necessary. The direct primary is a step in this direction, if it is associated with a corrupt-services act effective to prevent the advantage of the man willing recklessly and unscrupulously to spend money over his more honest competitor. It is particularly important that all moneys received or expended for campaign purposes should be publicly accounted for, not only after election, but before election as well. Political action must be made simpler, easier, and freer from confusion for every citizen. I believe that the prompt removal of unfaithful or incompetent public servants should be made easy and sure in whatever way experience shall show to be most expedient in any given class of cases....

The object of government is the welfare of the people. The material progress and prosperity of a nation are desirable chiefly so long as they lead to the moral and material welfare of all good citizens. Just in proportion as the average man and woman are honest, capable of sound judgment and high ideals, active in public affairs—but, first of all, sound in their home, and the father and mother of healthy children whom they bring up well—just so far, and no farther, we may count our civilization a success. We must have—I believe we have already—a genuine and permanent moral awakening, without which no wisdom of legislation or administration really means anything; and, on the other hand, we must try to secure the social and economic legislation without which any improvement due to purely moral agitation is necessarily evanescent.... We must have the right kind of character—character that makes a man, first of all, a good man in the home, a good father, and a good husband—that makes a man a good neighbor. You must have that, and then, in addition, you must have the kind of law and the kind of administration of the law which will give to those qualities in the private citizen the best possible chance for development. The prime problem of our nation is to get the right type of good citizenship, and, to get it, we must have progress, and our public men must be genuinely progressive.

# 29. Woodrow Wilson: Make the US a World Leader

## Woodrow Wilson (1856-1924)

Woodrow Wilson was born in rural Virginia shortly before the Civil War. He graduated Princeton and then attended the University of Virginia Law School. After practicing law for a short time, he decided to pursue an academic career and became one of the first students at John Hopkins University, where he earned a Ph.D. in history and government. He taught at Bryn Mawr, Wesleyan, and Princeton, where he was promoted to president after twelve years of teaching.

Wilson made numerous reforms at Princeton, but when his further initiatives were stymied by administrators and alumni he took his career in a different direction. In 1910, he ran for Governor of New Jersey and won. Two years later, he sought the Democratic nomination for president and won on the 46th ballot. Theodore Roosevelt's third-party candidacy split the Republican vote and Wilson was elected president despite winning only 42% of the popular vote. Wilson played a major role in setting the legislative agenda for Congress, including restoring the tradition of giving the State of the Union Address to a joint session of Congress. He also mediated what was then called the Great European War, winning the Nobel Peace Prize in 1916. After winning reelection later that year, he called for the establishment of a "world league for peace," setting forth principles that would guide the future League of Nations. However, after Germany continued to attack US-flagged ships, he asked Congress to declare war in 1917.

US intervention proved to be decisive, and Wilson travelled to France to guide the creation of the Treaty of Versailles, spending an unprecedented six months outside of the US. But American allies insisted on a vindictive peace, and Wilson was forced to surrender one of his most important goals for the treaty. He returned to the US and insisted that the Senate ratify the treaty without any amendments. When the Senate rejected his request, Wilson embarked upon a cross-country speaking tour that was abruptly terminated after he suffered a stroke. The Senate never ratified the treaty and the US never joined the League of Nations. Wilson remained an invalid for much of the remainder of his presidency, and did not run for a third term. He died three years after leaving office.

## “A World League for Peace” (1917)

On January 22, 1917, Woodrow Wilson addressed Congress to outline the principles that he believed were necessary to resolve the Great European War and promote peace in the future. He called for a peace without victory that would leave all parties somewhat dissatisfied, but upon which a peaceful postwar world could be established. He stated his belief that such a peace could only last if all nations recognized the right of each people to choose a government free of interference by other nations. Most importantly, Wilson called for the US to abandon its historic reluctance to get involved in European affairs and sought its commitment to participate in an international organization that could peacefully settle disputes between nations.

On the eighteenth of December last I addressed an identic note to the governments of the nations now at war requesting them to state, more definitely than they had yet been stated by either group of belligerents, the terms upon which they would deem it possible to make peace. I spoke on behalf of humanity and of the rights of all neutral nations like our own, many of whose most vital interests the war puts in constant jeopardy.

The Central Powers united in a reply which stated merely that they were ready to meet their antagonists in conference to discuss terms of peace.

The Entente Powers have replied much more definitely and have stated, in general terms, indeed, but with sufficient definiteness to imply details, the arrangements, guarantees, and acts of reparation which they deem to be the indispensable conditions of a satisfactory settlement.

We are that much nearer a definite discussion of the peace which shall end the present war. We are that much nearer the discussion of the international concert which must thereafter hold the world at peace. In every discussion of the peace that must end this war it is taken for granted that that peace must be followed by some definite concert of power which will make it virtually impossible that any such catastrophe should ever overwhelm us again. Every lover of mankind, every sane and thoughtful man must take that for granted.

I have sought this opportunity to address you because I thought that I owed it to you, as the council associated with me in the final determination of our international obligations, to disclose to you without reserve the thought and purpose that have been taking form in my mind in regard to the duty of our Government in the days to come when it will be necessary to lay afresh and upon a new plan the foundations of peace among the nations.

It is inconceivable that the people of the United States should play no part in that great enterprise. To take part in such a service will be the opportunity for which they have sought to prepare themselves by the very principles and purposes of their polity and the approved practices of their Government ever since the days when they set up a new nation in the high and honorable hope that it might in all that it was and did show mankind the way to liberty.

They cannot in honor withhold the service to which they are now about to be challenged. They do not wish to withhold it. But they owe it to themselves and to the other nations of the world to state

the conditions under which they will feel free to render it. That service is nothing less than this, to add their authority and their power to the authority and force of other nations to guarantee peace and justice throughout the world. Such a settlement cannot now be long postponed. It is right that before it comes this Government should frankly formulate the conditions upon which it would feel justified in asking our people to approve its formal and solemn adherence to a League for Peace. I am here to attempt to state those conditions.

The present war must first be ended; but we owe it to candor and to a just regard for the opinion of mankind to say that, so far as our participation in guarantees of future peace is concerned, it makes a great deal of difference in what way and upon what terms it is ended. The treaties and agreements which bring it to an end must embody terms which will create a peace that is worth guaranteeing and preserving, a peace that will win the approval of mankind, not merely a peace that will serve the several interests and immediate aims of the nations engaged.

We shall have no voice in determining what those terms shall be, but we shall, I feel sure, have a voice in determining whether they shall be made lasting or not by the guarantees of a universal covenant; and our judgment upon what is fundamental and essential as a condition precedent to permanency should be spoken now, not afterwards when it may be too late.

No covenant of cooperative peace that does not include the peoples of the New World can suffice to keep the future safe against war; and yet there is only one sort of peace that the peoples of America could join in guaranteeing.

The elements of that peace must be elements that engage the confidence and satisfy the principles of the American governments, elements consistent with their political faith and with the practical convictions which the peoples of America have once for all embraced and undertaken to defend.

I do not mean to say that any American government would throw any obstacle in the way of any terms of peace the governments now at war might agree upon, or seek to upset them when made, whatever they might be. I only take it for granted that mere terms of peace between the belligerents will not satisfy even the belligerents themselves.

Mere agreements may not make peace secure. It will be absolutely necessary that a force be created as a guarantor of the permanency of the settlement so much greater than the force of any nation now engaged or any alliance hitherto formed or projected that no nation, no probable combination of nations could face or withstand it.

If the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind.

The terms of the immediate peace agreed upon will determine whether it is a peace for which such a guarantee can be secured. The question upon which the whole future peace and policy of the world depends is this: Is the present war a struggle for a just and secure peace, or only for a new balance of power? If it be only a struggle for a new balance of power, who will guarantee, who can guarantee, the stable equilibrium of the new arrangement?

Only a tranquil Europe can be a stable Europe. There must be, not a balance of power, but a community of power; not organized rivalries, but an organized common peace.

Fortunately we have received very explicit assurances on this point. The statesmen of both of the groups of nations now arrayed against one another have said, in terms that could not be misinterpreted, that it was no part of the purpose they had in mind to crush their antagonists. But the implications of these assurances

may not be equally clear to all [and] may not be the same on both sides of the water. I think it will be serviceable if I attempt to set forth what we understand them to be.

They imply, first of all, that it must be a peace without victory. It is not pleasant to say this. I beg that I may be permitted to put my own interpretation upon it and that it may be understood that no other interpretation was in my thought.

I am seeking only to face realities and to face them without soft concealments. Victory would mean peace forced upon the loser, a victor's terms imposed upon the vanquished. It would be accepted in humiliation, under duress, at an intolerable sacrifice, and would leave a sting, a resentment, a bitter memory upon which terms of peace would rest, not permanently, but only as upon quicksand.

Only a peace between equals can last. Only a peace the very principle of which is equality and a common participation in a common benefit. The right state of mind, the right feeling between nations, is as necessary for a lasting peace as is the just settlement of vexed questions of territory or of racial and national allegiance.

The equality of nations upon which peace must be founded if it is to last must be an equality of rights; the guarantees exchanged must neither recognize nor imply a difference between big nations and small, between those that are powerful and those that are weak.

Right must be based upon the common strength, not upon the individual strength, of the nations upon whose concert peace will depend.

Equality of territory or of resources there of course cannot be; nor any other sort of equality not gained in the ordinary peaceful and legitimate development of the peoples themselves. But no one asks or expects anything more than an equality of rights. Mankind is looking now for freedom of life, not for equiposes of power.

And there is a deeper thing involved than even equality of right among organized nations. No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.

I take it for granted, for instance, if I may venture upon a single example, that statesmen everywhere are agreed that there should be a united, independent, and autonomous Poland, and that henceforth inviolable security of life, of worship, and of industrial and social development should be guaranteed to all peoples who have lived hitherto under the power of governments devoted to a faith and purpose hostile to their own.

I speak of this, not because of any desire to exalt an abstract political principle which has always been held very dear by those who have sought to build up liberty in America, but for the same reason that I have spoken of the other conditions of peace which seem to me clearly indispensable, because I wish frankly to uncover realities.

Any peace which does not recognize and accept this principle will inevitably be upset. It will not rest upon the affections or the convictions of mankind. The ferment of spirit of whole populations will fight subtly and constantly against it, and all the world will sympathize. The world can be at peace only if its life is stable, and there can be no stability where the will is in rebellion, where there is not tranquility of spirit and a sense of justice, of freedom, and of right.

So far as practicable, moreover, every great people now struggling towards a full development of its resources and of its powers should be assured a direct outlet to the great highways of the sea. Where this cannot be done by the cession of territory, it can no doubt be done by the neutralization of direct rights of way under the general guarantee which will assure the peace itself. With a right comity of arrangement no nation need be shut away from free access to the open paths of the world's commerce.

And the paths of the sea must alike in law and in fact be free. The freedom of the seas is the sine qua non of peace, equality, and cooperation.

No doubt a somewhat radical reconsideration of many of the rules of international practice hitherto thought to be established may be necessary in order to make the seas indeed free and common in practically all circumstances for the use of mankind, but the motive for such changes is convincing and compelling. There can be no trust or intimacy between the peoples of the world without them.

The free, constant, unthreatened intercourse of nations is an essential part of the process of peace and of development. It need not be difficult either to define or to secure the freedom of the seas if the governments of the world sincerely desire to come to an agreement concerning it.

It is a problem closely connected with the limitation of naval armaments and the cooperation of the navies of the world in keeping the seas at once free and safe. And the question of limiting naval armaments opens the wider and perhaps more difficult question of the limitation of armies and of all programs of military preparation.

Difficult and delicate as these questions are, they must be faced with the utmost candor and decided in a spirit of real accommodation if peace is to come with healing in its wings, and come to stay. Peace cannot be had without concession and sacrifice. There can be no sense of safety and equality among the nations if great preponderating armaments are henceforth to continue here and there to be built up and maintained.

The statesmen of the world must plan for peace and nations must adjust and accommodate their policy to it as they have planned for war and made ready for pitiless contest and rivalry. The question of armaments, whether on land or sea, is the most immediately and intensely practical question connected with the future fortunes of nations and of mankind....

I would fain believe that I am speaking for the silent mass of mankind everywhere who have as yet had no place or opportunity to speak their real hearts out concerning the death and ruin they see to have come already upon the persons and the homes they hold most dear.

And in holding out the expectation that the people and Government of the United States will join the other civilized nations of the world in guaranteeing the permanence of peace upon such terms as I have named I speak with the greater boldness and confidence because it is clear to every man who can think that there is in this promise no breach in either our traditions or our policy as a nation, but a fulfilment, rather, of all that we have professed or striven for.

I am proposing, as it were, that the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world: that no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful.

I am proposing that all nations henceforth avoid entangling alliances which would draw them into competitions of power, catch them in a net of intrigue and selfish rivalry, and disturb their own affairs with influences intruded from without. There is no entangling alliance in a concert of power. When all unite to act in the same sense and with the same purpose all act in the common interest and are free to live their own lives under a common protection.

I am proposing government by the consent of the governed; that freedom of the seas which in international conference after conference representatives of the United States have urged with the eloquence of those who are the convinced disciples of liberty; and that moderation of armaments which makes of armies and navies a power for order merely, not an instrument of aggression or of selfish violence.

These are American principles, American policies. We could stand for no others. And they are also the

principles and policies of forward-looking men and women everywhere, of every modern nation, of every enlightened community. They are the principles of mankind and must prevail.

## State of the Union Address (1920)

Wilson gave his last State of the Union Address a month after Republican Warren Harding had been elected president. In an effort to define his legacy as president, Wilson invoked Abraham Lincoln's Second Inaugural Address for the principle that right should make might. He believed that world peace could best be achieved if democratic governments were established throughout the world, and he viewed the promotion of democracy as the future role of the US. At a time when European nations were turning to authoritarian governments, Wilson called for making the US an example of just and equal laws at home and the protection of the weak from the strong in international relations. But Wilson did not always promote just and equal treatment while president. He increased the segregation of federal offices while turning a blind eye to race-based lynching in the south.

When I addressed myself to performing the duty laid upon the President by the Constitution to present to you an annual report on the state of the Union, I found my thought dominated by an immortal sentence of Abraham Lincoln's—"Let us have faith that right makes might, and in that faith let us dare to do our duty as we understand it"—a sentence immortal because it embodies in a form of utter simplicity and purity the essential faith of the nation, the faith in which it was conceived, and the faith in which it has grown to glory and power. With that faith and the birth of a nation founded upon it came the hope into the world that a new order would prevail throughout the affairs of mankind, an order in which reason and right would take precedence over covetousness and force; and I believe that I express the wish and purpose of every thoughtful American when I say that this sentence marks for us in the plainest manner the part we should play alike in the arrangement of our domestic affairs and in our exercise of influence upon the affairs of the world.

By this faith, and by this faith alone, can the world be lifted out of its present confusion and despair. It was this faith which prevailed over the wicked force of Germany. You will remember that the beginning of the end of the war came when the German people found themselves face to face with the conscience of the world and realized that right was everywhere arrayed against the wrong that their government was attempting to perpetrate. I think, therefore, that it is true to say that this was the faith which won the war. Certainly this is the faith with which our gallant men went into the field and out upon the seas to make sure of victory.

This is the mission upon which Democracy came into the world. Democracy is an assertion of the right of the individual to live and to be treated justly as against any attempt on the part of any combination of individuals to make laws which will overburden him or which will destroy his equality among his fellows in the matter of right or privilege; and I think we all realize that the day has come when Democracy is being put upon its final test. The Old World is just now suffering from a wanton rejection of the principle of democracy



and a substitution of the principle of autocracy as asserted in the name, but without the authority and sanction, of the multitude. This is the time of all others when Democracy should prove its purity and its spiritual power to prevail. It is surely the manifest destiny of the United States to lead in the attempt to make this spirit prevail.

There are two ways in which the United States can assist to accomplish this great object. First, by offering the example within her own borders of the will and power of Democracy to make and enforce laws which are unquestionably just and which are equal in their administration—laws which secure its full right to Labor and yet at the same time safeguard the integrity of property, and particularly of that property which is devoted to the development of industry and the increase of the necessary wealth of the world. Second, by standing for right and justice as toward individual nations. The law of Democracy is for the protection of the weak, and the influence of every democracy in the world should be for the protection of the weak nation, the nation which is struggling toward its right and toward its proper recognition and privilege in the family of nations.

The United States cannot refuse this role of champion without putting the stigma of rejection upon the great and devoted men who brought its government into existence and established it in the face of almost universal opposition and intrigue, even in the face of wanton force, as, for example, against the Orders in Council of Great Britain and the arbitrary Napoleonic decrees which involved us in what we know as the War of 1812.

I urge you to consider that the display of an immediate disposition on the part of the Congress to remedy any injustices or evils that may have shown themselves in our own national life will afford the most effectual offset to the forces of chaos and tyranny which are playing so disastrous a part in the fortunes of the free peoples of more than one part of the world. The United States is of necessity the sample democracy of the world, and the triumph of Democracy depends upon its success....

## UNIT VI

# GOVERNMENT EXPANSION IN THE 1930S

After the Senate twice rejected the Versailles Treaty, the US turned away from a leadership role in international relations. Women did get the right to vote in 1920 with the ratification of the Nineteenth Amendment, but the political consensus was that the US “return to normalcy,” the slogan for Republican Warren Harding’s presidential campaign that year. The US struggled with the imposition of Prohibition, which made it a crime to manufacture, sell or transport alcohol but not to drink it. There was widespread evasion of this unpopular policy, and significant resources were spent prosecuting people whose profession had essentially been outlawed by a constitutional amendment. Eventually Americans recognized that it had been unwise to insert a public policy measure into the Constitution, and the process of repealing the amendment began. This would not be completed until 1933.

The Roaring Twenties saw isolationist sentiments increase as the Union of Soviet Socialist Republics imposed communism on the people of Russia while fascist governments took power in Italy and eventually Germany. After President Harding died while in office, the Republicans remained in power as Calvin Coolidge used radio to speak to the people directly for the first time. He passed up a chance to run again in 1928, but successfully handed off power to his Secretary of Commerce, Herbert Hoover. The economy was booming, unemployment was only 3.2%, and the voters trusted the Republicans.

But then Black Tuesday struck. The stock market crashed on October 29, 1929, and the economy went into the Great Depression. President Hoover was unable to rally the economy, and unemployment got worse during each year of his administration. It eventually reached 23.6% in 1932, the next presidential election year. Since there was no national program of aid to the poor, and states lacked the funds to provide welfare, millions suffered.

Franklin Roosevelt won the 1932 Democratic nomination and proposed reforms that followed some of Herbert Croly’s suggestions in *The Promise of American Life*. Elected in a landslide, Roosevelt and the Democrats created a New Deal that would become the cornerstone of the Democratic Party platform for the next century. In this unit, you will find Roosevelt’s 1932 campaign address at the San Francisco Commonwealth Club, along with two State of the Union Addresses: 1941 (which set forth his “four freedoms”) and 1944 (where he pronounced an economic bill of rights that inspired many subsequent Democratic reforms).

Despite Roosevelt’s popularity, there was opposition to his New Deal programs. Conservative Herbert Hoover and liberal Walter Lippmann both expressed concern that big government would crowd out private freedom while doing little for middle class and poor people. But the majority wasn’t listening, as Americans elected FDR a record four times, all by substantial margins.



## 30. Franklin Roosevelt's New Deal

### Franklin Delano Roosevelt (1881-1945)

Born to wealthy parents in Hyde Park, New York, Franklin Roosevelt graduated Harvard and attended Columbia Law School. He practiced law briefly before being elected to the New York Senate in 1910. He was a prominent supporter of Woodrow Wilson and served as Assistant Secretary of the Navy from 1913-19.

After running unsuccessfully for vice president in 1920, he became partially paralyzed due to either polio or Guillain-Barré syndrome and spent several years convalescing. He reentered politics in 1928 and was elected Governor of New York. When the Depression occurred, he called for unemployment compensation and old-age pensions, and was reelected in 1930.

Roosevelt won the Democratic nomination for president in 1932 and ran against incumbent Herbert Hoover. He trounced Hoover in the general election while setting a record for most electoral votes. He broke that record when he ran for reelection in 1936.

FDR spent his first term trying to resurrect the economy. When a series of government work programs failed to spark recovery, he pivoted to direct aid to the poor and unemployed. That was more successful, but the economy was stalled until World War II began. In 1940, Democrats convinced him to run for an unprecedented third term, and during World War II he was elected to a fourth term. He had only completed about three months of his last term before he died of a cerebral hemorrhage in Warm Springs, Georgia. He remains the only person with a significant physical disability to serve as president.

### Address to the Commonwealth Club (1932)

In a campaign speech in San Francisco, Franklin Roosevelt cited Thomas Jefferson for the proposition that the United States was founded on a belief in “personal competency,” which was reflected in its protection for individual rights and democratic participation. After the Civil War, the government promoted the development of American industry, which brought great prosperity to some while others endured economic hardship. Roosevelt proposed that the United States recognize an “economic bill of rights” that would provide welfare to those most in need of it, such as the unemployed and the elderly. This would become one of the key components of his “New Deal.”

...The issue of government has always been whether individual men and women will have to serve some system of government of economics, or whether a system of government and economics exists to serve individual men and women. This question has persistently dominated the discussion of government for many generations.

On questions relating to these things men have differed, and for time immemorial it is probable that honest men will continue to differ. The final word belongs to no man; yet we can still believe in change and in progress. Democracy, as a dear old friend of mine in Indiana, Meredith Nicholson, has called it, is a quest, a never-ending seeking for better things, and in the seeking for these things and the striving for better things, and in the seeking for these things and the striving for them, there are many roads to follow. But, if we map the course of these roads, we find that there are only two general directions.

When we look about us, we are likely to forget how hard people have worked to win the privilege of government. The growth of the national governments of Europe was a struggle for the development of a centralized force in the nation, strong enough to impose peace upon ruling barons. In many instances the victory of the central government, the creation of a strong central government, was a haven of refuge to the individual. The people preferred the master far away to the exploitation and cruelty of the smaller master near at hand.

But the creators of national government were perforce ruthless men. They were often cruel in their methods, but they did strive steadily toward something that society needed and very much wanted, a strong central state, able to keep the peace, to stamp out civil war, to put the unruly nobleman in his place, and to permit the bulk of individuals to live safely. The man of ruthless force had his place in developing a pioneer country, just as he did in fixing the power of the central government in the development of nations. Society paid him well for his services and its development. When the development among the nations of Europe, however, has been completed, ambition, and ruthlessness, having served its term tended to overstep its mark.

There came a growing feeling that government was conducted for the benefit of a few who thrived unduly at the expense of all. The people sought a balancing—a limiting force. There came gradually, through town councils, trade guilds, national parliaments, by constitution and by popular participation and control, limitations on arbitrary power. Another factor that tended to limit the power of those who ruled was the rise of the ethical conception that a ruler bore a responsibility for the welfare of his subjects.

The American colonies were born in this struggle. The American Revolution was a turning point in it. After the revolution the struggle continued and shaped itself in the public life of the country. There were those who because they had seen the confusion which attended the years of war for American independence surrendered to the belief that popular government was essentially dangerous and essentially unworkable. They were honest people, my friends, and we cannot deny that their experience had warranted some measure of fear. The most brilliant, honest and able exponent of this point of view was Hamilton. He was too impatient of slow moving methods. Fundamentally he believed that the safety of the republic lay in the autocratic strength of its government, that the destiny of individuals was to serve that government, and that fundamentally a great and strong group of central institutions, guided by a small group of able and public spirited citizens could best direct all government.

But Mr. Jefferson, in the summer of 1776, after drafting the Declaration of Independence turned his mind to the same problem and took a different view. He did not deceive himself with outward forms. Government to him was a means to an end, not an end in itself; it might be either a refuge and a help or a threat and a danger, depending on the circumstances. We find him carefully analyzing the society for which he was to

organize a government: "We have no paupers. The great mass of our population is of laborers, our rich who cannot live without labor, either manual or professional, being few and of moderate wealth."

These people, he considered, had two sets of rights, those of "personal competency" and those involved in acquiring and possessing property. By "personal competency" he meant the right of free thinking, freedom of forming and expressing opinions, and freedom of personal living each man according to his own lights. To insure the first set of rights, a government must so order its functions as not to interfere with the individual. But even Jefferson realized that the exercise of the property rights might so interfere with the rights of the individual that the government, without whose assistance the property rights could not exist, must intervene, not to destroy individualism but to protect it. .

So began, in American political life, the new day, the day of the individual against the system, the day in which individualism was made the great watchword of American life. The happiest of economic conditions made that day long and splendid. On the Western frontier, land was substantially free. No one, who did not shirk the task of earning a living, was entirely without opportunity to do so. Depressions could, and did, come and go; but they could not alter the fundamental fact that most of the people lived partly by selling their labor and partly by extracting their livelihood from the soil, so that starvation and dislocation were practically impossible. At the very worst there was always the possibility of climbing into a covered wagon and moving west where the untilled prairies afforded a haven for men to whom the East did not provide a place. So great were our natural resources that we could offer this relief not only to our own people, but to the distressed of all the world; we could invite immigration from Europe, and welcome it with open arms. Traditionally, when a depression came, a new section of land was opened in the West; and even our temporary misfortune served our manifest destiny.

It was the middle of the 19th century that a new force was released and a new dream created. The force was what is called the industrial revolution, the advance of steam and machinery and the rise of the forerunners of the modern industrial plant. The dream was the dream of an economic machine, able to raise the standard of living for everyone; to bring luxury within the reach of the humblest; to annihilate distance by steam power and later by electricity, and to release everyone from the drudgery of the heaviest manual toil. It was to be expected that this would necessarily affect government. Heretofore, government had merely been called upon to produce conditions within which people could live happily, labor peacefully, and rest secure. Now it was called upon to aid in the consummation of this new dream. There was, however, a shadow over the dream. To be made real, it required use of the talents of men of tremendous will, and tremendous ambition, since by no other force could the problems of financing and engineering and new developments be brought to a consummation.

So manifest were the advantages of the machine age, however, that the United States fearlessly, cheerfully, and, I think, rightly, accepted the bitter with the sweet. It was thought that no price was too high to pay for the advantages which we could draw from a finished industrial system. The history of the last half century is accordingly in large measure a history of a group of financial Titans, whose methods were not scrutinized with too much care, and who were honored in proportion as they produced the results, irrespective of the means they used. The financiers who pushed the railroads to the Pacific were always ruthless, we have them today. It has been estimated that the American investor paid for the American railway system more than three times over in the process; but despite that fact the net advantage was to the United States. As long as we had free land; as long as population was growing by leaps and bounds; as long as our industrial plants were insufficient to supply our needs, society chose to give the ambitious man free play and unlimited reward provided only that he produced the economic plant so much desired.

During this period of expansion, there was equal opportunity for all and the business of government was not to interfere but to assist in the development of industry. This was done at the request of businessmen themselves. The tariff was originally imposed for the purpose of “fostering our infant industry,” a phrase I think the older among you will remember as a political issue not so long ago. The railroads were subsidized, sometimes by grants of money, oftener by grants of land; some of the most valuable oil lands in the United States were granted to assist the financing of the railroad which pushed through the Southwest.... [W]hile it has been American doctrine that the government must not go into business in competition with private enterprises, still it has been traditional particularly in Republican administrations for business urgently to ask the government to put at private disposal all kinds of government assistance....

Each group has sought protection from the government for its own special interest, without realizing that the function of government must be to favor no small group at the expense of its duty to protect the rights of personal freedom and of private property of all its citizens.

In retrospect we can now see that the turn of the tide came with the turn of the century. We were reaching our last frontier; there was no more free land and our industrial combinations had become great uncontrolled and irresponsible units of power within the state. Clear-sighted men saw with fear the danger that opportunity would no longer be equal; that the growing corporation, like the feudal baron of old, might threaten the economic freedom of individuals to earn a living. In that hour, our antitrust laws were born. The cry was raised against the great corporations. Theodore Roosevelt, the first great Republican progressive, fought a Presidential campaign on the issue of “trust busting” and talked freely about malefactors of great wealth. If the government had a policy it was rather to turn the clock back, to destroy the large combinations and to return to the time when every man owned his individual small business.

This was impossible; Theodore Roosevelt, abandoning the idea of “trust busting,” was forced to work out a difference between “good” trusts and “bad” trusts. The Supreme Court set forth the famous “rule of reason” by which it seems to have meant that a concentration of industrial power was permissible if the method by which it got its power, and the use it made of that power, was reasonable.

Woodrow Wilson, elected in 1912, saw the situation more clearly. Where Jefferson had feared the encroachment of political power on the lives of individuals, Wilson knew that the new power was financial. He says, in the highly centralized economic system, the depot of the twentieth century, on whom great masses of individuals relied for their safety and their livelihood, and whose irresponsibility and greed (if it were not controlled) would reduce them to starvation and penury....

A glance at the situation today only too clearly indicates that equality of opportunity as we have known it no longer exists. Our industrial plant is built; the problem just now is whether under existing conditions it is not overbuilt. Our last frontier has long since been reached, and there is practically no more free land. More than half of our people do not live on the farms or on lands and cannot derive a living by cultivating their own property. There is no safety valve in the form of a Western prairie to which those thrown out of work by the Eastern economic machines can go for a new start. We are not able to invite the immigration from Europe to share our endless plenty. We are now providing a drab living for our own people.

Our system of constantly rising tariffs has at last reacted against us to the point of closing our Canadian frontier on the north, our European markets on the east, many of our Latin American markets to the south, and a goodly proportion of our Pacific markets on the west, through the retaliatory tariffs of those countries. It has forced many of our great industrial institutions who exported their surplus production to such countries, to establish plants in such countries within the tariff walls. This has resulted in the reduction of the operation of their American plants, and opportunity for employment.

Just as freedom to farm has ceased, so also the opportunity in business has narrowed. It still is true that men can start small enterprises, trusting to native shrewdness and ability to keep abreast of competitors; but area after area has been preempted altogether by the great corporations, and even in the fields which still have no great concerns, the small man starts with a handicap. The unfeeling statistics of the past three decades show that the independent business man is running a losing race. Perhaps he is forced to the wall; perhaps he cannot command credit; perhaps he is "squeezed out," in Mr. Wilson's words, by highly organized corporate competitors, as your corner grocery man can tell you.

Recently a careful study was made of the concentration of business in the United States. It showed that our economic life was dominated by some six hundred odd corporations who controlled two-thirds of American industry. Ten million small business men divided the other third. More striking still, it appeared that if the process of concentration goes on at the same rate, at the end of another century we shall have all American industry controlled by a dozen corporations, and run by perhaps a hundred men. Put plainly, we are steering a steady course toward economic oligarchy, if we are not there already.

Clearly, all this calls for a reappraisal of values. A mere builder of more industrial plants, a creator of more railroad systems, and organizer of more corporations, is as likely to be a danger as a help. The day of the great promoter or the financial Titan, to whom we granted anything if only he would build, or develop, is over. Our task now is not discovery or exploitation of natural resources, or necessarily producing more goods. It is the soberer, less dramatic business of administering resources and plants already in hand, of seeking to reestablish foreign markets for our surplus production, of meeting the problem of under consumption, of adjusting production to consumption, of distributing wealth and products more equitably, of adapting existing economic organizations to the service of the people. The day of enlightened administration has come.

Just as in older times the central government was first a haven of refuge, and then a threat, so now in a closer economic system the central and ambitious financial unit is no longer a servant of national desire, but a danger. I would draw the parallel one step farther. We did not think because national government had become a threat in the 18th century that therefore we should abandon the principle of national government. Nor today should we abandon the principle of strong economic units called corporations, merely because their power is susceptible of easy abuse.

In other times we dealt with the problem of an unduly ambitious central government by modifying it gradually into a constitutional democratic government. So today we are modifying and controlling our economic units.

As I see it, the task of government in its relation to business is to assist the development of an economic declaration of rights, an economic constitutional order. This is the common task of statesman and business man. It is the minimum requirement of a more permanently safe order of things.

Every man has a right to life; and this means that he has also a right to make a comfortable living. He may by sloth or crime decline to exercise that right; but it may not be denied him. We have no actual famine or death; our industrial and agricultural mechanism can produce enough and to spare. Our government formal and informal, political and economic, owes to every one an avenue to possess himself of a portion of that plenty sufficient for his needs, through his own work.

Every man has a right to his own property; which means a right to be assured, to the fullest extent attainable, in the safety of his savings. By no other means can men carry the burdens of those parts of life which, in the nature of things afford no chance of labor; childhood, sickness, old age. In all thought of property, this right is paramount; all other property rights must yield to it. If, in accord with this principle,



we must restrict the operations of the speculator, the manipulator, even the financier, I believe we must accept the restriction as needful, not to hamper individualism but to protect it.

These two requirements must be satisfied, in the main, by the individuals who claim and hold control of the great industrial and financial combinations which dominate so large a part of our industrial life. They have undertaken to be, not business men, but princes—princes of property. I am not prepared to say that the system which produces them is wrong. I am very clear that they must fearlessly and competently assume the responsibility which goes with the power. So many enlightened business men know this that the statement would be little more than a platitude, were it not for an added implication.

This implication is, briefly, that the responsible heads of finance and industry instead of acting each for himself, must work together to achieve the common end. They must, where necessary, sacrifice this or that private advantage; and in reciprocal self-denial must seek a general advantage. It is here that formal government—political government, if you choose, comes in. Whenever in the pursuit of this objective the lone wolf, the unethical competitor, the reckless promoter, the Ishmael or Insull whose hand is against every man's, declines to join in achieving an end recognized as being for the public welfare, and threatens to drag the industry back to a state of anarchy, the government may properly be asked to apply restraint. Likewise, should the group ever use its collective power contrary to public welfare, the government must be swift to enter and protect the public interest.

The government should assume the function of economic regulation only as a last resort, to be tried only when private initiative, inspired by high responsibility, with such assistance and balance as government can give, has finally failed. As yet there has been no final failure, because there has been no attempt, and I decline to assume that this nation is unable to meet the situation.

The final term of the high contract was for liberty and the pursuit of happiness. We have learnt a great deal of both in the past century. We know that individual liberty and individual happiness mean nothing unless both are ordered in the sense that one man's meat is not another man's poison. We know that the old "rights of personal competency"—the right to read, to think, to speak to choose and live a mode of life, must be respected at all hazards.

We know that liberty to do anything which deprives others of those elemental rights is outside the protection of any compact; and that government in this regard is the maintenance of a balance, within which every individual may have a place if he will take it; in which every individual may find safety if he wishes it; in which every individual may attain such power as his ability permits, consistent with his assuming the accompanying responsibility.

Faith in America, faith in our tradition of personal responsibility, faith in our institutions, faith in ourselves demands that we recognize the new terms of the old social contract. We shall fulfill them, as we fulfilled the obligation of the apparent Utopia which Jefferson imagined for us in 1776, and which Jefferson, Roosevelt and Wilson sought to bring to realization. We must do so, lest a rising tide of misery engendered by our common failure, engulf us all.

But failure is not an American habit; and in the strength of great hope we must all shoulder our common load.

## State of the Union Address (1941)

In his State of the Union Address in 1941, Roosevelt called for expanding military aid to US allies since the war effort was pursuing US goals. He also proclaimed that the United States would seek to reform the world, based on the defense of four specific freedoms: expression, religious worship, economic security, and military security. He opposed this mission to the practices of the tyrannical nations that would declare war on the United States before the end of the year.

I address you, the Members of this new Congress, at a moment unprecedented in the history of the Union. I use the word “unprecedented,” because at no previous time has American security been as seriously threatened from without as it is today. Since the permanent formation of our Government under the Constitution, in 1789, most of the periods of crisis in our history have related to our domestic affairs. And fortunately, only one of these--the four-year War Between the States--ever threatened our national unity. Today, thank God, one hundred and thirty million Americans, in forty-eight States, have forgotten points of the compass in our national unity....

What I seek to convey is the historic truth that the United States as a nation has at all times maintained opposition, clear, definite opposition, to any attempt to lock us in behind an ancient Chinese wall while the procession of civilization went past. Today, thinking of our children and of their children, we oppose enforced isolation for ourselves or for any other part of the Americas.

That determination of ours, extending over all these years, was proved, for example, in the early days during the quarter century of wars following the French Revolution. While the Napoleonic struggles did threaten interests of the United States because of the French foothold in the West Indies and in Louisiana, and while we engaged in the War of 1812 to vindicate our right to peaceful trade, it is nevertheless clear that neither France nor Great Britain, nor any other nation, was aiming at domination of the whole world.

And in like fashion from 1815 to 1914--ninety-nine years--no single war in Europe or in Asia constituted a real threat against our future or against the future of any other American nation. Except in the Maximilian interlude in Mexico, no foreign power sought to establish itself in this Hemisphere; and the strength of the British fleet in the Atlantic has been a friendly strength. It is still a friendly strength.

Even when the World War broke out in 1914, it seemed to contain only small threat of danger to our own American future. But, as time went on, as we remember, the American people began to visualize what the downfall of democratic nations might mean to our own democracy.

We need not overemphasize imperfections in the Peace of Versailles. We need not harp on failure of the democracies to deal with problems of world reconstruction. We should remember that the Peace of 1919 was far less unjust than the kind of “pacification” which began even before Munich, and which is being carried on under the new order of tyranny that seeks to spread over every continent today. The American people have unalterably set their faces against that tyranny.

I suppose that every realist knows that the democratic way of life is at this moment being directly assailed in every part of the world--assailed either by arms, or by secret spreading of poisonous propaganda by

those who seek to destroy unity and promote discord in nations that are still at peace. During sixteen long months this assault has blotted out the whole pattern of democratic life in an appalling number of independent nations, great and small. And the assailants are still on the march, threatening other nations, great and small.

Therefore, as your President, performing my constitutional duty to “give to the Congress information of the state of the Union,” I find it, unhappily, necessary to report that the future and the safety of our country and of our democracy are overwhelmingly involved in events far beyond our borders.

Armed defense of democratic existence is now being gallantly waged in four continents. If that defense fails, all the population and all the resources of Europe, and Asia, and Africa and Australasia will be dominated by conquerors. And let us remember that the total of those populations in those four continents, the total of those populations and their resources greatly exceeds the sum total of the population and the resources of the whole of the Western Hemisphere--yes, many times over.

In times like these it is immature--and incidentally, untrue--for anybody to brag that an unprepared America, single-handed, and with one hand tied behind its back, can hold off the whole world. No realistic American can expect from a dictator's peace international generosity, or return of true independence, or world disarmament, or freedom of expression, or freedom of religion--or even good business. Such a peace would bring no security for us or for our neighbors. “Those, who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.”

As a nation, we may take pride in the fact that we are softhearted; but we cannot afford to be soft-headed. We must always be wary of those who with sounding brass and a tinkling cymbal preach the “ism” of appeasement. We must especially beware of that small group of selfish men who would clip the wings of the American eagle in order to feather their own nests.

I have recently pointed out how quickly the tempo of modern warfare could bring into our very midst the physical attack which we must eventually expect if the dictator nations win this war.... The first phase of the invasion of this Hemisphere would not be the landing of regular troops. The necessary strategic points would be occupied by secret agents and by their dupes--and great numbers of them are already here, and in Latin America. As long as the aggressor nations maintain the offensive, they--not we--will choose the time and the place and the method of their attack.

And that is why the future of all the American Republics is today in serious danger. That is why this Annual Message to the Congress is unique in our history. That is why every member of the Executive Branch of the Government and every member of the Congress face great responsibility and great accountability. The need of the moment is that our actions and our policy should be devoted primarily--almost exclusively--to meeting this foreign peril. For all our domestic problems are now a part of the great emergency.

Just as our national policy in internal affairs has been based upon a decent respect for the rights and the dignity of all of our fellow men within our gates, so our national policy in foreign affairs has been based on a decent respect for the rights and the dignity of all nations, large and small. And the justice of morality must and will win in the end.

Our national policy is this: First, by an impressive expression of the public will and without regard to partisanship, we are committed to all-inclusive national defense.

Second, by an impressive expression of the public will and without regard to partisanship, we are committed to full support of all those resolute people everywhere who are resisting aggression and are thereby keeping war away from our Hemisphere. By this support, we express our determination that the democratic cause shall prevail; and we strengthen the defense and the security of our own nation.

Third, by an impressive expression of the public will and without regard to partisanship, we are committed to the proposition that principles of morality and considerations for our own security will never permit us to acquiesce in a peace dictated by aggressors and sponsored by appeasers. We know that enduring peace cannot be bought at the cost of other people's freedom.

In the recent national election there was no substantial difference between the two great parties in respect to that national policy. No issue was fought out on this line before the American electorate. And today it is abundantly evident that American citizens everywhere are demanding and supporting speedy and complete action in recognition of obvious danger.

Therefore, the immediate need is a swift and driving increase in our armament production. Leaders of industry and labor have responded to our summons. Goals of speed have been set. In some cases these goals are being reached ahead of time; in some cases we are on schedule; in other cases there are slight but not serious delays; and in some cases--and I am sorry to say very important cases--we are all concerned by the slowness of the accomplishment of our plans.

The Army and Navy, however, have made substantial progress during the past year. Actual experience is improving and speeding up our methods of production with every passing day. And today's best is not good enough for tomorrow.

I am not satisfied with the progress thus far made. The men in charge of the program represent the best in training, in ability, and in patriotism. They are not satisfied with the progress thus far made. None of us will be satisfied until the job is done. No matter whether the original goal was set too high or too low, our objective is quicker and better results....

New circumstances are constantly begetting new needs for our safety. I shall ask this Congress for greatly increased new appropriations and authorizations to carry on what we have begun. I also ask this Congress for authority and for funds sufficient to manufacture additional munitions and war supplies of many kinds, to be turned over to those nations which are now in actual war with aggressor nations.

Our most useful and immediate role is to act as an arsenal for them as well as for ourselves. They do not need manpower, but they do need billions of dollars worth of the weapons of defense. The time is near when they will not be able to pay for them all in ready cash. We cannot, and we will not, tell them that they must surrender, merely because of present inability to pay for the weapons which we know they must have.

I do not recommend that we make them a loan of dollars with which to pay for these weapons--a loan to be repaid in dollars. I recommend that we make it possible for those nations to continue to obtain war materials in the United States, fitting their orders into our own program. And nearly all of their materiel would, if the time ever came, be useful in our own defense. Taking counsel of expert military and naval authorities, considering what is best for our own security, we are free to decide how much should be kept here and how much should be sent abroad to our friends who by their determined and heroic resistance are giving us time in which to make ready our own defense.

For what we send abroad, we shall be repaid, repaid within a reasonable time following the close of hostilities, repaid in similar materials, or, at our option, in other goods of many kinds, which they can produce and which we need. Let us say to the democracies: "We Americans are vitally concerned in your defense of freedom. We are putting forth our energies, our resources and our organizing powers to give you the strength to regain and maintain a free world. We shall send you, in ever-increasing numbers, ships, planes, tanks, guns. This is our purpose and our pledge."

In fulfillment of this purpose we will not be intimidated by the threats of dictators that they will regard as a breach of international law or as an act of war our aid to the democracies which dare to resist their

aggression. Such aid is not an act of war, even if a dictator should unilaterally proclaim it so to be. And when the dictators, if the dictators, are ready to make war upon us, they will not wait for an act of war on our part. They did not wait for Norway or Belgium or the Netherlands to commit an act of war. Their only interest is in a new one-way international law, which lacks mutuality in its observance, and, therefore, becomes an instrument of oppression.

The happiness of future generations of Americans may well depend upon how effective and how immediate we can make our aid felt. No one can tell the exact character of the emergency situations that we may be called upon to meet. The Nation's hands must not be tied when the Nation's life is in danger.

Yes, and we must all prepare--all of us prepare--to make the sacrifices that the emergency--almost as serious as war itself--demands. Whatever stands in the way of speed and efficiency in defense--in defense preparations of any kind--must give way to the national need. A free nation has the right to expect full cooperation from all groups. A free nation has the right to look to the leaders of business, of labor, and of agriculture to take the lead in stimulating effort, not among other groups but within their own groups.

The best way of dealing with the few slackers or trouble makers in our midst is, first, to shame them by patriotic example, and, if that fails, to use the sovereignty of government to save government.

As men do not live by bread alone, they do not fight by armaments alone. Those who man our defenses, and those behind them who build our defenses, must have the stamina and the courage which come from unshakable belief in the manner of life which they are defending. The mighty action that we are calling for cannot be based on a disregard of all things the worth fighting for.

The Nation takes great satisfaction and much strength from the things which have been done to make its people conscious of their individual stake in the preservation of democratic life in America. Those things have toughened the fibre of our people, have renewed their faith and strengthened their devotion to the institutions we make ready to protect.

Certainly this is no time for any of us to stop thinking about the social and economic problems which are the root cause of the social revolution which is today a supreme factor in the world. For there is nothing mysterious about the foundations of a healthy and strong democracy. The basic things expected by our people of their political and economic systems are simple. They are:

Equality of opportunity for youth and for others.

Jobs for those who can work.

Security for those who need it.

The ending of special privilege for the few.

The preservation of civil liberties for all.

The enjoyment of the fruits of scientific progress in a wider and constantly rising standard of living.

These are the simple, the basic things that must never be lost sight of in the turmoil and unbelievable complexity of our modern world. The inner and abiding strength of our economic and political systems is dependent upon the degree to which they fulfill these expectations.

Many subjects connected with our social economy call for immediate improvement. As examples: We should bring more citizens under the coverage of old-age pensions and unemployment insurance. We should widen the opportunities for adequate medical care. We should plan a better system by which persons deserving or needing gainful employment may obtain it.

I have called for personal sacrifice. And I am assured of the willingness of almost all Americans to respond to that call. A part of the sacrifice means the payment of more money in taxes. In my Budget Message I will recommend that a greater portion of this great defense program be paid for from taxation than we are

paying for today. No person should try, or be allowed, to get rich out of the program; and the principle of tax payments in accordance with ability to pay should be constantly before our eyes to guide our legislation. If the Congress maintains these principles, the voters, putting patriotism ahead of pocketbooks, will give you their applause.

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression--everywhere in the world.

The second is freedom of every person to worship God in his own way--everywhere in the world.

The third is freedom from want--which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants--everywhere in the world.

The fourth is freedom from fear--which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor--anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.

To that new order we oppose the greater conception--the moral order. A good society is able to face schemes of world domination and foreign revolutions alike without fear.

Since the beginning of our American history, we have been engaged in change--in a perpetual peaceful revolution--a revolution which goes on steadily, quietly adjusting itself to changing conditions--without the concentration camp or the quick-lime in the ditch. The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society.

This nation has placed its destiny in the hands and heads and hearts of its millions of free men and women; and its faith in freedom under the guidance of God. Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them. Our strength is our unity of purpose.

To that high concept there can be no end save victory.

## State of the Union Address (1944)

By 1944, the Allies were winning World War II, and Roosevelt had already laid the foundation for the United Nations. He returned to the theme of his Commonwealth Club Address, but expanded the scope of economic rights worldwide. He listed eight specific provisions that formed an economic bill of rights. While these have never become constitutional rights, with one exception (the right to a decent home) they became key components of Democratic Party policies over the next two decades. Most of them have been partially enacted into federal law. However, Roosevelt's belief that Russia and China sought peace as much as the U.S. and U.K. would prove mistaken, as they would become the United States' greatest rivals over the next half-century.

This Nation in the past two years has become an active partner in the world's greatest war against human

slavery. We have joined with like-minded people in order to defend ourselves in a world that has been gravely threatened with gangster rule.

But I do not think that any of us Americans can be content with mere survival. Sacrifices that we and our allies are making impose upon us all a sacred obligation to see to it that out of this war we and our children will gain something better than mere survival.

We are united in determination that this war shall not be followed by another interim which leads to new disaster—that we shall not repeat the tragic errors of ostrich isolationism—that we shall not repeat the excesses of the wild twenties when this Nation went for a joy ride on a roller coaster which ended in a tragic crash.

When Mr. Hull went to Moscow in October, and when I went to Cairo and Teheran in November, we knew that we were in agreement with our allies in our common determination to fight and win this war. But there were many vital questions concerning the future peace, and they were discussed in an atmosphere of complete candor and harmony.

In the last war such discussions, such meetings, did not even begin until the shooting had stopped and the delegates began to assemble at the peace table. There had been no previous opportunities for man-to-man discussions which lead to meetings of minds. The result was a peace which was not a peace. That was a mistake which we are not repeating in this war...

The one supreme objective for the future, which we discussed for each Nation individually, and for all the United Nations, can be summed up in one word: Security.

And that means not only physical security which provides safety from attacks by aggressors. It means also economic security, social security, moral security—in a family of Nations.

In the plain down-to-earth talks that I had with the Generalissimo [Chaing Kai-Shek] and Marshal Stalin and Prime Minister Churchill, it was abundantly clear that they are all most deeply interested in the resumption of peaceful progress by their own peoples—progress toward a better life. All our allies want freedom to develop their lands and resources, to build up industry, to increase education and individual opportunity, and to raise standards of living.

All our allies have learned by bitter experience that real development will not be possible if they are to be diverted from their purpose by repeated wars—or even threats of war.

China and Russia are truly united with Britain and America in recognition of this essential fact: The best interests of each Nation, large and small, demand that all freedom-loving Nations shall join together in a just and durable system of peace. In the present world situation, evidenced by the actions of Germany, Italy, and Japan, unquestioned military control over disturbers of the peace is as necessary among Nations as it is among citizens in a community. And an equally basic essential to peace is a decent standard of living for all individual men and women and children in all Nations. Freedom from fear is eternally linked with freedom from want...

It has been shown time and again that if the standard of living of any country goes up, so does its purchasing power—and that such a rise encourages a better standard of living in neighboring countries with whom it trades. That is just plain common sense—and it is the kind of plain common sense that provided the basis for our discussions at Moscow, Cairo, and Teheran...

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. “Necessitous men are not free men.” People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed. Among these are:

The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

America’s own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world...



# 31. Herbert Hoover's Fears of Government Domination

## Herbert Hoover (1874-1964)

Herbert Hoover was raised in Oregon and became one of Stanford's first graduates. He became a successful mining engineer, working in several countries including China and Australia. In 1914, he headed an international relief program in Belgium. After the US entered World War I, President Wilson appointed him to oversee food production throughout the country. After the war, he returned to Europe to supervise the American Relief Administration in Eastern Europe. He ran for the Republican nomination for president in 1920 but lost out to the better-connected Warren Harding.

Hoover became Secretary of Commerce under Harding and stayed on after Calvin Coolidge succeeded him in 1923. Hoover was widely praised for his administrative acumen, and the Republican Party chose him as its nominee in 1928. He easily defeated Democratic nominee Al Smith in the 1928 general election. His presidency was preoccupied with attempting to help the US recover from the Great Depression of 1929. Unwilling to engage in extensive borrowing to restart the economy, Coolidge chose to support high tariffs to protect American industry from international competition. This led to a trade war that worsened the US economy, and by 1932 public opinion had turned strongly against the Republicans. Hoover was routed by Franklin Roosevelt in the general election that November.

After leaving the White House, Hoover continued to be involved in politics, criticizing the New Deal as an assault on individual freedom. He also opposed American involvement in Europe, backing the isolationist wing of the Republican Party. He lived for 31 years after serving as President, which is second only to Jimmy Carter.

## This Challenge to Liberty (1936)

Hoover backed republican Alf Landon's challenge to Franklin Roosevelt in 1936. He portrayed the New Deal as inimical to American values, suggesting that Democratic policies were undermining individual freedom and weakening the ability of Americans to succeed on their own. Much like William Graham Sumner, Hoover

suggested that government intervention in the economy had created a new class of recipients of government assistance who shared the Roosevelt's administration's interest in government control of the economy. Alluding to the fact that unemployment had peaked at 25%, he argued that free enterprise should not be shackled when it had worked well for the remaining 75%. He claimed that Roosevelt's massive expansion of the federal government would enslave Americans to high taxes and extensive government control over their lives, and promised to continue fighting even though it was clear that Roosevelt would win the 1936 election in a landslide—which he did.

...Through four years of experience this New Deal attack upon free institutions has emerged as the transcendent issue in America.

All the men who are seeking for mastery in the world today are using the same weapons. They sing the same songs. They all promise the joys of Elysium without effort. But their philosophy is founded on the coercion and compulsory organization of men. True liberal government is founded on the emancipation of men. This is the issue upon which men are imprisoned and dying in Europe right now.

The rise of this issue has dissolved our old party lines. The New Deal repudiation of Democracy has left the Republican Party alone the guardian of the Ark of the Covenant with its charter of freedom. The tremendous import of this issue, the peril to our country has brought the support of the ablest leaders of the Democratic Party. It is no passing matter which enlists side by side the fighting men who have opposed each other over many years. It is the unity demanded by a grave danger to the Republic...

Freedom does not die from frontal attack. It dies because men in power no longer believe in a system based upon Liberty.

[I]llegal invasions of the Constitution are but the minor artillery with which this New Deal philosophy of government is being forced upon us. They are now using a more subtle and far more effective method of substituting personal power and centralized government for the institutions of free men. It is not by violation of the Constitution that they are making headway today. It is through taking vast sums of the people's money and then manipulating its spending to build up personal power. By this route relief has been centralized in their hands. By this route government has entered into business in competition with the citizen. In this way a score of new instruments of public power have been created. By this route the ordinary functions of government have been uselessly expanded with a double bookkeeping to conceal it. Public funds are used right and left to subsidize special groups of our citizens and special regions of the country. At public expense there is a steady drip of propaganda to poison the public mind.

Through this spending there grows a huge number of citizens with a selfish vested interest in continuing this centralization of power. It has also made millions of citizens dependent upon the government.

Thus also have been built huge political bureaucracies hungry for more power. This use of money has enabled the independence of Congress to be sapped by the pork barrel. It has subtly undermined the rights and the responsibility of States and local governments. Out of all this we see government daily by executive orders instead of by open laws openly arrived at.

The New Deal taxes are in forms which stifle the growth of small business and discourage new enterprise. By stifling private enterprise the field is tilled for further extension of government enterprise. Intricate taxes are interpreted by political bureaucrats who coerce and threaten our business men. By politically managed

currency the President has seized the power to alter all wages, all prices, all debts, all savings at will. But that is not the worst. They are creating personal power over votes. That crushes the first safeguard of liberty.

Does Mr. Roosevelt not admit all this in his last report on the state of the Union: "We have built up new instruments of public power" which he admits could "provide shackles for the liberties of the people." Does freedom permit any man or any government any such power? Have the people ever voted for these shackles?

Has he abandoned this "new order," this "planned economy" that he has so often talked about? Will he discharge these associates of his who daily preached the "new order" but whom he does not now allow to appear in this campaign?

Is Mr. Roosevelt not asking for a vote of confidence on these very breaches of liberty?

Is not this very increase in personal power the suicide road upon which every democratic government has died from the time of Greece and Rome down to the dozen liberal governments that have perished in Europe during this past twenty years?

I gave the warning against this philosophy of government four years ago from a heart heavy with anxiety for the future of our country. It was born from many years' experience of the forces moving in the world which would weaken the vitality of American freedom. It grew in four years of battle as President to uphold the banner of free men....

I rejected the notion of great trade monopolies and price fixing through codes. That could only stifle the little business man by regimenting him under his big brother. That idea was born of certain American Big Business and grew up to be the NRA.

I rejected the schemes of "economic planning" to regiment and coerce the farmer. That was born of a Roman despot fourteen hundred years ago and grew up into the AAA.

I refused national plans to put the government into business in competition with its citizens. That was born of Karl Marx.

I vetoed the idea of recovery through stupendous spending to prime the pump. That was born of a British professor.

I threw out attempts to centralize relief in Washington for politics and social experimentation. I defeated other plans to invade State rights, to centralize power in Washington. Those ideas were born of American radicals.

I stopped attempts at currency inflation and repudiation of government obligation. That was robbery of insurance policy holders, savings banks depositors and wage earners. That was born of the early Brain Trusters.

I rejected all these things because they would not only delay recovery but because I knew that in the end they would shackle free men....

Our people did not recognize the gravity of the issue when I stated it four years ago. That is no wonder, for the day Mr. Roosevelt was elected Recovery was in progress, the Constitution was untrampled, the integrity of the government and the institutions of freedom were intact. It was not until after the election that the people began to awake. Then the realization of intended tinkering with the currency drove bank depositors into the panic that greeted Mr. Roosevelt's inauguration. Recovery was set back for two years, and hysteria was used as the bridge to reach the goal of personal government.

I am proud to have carried the banner of free men to the last hour of the term my countrymen entrusted it to me. It matters nothing in the history of a race what happens to those who in their time have carried the banner of free men. What matters is that the battle shall go on.

The people know now the aims of this New Deal philosophy of government. We propose instead leadership and authority in government within the moral and economic framework of the American System.

We propose to hold to the Constitutional safeguards of free men.

We propose to relieve men from fear, coercion and spite that are inevitable in personal government.

We propose to demobilize and decentralize all this spending upon which vast personal power is being built. We propose to amend the tax laws so as not to defeat free men and free enterprise.

We propose to turn the whole direction of this country toward liberty, not away from it.

The New Dealers say that all this that we propose is a worn-out System; that this machine age requires new measures for which we must sacrifice some part of the freedom of men. Men have lost their way with a confused idea that governments should run machines. Man-made machines cannot be of more worth than men themselves. Free men made these machines. Only free spirits can master them to their proper use.

The relation of our government with all these questions is complicated and difficult. They rise into the very highest ranges of economics, statesmanship, and morals.

And do not mistake. Free government is the most difficult of all government. But it is everlastingly true that the plain people will make fewer mistakes than any other group of men no matter how powerful. But free government implies vigilant thinking and courageous living and self-reliance in a people.

Let me say to you that any measure which breaks our dykes of freedom will flood the land with misery....

We realize that one-quarter of our people are not able today to have the standards we desire. But we are proud of a system that has given security and comfort to three-quarters of our families and in which even the under quarter ranks higher than that of any nation in the world.

National wisdom and national ideals require that we constantly develop the economic forces which will lift this one-quarter of our people. It requires that we at the same time attain greater stability to employment and to agriculture in the other three-quarters.

This is no occasion to elaborate the details of a program. But surely we must dump the whole New Deal theory of restriction of production, of code monopolies, of constantly higher prices for manufactured goods. We must reject their currency and credit policies, which will repeat our calamities of booms and depressions with greater heights and depths. We must reduce spending and amend the forms of taxation which now destroy enterprise and employment. We hold over-swollen fortunes must be distributed through pressure of taxes....

It may be that some super mind can tell us what to do each day for our own good or can even force us to do it. But we haven't seen any indication of such mind among the New Dealers. This country moves forward because each individual of all these millions, each thinking for himself, using his own best judgment, using his own skill and experience, becomes expert in bettering his family and his community. To do that they must captain their own souls....

You might think that reform and change to meet new conditions of life are discoveries of the New Deal. Free men have always applied reform. We have been reforming and changing ever since George Washington. Democracy is not static. It is a living force. Every new idea, every new invention offers opportunity for both good and evil.

We are in need of reform every day in the week as long as men are greedy for money or power. We need a whole list of reforms right now, including the reform of these people who have created a gigantic spoils system as a method of seizing political power.

Many of the problems discussed in this campaign concern our material welfare. That is right. But there are things far more important to a nation than material welfare. It is possible to have a prosperous country

under a dictatorship. It is not possible to have a free country. No great question will ever be settled in dollars and cents. Great questions must be settled on moral grounds and the tests of what makes free men. What is the nation profited if it shall gain the whole world and lose its own soul?

We want recovery. Not alone economic recovery. We must have moral recovery. And there are many elements in this.

We must re-establish truth and morals in public life. No people will long remain a moral people under a government that repudiates its obligations, that uses public funds to corrupt the people, that conceals its actions by double bookkeeping.

We must have government that builds stamina into communities and men. That makes men instead of mendicants. We must stop this softening of thrift, self-reliance and self-respect through dependence on government. We must stop telling youth that the country is going to the devil and they haven't a chance. We must stop this dissipating the initiative and aspirations of our people. We must revive the courage of men and women and their faith in American liberty. We must recover these spiritual heritages of America.

All this clatter of class and class hate should end. Thieves will get into high places as well as low places and they should both be given economic security--in jail. But they are not a class. This is a classless country. If we hold to our unique American ideal of equal opportunity there can never be classes or masses in our country. To preach these class ideas from the White House is new in American life. There is no employing class, no working class, no farming class. You may pigeonhole a man or woman as a farmer or a worker or a professional man or an employer or even a banker. But the son of the farmer will be a doctor or a worker or even a banker, and his daughter a teacher. The son of a worker will be an employer--or maybe President. And certainly the sons of even economic royalists have a bad time holding the title of nobility.

The glory of our country has been that every mother could look at the babe in her arms with confidence that the highest position in the world was open to it.

The transcendent issue before us today is free men and women. How do we test freedom? It is not a catalogue of political rights. It is a thing of the spirit. Men must be free to worship, to think, to hold opinions, to speak without fear. They must be free to challenge wrong and oppression with surety of justice. Freedom conceives that the mind and spirit of man can be free only if he be free to pattern his own life, to develop his own talents, free to earn, to spend, to save, to acquire property as the security of his old age and his family.

Freedom demands that these rights and ideals shall be protected from infringement by others, whether men or groups, corporations or governments.

The conviction of our fathers was that all these freedoms come from the Creator and that they can be denied by no man or no government or no New Deal. They were spiritual rights of men. The prime purpose of liberal government is to enlarge and not to destroy these freedoms. It was for that purpose that the Constitution of the United States was enacted. For that reason we demand that the safeguards of freedom shall be upheld. It is for this reason that we demand that this country should turn its direction from a system of personal centralized government to the ideals of liberty.

And again I repeat that statement of four years ago--"This campaign is more than a contest between two men. It is a contest between two philosophies of government."

Whatever the outcome of this election that issue is set. We shall battle it out until the soul of America is saved.

## 32. Walter Lippmann and the Tyranny of Central Planning

### Walter Lippmann (1889-1974)

Born to a prosperous family in New York City, Lippmann studied philosophy and languages at Harvard. He became a journalist and in 1913 founded *The New Republic* with Herbert Croly. He aided Woodrow Wilson in his writing his Fourteen Points speech that outlined the principles of the Versailles Treaty, but criticized the president for his extensive censorship of the press during World War I.

Lippmann is best known for his critique of the contemporary news media as being too willing to accept what its sources said without subjecting it to critical analysis. He was also critical of the American public, which he saw as unintelligent and uninformed, and thus of little help in solving the problems facing the country. Lippmann preferred that government decisions be guided by a technocratic elite, but he drew the line at centralized economic planning, which he saw as inimical to both freedom and democracy.

### Planning in an Economy of Abundance (1937)

As the Roosevelt administration transformed the US economy through adoption of various forms of public assistance, some advocated adopting centralized economic planning as a way of attaining prosperity for all. Lippmann acknowledged that such planning made sense during wartime, but criticized it in peacetime due to the widespread discretion that government officials would have in setting planning targets. Lippmann's work thus presents a critique of a planned economy in peacetime as well as a justification for permitting such planning as a wartime emergency measure.

Although all the known examples of the species have had their origin in war or hold as their objective the preparation for war, it is widely believed that a collectivist order could be organized for peace and for plenty. "It is nonsense," says Mr. George Soule, in *A Planned Society*, "to say that there is any physical impossibility of doing for peace purposes the sort of thing we actually did for war purposes." If the state can organize for

war, why can it not organize for peace and plenty? If it can mobilize against a foreign enemy, why not against poverty, squalor, and the hideous social evils that attend them?

It is plain enough that a dictated collectivism is necessary if a nation is to exert its maximum military power: very evidently its capital and labor must not be wasted on the making of luxuries; it can tolerate no effective dissent or admit that men have any right to the pursuit of private happiness. No one can dispute that. The waging of war must be authoritarian and collectivist. The question we must now consider is whether a system which is essential to the conduct of war can be adapted to the civilian ideal of peace and plenty. Can this form of organization, historically associated with military purposes and necessities, be used for the general improvement of men's condition? It is a critical question. For in answering it we shall be making up our minds whether the hopes invested in the promises of the collectivists are valid, and therefore entitled to our allegiance.

We must remind ourselves again, not only why collectivism is necessary in war, but why war is so favorable to collectivism. In wartime the political conditions fix the "imperatives" which Mr. Stuart Chase lays down in *The Economy of Abundance*: "the scrapping of outworn political boundaries [vide Belgium, Greece, and the neutrals] and of constitutional checks and balances, where the issues involved are technical [sic]; centralization of government; the overhead planning and control of economic activity." Under the system of centralized control without constitutional checks and balances, the war spirit identifies dissent with treason, the pursuit of private happiness with slackerism and sabotage, and, on the other side, obedience with discipline, conformity with patriotism. Thus at one stroke war extinguishes the difficulties of planning, cutting out from under the individual any moral ground as well as any lawful ground on which he might resist the execution of the official plan. The dissenter, the conscientious objector, the indifferent and the discontented, have no rights which anyone is bound to respect, and if they are dealt with leniently it is because the war administrators have scruples or regard the opposition as negligible. In the degree of their interference with the prosecution of the war, they have no more standing against military authority than has been enjoyed by the victims of Lenin, Trotsky, Stalin, Mussolini, and Hitler. The polite name for all this has been found by Mr. Soule, who puts first among "the lessons from our war planning" and names as one of the four basic conditions, if we are to plan successfully for peace, that "we must have an objective which can arouse general loyalty and enthusiasm."

War easily provides such an objective, and it is incomparably suited to the creation of a collective sentiment in which all lesser purposes are submerged. For the sentiment is specific and intelligible to everyone. The cry that the enemy is at the gates, even the cry that beyond the deserts and mountains of Africa lies the promised land, can be understood by all. This is a very different thing from blowing the bugles and summoning the people to the abundant life to be achieved by "capacity operation of its plant, on the balanced load principle." Anyone can imagine an enemy and hate him; but the concept of an abundant life is merely the beginning of an interminable argument. This is the reason, based on a deep psychological necessity, why the socialist propaganda has always relied more upon an appeal to class war than upon the vision of a socialist society, why the effective leaders from Marx to Lenin have always derided as "unscientific" and "utopian" any detailed concern with the nature of a socialist society. Their intuition has surely been sound. For it is the war spirit that most readily imposes unanimity for collective action among masses of men. When men are at peace, they have an incorrigible tendency (if you like collectivism), a noble tendency (if you dislike it), to become individuals. For reasons of this sort, war provides an excellent climate for the administration of a planned economy....

An overhead planning and control of economic activity is feasible because the plan is calculable. It is

calculable because there is a specific purpose to be achieved, the supply of a military force of known size with known requirements out of known resources, and to this concrete objective all other needs must conform. The planners know definitely what goods are needed and in what amount. There is no problem of how much can be sold. There is only the problem of how much can be produced. There is no worry about the varying tastes of voluntary consumers; the consumer is rationed. There is no such thing as a choice of occupation; labor is conscripted. Thus, though war economies are notoriously inefficient, they can be administered by the method of overhead planning and control because, theoretically at least, there are no unknown factors, and there can be no resistance; it is possible, therefore, to calculate the relation of the means to the end and execute a plan whether people like it or not....

Without such specific directives it would be impossible to plan. Yet in the popular discussion of planning this crucial point is rarely appreciated, and it is naïvely assumed that the planning boards determine the character of the plan. They can no more do that than an architect can plan a building until he is informed whether it is to be a church, a factory, a tenement, a garage, or a gambling casino. Even when he knows that, he has to be told whether the church is to be a cathedral or a mosque, whether the garage is to hold one Ford or a fleet of omnibuses. If he knows what is wanted he can plan a building. But no planning can tell him what is wanted. That decision must come from someone higher up than the planner: in a society it must come from the sovereign.

The question whether an economy can be planned for abundance, for the general welfare, for the improvement of the popular standard of life, comes down, therefore, to the question of whether concepts of this sort can be translated into orders for particular goods which are as definite as the “requisitions” of a general staff. An objective like “the general welfare” has to be defined as specific quantities of specific goods—so many vegetables, so much meat, this number of shoes, neckties, collar buttons, aspirin tablets, frame houses, brick houses, steel buildings. Unless this can be done there will not exist the primary schedule of requirements from which to calculate the plan. The general staff can tell the planner exactly how much food, clothing, ammunition, it needs for each soldier. But in time of peace who shall tell the planners for abundance what they must provide?

The answer given by Mr. Lewis Mumford, in *Technics and Civilization*, is that “a normal standard of consumption” can be defined by biologists, moralists, and men of cultured taste; that the goods necessary to support it can be “standardized, weighed, measured”; that they should be supplied to all members of the community. He calls this “basic communism.” It is not quite clear to me whether he believes that the goods listed in this normal standard are to be furnished as they are to soldiers out of a public commissariat or whether he proposes to guarantee everyone a basic money income sufficient to buy a “normal” quantity of goods. If he has in mind the providing of rations of standard goods, then, of course, he has considerable confidence in his ability to determine what is good for the people, small respect for their varied tastes, and an implied willingness to make them like what they ought to like. Conceivably this could be done. But I should suppose it could be done only under the compulsion of necessity: that is, if goods were so scarce that the choice lay between the official ration and nothing. On the other hand, if he has in mind a guaranteed minimum income which may be spent freely, then he has no way of knowing whether the consumers will have his own excellent tastes, and go to the stores demanding what he thinks they should demand. But if they do not wish to buy what he would like them to buy, then his planners are bound to find that there is a scarcity of some goods and a glut of others....

[T]he fundamental characteristic of a rising standard of life is that an increasing portion of each man’s income is spent on unessentials; it is applied, in other words, to things in which preference rather than



necessity is the criterion. If all income had to be spent on the absolute necessities of life, the goods required would be few in number and their production could readily be standardized into a routine. Now it should be noted that all known examples of planned economy have flourished under conditions of scarcity. In the war economies of 1914-1918, in the collectivist régimes in Russia, Italy, and Germany, the supply of necessary goods has never been equal to the demand. Under such conditions, as during a siege or a famine, the communist principle is not only feasible but necessary. But as productivity rises above the level of necessity the variety of choice is multiplied; and as choice is multiplied the possibility of an overhead calculation of the relation between demand and supply diminishes....

By what formula could a planning authority determine which goods to provide against the purchases of thirty million families with seventy billions of free spendable income? The calculation is not even theoretically possible. For, unless the people are to be deprived of the right to dispose of their incomes voluntarily, anyone who sets out to plan American production must first forecast how many units of each commodity the people would buy, not only at varying prices for that commodity, but in all possible combinations of prices for all commodities.

Within limits, some narrow and others almost indefinitely elastic, more articles of one sort will be bought at a low price than at a high price. Let us suppose, then, that the planning authority wishes to make a five-year plan for the production of automobiles, and that by means of the familiar mathematical curves used by economists it determines that at \$500 a car the people will buy ten million new cars in five years. The planners could then calculate the amount of steel, wood, glass, leather, rubber, gasoline, oil, pipe lines, pumps, filling stations, needed to manufacture and service that many additional automobiles. This would be theoretically feasible. The problem would not differ essentially from planning to supply an army; the industrial system would be planned to produce ten million automobiles. There would be a single, specific quantitative objective as the premise of the plan. But such a planned economy would be for monomaniacs.

So let us suppose that the authority has also to plan the construction of houses. The task immediately becomes more complicated. For now it is no longer possible to stop at determining how many houses the people will buy at, let us say, \$3000 a piece. It is necessary also to decide how they will choose, and in what proportions, between a new car at \$500 and a new house at \$3000. With cheap houses available, some will prefer them to cars; others will prefer cheap cars to houses. The planners would have to predict the choice. They would then find, of course, that since houses also require steel, wood, glass, they would have to recalculate the plan drawn up when they had only automobiles in mind.

But that would not be the end of their difficulties. For there would be a party saying that housing is more important or, as Mr. Mumford would put it, more vital than joy-riding; that therefore cars should cost 20 per cent more, or \$600, and houses 20 per cent less, or \$2400. The planners would have to consult an oracle; they could have no objective criterion by which to determine whether freedom of movement or stability of residence was more conducive to an abundant life. But suppose they listened to Mr. Mumford, and agreed to raise the price of cars and reduce the price of houses. Everything would have to be recalculated and replanned. For now there would have to be less rubber imported, but more cement produced domestically; there would have to be less filling-station equipment and more bathroom fixtures.

In line with the decision to favor a settled as against a nomadic way of life, many other activities would have to be replanned. There would probably be more demand for radios and carpet slippers, less for movies and roadside eating places. The state would either have to provide more subways and buses to take the man of the family to work, the woman to the market, and the child to school, or have to move factories, shopping centres, and schools nearer to the home. The authority would have to calculate these shifting demands

correctly in order to do away with the chaos and waste of competitive individualism. It would require some mighty arithmetic. As a matter of fact, a regiment of Einsteins could not make the calculation, because the problem is inherently incalculable. For even if we make the fantastic hypothesis that the planning authority could draw up reliable estimates of what the demand would be in all combinations of prices, for all the thousands of articles that Americans buy, there is still no way of deciding which schedule would fit the people's conception of the most abundant life.

Out of all the possible plans of production some schedule would have to be selected arbitrarily. There is absolutely no objective and universal criterion by which to decide between better houses and more automobiles, between pork and beef, between the radio and the movies. In military planning one criterion exists: to mobilize the most powerful army that national resources will support. That criterion can be defined by the general staff as so many men with such and such equipment, and the economy can be planned accordingly. But civilian planning for a more abundant life has no definable criterion. It can have none. The necessary calculations cannot, therefore, be made, and the concept of a civilian planned economy is not merely administratively impracticable; it is not even theoretically conceivable. The conception is totally devoid of meaning, and there is, speaking literally, nothing in it.

The primary factor which makes civilian planning incalculable is the freedom of the people to spend their income. Planning is theoretically possible only if consumption is rationed. For a plan of production is a plan of consumption. If the authority is to decide what shall be produced, it has already decided what shall be consumed. In military planning that is precisely what takes place: the authorities decide what the army shall consume and what of the national product shall be left for the civilians. No economy can, therefore, be planned for civilians unless there is such scarcity that the necessities of existence can be rationed. As productivity rises above the subsistence level, free spending becomes possible. A planned production to meet a free demand is a contradiction in terms and as meaningless as a square circle.

It follows, too, that a plan of production is incompatible with voluntary labor, with freedom to choose an occupation. A plan of production is not only a plan of consumption, but a plan of how long and where the people shall work, and what they shall work at. By no possible manipulation of wage rates could the planners attract to the various jobs precisely the right number of workers. Under voluntary labor, particularly with consumption rationed and standardized, the unpleasant jobs would be avoided and the good jobs overcrowded. Therefore the inevitable and necessary complement of the rationing of consumption is the conscription of labor, either by overt act of law or by driving workers into the undesirable jobs by offering them starvation as the alternative. This is, of course, exactly what happens in a thoroughly militarized state.

The conscription of labor and the rationing of consumption are not to be regarded as transitional or as accidental devices in a planned economy. They are the very substance of it. To make a five-year plan of what a whole nation shall produce is to determine how it shall labor and what it shall receive. It can receive only what the plan provides. It can obtain what the plan provides only by doing the work which the plan calls for. It must do that work or the plan is a failure; it must accept what the plan yields in the way of goods or it must do without....

[W]ho, in a civilian society, is to decide what is to be the specific content of the abundant life? It cannot be the people deciding by referendum or through a majority of their elected representatives. For if the sovereign power to pick the plan is in the people, the power to amend it is there also at all times. A plan subject to change from month to month or even from year to year is not a plan; if the decision has been taken to make ten million cars at \$500 and one million suburban houses at \$3000, the people cannot change

their minds a year later, scrap the machinery to make the cars, abandon the houses when they are partly built, and decide to produce instead skyscraper apartment houses and underground railroads.

There is, in short, no way by which the objectives of a planned economy can be made to depend upon popular decision. They must be imposed by an oligarchy of some sort, and that oligarchy must, if the plan is to be carried through, be without responsibility in matters of policy. Individual oligarchs might, of course, be held accountable for breaches of the law just as generals can be court-martialed. But their policy can no more be made a matter of continuous accountability to the voters than the strategic arrangements of the generals can be determined by the rank and file. The planning board or their superiors have to determine what the life and labor of the people shall be.

Not only is it impossible for the people to control the plan, but, what is more, the planners must control the people. They must be despots who tolerate no effective challenge to their authority. Therefore civilian planning is compelled to presuppose that somehow the despots who climb to power will be benevolent—that is to say, will know and desire the supreme good of their subjects. This is the implicit premise of all the books which recommend the establishment of a planned economy in a civilian society. They paint an entrancing vision of what a benevolent despotism could do. They ask—never very clearly, to be sure—that somehow the people should surrender the planning of their existence to “engineers,” “experts,” and “technologists,” to leaders, saviors, heroes. This is the political premise of the whole collectivist philosophy: that the dictators will be patriotic or class-conscious, whichever term seems the more eulogistic to the orator. It is the premise, too, of the whole philosophy of regulation by the state, currently regarded as progressivism. Though it is disguised by the illusion that a bureaucracy accountable to a majority of voters, and susceptible to the pressure of organized minorities, is not exercising compulsion, it is evident that the more varied and comprehensive the regulation becomes, the more the state becomes a despotic power as against the individual. For the fragment of control over the government that one man exercises through his vote is in no effective sense proportionate to the authority exercised over him by the government.

Benevolent despots might indeed be found. On the other hand, they might not be. They may appear at one time; they may not appear at another. The people, unless they choose to face the machine guns on the barricades, can take no steps to see to it that benevolent, despots are selected and the malevolent cashiered. They cannot select their despots. The despots must select themselves, and, no matter whether they are good or bad, they will continue in office so long as they can suppress rebellion and escape assassination.

Thus, by a kind of tragic irony, the search for security and a rational society, if it seeks salvation through political authority, ends in the most irrational form of government imaginable—in the dictatorship of casual oligarchs, who have no hereditary title, no constitutional origin or responsibility, who cannot be replaced except by violence. The reformers who are staking their hopes on good despots, because they are so eager to plan the future, leave unplanned that on which all their hopes depend. Because a planned society must be one in which the people obey their rulers, there can be no plan to find the planners: the selection of the despots who are to make society so rational and so secure has to be left to the insecurity of irrational chance.

## UNIT VII

# THE STRUGGLE FOR RACIAL EQUALITY

By the late 1940s, most Americans had come to accept the need for government to play an active role in promoting social welfare. However, there was still great disparity in the treatment of people of color. While the federal government was desegregated in the late 1940s, numerous states and localities relied on *Plessy v. Ferguson* in maintaining a dual system of facilities that were rarely equal for people of different races.

The National Association for the Advancement of Colored People (NAACP) sponsored a series of lawsuits in the 1930s and 1940s that succeeded in showing that the facilities for people of color were far inferior than those for whites. The organization's ultimate goal was to overturn *Plessy*, which it sought to do through a series of lawsuits against segregated school districts. Five of these cases reached the Supreme Court in 1952 under the caption *Brown v. Board of Education of Topeka*. Two years later, Chief Justice Earl Warren's unanimous opinion held that segregated public education violated the Equal Protection Clause.

This decision gave substantial credibility to advocates of equality, who sought to dismantle legalized segregation and create a country that prohibited discrimination on the basis of race. This was not an easy struggle, as segregationist refused to back down for almost two decades. One of the leaders of the struggle was Martin Luther King Jr., a minister who used a campaign of non-violent civil disobedience to demonstrate how race affected the treatment of Americans. He was a powerful writer and speaker, and his Letter from the Birmingham Jail and Speech at the Lincoln Memorial illustrate the method of non-violent protest that he promoted to change law and society. Malcolm X (he later took the name Malik el-Shabazz) initially called for blacks to withdraw into separate enclaves, but later recognized that an integrated country was preferable. In a speech that became known for its phrase "the ballot or the bullet," X contended that if the federal government failed to ensure voting rights for blacks, there would be no option but resorting to violent protest. After his assassination in 1965, Congress passed the Voting Rights Act to protect the voting rights of racial minorities.



# 33. The Supreme Court Ends Public Segregation

## Earl Warren (1891-1974)

Born to a poor family in Los Angeles, Earl Warren received a law degree from the University of California, Berkeley in 1914. After serving in World War I, he became a prosecutor and was elected Alameda County District Attorney in 1925. He was elected California's first full-time attorney general in 1938, and expanded a California program that confiscated land from owners who had Japanese ancestry.

Warren backed Franklin Roosevelt's internment of Japanese in 1942 and was elected Governor of California later that year. He enjoyed great popularity and was reelected twice. He was the unsuccessful Republican nominee for VP in 1948, and sought the presidency in 1952, also without success. He ultimately backed Eisenhower's nomination, and was promised his first Supreme Court appointment.

When Chief Justice Vinson died, Eisenhower gave Warren a recess appointment so he could immediately join the Court as the new Chief Justice. He served over 15 years, accumulating one of the most liberal voting records in history. Warren announced his resignation in 1968 to allow Democratic President Lyndon Johnson to fill his position, but Johnson's nominee Abe Fortas was filibustered and the Senate was unable to confirm him before Johnson's term expired. Warren remained Chief Justice until Richard Nixon's nominee Warren Burger was confirmed in June 1969.

## *Brown v. Board of Education (1954)*

After the Supreme Court upheld the constitutionality of racial segregation in *Plessy v. Ferguson* in 1896, segregated public schools were the norm in many areas of the country. While in the twentieth century many states eliminated racial classifications, schools in 17 states legally required segregation of students by race until the 1950s. In 1951, the NAACP filed a series of cases challenging the constitutionality of segregated public education. Initially, they were successful on only one state (Delaware), but they appealed to the Supreme Court, which consolidated five cases for oral argument in 1953. When the Justices first met to decide the cases, they

were deadlocked, and Chief Justice Fred Vinson ordered that the case be reargued later that year. However, he died before the reargument and was replaced by Earl Warren, who was strongly opposed to continuing segregation. Warren convinced three justices to change their views, which allowed him to write a unanimous decision holding that segregated public education was unconstitutional under the Equal Protection Clause.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion. In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called “separate but equal” doctrine announced by this Court in *Plessy v. Ferguson*. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not “equal” and cannot be made “equal,” and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then-existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among “all persons born or naturalized in the United States.” Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty...

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of “separate but equal” did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, *supra*, involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the “separate but equal” doctrine in the field of public education. In *Cumming v. County Board of Education* and *Gong Lum v. Rice* the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada*; *Sipuel v. Oklahoma*; *Sweatt v.*

*Painter*; *McLaurin v. Oklahoma State Regents*. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter*, *supra*, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other “tangible” factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. In *Sweatt v. Painter*, *supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on “those qualities which are incapable of objective measurement but which make for greatness in a law school.” In *McLaurin v. Oklahoma State Regents*, *supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: “[H]is ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.”

Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs: “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.”

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this



finding is amply supported by modern authority.<sup>1</sup> Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that, in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument... on Questions 4 and 5 previously propounded by the Court for the reargument this Term.

1. K.B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Mid-century White House Conference on Children and Youth, 1950); Witmer and Kotinsky, *Personality in the Making* (1952), c. VI; Deutscher and Chein, *The Psychological Effects of Enforced Segregation A Survey of Social Science Opinion*, 26 *J.Psychol.* 259 (1948); Chein, *What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?*, 3 *Int.J.Opinion and Attitude Res.* 229 (1949); Brameld, *Educational Costs*, in *Discrimination and National Welfare* (MacIver, ed., 1949), 44-48; Frazier, *The Negro in the United States* (1949), 674-681. And see generally Myrdal, *An American Dilemma* (1944).

# 34. Martin Luther King, Jr., Leads the Civil Rights Movement

## Martin Luther King, Jr. (1929-1968)

Martin King, Jr., was born in Atlanta. His father was a minister at the Ebenezer Baptist Church, and took Martin on a trip to Europe and the Middle East when he was five. During that trip his father gave him his middle name Luther.

King attended a segregated high school in Atlanta before enrolling at Morehouse College at age 15. He graduated at 19 with a degree in Sociology. He then obtained a B.Div. from Crozier Seminary (PA) in 1951 and a Ph.D. from Boston University in 1955. During his studies for the ministry he began preaching, and in 1954 he became pastor at a church in Montgomery.

King first became prominent when he helped organize the Montgomery bus boycott in 1955 after Rosa Parks refused to give up her seat to a white patron on a segregated bus. He helped found the Southern Christian Leadership Conference in 1957 to organize non-violent civil rights protests, and quickly became a national leader. In 1959, he became co-pastor of the Ebenezer Baptist Church with his father. King was arrested 29 times for participating in protests, but this did not deter him his quest to achieve racial equality through non-violent protest. King's efforts to achieve civil rights for blacks won him the Nobel Peace Prize in 1964. He was assassinated outside a motel in Memphis, Tennessee in 1968; the motel is now part of a civil rights museum that commemorates his achievements.

## Letter from the Birmingham Jail (1963)

In April 1963, Martin Luther King was arrested for organizing a civil rights demonstration in Birmingham, Alabama. While detained in the city jail, he wrote a letter to his fellow clergymen on scraps of paper and old newspapers. King explained that non-violent confrontation was necessary to convince white Americans and their political leaders to end racial segregation and require equality for people of all races. He claimed to be an “extremist for justice” and compared himself to famous religious leaders including Jesus of Nazareth and Martin

Luther. He urged his fellow clergymen to support his campaign, implicitly suggesting that the alternative was violent protest and bloodshed.

My dear fellow clergymen:

While confined here in the Birmingham city jail, I came across your recent statement calling my present activities “unwise and untimely.” Seldom do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my desk, my secretaries would have little time for anything other than such correspondence in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine good will and that your criticisms are sincerely set forth, I want to try to answer your statements in what I hope will be patient and reasonable terms.

I think I should indicate why I am here in Birmingham, since you have been influenced by the view which argues against “outsiders coming in.” I have the honor of serving as president of the Southern Christian Leadership Conference, an organization operating in every southern state, with headquarters in Atlanta, Georgia. We have some eighty-five affiliated organizations across the South, and one of them is the Alabama Christian Movement for Human Rights. Frequently we share staff, educational and financial resources with our affiliates. Several months ago the affiliate here in Birmingham asked us to be on call to engage in a nonviolent direct-action program if such were deemed necessary. We readily consented, and when the hour came we lived up to our promise. So I, along with several members of my staff, am here because I was invited here I am here because I have organizational ties here.

But more basically, I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their villages and carried their “thus saith the Lord” far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. Like Paul, I must constantly respond to the Macedonian call for aid.

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial “outside agitator” idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.

You deplore the demonstrations taking place in Birmingham. But your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations. I am sure that none of you would want to rest content with the superficial kind of social analysis that deals merely with effects and does not grapple with underlying causes. It is unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city’s white power structure left the Negro community with no alternative.

In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices exist; negotiation; self-purification; and direct action. We have gone through all these steps in Birmingham. There can be no gainsaying the fact that racial injustice engulfs this community. Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of brutality is widely known. Negroes have experienced grossly unjust treatment in the courts. There have been more unsolved

bombings of Negro homes and churches in Birmingham than in any other city in the nation. These are the hard, brutal facts of the case. On the basis of these conditions, Negro leaders sought to negotiate with the city fathers. But the latter consistently refused to engage in good-faith negotiation.

Then, last September, came the opportunity to talk with leaders of Birmingham's economic community. In the course of the negotiations, certain promises were made by the merchants—for example, to remove the stores' humiliating racial signs. On the basis of these promises, the Reverend Fred Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to a moratorium on all demonstrations. As the weeks and months went by, we realized that we were the victims of a broken promise. A few signs, briefly removed, returned; the others remained.

As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community. Mindful of the difficulties involved, we decided to undertake a process of self-purification. We began a series of workshops on nonviolence, and we repeatedly asked ourselves: "Are you able to accept blows without retaliating?" "Are you able to endure the ordeal of jail?" We decided to schedule our direct-action program for the Easter season, realizing that except for Christmas, this is the main shopping period of the year. Knowing that a strong economic withdrawal program would be the by-product of direct action, we felt that this would be the best time to bring pressure to bear on the merchants for the needed change.

Then it occurred to us that Birmingham's mayoralty election was coming up in March, and we speedily decided to postpone action until after election day. When we discovered that the Commissioner of Public Safety, Eugene "Bull" Connor, had piled up enough votes to be in the run-off we decided again to postpone action until the day after the run-off so that the demonstrations could not be used to cloud the issues. Like many others, we waited to see Mr. Connor defeated, and to this end we endured postponement after postponement. Having aided in this community need, we felt that our direct-action program could be delayed no longer.

You may well ask: "Why direct action? Why sit-ins, marches and so forth? Isn't negotiation a better path?" You are quite right in calling, for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent-resister may sound rather shocking. But I must confess that I am not afraid of the word "tension." I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.

The purpose of our direct-action program is to create a situation so crisis-packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dialogue.

One of the basic points in your statement is that the action that I and my associates have taken in Birmingham is untimely. Some have asked: "Why didn't you give the new city administration time to act?" The only answer that I can give to this query is that the new Birmingham administration must be prodded about as much as the outgoing one before it will act. We are sadly mistaken if we feel that the

election of Albert Boutwell as mayor will bring the millennium to Birmingham. While Mr. Boutwell is a much more gentle person than Mr. Connor, they are both segregationists, dedicated to maintenance of the status quo. I have hope that Mr. Boutwell will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from devotees of civil rights. My friends, I must say to you that we have not made a single gain civil rights without determined legal and nonviolent pressure. Lamentably, it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct-action campaign that was “well timed” in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word “Wait!” It rings in the ear of every Negro with piercing familiarity. This “Wait” has almost always meant “Never.” We must come to see, with one of our distinguished jurists, that “justice too long delayed is justice denied.”

We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jetlike speed toward gaining political independence, but we stiffly creep at horse-and-buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging dark of segregation to say, “Wait.” But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can’t go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five-year-old son who is asking: “Daddy, why do white people treat colored people so mean?”; when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading “white” and “colored”; when your first name becomes “nigger,” your middle name becomes “boy” (however old you are) and your last name becomes “John,” and your wife and mother are never given the respected title “Mrs.”; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you no longer fighting a degenerating sense of “nobodiness” then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience.

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court’s decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may wonder: “How can you advocate breaking some laws and obeying others?” The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just

laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that “an unjust law is no law at all.”

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distort the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority. Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an “I-it” relationship for an “I-thou” relationship and ends up relegating persons to the status of things. Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and awful. Paul Tillich said that sin is separation. Is not segregation an existential expression “of man’s tragic separation, his awful estrangement, his terrible sinfulness?” Thus it is that I can urge men to obey the 1954 decision of the Supreme Court, for it is morally right; and I can urge them to disobey segregation ordinances, for they are morally wrong.

Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.

Let me give another explanation. A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Who can say that the legislature of Alabama which set up that state’s segregation laws was democratically elected? Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters, and there are some counties in which, even though Negroes constitute a majority of the population, not a single Negro is registered. Can any law enacted under such circumstances be considered democratically structured?

Sometimes a law is just on its face and unjust in its application. For instance, I have been arrested on a charge of parading without a permit. Now, there is nothing wrong in having an ordinance which requires a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First Amendment privilege of peaceful assembly and protest.

I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.

Of course, there is nothing new about this kind of civil disobedience. It was evidenced sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake. It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practiced civil disobedience. In our own nation, the Boston Tea Party represented a massive act of civil disobedience.

We should never forget that everything Adolf Hitler did in Germany was “legal” and everything the Hungarian freedom fighters did in Hungary was “illegal.” It was “illegal” to aid and comfort a Jew in Hitler’s

Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country's antireligious laws.

I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Conciliator or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice and that when they fan in this purpose they become the dangerously structured dams that block the flow of social progress. I had hoped that the white moderate would understand that the present tension in the South is a necessary phase of the transition from an obnoxious negative peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with an its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.

In your statement you assert that our actions, even though peaceful, must be condemned because they precipitate violence. But is this a logical assertion? Isn't this like condemning a robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries precipitated the act by the misguided populace in which they made him drink hemlock? Isn't this like condemning Jesus because his unique God-consciousness and never-ceasing devotion to God's will precipitated the evil act of crucifixion? We must come to see that, as the federal courts have consistently affirmed, it is wrong to urge an individual to cease his efforts to gain his basic constitutional rights because the quest may precipitate violence. Society must protect the robbed and punish the robber.

I had also hoped that the white moderate would reject the myth concerning time in relation to the struggle for freedom. I have just received a letter from a white brother in Texas. He writes: "An Christians know that the colored people will receive equal rights eventually, but it is possible that you are in too great a religious hurry. It has taken Christianity almost two thousand years to accomplish what it has. The teachings of Christ take time to come to earth." Such an attitude stems from a tragic misconception of time, from the strangely rational notion that there is something in the very flow of time that will inevitably cure all ills. Actually, time itself is neutral; it can be used either destructively or constructively. More and more I feel that the people of ill will have used time much more effectively than have the people of good will. We will have to repent in this generation not merely for the hateful words and actions of the bad people but for the appalling silence of the good people. Human progress never rolls in on wheels of inevitability; it comes through the

tireless efforts of men willing to be co-workers with God, and without this hard work, time itself becomes an ally of the forces of social stagnation. We must use time creatively, in the knowledge that the time is always ripe to do right. Now is the time to make real the promise of democracy and transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity.

You speak of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of an extremist. I began thinking about the fact that stand in the middle of two opposing forces in the Negro community. One is a force of complacency, made up in part of Negroes who, as a result of long years of oppression, are so drained of self-respect and a sense of "somebodiness" that they have adjusted to segregation; and in part of a few middle class Negroes who, because of a degree of academic and economic security and because in some ways they profit by segregation, have become insensitive to the problems of the masses. The other force is one of bitterness and hatred, and it comes perilously close to advocating violence. It is expressed in the various black nationalist groups that are springing up across the nation, the largest and best-known being Elijah Muhammad's Muslim movement. Nourished by the Negro's frustration over the continued existence of racial discrimination, this movement is made up of people who have lost faith in America, who have absolutely repudiated Christianity, and who have concluded that the white man is an incorrigible "devil."

I have tried to stand between these two forces, saying that we need emulate neither the "do-nothingism" of the complacent nor the hatred and despair of the black nationalist. For there is the more excellent way of love and nonviolent protest. I am grateful to God that, through the influence of the Negro church, the way of nonviolence became an integral part of our struggle.

If this philosophy had not emerged, by now many streets of the South would, I am convinced, be flowing with blood. And I am further convinced that if our white brothers dismiss as "rabble-rousers" and "outside agitators" those of us who employ nonviolent direct action, and if they refuse to support our nonviolent efforts, millions of Negroes will, out of frustration and despair, seek solace and security in black-nationalist ideologies a development that would inevitably lead to a frightening racial nightmare.

Oppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself, and that is what has happened to the American Negro. Something within has reminded him of his birthright of freedom, and something without has reminded him that it can be gained. Consciously or unconsciously, he has been caught up by the Zeitgeist, and with his black brothers of Africa and his brown and yellow brothers of Asia, South America and the Caribbean, the United States Negro is moving with a sense of great urgency toward the promised land of racial justice. If one recognizes this vital urge that has engulfed the Negro community, one should readily understand why public demonstrations are taking place. The Negro has many pent-up resentments and latent frustrations, and he must release them. So let him march; let him make prayer pilgrimages to the city hall; let him go on freedom rides—and try to understand why he must do so. If his repressed emotions are not released in nonviolent ways, they will seek expression through violence; this is not a threat but a fact of history. So I have not said to my people: "Get rid of your discontent." Rather, I have tried to say that this normal and healthy discontent can be channeled into the creative outlet of nonviolent direct action. And now this approach is being termed extremist.

But though I was initially disappointed at being categorized as an extremist, as I continued to think about the matter I gradually gained a measure of satisfaction from the label. Was not Jesus an extremist for love: "Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you." Was not Amos an extremist for justice: "Let justice roll down like



waters and righteousness like an ever-flowing stream.” Was not Paul an extremist for the Christian gospel: “I bear in my body the marks of the Lord Jesus.” Was not Martin Luther an extremist: “Here I stand; I cannot do otherwise, so help me God.” And John Bunyan: “I will stay in jail to the end of my days before I make a butchery of my conscience.” And Abraham Lincoln: “This nation cannot survive half slave and half free.” And Thomas Jefferson: “We hold these truths to be self-evident, that all men are created equal ...” So the question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love? Will we be extremist for the preservation of injustice or for the extension of justice? In that dramatic scene on Calvary’s hill three men were crucified. We must never forget that all three were crucified for the same crime—the crime of extremism. Two were extremists for immorality, and thus fell below their environment. The other, Jesus Christ, was an extremist for love, truth and goodness, and thereby rose above his environment. Perhaps the South, the nation and the world are in dire need of creative extremists....

There was a time when the church was very powerful in the time when the early Christians rejoiced at being deemed worthy to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society. Whenever the early Christians entered a town, the people in power became disturbed and immediately sought to convict the Christians for being “disturbers of the peace” and “outside agitators” But the Christians pressed on, in the conviction that they were “a colony of heaven,” called to obey God rather than man. Small in number, they were big in commitment. They were too God-intoxicated to be “astronomically intimidated.” By their effort and example they brought an end to such ancient evils as infanticide. and gladiatorial contests.

Things are different now. So often the contemporary church is a weak, ineffectual voice with an uncertain sound. So often it is an archdefender of the status quo. Far from being disturbed by the presence of the church, the power structure of the average community is consoled by the church’s silent and often even vocal sanction of things as they are.

But the judgment of God is upon the church as never before. If today’s church does not recapture the sacrificial spirit of the early church, it will lose its authenticity, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no meaning for the twentieth century. Every day I meet young people whose disappointment with the church has turned into outright disgust.

Perhaps I have once again been too optimistic. Is organized religion too inextricably bound to the status quo to save our nation and the world? Perhaps I must turn my faith to the inner spiritual church, the church within the church, as the true ekklesia and the hope of the world. But again I am thankful to God that some noble souls from the ranks of organized religion have broken loose from the paralyzing chains of conformity and joined us as active partners in the struggle for freedom, They have left their secure congregations and walked the streets of Albany, Georgia, with us. They have gone down the highways of the South on tortuous rides for freedom. Yes, they have gone to jail with us. Some have been dismissed from their churches, have lost the support of their bishops and fellow ministers. But they have acted in the faith that right defeated is stronger than evil triumphant. Their witness has been the spiritual salt that has preserved the true meaning of the gospel in these troubled times. They have carved a tunnel of hope through the dark mountain of disappointment.

I hope the church as a whole will meet the challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are at present misunderstood. We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned

though we may be, our destiny is tied up with America's destiny. Before the pilgrims landed at Plymouth, we were here. Before the pen of Jefferson etched the majestic words of the Declaration of Independence across the pages of history, we were here. For more than two centuries our forebears labored in this country without wages; they made cotton king; they built the homes of their masters while suffering gross injustice and shameful humiliation—and yet out of a bottomless vitality they continued to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

Before closing I feel impelled to mention one other point in your statement that has troubled me profoundly. You warmly commended the Birmingham police force for keeping “order” and “preventing violence.” I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, nonviolent Negroes. I doubt that you would so quickly commend the policemen if you were to observe their ugly and inhumane treatment of Negroes here in the city jail; if you were to watch them push and curse old Negro women and young Negro girls; if you were to see them slap and kick old Negro men and young boys; if you were to observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I cannot join you in your praise of the Birmingham police department.

It is true that the police have exercised a degree of discipline in handing the demonstrators. In this sense they have conducted themselves rather “nonviolently” in public. But for what purpose? To preserve the evil system of segregation. Over the past few years I have consistently preached that nonviolence demands that the means we use must be as pure as the ends we seek. I have tried to make clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or perhaps even more so, to use moral means to preserve immoral ends... to maintain the immoral end of racial injustice. As T. S. Eliot has said: “The last temptation is the greatest treason: To do the right deed for the wrong reason.”

I wish you had commended the Negro sit-inners and demonstrators of Birmingham for their sublime courage, their willingness to suffer and their amazing discipline in the midst of great provocation. One day the South will recognize its real heroes. They will be the James Merediths, with the noble sense of purpose that enables them to face jeering, and hostile mobs, and with the agonizing loneliness that characterizes the life of the pioneer. They will be old, oppressed, battered Negro women, symbolized in a seventy-two-year-old woman in Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride segregated buses, and who responded with ungrammatical profundity to one who inquired about her weariness: “My feet is tired, but my soul is at rest.” They will be the young high school and college students, the young ministers of the gospel and a host of their elders, courageously and nonviolently sitting in at lunch counters and willingly going to jail for conscience' sake. One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judeo-Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.

Never before have I written so long a letter. I'm afraid it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else can one do when he is alone in a narrow jail cell, other than write long letters, think long thoughts and pray long prayers?

If I have said anything in this letter that overstates the truth and indicates an unreasonable impatience, I

beg you to forgive me. If I have said anything that understates the truth and indicates my having a patience that allows me to settle for anything less than brotherhood, I beg God to forgive me.

I hope this letter finds you strong in the faith. I also hope that circumstances will soon make it possible for me to meet each of you, not as an integrationist or a civil rights leader but as a fellow clergyman and a Christian brother. Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

## Speech at the Lincoln Memorial (1963)

On August 28, 1963, Martin Luther King delivered a 17-minute speech to a crowd of a quarter-million who had gathered at the Lincoln Memorial as part of a civil rights protest. As he neared the end of his prepared speech, Mahalia Jackson shouted out, "Tell them about your dream." King pivoted to a vision of an America where all people received respect without regard to race or color. Today many still refer to this speech as the "I have a dream" speech.

I am happy to join with you today in what will go down in history as the greatest demonstration for freedom in the history of our nation.

Five score years ago, a great American in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves, who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity, but 100 years later, the Negro still is not free. 100 years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. 100 years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. 100 years later, the Negro is still languished in the corners of American society and finds himself in exile in his own land.

So we've come here today to dramatize the shameful condition. In a sense, we've come to our nation's capital to cash a check. When the architects of our Republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness. It is obvious today that America has defaulted on this promissory note in so far as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked insufficient funds.

But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. So we've come to cash this check, a check that will

give us upon demand the riches of freedom, and the security of justice. We have also come to this hallowed spot to remind America of the fierce urgency of now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children.

It would be fatal for the nation to overlook the urgency of the moment. This sweltering summit of the Negroes legitimate discontent will not pass until that is an invigorating autumn of freedom and equality. 1963 is not an end, but a beginning. Those who hope that the Negro needed to blow off steam and will now be content will have a rude awakening if the nation returns to business as usual.

There will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges. But that is something that I must say to my people who stand on the warm threshold which leads into the palace of justice. In the process of gaining our rightful place, we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct our struggle on the high plain of dignity and discipline. We must not allow our creative protests to degenerate into physical violence. Again and again, we must rise to the majestic heights of meeting physical force with soul force. The marvelous new militancy, which has engulfed the Negro community, must not lead us to a distrust of all white people, for many of our white brothers, as evidenced by their presence here today, have come to realize their destiny is tied up in our destiny.

They have come realize that their freedom is inextricably bound to our freedom. We cannot walk alone, and as we walk, we must make the pledge that we shall always march ahead. We cannot turn back. They are those who asking the devotees of civil rights, when will you be satisfied? We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality. We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and the hotels of the cities. We cannot be satisfied as long as the Negroes basic mobility is from a smaller ghetto to a larger one. We can never be satisfied as long as our children are stripped of their selfhood and robbed of their dignity by signs stating, For Whites Only. We cannot be satisfied as long as a Negro in Mississippi cannot vote, and a Negro in New York believes he has nothing for which to vote. No, we are not satisfied and we will not be satisfied until justice rolls down like waters and righteousness like a mighty stream.

I am not unmindful that some of you have come here out of great trials and tribulations. Some of you have come fresh from narrow jail cells. Some of you have come from areas where your quest for freedom left you battered by the storms of persecution and staggered by the winds of police brutality. You have been the veterans of creative suffering. Continue to work with the faith that honor and suffering is redemptive. Go back to Mississippi, go back to Alabama, go back to South Carolina, go back to Georgia, go back to Louisiana, go back to the slums and ghettos of our northern cities, knowing that somehow this situation can and will be changed. Let us not wallow in the valley of despair.

I say to you today, my friend, so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed, "We hold these truths to be self evident that all men are created."

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood. I have a dream that one day, even

the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice. I have a dream that my four little children will one day live in a nation where they will not be judged by the color of our skin, but by the content of that character. I have a dream today.

I have a dream that one day down in Alabama with its vicious racists, with its governor having his lips dripping with the words of interposition and nullification, one day right there in Alabama, little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers. I have a dream today.

I have a dream that one day every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain and the crooked places will be made straight and the glory of the Lord shall be revealed and all flesh shall see it together. This is our hope. This is a faith that I go back to the South with. With this faith, we will be able to hew out of the mountain of despair, a stone of hope. With this faith, we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith, we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day.

This will be the day, this will be the day when all of God's children will be able to sing with new meaning, My country, 'Tis of thee, Sweet land of Liberty, Of thee I sing. Land where my fathers died, Land of the Pilgrim's pride, From every mountainside, Let freedom ring. If America is to be a great nation, this must become true.

So let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. Let freedom ring from the heightening Alleghenies of Pennsylvania. Let freedom ring from the snow capped Rockies of Colorado. Let freedom ring from the curvaceous slopes of California. But not only that, let freedom ring from Stone Mountain of Georgia. Let freedom ring from Lookout Mountain of Tennessee. Let freedom ring from every hill and molehill of Mississippi. From every mountainside, let freedom ring, and when this happens, when we allow freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and gentiles, Protestants and Catholic, will be able to join hands and sing in the words of the old Negro spiritual, Free at last! Free at last! Thank God Almighty, we are free at last!

## 35. Malcolm X: The Ballot or the Bullet

### Malcolm X [Malik el-Shabazz] (1925-1965)

Malcolm Little was raised in foster homes after his father died in an accident and his mother was committed to a psychiatric institution. He moved to Harlem at 18, and committed numerous crimes. While imprisoned for larceny and burglary, he converted to Islam and changed his last name to X, representing his unknown African ancestors. He joined the Nation of Islam and became one of its leaders, championing black separatism and rejecting non-violence. He gained national publicity when profiled by CBS in “The Hate that Hate Produced.”

In 1964, he left the Nation of Islam and rejected its separationist doctrines. After a pilgrimage to Mecca, he renamed himself Malik el-Shabazz. When he returned, he formed Islamic Mosque, Inc., and urged his followers to assert their right to vote and use it to elect leaders who would help American blacks. In a speech excerpted here, which he gave in several cities, he urged followers to take up arms if whites persisted in denying voting rights.

Malcolm X's fame diverted attention from the Nation of Islam, and several of its members plotted to silence him permanently. His car and house were firebombed. On February 21, 1965, he was assassinated by three members of the Newark mosque of the Nation of Islam at the Audubon Ballroom in Harlem.

### “The Ballot or the Bullet” (1964)

Unlike Martin Luther King, Jr., Malcolm X was not an advocate of non-violent protest. He believed that if blacks were not given the right to vote, they needed to demonstrate their opposition the same way that modern revolutionaries did when fighting for self-rule in African and Asian colonies: taking up arms. He began his speech with a discussion of why it was important for black consumers to support black-owned business, which reflected his longstanding belief in black nationalism. He then explained that if the black community did not develop self-sufficiency, it would never gain economic independence in a country where whites were dominant. He then turned his attention to politics, criticizing Democrats for promising civil rights but not delivering because segregationist southerners were in control of key Congressional committees. He argued that 1964 was the year that black power could make a significant difference in American politics because the black vote could decide the presidential election. However, he expressed skepticism that this would actually happen because of racial gerrymandering in the north and race-based voter suppression in the south.

This afternoon, we want to talk about the ballot or the bullet. The ballot or the bullet explains itself. But before we get into it, since this is the year of the ballot, or the bullet, I would like to clarify some things that refer to me personally, concerning my own personal position.

I'm still a Muslim. That is my religion. It's still Islam... Though Islam is my religious philosophy, my political, economic, and social philosophy is Black Nationalism....

The political philosophy of Black Nationalism only means that the black man should control the politics and the politicians in his own community. The time when white people can come in our community, and get us to vote for them, so that they can be our political leaders, and tell us what to do and what not to do, is long gone....

We must understand the politics of our community. And we must know what politics is supposed to produce. We must know what role politics plays in our lives. And until we become politically mature we will always be misled, lead astray, or deceived, or maneuvered into supporting someone politically, who doesn't have the good of our community at heart. So the political philosophy of Black Nationalism only means that we will have to carry on a political program of reeducation: to open our people's eyes; make us become more politically conscious, politically mature; and then we will, whenever we get ready to cast our ballot, that ballot will be cast for a man of the community, who has the good of the community at heart.

The economic philosophy of Black Nationalism only means that we should own, and operate, and control the economy of our community. You can't open up a black store in a white community. White men won't even patronize you. And he's not wrong! He's got sense enough to look out for himself. It's you who don't have sense enough to look out for yourself.

The white man is too intelligent to let someone else come and gain control of the economy of his community. But you will let anybody come in and control the economy of your community. Control the housing. Control the education. Control the jobs. Control the businesses, under their pretext that you want to integrate. No! You out of your mind!

The economic philosophy of Black Nationalism only means that we have to become involved in a program of reeducation. To educate our people into the importance of knowing that when you spend your dollar out of the community in which you live, the community in which you spend your money becomes richer and richer. The community out of which you take your money becomes poorer and poorer. And because these Negroes who have been misled and misguided are breaking their necks to take their money and spend it with The Man, The Man is becoming richer and richer, and you're becoming poorer and poorer. And then what happens? The community in which you live becomes a slum. It becomes a ghetto. The conditions become rundown. And then you have the audacity to complain about poor housing, and a rundown community. While you'll run it down yourself, when you take your dollar out.

You and I are in a double trap, because not only do we lose by taking our money someplace else and spending it, when we try and spend it in our own community, we're trapped because we haven't had sense enough to have set up stores and control the businesses of our community. The man who's controlling the stores in our community is a man who doesn't look like we do. He's a man who doesn't even live in the community. So you and I, even when we try and spend out money in the block where we live, or the area where we live, we're spending it with a man who when the sun goes down, takes that basket full of money, in another part of town.

So we're trapped. Trapped. Double trapped. Triple trapped. Anywhere we go, we're find that we're trapped. And every kind of solution that someone comes up with, is just another trap. But the political and economic philosophy of Black Nationalism... shows our people the importance of setting up these little stores and

developing them and expanding them into larger operations. Woolworth didn't start out big like they are today; they started out with a dime store, and expanded, and expanded, and expanded until today they are all over the country and all over the world and they getting some of everybody's money....

So our people not only have to be reeducated to the importance of supporting black business, but the black man himself has to be made aware of the importance of going into business. And once you and I go into business, we own and operate at least the businesses in our community. What we will be doing is developing a situation wherein we will actually be able to create employment for the people in the community. And once you can create some employment in the community where you live, it will eliminate the necessity of you and me having to act ignorantly and disgracefully, boycotting and picketing some cracker someplace else trying to beg him for a job.

Anytime you have to rely upon your enemy for a job, you're in bad shape. And he is your enemy. You wouldn't be in this country if some enemy hadn't kidnapped you and brought you here....

Whether you are a Christian or a Muslim or a nationalist, we all have the same problem. They don't hang you because you're a Baptist; they hang you because you're black. They don't attack me because I'm a Muslim. They attack me because I'm black. They attacked all of us for the same reason. All of us catch hell from the same enemy. We're all in the same bag, in the same boat.

We suffer political oppression, economic exploitation and social degradation. All of them from the same enemy. The government has failed us. You can't deny that. Any time you're living in the 20th century, 1964, and you walking around here singing "We Shall Overcome," the government has failed you. This is part of what's wrong with you, you do too much singing. Today it's time to stop singing and start swinging.

You can't sing up on freedom. But you can swing up on some freedom. Cassius Clay can sing. But singing didn't help him to become the heavyweight champion of the world. Swinging helped him.

So this government has failed us. The government itself has failed us. And the white liberals who have been posing as our friends have failed us. And once we see that all of these other sources to which we've turned have failed, we stop turning to them and turn to ourselves. We need a self-help program, a do-it-yourself philosophy, a do-it-right-now philosophy, a it's-already-too-late philosophy. This is what you and I need to get with. And the only time, the only way we're going to solve our problem is with a self-help program. Before we can get a self-help program started, we have to have a self-help philosophy. Black nationalism is a self-help philosophy.

What's so good about it, you can stay right in the church where you are and still take black nationalism as your philosophy. You can stay in any kind of civic organization that you belong to and still take black nationalism as your philosophy. You can be an atheist and still take black nationalism as your philosophy. This is a philosophy that eliminates the necessity for division and argument, because if you're black, you should be thinking black. And if you're black and you not thinking black at this late date, well, I'm sorry for you.

Once you change your philosophy, you change your thought pattern. Once you change your thought pattern you change your attitude. Once you change your attitude it changes your behavior pattern. And then you go on into some action. As long as you got a sit-down philosophy you'll have a sit-down thought pattern. And as long as you think that old sit-down thought, you'll be in some kind of sit-down action. They'll have you sitting in everywhere.

It's not so good to refer to what you're going to do as a sit-in. That right there castrates you. Right there it brings you down. What goes with it? What? Think of the image of someone sitting. An old woman can sit. An



old man can sit. A chump can sit, a coward can sit, anything can sit. Well, you and I been sitting long enough and it's time for us today to start doing some standing and some fighting to back that up.

When we look at other parts of this Earth upon which we live, we find that black, brown, red and yellow people in Africa and Asia are getting their independence. They're not getting it by singing, "We Shall Overcome." No, they're getting it through nationalism. It is nationalism that brought about the independence of the people in Asia. Every nation in Asia gained its independence through the philosophy of nationalism. Every nation on the African continent that has gotten its independence brought it about through the philosophy of nationalism. And it will take black nationalism to bring about the freedom of 22 million Afro-Americans, here in this country, where we have suffered colonialism for the past 400 years.

America is just as much a colonial power as England ever was. America is just as much a colonial power as France ever was. In fact, America is more so a colonial power than they, because she is a hypocritical colonial power behind it.... What do you call second-class citizenship? Why, that's colonization. Second-class citizenship is nothing but 20th century slavery. How you going to tell me you're a second-class citizen? They don't have second-class citizenship in any other government on this Earth. They just have slaves and people who are free! Well, this country is a hypocrite! They try and make you think they set you free by calling you a second-class citizen. No, you're nothing but a 20th century slave.

Just as it took nationalism to remove colonialism from Asia and Africa, it'll take black nationalism today to remove colonialism from the backs and the minds of twenty-two million Afro-Americans here in this country. And 1964 looks like it might be the year of the ballot or the bullet.

Why does it look like it might be the year of the ballot or the bullet? Because Negroes have listened to the trickery and the lies and the false promises of the white man now for too long, and they're fed up. They've become disenchanted. They've become disillusioned. They've become dissatisfied. And all of this has built up frustrations in the black community that makes the black community throughout America today more explosive than all of the atomic bombs the Russians can ever invent. Whenever you got a racial powder keg sitting in your lap, you're in more trouble than if you had an atomic powder keg sitting in your lap. When a racial powder keg goes off, it doesn't care who it knocks out the way. Understand this, it's dangerous.

And in 1964, this seems to be the year. Because what can the white man use, now, to fool us? After he put down that March on Washington, and you see all through that now, he tricked you, had you marching down to Washington. Had you marching back and forth between the feet of a dead man named Lincoln and another dead man named George Washington, singing, "We Shall Overcome."

He made a chump out of you. He made a fool out of you. He made you think you were going somewhere and you end up going nowhere but between Lincoln and Washington.

So today our people are disillusioned. They've become disenchanted. They've become dissatisfied. And in their frustrations they want action. And in 1964 you'll see this young black man, this new generation, asking for the ballot or the bullet....

When this country here was first being founded, there were thirteen colonies. The whites were colonized. They were fed up with this taxation without representation. So some of them stood up and said, "Liberty or death!" I went to a white school over here in Mason, Michigan. The white man made the mistake of letting me read his history books. He made the mistake of teaching me that Patrick Henry was a patriot, and George Washington... Wasn't nothing non-violent about ol' Pat, or George Washington. "Liberty or death" is what brought about the freedom of whites in this country from the English.

They didn't care about the odds. Why, they faced the wrath of the entire British Empire. And in those days, they used to say that the British Empire was so vast and so powerful that the sun would never set on it. This

is how big it was, yet these thirteen little scrawny states, tired of taxation without representation, tired of being exploited and oppressed and degraded, told that big British Empire, "Liberty or death." And here you have 22 million Afro-Americans, black people today, catching more hell than Patrick Henry ever saw.

And I'm here to tell you in case you don't know it that you got a new, you got a new generation of black people in this country who don't care anything whatsoever about odds. They don't want to hear you ol' Uncle Tom, handkerchief-heads talking about the odds. No! This is a new generation. If they're going to draft these young black men, and send them over to Korea or to South Vietnam to face 800 million Chinese... If you're not afraid of those odds, you shouldn't be afraid of these odds....

Why does this loom to be such an explosive political year? Because this is the year of politics. This is the year when all of the white politicians are going to come into the Negro community. You never see them until election time. You can't find them until election time. They're going to come in with false promises. And as they make these false promises they're going to feed our frustrations, and this will only serve to make matters worse. I'm no politician... I don't speak as a Democrat or a Republican, nor an American. I speak as a victim of America's so-called democracy. You and I have never seen democracy, all we've seen is hypocrisy.

When we open our eyes today and look around America, we see America not through the eyes of someone who has enjoyed the fruits of Americanism. We see America through the eyes of someone who has been the victim of Americanism. We don't see any American dream. We've experienced only the American nightmare. We haven't benefited from America's democracy. We've only suffered from America's hypocrisy. And the generation that's coming up now can see it. And are not afraid to say it. If you go to jail, so what? If you're black, you were born in jail....

Twenty-two million black victims of Americanism are waking up and they are gaining a new political consciousness, becoming politically mature. And as they develop this political maturity, they're able to see the recent trends in these political elections. They see that the whites are so evenly divided that every time they vote, the race is so close they have to go back and count the votes all over again. Which means that any block, any minority that has a block of votes that stick together is in a strategic position. Either way you go, that's who gets it. You're in a position to determine who'll go to the White House and who'll stay in the doghouse.

You're the one who has that power. You can keep Johnson in Washington D.C., or you can send him back to his Texas cotton patch. You're the one who sent Kennedy to Washington. You're the one who put the present Democratic administration in Washington, D.C. The whites were evenly divided. It was the fact that you threw 80 percent of your votes behind the Democrats that put the Democrats in the White House.

When you see this, you can see that the Negro vote is the key factor. And despite the fact that you are in a position to be the determining factor, what do you get out of it? The Democrats have been in Washington, D.C. only because of the Negro vote. They've been down there four years... All other legislation they wanted to bring up they've brought it up, and gotten it out of the way, and now they bring up you. And now they bring up you! You put them first and they put you last. Because you're a chump! A political chump...

Any time you throw your weight behind a political party that controls two-thirds of the government, and that party can't keep the promise that it made to you during election-time, and you're dumb enough to walk around continuing to identify yourself with that party, you're not only a chump but you're a traitor to your race.

What kind of alibi do come up with? They try and pass the buck to the Dixiecrats. Now, back during the days when you were blind, deaf and dumb, ignorant, politically immature, naturally you went along with

that. But today, as your eyes come open, and you develop political maturity, you're able to see and think for yourself, and you can see that a Dixiecrat is nothing but a Democrat in disguise.

You look at the structure of the government that controls this country, is controlled by 16 senatorial committees and 20 congressional committees. Of the 16 senatorial committees that run the government, 10 of them are in the hands of southern segregationists. Of the 20 congressional committees that run the government, 12 of them are in the hands of southern segregationists. And they're going to tell you and me that the South lost the war?

You, today, are in the hands of a government of segregationists. Racists, white supremacists, who belong to the Democratic party but disguise themselves as Dixiecrats. A Dixiecrat is nothing but a Democrat. Whoever runs the Democrats is also the father of the Dixiecrats. And the father of all of them is sitting in the White House. I say, and I'll say it again, you got a president who's nothing but a southern segregationist from the state of Texas. They'll lynch in Texas as quick as they'll lynch you in Mississippi....

I was in Washington a couple of weeks ago while the senators were filibustering and I noticed in the back of the Senate a huge map, and on this map it showed the distribution of Negroes in America. And surprisingly, the same senators that were involved in the filibuster were from the states where there were the most Negroes. Why were they filibustering the civil rights legislation? Because the civil rights legislation is supposed to guarantee voting rights to Negroes from those states. And those senators from those states know that if the Negroes in those states can vote, those senators are down the drain. The representatives of those states go down the drain....

Up here in the North you have the same thing. The Democratic Party, they don't do it that way. They got a thing they call gerrymandering. They maneuver you out of power. Even though you can vote they fix it so you're voting for nobody. They got you going and coming. In the South they're outright political wolves, in the North they're political foxes. A fox and a wolf are both canine, both belong to the dog family. Now, you take your choice. You going to choose a northern dog or a southern dog? Because either dog you choose, I guarantee you, you'll still be in the doghouse.

This is why I say it's the ballot or the bullet. It's liberty or it's death. It's freedom for everybody or freedom for nobody. America today finds herself in a unique situation. Historically, revolutions are bloody, oh yes they are. They have never had a bloodless revolution. Or a non-violent revolution. That don't happen even in Hollywood. You don't have a revolution in which you love your enemy. And you don't have a revolution in which you are begging the system of exploitation to integrate you into it. Revolutions overturn systems. Revolutions destroy systems....

I hope that the white man can see this. Because if you don't see it you're finished. If you don't see it you're going to become involved in some action in which you don't have a chance. We don't care anything about your atomic bomb; it's useless, because other countries have atomic bombs. When two or three different countries have atomic bombs, nobody can use them. So it means that the white man today is without a weapon. If you want some action you've got to come on down to Earth, and there's more black people on Earth than there are white people....

So it's the ballot or the bullet. Today, our people can see that we're faced with a government conspiracy. This government has failed us. The senators who are filibustering concerning your and my rights, that's the government. Don't say it's southern senators, this is the government. This is a government filibuster. It's not a segregationist filibuster, it's a government filibuster. Any kind of activity that takes place on the floor of the Congress or the Senate, that's the government. Any kind of dilly-dallying, that's the government. Any kind of pussy-footing, that's the government. Any kind of act that's designed to delay or deprive you and me, right

now, of getting full rights, that's the government that's responsible. And anytime you find the government involved in a conspiracy to violate the citizenship or the civil rights of a people in 1964, then you are wasting your time going to that government expecting redress. Instead you have to take that government to the world court and accuse it of genocide and all of the other crimes that it is guilty of today.

So those of us whose political and economic and social philosophy is black nationalism have become involved in the civil rights struggle. We have injected ourselves into the civil rights struggle. And we intend to expand it from the level of civil rights to the level of human rights. As long as you fight it on the level of civil rights, you're under Uncle Sam's jurisdiction. You're going to his court expecting him to correct the problem. He created the problem. He's the criminal! You don't take your case to the criminal, you take your criminal to court.

When the government of South Africa began to trample upon the human rights of the people of South Africa they were taken to the U.N. When the government of Portugal began to trample upon the rights of our brothers and sisters in Angola, it was taken before the U.N. Why, even the white man took the Hungarian question to the U.N. And just this week, Justice Goldberg was crying over three million Jews in Russia, about their human rights, charging Russia with violating the U.N. Charter because of its mistreatment of the human rights of Jews in Russia. Now you tell me how can the plight of everybody on this Earth reach the halls of the United Nations and you have twenty-two million Afro-Americans whose churches are being bombed, whose little girls are being murdered, whose leaders are being shot down in broad daylight? Now you tell me why the leaders of this struggle have never taken it before the United Nations.

So our next move is to take the entire civil rights struggle, problem, into the United Nations and let the world see that Uncle Sam is guilty of violating the human rights of 22 million Afro-Americans right down to the year of 1964 and still has the audacity or the nerve to stand up and represent himself as the leader of the free world? Not only is he a crook, he's a hypocrite...

So I say in my conclusion, the only way we're going to solve it: we got to unite. We got to work together in unity and harmony. And black nationalism is the key. How we are going to overcome the tendency to be at each other's throats that always exists in our neighborhood? And the reason this tendency exists, the strategy of the white man has always been divide and conquer. He keeps us divided in order to conquer us. He tells you, I'm for separation and you for integration, and keep us fighting with each other. No, I'm not for separation and you're not for integration, what you and I are for is freedom. Only, you think that integration will get you freedom; I think that separation will get me freedom. We both got the same objective, we just got different ways of getting' at it.

So I studied this man, Billy Graham, who preaches white nationalism. That's what he preaches. I say, that's what he preaches. The whole church structure in this country is white nationalism, you go inside a white church, that's what they preaching, white nationalism. They got Jesus white, Mary white, God white, everybody white, that's white nationalism...

Well, we going to do the same thing, only our gospel is black nationalism. His gospel is white nationalism, our gospel is black nationalism. And the gospel of black nationalism, as I told you, means you should control your own, the politics of your community, the economy of your community, and all of the society in which you live should be under your control. And once you ... feel that this philosophy will solve your problem, go join any church where that's preached. Don't join any church where white nationalism is preached... When you walk in a Negro church and see a white Jesus and a white Mary and some white angels, that Negro church is preaching white nationalism.

But, when you go to a church and you see the pastor of that church with a philosophy and a program

that's designed to bring black people together and elevate black people, join that church. Join that church. If you see where the NAACP is preaching and practicing that which is designed to make black nationalism materialize, join the NAACP. Join any kind of organization, civic, religious, fraternal, political or otherwise that's based on lifting the black man up and making him master of his own community.

It will be the ballot, or it will be the bullet. It will be liberty, or it will be death. And if you're not ready to pay that price, don't use the word freedom in your vocabulary....

## UNIT VIII

# THE CONSERVATIVE RESPONSE TO THE WELFARE STATE

The Republican Party fell into hard times in the 1930s after Franklin Roosevelt's New Deal brought the economy back from the depths of the Depression. Its opposition to American involvement in Europe retained the support of isolationists, but this disappeared after the Japanese bombed Pearl Harbor, Hawaii, on December 7, 1941. After the US declared war the following day, the federal government swelled to a record size as the Roosevelt administration took control of the economy. Both parties tolerated this as part of the nation's war strategy.

After the war, the Republicans challenged the vast administrative state that the Roosevelt administration had built in the past decade. But they realized that the US economy depends on the existence of a safety net for those less well off, and they came to accept that government should not allow people to starve or die due to lack of medical care for a medical emergency. Frederick Hayek became one of the intellectual heroes of the Republican Party, which experienced a resurgence in the 1950s under President Dwight Eisenhower. The first selection is from Hayek's *The Constitution of Liberty*, which was published at the end of the decade.

The 1960s saw the Democrats return to office and further expand federal social and economic programs, but these did not solve the underlying problems that the US faced. In the bicentennial election of 1976, the Republicans ran the only president who never won a national election, Gerald Ford. Weakened by his pardon of Richard Nixon, he was beaten by former Georgia Governor Jimmy Carter. However, in the next election, the Republicans returned to power with a message that echoed Theodore Roosevelt's faith in individual initiative and Hayek's skepticism of government solutions. Included in this unit are Ronald Reagan's 1981 Inaugural Address and Russell Kirk's essay setting forth ten principles of conservatism.



# 36. Friedrich Hayek and Compassionate Libertarianism

## Friedrich Hayek (1899-1992)

Friedrich von Hayek was born into a family of scholars in Vienna. After dropping the aristocratic “von,” he earned doctorates in both economics and political science at the University of Vienna in the early 1920s. He conducted economic research in several countries, including the US, before becoming a professor at the London School of Economics in 1938.

Inspired by Ludwig von Mises’ critique of socialism, Hayek wrote *The Road to Serfdom*, which was published in 1944. Hayek criticized both the UK and US for moving towards centrally-planned economies, arguing that retaining these extensive controls after World War II could lead to the end of democratic government. He argued that the rule of law and a market economy are essential to preserving both civil and political rights.

Hayek moved to the US in 1950, when he became a professor at the University of Chicago. Joining forces with Milton Friedman, the duo became America’s leading defenders of libertarianism. *The Constitution of Liberty*, published in 1959, updated his ideas for the postwar world. Hayek was awarded the Nobel Prize in economics in 1974 for his work in demonstrating how price changes communicate information to market participants.

## *The Constitution of Liberty* (1959)

Friedrich Hayek saw *isonomia*—the requirement of equality under the law—as an essential component of the US Constitution. In *The Constitution of Liberty*, he sought to show how *isonomia* reinforced liberties protected by the Bill of Rights to ensure the freedom for all Americans. He agreed with earlier critics that government intervention into the market elevated some interests above others, and thus he opposed actions that favored well-connected businesses. However, he recognized that government action was necessary to ensure that market participants were provided with the knowledge to make meaningful choices, which meant that licensing and inspection were worth the expenditure of tax dollars. He also argued that people in extreme poverty could never receive *isonomy* unless they were provided with a basic safety net to ensure that they



would not perish from hunger, homelessness, and lack of medical care. Hayek's arguments for a minimal welfare state helped create a consensus among Americans that some level of public assistance was required to make freedom possible for all.

"Isonomia" was imported into England from Italy at the end of the sixteenth century as a word meaning "equality of laws to all manner of persons"; shortly afterward it was freely used by the translator of Livy in the Englished form "isonomy" to describe the state of equal laws for all and responsibility of the magistrates. It continued in use during the seventeenth century until "equality before the law," "government of law," or "rule of law" gradually replaced it...

When it first appeared, it described a state which Solon had earlier established in Athens when he gave the people "equal laws for the noble and base" and thereby gave them "not so much control of public policy as the certainty of being governed legally in accordance with the known rules." Isonomy was contrasted with the arbitrary rule of tyrants and became a familiar expression in popular drinking songs celebrating the assassination of one of these tyrants. The concept seems to be older than *demokratia*, and the demand for equal participation of all in the government appears to have been one of its consequences....

The spirit of the laws of free Rome has been transmitted to us mainly in the works of the historians and orators of the period... Cicero indeed became the main authority for modern liberalism, and we owe to him many of the most effective formulations of freedom under the law. To him is due the conception of general rules or *leges legum*, which govern legislation, the conception that we obey the law in order to be free, and the conception that the judge ought to be merely the mouth through whom the law speaks....

Thereafter, for a thousand years, the conception that legislation should serve to protect the freedom of the individual was lost. And when the art of legislation was rediscovered, it was the code of Justinian with its conception of a prince who stood above the law that served as a model on the Continent.

In England, however, the wide influence which the classical authors enjoyed during the reign of Elizabeth helped to prepare the way for a different development. Soon after her death the great struggle between king and Parliament began, from which emerged as a by-product the liberty of the individual....

Ever since a court had laid down in the famous Case of Monopolies that the grant of exclusive rights to produce any article was "against the common law and the liberty of the subject," the demand for equal laws for all citizens became the main weapon of Parliament in its opposition to the king's aims. Englishmen then understood better than they do today that the control of production always means the creation of privilege....

[I]t came to be recognized, as Parliament began to act as arbitrarily as the king, that whether or not an action was arbitrary depended not on the source of the authority but on whether it was in conformity with preexisting principles of law. The points most frequently emphasized were that there must be no punishment without a previously existing law providing for it, that all statutes should have only prospective and not retrospective operation, and that the discretion of all magistrates should be strictly circumscribed by law. Throughout, the governing idea was that the law should be king, or as one of the polemical tracts of the period expressed it, *Lex, Rex*.

Gradually, two crucial conceptions emerged as to how these basic ideals should be safeguarded: the idea of a written constitution and the principle of the separation of powers....

While in his philosophical discussion Locke's concern is with the source which makes power legitimate

and with the aim of government in general, the practical problem with which he is concerned is how power, whoever exercises it, can be prevented from becoming arbitrary: “Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where that rule prescribes not; and not to be subject to the inconstant, uncertain, arbitrary will of another man.” It is against the “irregular and uncertain exercise of the power” that the argument is mainly directed: the important point is that “whoever has the legislative or supreme power of any commonwealth is bound to govern by establish standing laws promulgated and known to the people, and not be extemporary decrees; by indifferent and upright judges, who are to decide controversies by those laws; and to employ the forces of the community at home only in the execution of such laws.” Even the legislature has no “absolute arbitrary power,” “cannot assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice, and decide the rights of the subject by promulgated standing laws, and known authorized judges,” while the “supreme executor of the law ... has no will, no power, but that of the law”... [H]is ultimate aim throughout is what today is often called the “taming of power”: the end why men “choose and authorize a legislative is that there may be laws made, and rules set, as guards and fences to the property of all the members of society, to limit the power and moderate the dominion of every part and member of that society”...

Until the final break, the claims and arguments advanced by the colonists in the conflict with the mother country were based entirely on the rights and privileges to which they regarded themselves entitled as British subjects. It was only when they discovered that the British constitution, in whose principles they firmly believed, had little substance and could not be successfully appealed to against the claims of Parliament, that they concluded that the missing foundation had to be supplied. They regarded it as fundamental doctrine that a “fixed constitution” was essential to any free government and that a constitution meant limited government. From their own history they had become familiar with written documents which defined and circumscribed the powers of government such as the Mayflower compact and the colonial charters.

Their experience had also taught them that any constitution that allocated and distributed the different powers thereby necessarily limited the powers of any authority. A constitution might conceivably confine itself to procedural matters and merely determine the source of all authority. But they would hardly have called “constitution” a document which merely said that whatever such and such a body or person says shall be law. They perceived that, once such a document assigned specific powers to different authorities, it would also limit their powers not only in regard to the subjects or the aims to be pursued but also with regard to the methods to be employed. To the colonists, freedom meant that government should have powers only for such action as was explicitly required by law, so that nobody should possess any arbitrary power.

The conception of a constitution thus became closely connected with the conception of representative government, in which the powers of the representative body were strictly circumscribed by the document that conferred upon it particular powers. The formula that all power derives from the people referred not so much to the recurrent election of representatives as to the fact that the people, organized as a constitution-making body, had the exclusive right to determine the powers of the representative legislature. The constitution was thus conceived as a protection of the people against all arbitrary action, on the part of the legislative as well as the other branches of the government....

The idea of a constitution, therefore, involves not only the idea of hierarchy of authority or power but also that of a hierarchy of rules or laws, where those possessing a higher degree of generality and proceeding

from a superior authority control the contents of the more specific laws that are passed by a delegated authority....

The fundamental distinction between a constitution and ordinary laws is similar to that between laws in general and their application by the courts to a particular case: as in deciding concrete cases the judge is bound by general rules, so the legislature in making the particular laws is bound by the more general principles of the constitution. The justification for these distinctions is also similar in both cases: as a judicial decision is regarded as just only if it is in conformity with a general law, so particular laws are regarded as just only if they conform to more general principles. And as we want to prevent the judge from infringing the law for some particular reason, so we also want to prevent the legislature from infringing certain general principles for the sake of temporary and immediate aims.

We have already discussed the reason for this need ... that all men in the pursuit of immediate aims are apt—or, because of the limitations of their intellect, in fact bound—to violate rules of conduct which they would nevertheless wish to see generally observed. Because of the restricted capacity of our minds, our immediate purposes will always loom large, and we will tend to sacrifice long-term advantages to them. In individual as in social conduct we can therefore approach a measure of rationality or consistency in making particular decisions only by submitting to general principles, irrespective of momentary needs. Legislation can no more dispense with guidance by principles than any other human activity if it is to take account of effects in the aggregate....

[A] constitutional system does not involve an absolute limitation of the will of the people but merely a subordination of immediate objectives to long-term ones. In effect this means a limitation of the means available to a temporary majority for the achievement of particular objectives by general principles laid down by another majority for a long period in advance. Or, to put it differently, it means that the agreement to submit to the will of the temporary majority on particular issues is based on the understanding that this majority will abide by more general principles laid down beforehand by a more comprehensive body.

This division of authority implies more than at first may be apparent. It implies a recognition of limits to the power of deliberative reason and a preference for reliance on proved principles over *ad hoc* solutions; furthermore, it implies that the hierarchy of rules does not necessarily end with the explicitly stated rules of constitutional law. Like the forces governing the individual mind, the forces making for social order are a multilevel affair; and even constitutions are based on, or presuppose, an underlying agreement on more fundamental principles.... [A] group of men can form a society capable of making laws because they already share common beliefs which make discussion and persuasion possible and to which the articulated rules must conform in order to be accepted as legitimate.

From this it follows that no person or body of persons has complete freedom to impose upon the rest whatever laws it likes... Constitutionalism means that all power rests on the understanding that it will be exercised according to commonly accepted principles, that the persons on whom power is conferred are selected because it is thought that they are most likely to do what is right, not in order that whatever they should do be right. It rests, in the last resort, on the understanding that power is ultimately not a physical fact but a state of opinion which makes people obey... The Constitution which the new American nation was to give itself was definitely meant not merely as a regulation of the derivation of power but as a constitution of liberty, a constitution that would protect the individual against arbitrary government....

If we consider that the aim of the Constitution was largely to restrain legislatures, it becomes evident that the arrangements had to be made for applying such restraints in the way that other laws are applied—namely, through courts of justice. It is therefore not surprising that a careful historian [C.H.

McIlwain] finds that “judicial review, instead of being an American invention, is as old as constitutional law itself, and without it constitutionalism would never have been attained.” In view of the character of the movement that led to the design of a written constitution, it must indeed seem curious that the need for courts which could declare laws unconstitutional should have ever been questioned. The important fact, at any rate, is that to some of the drafters of the Constitution judicial review was a necessary and self-evident part of a constitution....

It is time to try to pull together the various historical strands and to state systematically the essential conditions of liberty under the law. Mankind has learned from long and painful experience that the law of liberty must produce certain attributes. What are they?

The first point that must be stressed is that, because the rule of law means that government must never coerce an individual except in the enforcement of a known rule, it constitutes a limitation on the powers of all government, including the powers of the legislature. It is a doctrine concerning what the law ought to be, concerning the attributes that a particular law ought to possess. This is important because today the conception of the rule of law is sometimes confused with the requirement of mere legality in all government action. The rule of law, of course, presupposes complete legality, but this is not enough; if a law gave the government unlimited power to act as it pleased, all its actions would be legal, but it would certainly not be under the rule of law. The rule of law, therefore, is also more than constitutionalism: it requires that all laws conform to certain principles.

From the fact that the rule of law is a limitation upon all legislation, it follows that it cannot itself be a law in the same sense as laws passed by the legislator. Constitutional provisions may make infringements of the rule of law more difficult. They may help to prevent inadvertent infringements by routine legislation. But the ultimate legislator can never limit his own powers by law, because he can always abrogate any law he has made. The rule of law is therefore not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or political ideal. It will be effective only in so far as the legislator feels bound by it. In a democracy this means it will not prevail unless it forms part of the moral tradition of the community, a common ideal shared and unquestionably accepted by the majority....

It is equally important to remember that the rule of law restricts government only in its coercive activities. These will never be the only functions of government. Even in order to enforce the law, the government requires an apparatus of personal and material resources which it must administer. And there are whole fields of government activity, such as foreign policy, where the problem of coercion of the citizens does not normally arise....

In current practice, everything is called “law” which has been resolved in the appropriate manner by a legislative authority. But of these laws in the formal sense of the word, only some—today only a very small proportion—are substantive (or “material”) laws regulating the relations between private persons or between such persons and the state. The great majority of the so-called laws are rather instructions issued by the state to its servants concerning the manner in which they are to direct the apparatus of government and the means that are at their disposal....

[A]lthough government has to administer means which have been put at its disposal (including the services of all those whom it has hired to carry out its instructions), this does not mean that it should similarly administer the efforts of private citizens. What distinguishes a free from an unfree society is that in the former each individual has a recognized private sphere clearly distinct from the public sphere, and the private individual cannot be ordered about but is expected to obey only the rules which are equally applicable to all....

The second chief attribute which must be required of true laws is that they be known and certain. The importance which the certainty of the law has for the smooth and efficient running of a free society can hardly be exaggerated. There is probably no single factor which has contributed more to the prosperity of the West than the relative certainty of the law which has prevailed here... [T]he degree of the certainty of the law must be judged by the disputes which do not lead to litigation because the outcome is practically certain as soon as the legal position is examined. It is the cases that never come before the courts, not those that do, that are the measure of the certainty of the law...

The essential point is that the decisions of the courts can be predicted, not that all the rules which determine them can be stated in words... Many of the legal principles on which the conclusions depend will only be implicit in the body of formulated law and will have to be discovered by the courts. This, however, is not a peculiarity of legal reasoning. Probably all generalizations that we can formulate depend on still higher generalizations which we do not explicitly know but which nevertheless govern the working of our minds. Though we will always try to discover those more general principles on which our decisions rest, this is probably by its nature an unending process that can never be completed.

The third requirement of true law is equality. It is as important, but much more difficult, to define than the others. That any law should apply equally to all means more than that it should be general... A law may be perfectly general in referring only to formal characteristic of the persons involved and yet make different provisions for different classes of people... It must be admitted that, in spite of many ingenious attempts to solve this problem, no entirely satisfactory criterion has been found that would always tell us what kind of classification is compatible with equality before the law. To say, as has so often been said, that the law must not make irrelevant distinctions or that it must not discriminate between persons for reasons which have no connection with the purpose of the law is little more than evading the issue.

Yet, though equality before the law may thus be one of the ideals that indicate the direction without fully determining the goal and may therefore always remain beyond our reach, it is not meaningless... [o]ne important requirement that must be satisfied [is] that those inside any group singled out acknowledge the legitimacy of the distinction as well as those outside it...

The ideal of the rule of law requires that the state either enforce the law upon others—and that this be its only monopoly—or act under the same law and therefore be limited in the same manner as any private person. It is this fact that all rules apply equally to all, including those who govern, which makes it improbable that any oppressive rules will be adopted.

It would be humanly impossible to separate effectively the laying-down of new general rules and their application to particular cases unless these functions were performed by different persons or bodies. This part at least of the doctrine of the separation of powers must therefore be regarded as an integral part of the rule of law. Rules must not be made with particular cases in mind, nor must particular cases be decided in the light of anything but the general rule—although this rule may not yet have been explicitly formulated and therefore have to be discovered. This requires independent judges who are not concerned with any temporary ends of government...

The rule of law requires that the executive in its coercive action be bound by rules which prescribe not only when and where it may use coercion but also in what manner it may do so. The only way in which this can be ensured is to make all its actions of this kind subject to judicial review...

It is evident that not all the acts of government can be bound by fixed rules and that at every state of the government hierarchy considerable discretion must be granted to the subordinate agencies. So long as the

government administers its own resources, there are strong arguments for giving it as much discretion as any business management would require in similar circumstances....

The problem of discretionary powers as it affects the rule of law is not a problem of the limitation of the powers of particular agents of government but of the limitation of the powers of government as a whole. It is a problem of the scope of administration in general... It is only when the administration interferes with the private sphere of the citizen that the problem of discretion becomes relevant to us; and the principle of the rule of law, in effect, means that the administrative authorities should have no discretionary powers in this aspect.

In acting under the rule of law the administrative agencies will often have to exercise discretion as the judge exercises discretion in interpreting the law. This, however, is a discretionary power which can and must be controlled by the possibility of a review of the substance of the decision by an independent court. This means that the decision must be deducible from the rules of law and from the circumstances to which the law refers and which can be known to the parties concerned....

“[I]n spite of the inevitable incompleteness of any bill of rights, such a bill affords an important protection for certain rights known to be easily endangered. Today we must be particularly aware that, as a result of technological change, which constantly creates new threats to individual liberty, no list of particular rights can be regarded as exhaustive....

If bills of rights are to remain in any way meaningful, it must be recognized early that their intention was certainly to protect the individual against all vital infringements of his liberty and that they therefore must be presumed to contain a general clause protecting against government's interference those immunities which individuals in fact have enjoyed in the past....

We have up to this point represented those guaranties of individual freedom as if they were absolute rights which could never be infringed. In actual fact they cannot mean more than that the normal running of society is based on them and that any departure from them requires special justification. Even the most fundamental principles of a free society, however, may have to be temporarily sacrificed when, but only when, it is a question of preserving liberty in the long run, and in the case of war... [I]f the rule of law is to be preserved, it is necessary that such actions be confined to exceptional cases defined by rule, so that their justification does not rest on the arbitrary decision of any authority but can be reviewed by an independent court, and second, it is necessary that the individuals affected be not harmed by the disappointment of their legitimate expectations but be fully indemnified for any damage they suffer as a result of such action....

[T]he general argument for economic freedom ... rest[s] on the fact that the great majority of government measures that have been advocated in this field are, in fact, inexpedient, either because they will fail or because their costs will outweigh their advantages. This means that, so long as they are compatible with the rule of law, they cannot be rejected out of hand as government intervention but must be examined in each instance from the viewpoint of expediency....

In other words, it is the character rather than the volume of government activity that is important. A functioning market economy presupposes certain activities on the part of the state; there are some other such activities by which its functioning will be assisted; and it can tolerate many more, provided that they are of the kind which are compatible with a functioning market. But there are those which run counter to the very principle on which a free system rests and which must therefore be altogether excluded if such a system is to work....

[T]he rule of law provides the criterion which enables us to distinguish between those measures which are and those which are not compatible with a free system. Those that are may be examined further on the

grounds of expediency... [T]he observation of the rule of law is a necessary, but not yet a sufficient condition for the satisfactory working of a free economy....

In so far as the government merely undertakes to supply services which otherwise would not be supplied at all (usually because it is not possible to confine the benefits to those prepared to pay for them), the only question which arises is whether the benefits are worth the cost....

A great many of the activities which governments have universally undertaken in this field and which fall within the limits described are those which facilitate the acquisition of reliable knowledge about facts of general significance. The most important function of this kind is the provision of a reliable and efficient monetary system. Others scarcely less important are the setting of standards of weights and measures; the provision of information gathered from surveying, land registration, statistics, etc.; and the support, if not also the organization, of some kind of education.

All these activities of government are part of its effort to provide a favorable framework for individual decisions; they supply means which individuals can use for their own purposes. Many other services of a more material kind fall into that same category.... To this latter group belong all the services which are clearly desirable but which will not be provided by competitive enterprise because it would be either impossible or difficult to charge the individual beneficiary for them. Such are most sanitary and health services, often the construction and maintenance of roads, and many of the amenities provided by municipalities for the inhabitants of cities. Included also are the activities which Adam Smith described as “those public works, which, though they may in the highest degree be advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual or small number of individuals.” And there are many other kinds of activity in which the government may legitimately wish to engage, in order perhaps to maintain secrecy in military preparations or to encourage the advancement of knowledge in certain fields. But though the government may at any moment be best qualified to take the lead in such fields, this provides no justification for assuming that this will always be so and therefore giving it exclusive responsibility.... [T]he services in question can generally be provided, and more effectively provided, by the government’s assuming some or all of the financial responsibility but leaving the conduct of the affairs to independent and in some measure competitive agencies....

Furthermore, a free system does not exclude on principle all those general regulations of economic activity which can be laid down in the form of general rules specifying conditions which everybody who engages in a certain activity must satisfy. They include, in particular, all regulations governing the techniques of production.... This is true of most of the wide field of regulations known as “factory legislation.”...

We must now turn to the kinds of government measures which the rule of law excludes in principle because they cannot be achieved by merely enforcing general rules but, of necessity, involve arbitrary discrimination between persons. The most important among them are decisions as to who is to be allowed to provide different services or commodities, at what prices or in what quantities—in other words, measures designed to control the access to different trades and occupations, the terms of sale, and the amounts to be produced or sold.

So far as the entry into different occupations is concerned, our principle does not necessarily exclude the possible advisability in some instances of permitting it only to those who possess certain ascertainable qualifications.... [I]t is probably undeniable that in some instances, such as where the sale of poisons or firearms is involved, it is both desirable and unobjectionable that only persons satisfying certain intellectual and moral qualities should be allowed to practice such trades....

There are several reasons why all direct control of prices by government is irreconcilable with a functioning free system.... In the first place, it is impossible to fix prices according to long-term rules which will effectively guide production. Appropriate prices depend on circumstances which are constantly changing and must be continually adjusted to them.... [W]ith prices different from those that would form on a free market, demand and supply will not be equal, and if the price control is to be effective, some method must be found for deciding who is to be allowed to buy or sell. This would necessarily be discretionary and must consist of *ad hoc* decisions that discriminate between persons on essentially arbitrary grounds....

The range and variety of government action that is, at least in principle, reconcilable with a free system is thus considerable. The old formulae of *laissez-faire* or non-intervention do not provide us with an adequate criterion for distinguishing between what is and what is not admissible in a free system.... [T]he continuous growth of wealth and technological knowledge which such a system makes possible will constantly suggest new ways in which government might render services to its citizens and bring such possibilities within the range of the practicable.

Why, then, has there been such persistent pressure to do away with those limitations upon government that were erected for the protection of individual liberty?... The answer is that during the last few generations certain new aims of policy have emerged which cannot be achieved within the limits of the rule of law. A government which cannot use coercion except in the enforcement of general rules has no power to ... determine the material position of particular people or enforce distributive or “social” justice. In order to achieve such aims, it would have to pursue a policy which is best described—since the word “planning” is so ambiguous—by the French word *dirigisme*, that is, a policy which determines for what specific purposes particular means are to be used.

This, however, is precisely what a government bound by the rule of law cannot do.... The restrictions which the rule of law imposes on government thus precludes all the measures which would be necessary to ensure that individuals will be rewarded according to another’s conception of merit rather than according to the value that their services have for their fellows.

...[N]o government in modern times has ever confined itself to the “individualist minimum”... All modern governments have made provision for the indigent, unfortunate, and disabled and have concerned themselves with questions of health and the dissemination of knowledge. There is no reason why the volume of these pure service activities should not increase with the general growth of wealth. There are common needs that can be satisfied only by collective action and which can be thus provided for without restricting individual liberty. It can hardly be denied that, as we grow richer, that minimum of sustenance which the community has always provided for those not able to look after themselves, and which can be provided outside the market, will gradually rise, or that government may, usefully and without doing any harm, assist or even lead in such endeavors. There is little reason why the government should not also play some role, or even take the initiative, in such areas as social insurance and education....

[O]nce the rigid position that government should not concern itself at all with such matters is abandoned—a position which is defensible but has little to do with freedom—the defenders of liberty commonly discover that the program of the welfare state comprises a great deal more that is represented as equally legitimate and unobjectionable... Though the position that the state should have nothing to do with matters not related to the maintenance of law and order may seem logical so long as we think of the state solely as a coercive apparatus, we must recognize that, as a service agency, it may assist without harm in the achievement of desirable aims which perhaps could not be achieved otherwise....

[A]n important distinction has to be drawn between two conceptions of security: a limited security which



can be achieved for all and which is, therefore, no privilege, and absolute security, which in a free society cannot be achieved for all. The first of these is security against severe physical privation, the assurance of a given minimum of sustenance for all; and the second is the assurance of a given standard of life, which is determined by comparing the standard enjoyed by a person or group with that of others. The distinction, then, is that between the security of an equal minimum income for all and the security of a particular income that a person is thought to deserve. The latter is closely related to the third main ambition that inspires the welfare state: the desire to use the powers of government to insure a more even or more just distribution of goods. Insofar as this means that the coercive powers of government are to be used to insure that particular people get particular things, it requires a kind of discrimination between, and an unequal treatment of, different people which is irreconcilable with a free society....

# 37. Ronald Reagan and the Republican Resurgence

## Ronald Reagan (1911-2004)

Born in Dixon, Illinois, Reagan graduated Eureka College and became a sportscaster in Iowa. He took a screen test in California in 1937 and was signed to a contract with Warner Brothers Studio. He spent the next five years acting in movies before enlisting in the army, where he made promotional films during World War II. He became president of the Screen Actors Guild in 1947 and was reelected several times.

Reagan moved from movies into television in the 1950s and became the host of the General Electric Theater, a weekly network program that raised his national profile. Televised speeches he gave in support of Barry Goldwater's 1964 presidential campaign led him to a successful run for Governor of California in 1966. He sought the Republican nomination for president unsuccessfully in 1968 and 1976, but secured it four years later.

Reagan appealed to traditional conservative principles in his 1980 campaign: strong national defense, fewer government programs, more state and local control over benefits, and contracting out services instead of expanding government. He won an overwhelming victory in the 1980 presidential election, and confirmed his conservative principles in his First Inaugural Address. Four years later, he was reelected with the second largest electoral vote margin in the 20th century. He died of pneumonia at age 93, setting an age record that has since been broken by Jimmy Carter.

## First Inaugural Address (1981)

Ronald Reagan began his Inaugural Address by praising the peaceful transfer of power from President Jimmy Carter—something Americans took for granted until 2021. He then invoked the themes that had dominated his campaign: reducing the size of government and its tax burden, promoting economic prosperity, and improving the lives of ordinary Americans. His principal message was that Americans do best when they find their own solutions to problems, rather than rely on the government to solve all their problems. He ended with an affirmation of the role of the US to preserve freedom at home and abroad.

To a few of us here today, this is a solemn and most momentous occasion; and yet, in the history of our Nation, it is a commonplace occurrence. The orderly transfer of authority as called for in the Constitution routinely takes place as it has for almost two centuries and few of us stop to think how unique we really are. In the eyes of many in the world, this every-4-year ceremony we accept as normal is nothing less than a miracle.

Mr. President [Carter], I want our fellow citizens to know how much you did to carry on this tradition. By your gracious cooperation in the transition process, you have shown a watching world that we are a united people pledged to maintaining a political system which guarantees individual liberty to a greater degree than any other, and I thank you and your people for all your help in maintaining the continuity which is the bulwark of our Republic.

The business of our nation goes forward. These United States are confronted with an economic affliction of great proportions. We suffer from the longest and one of the worst sustained inflations in our national history. It distorts our economic decisions, penalizes thrift, and crushes the struggling young and the fixed-income elderly alike. It threatens to shatter the lives of millions of our people.

Idle industries have cast workers into unemployment, causing human misery and personal indignity. Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement and keeps us from maintaining full productivity.

But great as our tax burden is, it has not kept pace with public spending. For decades, we have piled deficit upon deficit, mortgaging our future and our children's future for the temporary convenience of the present. To continue this long trend is to guarantee tremendous social, cultural, political, and economic upheavals.

You and I, as individuals, can, by borrowing, live beyond our means, but for only a limited period of time. Why, then, should we think that collectively, as a nation, we are not bound by that same limitation?

We must act today in order to preserve tomorrow. And let there be no misunderstanding—we are going to begin to act, beginning today.

The economic ills we suffer have come upon us over several decades. They will not go away in days, weeks, or months, but they will go away. They will go away because we, as Americans, have the capacity now, as we have had in the past, to do whatever needs to be done to preserve this last and greatest bastion of freedom.

In this present crisis, government is not the solution to our problem; government is the problem. From time to time, we have been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. But if no one among us is capable of governing himself, then who among us has the capacity to govern someone else? All of us together, in and out of government, must bear the burden. The solutions we seek must be equitable, with no one group singled out to pay a higher price.

We hear much of special interest groups. Our concern must be for a special interest group that has been too long neglected. It knows no sectional boundaries or ethnic and racial divisions, and it crosses political party lines. It is made up of men and women who raise our food, patrol our streets, man our mines and our factories, teach our children, keep our homes, and heal us when we are sick—professionals, industrialists, shopkeepers, clerks, cabbies, and truckdrivers. They are, in short, “We the people,” this breed called Americans.

Well, this administration's objective will be a healthy, vigorous, growing economy that provides equal opportunity for all Americans, with no barriers born of bigotry or discrimination. Putting America back to work means putting all Americans back to work. Ending inflation means freeing all Americans from the terror of runaway living costs. All must share in the productive work of this “new beginning” and all must

share in the bounty of a revived economy. With the idealism and fair play which are the core of our system and our strength, we can have a strong and prosperous America at peace with itself and the world.

So, as we begin, let us take inventory. We are a nation that has a government—not the other way around. And this makes us special among the nations of the Earth. Our Government has no power except that granted it by the people. It is time to check and reverse the growth of government which shows signs of having grown beyond the consent of the governed.

It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people. All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.

Now, so there will be no misunderstanding, it is not my intention to do away with government. It is, rather, to make it work—work with us, not over us; to stand by our side, not ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it.

If we look to the answer as to why, for so many years, we achieved so much, prospered as no other people on Earth, it was because here, in this land, we unleashed the energy and individual genius of man to a greater extent than has ever been done before. Freedom and the dignity of the individual have been more available and assured here than in any other place on Earth. The price for this freedom at times has been high, but we have never been unwilling to pay that price.

It is no coincidence that our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government. It is time for us to realize that we are too great a nation to limit ourselves to small dreams. We are not, as some would have us believe, doomed to an inevitable decline. I do not believe in a fate that will all on us no matter what we do. I do believe in a fate that will fall on us if we do nothing. So, with all the creative energy at our command, let us begin an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope.

We have every right to dream heroic dreams. Those who say that we are in a time when there are no heroes just don't know where to look. You can see heroes every day going in and out of factory gates. Others, a handful in number, produce enough food to feed all of us and then the world beyond. You meet heroes across a counter—and they are on both sides of that counter. There are entrepreneurs with faith in themselves and faith in an idea who create new jobs, new wealth and opportunity. They are individuals and families whose taxes support the Government and whose voluntary gifts support church, charity, culture, art, and education. Their patriotism is quiet but deep. Their values sustain our national life.

I have used the words “they” and “their” in speaking of these heroes. I could say “you” and “your” because I am addressing the heroes of whom I speak—you, the citizens of this blessed land. Your dreams, your hopes, your goals are going to be the dreams, the hopes, and the goals of this administration, so help me God.

We shall reflect the compassion that is so much a part of your makeup. How can we love our country and not love our countrymen, and loving them, reach out a hand when they fall, heal them when they are sick, and provide opportunities to make them self-sufficient so they will be equal in fact and not just in theory?

Can we solve the problems confronting us? Well, the answer is an unequivocal and emphatic “yes.” To paraphrase Winston Churchill, I did not take the oath I have just taken with the intention of presiding over the dissolution of the world's strongest economy.

In the days ahead I will propose removing the roadblocks that have slowed our economy and reduced productivity. Steps will be taken aimed at restoring the balance between the various levels of government.

Progress may be slow—measured in inches and feet, not miles—but we will progress. Is it time to reawaken this industrial giant, to get government back within its means, and to lighten our punitive tax burden. And these will be our first priorities, and on these principles, there will be no compromise.

On the eve of our struggle for independence a man who might have been one of the greatest among the Founding Fathers, Dr. Joseph Warren, President of the Massachusetts Congress, said to his fellow Americans, “Our country is in danger, but not to be despaired of.... On you depend the fortunes of America. You are to decide the important questions upon which rests the happiness and the liberty of millions yet unborn. Act worthy of yourselves.”

Well, I believe we, the Americans of today, are ready to act worthy of ourselves, ready to do what must be done to ensure happiness and liberty for ourselves, our children and our children’s children.

And as we renew ourselves here in our own land, we will be seen as having greater strength throughout the world. We will again be the exemplar of freedom and a beacon of hope for those who do not now have freedom.

To those neighbors and allies who share our freedom, we will strengthen our historic ties and assure them of our support and firm commitment. We will match loyalty with loyalty. We will strive for mutually beneficial relations. We will not use our friendship to impose on their sovereignty, for our own sovereignty is not for sale.

As for the enemies of freedom, those who are potential adversaries, they will be reminded that peace is the highest aspiration of the American people. We will negotiate for it, sacrifice for it; we will not surrender for it—now or ever.

Our forbearance should never be misunderstood. Our reluctance for conflict should not be misjudged as a failure of will. When action is required to preserve our national security, we will act. We will maintain sufficient strength to prevail if need be, knowing that if we do so we have the best chance of never having to use that strength.

Above all, we must realize that no arsenal, or no weapon in the arsenals of the world, is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today’s world do not have. It is a weapon that we as Americans do have. Let that be understood by those who practice terrorism and prey upon their neighbors.

I am told that tens of thousands of prayer meetings are being held on this day, and for that I am deeply grateful. We are a nation under God, and I believe God intended for us to be free. It would be fitting and good, I think, if on each Inauguration Day in future years it should be declared a day of prayer.

## 38. Russell Kirk's Conservative Principles

### Russell Kirk (1918-1994)

Born in Plymouth, Michigan, Russell Kirk received his B.A. at Michigan State and M.A. at Duke before serving in the military during World War II. He received a D. Litt. from the University of St. Andrews in Scotland. His thesis was published as *The Conservative Mind* (1953).

Kirk taught for several years at Michigan State in the 1950s. The university was rapidly expanding enrollment and technical education and deemphasizing liberal arts, policies that he opposed. He resigned to become a public intellectual, and spent the rest of his life writing and speaking about conservative ideas. He helped found *National Review* and *Modern Age*, leading conservative journals, and was awarded the Presidential Citizens Medal by Ronald Reagan. His former home in Mecosta, Michigan, now houses the Russell Kirk Center for Cultural Renewal.

### Ten Conservative Principles (1993)

Russell Kirk's essay does just what its title implies—summarize ten principles that he identified in the works of American conservatives. As you read his essay, see if you can identify other writers in this compilation who shared these values. Candidates include Tocqueville, Calhoun, Taney, Buchanan, Sumner, Brown, Theodore Roosevelt, Hayek and Reagan.

...So far as it is possible to determine what conservatives believe, the first principles of the conservative persuasion are derived from what leading conservative writers and public men have professed during the past two centuries. After some introductory remarks on this general theme, I will proceed to list ten such conservative principles.

Perhaps it would be well, most of the time, to use this word “conservative” as an adjective chiefly. For there exists no Model Conservative, and conservatism is the negation of ideology: it is a state of mind, a type of character, a way of looking at the civil social order.

The attitude we call conservatism is sustained by a body of sentiments, rather than by a system of

ideological dogmata. It is almost true that a conservative may be defined as a person who thinks himself such. The conservative movement or body of opinion can accommodate a considerable diversity of views on a good many subjects, there being no Test Act or Thirty-Nine Articles of the conservative creed.

In essence, the conservative person is simply one who finds the permanent things more pleasing than Chaos and Old Night. (Yet conservatives know, with Burke, that healthy “change is the means of our preservation.”) A people’s historic continuity of experience, says the conservative, offers a guide to policy far better than the abstract designs of coffee-house philosophers. But of course there is more to the conservative persuasion than this general attitude.

It is not possible to draw up a neat catalogue of conservatives’ convictions; nevertheless, I offer you, summarily, ten general principles; it seems safe to say that most conservatives would subscribe to most of these maxims....

First, the conservative believes that there exists an enduring moral order. That order is made for man, and man is made for it: human nature is a constant, and moral truths are permanent.

This word *order* signifies harmony. There are two aspects or types of order: the inner order of the soul, and the outer order of the commonwealth. Twenty-five centuries ago, Plato taught this doctrine, but even the educated nowadays find it difficult to understand. The problem of order has been a principal concern of conservatives ever since *conservative* became a term of politics....

It has been said by liberal intellectuals that the conservative believes all social questions, at heart, to be questions of private morality. Properly understood, this statement is quite true. A society in which men and women are governed by belief in an enduring moral order, by a strong sense of right and wrong, by personal convictions about justice and honor, will be a good society—whatever political machinery it may utilize; while a society in which men and women are morally adrift, ignorant of norms, and intent chiefly upon gratification of appetites, will be a bad society—no matter how many people vote and no matter how liberal its formal constitution may be.

Second, the conservative adheres to custom, convention, and continuity. It is old custom that enables people to live together peaceably; the destroyers of custom demolish more than they know or desire. It is through convention—a word much abused in our time—that we contrive to avoid perpetual disputes about rights and duties: law at base is a body of conventions. Continuity is the means of linking generation to generation; it matters as much for society as it does for the individual; without it, life is meaningless. When successful revolutionaries have effaced old customs, derided old conventions, and broken the continuity of social institutions—why, presently they discover the necessity of establishing fresh customs, conventions, and continuity; but that process is painful and slow; and the new social order that eventually emerges may be much inferior to the old order that radicals overthrew in their zeal for the Earthly Paradise.

Conservatives are champions of custom, convention, and continuity because they prefer the devil they know to the devil they don’t know. Order and justice and freedom, they believe, are the artificial products of a long social experience, the result of centuries of trial and reflection and sacrifice. Thus the body social is a kind of spiritual corporation, comparable to the church; it may even be called a community of souls. Human society is no machine, to be treated mechanically. The continuity, the life-blood, of a society must not be interrupted. Burke’s reminder of the necessity for prudent change is in the mind of the conservative. But necessary change, conservatives argue, ought to be gradual and discriminatory, never unfixing old interests at once.

Third, conservatives believe in what may be called the principle of prescription. Conservatives sense that modern people are dwarfs on the shoulders of giants, able to see farther than their ancestors only because

of the great stature of those who have preceded us in time. Therefore conservatives very often emphasize the importance of *prescription*—that is, of things established by immemorial usage, so that the mind of man runneth not to the contrary. There exist rights of which the chief sanction is their antiquity—including rights to property, often. Similarly, our morals are prescriptive in great part. Conservatives argue that we are unlikely, we moderns, to make any brave new discoveries in morals or politics or taste. It is perilous to weigh every passing issue on the basis of private judgment and private rationality. The individual is foolish, but the species is wise, Burke declared. In politics we do well to abide by precedent and precept and even prejudice, for the great mysterious incorporation of the human race has acquired a prescriptive wisdom far greater than any man's petty private rationality.

Fourth, conservatives are guided by their principle of prudence. Burke agrees with Plato that in the statesman, prudence is chief among virtues. Any public measure ought to be judged by its probable long-run consequences, not merely by temporary advantage or popularity. Liberals and radicals, the conservative says, are imprudent: for they dash at their objectives without giving much heed to the risk of new abuses worse than the evils they hope to sweep away. As John Randolph of Roanoke put it, Providence moves slowly, but the devil always hurries. Human society being complex, remedies cannot be simple if they are to be efficacious. The conservative declares that he acts only after sufficient reflection, having weighed the consequences. Sudden and slashing reforms are as perilous as sudden and slashing surgery.

Fifth, conservatives pay attention to the principle of variety. They feel affection for the proliferating intricacy of long-established social institutions and modes of life, as distinguished from the narrowing uniformity and deadening egalitarianism of radical systems. For the preservation of a healthy diversity in any civilization, there must survive orders and classes, differences in material condition, and many sorts of inequality. The only true forms of equality are equality at the Last Judgment and equality before a just court of law; all other attempts at levelling must lead, at best, to social stagnation. Society requires honest and able leadership; and if natural and institutional differences are destroyed, presently some tyrant or host of squalid oligarchs will create new forms of inequality.

Sixth, conservatives are chastened by their principle of imperfectability. Human nature suffers irremediably from certain grave faults, the conservatives know. Man being imperfect, no perfect social order ever can be created. Because of human restlessness, mankind would grow rebellious under any utopian domination, and would break out once more in violent discontent—or else expire of boredom. To seek for utopia is to end in disaster, the conservative says: we are not made for perfect things. All that we reasonably can expect is a tolerably ordered, just, and free society, in which some evils, maladjustments, and suffering will continue to lurk. By proper attention to prudent reform, we may preserve and improve this tolerable order. But if the old institutional and moral safeguards of a nation are neglected, then the anarchic impulse in humankind breaks loose: “the ceremony of innocence is drowned.” The ideologues who promise the perfection of man and society have converted a great part of the twentieth-century world into a terrestrial hell.

Seventh, conservatives are persuaded that freedom and property are closely linked. Separate property from private possession, and Leviathan becomes master of all. Upon the foundation of private property, great civilizations are built. The more widespread is the possession of private property, the more stable and productive is a commonwealth. Economic levelling, conservatives maintain, is not economic progress. Getting and spending are not the chief aims of human existence; but a sound economic basis for the person, the family, and the commonwealth is much to be desired.

Sir Henry Maine, in his *Village Communities*, puts strongly the case for private property, as distinguished



from communal property: “Nobody is at liberty to attack several property and to say at the same time that he values civilization. The history of the two cannot be disentangled.” For the institution of several property—that is, private property—has been a powerful instrument for teaching men and women responsibility, for providing motives to integrity, for supporting general culture, for raising mankind above the level of mere drudgery, for affording leisure to think and freedom to act. To be able to retain the fruits of one’s labor; to be able to see one’s work made permanent; to be able to bequeath one’s property to one’s posterity; to be able to rise from the natural condition of grinding poverty to the security of enduring accomplishment; to have something that is really one’s own—these are advantages difficult to deny. The conservative acknowledges that the possession of property fixes certain duties upon the possessor; he accepts those moral and legal obligations cheerfully.

Eighth, conservatives uphold voluntary community, quite as they oppose involuntary collectivism. Although Americans have been attached strongly to privacy and private rights, they also have been a people conspicuous for a successful spirit of community. In a genuine community, the decisions most directly affecting the lives of citizens are made locally and voluntarily. Some of these functions are carried out by local political bodies, others by private associations: so long as they are kept local, and are marked by the general agreement of those affected, they constitute healthy community. But when these functions pass by default or usurpation to centralized authority, then community is in serious danger. Whatever is beneficent and prudent in modern democracy is made possible through cooperative volition. If, then, in the name of an abstract Democracy, the functions of community are transferred to distant political direction—why, real government by the consent of the governed gives way to a standardizing process hostile to freedom and human dignity.

For a nation is no stronger than the numerous little communities of which it is composed. A central administration, or a corps of select managers and civil servants, however well intentioned and well trained, cannot confer justice and prosperity and tranquility upon a mass of men and women deprived of their old responsibilities. That experiment has been made before; and it has been disastrous. It is the performance of our duties in community that teaches us prudence and efficiency and charity.

Ninth, the conservative perceives the need for prudent restraints upon power and upon human passions. Politically speaking, power is the ability to do as one likes, regardless of the wills of one’s fellows. A state in which an individual or a small group are able to dominate the wills of their fellows without check is a despotism, whether it is called monarchical or aristocratic or democratic. When every person claims to be a power unto himself, then society falls into anarchy. Anarchy never lasts long, being intolerable for everyone, and contrary to the ineluctable fact that some persons are more strong and more clever than their neighbors. To anarchy there succeeds tyranny or oligarchy, in which power is monopolized by a very few.

The conservative endeavors to so limit and balance political power that anarchy or tyranny may not arise. In every age, nevertheless, men and women are tempted to overthrow the limitations upon power, for the sake of some fancied temporary advantage. It is characteristic of the radical that he thinks of power as a force for good—so long as the power falls into his hands. In the name of liberty, the French and Russian revolutionaries abolished the old restraints upon power; but power cannot be abolished; it always finds its way into someone’s hands. That power which the revolutionaries had thought oppressive in the hands of the old regime became many times as tyrannical in the hands of the radical new masters of the state.

Knowing human nature for a mixture of good and evil, the conservative does not put his trust in mere benevolence. Constitutional restrictions, political checks and balances, adequate enforcement of the laws, the old intricate web of restraints upon will and appetite—these the conservative approves as instruments

of freedom and order. A just government maintains a healthy tension between the claims of authority and the claims of liberty.

Tenth, the thinking conservative understands that permanence and change must be recognized and reconciled in a vigorous society. The conservative is not opposed to social improvement, although he doubts whether there is any such force as a mystical Progress, with a [capital] P, at work in the world. When a society is progressing in some respects, usually it is declining in other respects. The conservative knows that any healthy society is influenced by two forces, which Samuel Taylor Coleridge called its Permanence and its Progression. The Permanence of a society is formed by those enduring interests and convictions that gives us stability and continuity; without that Permanence, the fountains of the great deep are broken up, society slipping into anarchy. The Progression in a society is that spirit and that body of talents which urge us on to prudent reform and improvement; without that Progression, a people stagnate.

Therefore the intelligent conservative endeavors to reconcile the claims of Permanence and the claims of Progression. He thinks that the liberal and the radical, blind to the just claims of Permanence, would endanger the heritage bequeathed to us, in an endeavor to hurry us into some dubious Terrestrial Paradise. The conservative, in short, favors reasoned and temperate progress; he is opposed to the cult of Progress, whose votaries believe that everything new necessarily is superior to everything old.

Change is essential to the body social, the conservative reasons, just as it is essential to the human body. A body that has ceased to renew itself has begun to die. But if that body is to be vigorous, the change must occur in a regular manner, harmonizing with the form and nature of that body; otherwise change produces a monstrous growth, a cancer, which devours its host. The conservative takes care that nothing in a society should ever be wholly old, and that nothing should ever be wholly new. This is the means of the conservation of a nation, quite as it is the means of conservation of a living organism. Just how much change a society requires, and what sort of change, depend upon the circumstances of an age and a nation....



# Sources for this Book

Almost all of the readings in this book have been edited by the author for the purpose of presenting the ideas that he considers most important to American political theory. This means that, depending on the length of the original reading, there may be much that is left out. If you are interested in reading more of the works included in this book, here are the sources that will allow you to do so.

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Declaration of Independence: [www.nationalarchives.org](http://www.nationalarchives.org).

Constitution: [www.nationalarchives.org](http://www.nationalarchives.org).

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## **Chapter 3: Conflict, Disaggregation and Civil War**

Frederick Douglass' Speech: [www.gutenberg.org](http://www.gutenberg.org).

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## **Chapter 4: Reconstituting the Nation**

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Lester Ward's *Plutocracy and Paternalism*: [www.library.gwu.edu](http://www.library.gwu.edu).

## **Chapter 5: The Progressive Era and Political Reform**

Lincoln Steffens' *The Shame of the Cities*: [www.gutenberg.org](http://www.gutenberg.org).

Upton Sinclair's *The Jungle*: [www.gutenberg.org](http://www.gutenberg.org).

Herbert Croly's *The Promise of American Life*: [www.gutenberg.org](http://www.gutenberg.org).

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### **Chapter 8: The Conservative Response to the Welfare State**

Friedrich Hayek's *The Constitution of Liberty*: [www.iea.org.uk](http://www.iea.org.uk).

Ronald Reagan's First Inaugural Address; [www.nationalarchives.org](http://www.nationalarchives.org).

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