

High School | 9th–12th Grade



American Government and Politics

The Hillsdale

1776
Curriculum

HIGH SCHOOL

American Government and Politics

9 units | 45-50-minute classes

COURSE OVERVIEW

Unit 1 | The Principles of America

13-16 classes

LESSON 1 Liberty, Equality, Rights, and Self-Government

LESSON 2 The Necessities for Freedom and Self-Government

LESSON 3 Public Policy and Partisanship

Unit 2 | A Constitution of Principles

12-16 classes

LESSON 1 The Case for the Constitution

LESSON 2 The Case for Union

LESSON 3 Federalism

LESSON 4 Separation of Powers and Checks & Balances

Unit 3 | Governing in the Constitution

12-16 classes

- LESSON 1** The Congress in the Constitution
- LESSON 2** The Presidency in the Constitution
- LESSON 3** The Judiciary in the Constitution
- LESSON 4** The Bill of Rights

Unit 4 | Equality in America

16-20 classes

- LESSON 1** Self-Government vs. Slavery
- LESSON 2** Slavery and Moral Relativism
- LESSON 3** Lincoln's Statesmanship and the End of Slavery
- LESSON 4** Civil Rights and Reconstruction

Unit 5 | Progressivism and the State

13-17 classes

- LESSON 1** Criticism of the Declaration of Independence
- LESSON 2** Politics, Leadership, and the Administrative State
- LESSON 3** The New Deal and the Great Society
- LESSON 4** Constitutionalist Responses to Progressivism

Unit 6 | Institutions and Policy

17-23 classes

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LESSON 1	Congress
LESSON 2	The Presidency
LESSON 3	The Bureaucracy and the Administrative State
LESSON 4	Placeholder: State and Local Government
LESSON 5	Domestic Policy
LESSON 6	National Security and Foreign Policy

Unit 7 | Politics in Practice

14-18 classes

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LESSON 1	Parties, Elections, and Campaigns
LESSON 2	Civic Participation and Public Opinion
LESSON 3	Civic Associations and Interest Groups
LESSON 4	The First Amendment and the Media

Unit 8 | Late 20th Century Government and Politics

15-19 classes

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LESSON 1	The Civil Rights Movement
LESSON 2	New Progressive Movements
LESSON 3	Major Supreme Court Decisions
LESSON 4	Recent Debates about Equality

Capstone Conversation | The Meaning of America

4-5 classes

LESSON 1 What Is America?

LESSON 2 Challenges to America's Principles

LESSON 3 For Love of Country

Optional Civics Activities | Fostering Civic Responsibility

ACTIVITIES BY UNIT

CIVICS CLUB IDEAS

VOLUNTEERISM AND VIRTUE FORMATION IDEAS

UNIT 1

The Principles of America

45-50-minute classes | 13-16 classes

UNIT PREVIEW**Structure**

LESSON 1	Liberty, Equality, Rights, and Self-Government	6-7 classes	p. 7
LESSON 2	The Necessities for Freedom and Self-Government	3-4 classes	p. 14
LESSON 3	Public Policy and Partisanship	2-3 classes	p. 18
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 21
APPENDIX B	Primary Sources		p. 33

Why Teach the Principles of America

Young Americans on the verge of assuming all the responsibilities and rights of citizenship as adults must be more than merely familiar with the political body of which they are a part; they must hold a strong and deep understanding of its nature, its structure, its means, and, perhaps most importantly, its ends. No society, no government, no self-governing republic can long endure if even one generation should fail to possess such an understanding. Moreover, citizens cannot love their country, cannot preserve its goodness while correcting its failures, unless they know its history first. And knowledge of the United States for young Americans begins with a knowledge of its origins. In order to judge prudently in matters of public interest in the present day, students must learn about the philosophical principles upon which the American Founders created the United States of America, including the assertion of self-evident, objective truths about natural rights, morality, and self-government.

What Teachers Should Consider

From *The 1776 Report*, Pages 5-14

The United States of America is in most respects a nation like any other. It embraces a people, who inhabit a territory, governed by laws administered by human beings. Like other countries, our country has borders, resources, industries, cities and towns, farms and factories, homes, schools, and houses of worship. And, although a relatively young country, its people have shared a history of common struggle and achievement, from carving communities out of a vast, untamed wilderness, to winning independence and forming a new government, through wars, industrialization, waves of immigration, technological progress, and political change.

In other respects, however, the United States is unusual. It is a republic; that is to say, its government was designed to be directed by the will of the people rather than the wishes of a single individual or a narrow class of elites. Republicanism is an ancient form of government but one uncommon throughout history, in part because of its fragility, which has tended to make republics short-lived. Contemporary Americans tend to forget how historically rare republicanism has been, in part because of the success of republicanism in our time, which is derived in no small part from the very example and success of America.

In two decisive respects, the United States of America is unique. First, it has a definite birthday: July 4th, 1776. Second, it declares from the moment of its founding not merely the principles on which its new government will be based; it asserts those principles to be true and universal: “applicable to all men and all times,” as Lincoln said....

There was no United States of America before July 4th, 1776. There was not yet, formally speaking, an American people. There were, instead, living in the thirteen British colonies in North America some two-and-a-half million subjects of a distant king. Those subjects became a people by declaring themselves such and then by winning the independence they had asserted as their right.

They made that assertion on the basis of principle, not blood or kinship or what we today might call “ethnicity.”...They were neither wholly English nor wholly Protestant nor wholly Christian. Some other basis would have to be found and asserted to bind the new people together and to which they would remain attached if they were to remain a people. That basis was the assertion of universal and eternal principles of justice and political legitimacy....

...As the Declaration of Independence puts it, a “decent respect to the opinions of mankind” required them to explain themselves and justify their actions. They did not merely wish to assert that they disliked British rule and so were replacing it with something they liked better. They wished to state a justification for their actions, and for the government to which it would give birth, that is both true and moral: moral because it is faithful to the truth about things.

Such a justification could only be found in the precepts of nature—specifically human nature—accessible to the human mind but not subject to the human will. Those precepts—whether understood as created by God or simply as eternal—are a given that man did not bring into being and cannot change. Hence the Declaration speaks of both “the Laws of Nature and of Nature’s God”—it appeals to both reason and

revelation—as the foundation of the underlying truth of the document’s claims, and for the legitimacy of this new nation.

The core assertion of the Declaration, and the basis of the founders’ political thought, is that “all men are created equal.” From the principle of equality, the requirement for consent naturally follows: if all men are equal, then none may by right rule another without his consent.

The assertion that “all men are created equal” must also be properly understood. It does not mean that all human beings are equal in wisdom, courage, or any of the other virtues and talents that God and nature distribute unevenly among the human race. It means rather that human beings are equal in the sense that they are not by nature divided into castes, with natural rulers and ruled.

Thomas Jefferson liked to paraphrase the republican political thinker Algernon Sidney: “the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.” Superiority of talent—even a superior ability to rule—is not a divine or natural title or warrant to rule. George Washington, surely one of the ablest statesmen who ever lived, never made such an outlandish claim and, indeed, vehemently rejected such assertions made by others about him.

As Abraham Lincoln would later explain, there was no urgent need for the founders to insert into a “merely revolutionary document” this “abstract truth, applicable to all men and all times.” They could simply have told the British king they were separating and left it at that. But they enlarged the scope of their Declaration so that its principles would serve as “a rebuke and a stumbling-block to the very harbingers of re-appearing tyranny and oppression.” The finality of the truth that “all men are created equal” was intended to make impossible any return to formal or legal inequality, whether to older forms such as absolute monarchy and hereditary aristocracy, or to as-yet-unimagined forms we have seen in more recent times.

Natural equality requires not only the consent of the governed but also the recognition of fundamental human rights—including but not limited to life, liberty, and the pursuit of happiness—as well as the fundamental duty or obligation of all to respect the rights of others. These rights are found in nature and are not created by man or government; rather, men create governments to secure natural rights. Indeed, the very purpose of government is to secure these rights, which exist independently of government, whether government recognizes them or not. A bad government may deny or ignore natural rights and even prevent their exercise in the real world. But it can never negate or eliminate them.

The principles of the Declaration are universal and eternal. Yet they were asserted by a specific people, for a specific purpose, in a specific circumstance. The general principles stated in the document explain and justify the founders’ particular actions in breaking off from Great Britain, and also explain the principles upon which they would build their new government. These principles apply to all men, but the founders acted to secure only Americans’ rights, not those of all mankind. The world is still—and will always be—divided into nations, not all of which respect the rights of their people, though they should.

How Teachers Can Learn More

TEXTS

<i>The 1776 Report</i> , The President's Advisory 1776 Commission	Pages 5-14, 64-75
<i>The U.S. Constitution: A Reader</i> , ed. Hillsdale College Politics Faculty	Chapters 1-3
<i>The Political Theory of the American Founding</i> , Thomas West	
<i>On Duties</i> , Marcus Tullius Cicero	Books I-III
<i>Second Treatise of Government</i> , John Locke	
<i>American Government and Politics</i> , Joseph Bessette and John Pitney	Chapters 1 and 4

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101

Primary Sources Studied in This Unit

On the Laws, Book I, Marcus Tullius Cicero
Second Treatise of Government, Chapter 9, John Locke
 The Mayflower Compact
 The Declaration of Independence
 The Massachusetts Constitution of 1780, Preamble and Part the First
 Virginia Declaration of Rights
 Fragment on the Constitution and Union, Abraham Lincoln
 Inaugural Address, George Washington
 Farewell Address, George Washington
 The Northwest Ordinance, Article III
 Report of the Commissioners for the University of Virginia, Thomas Jefferson & James Madison
 Letter to the Massachusetts Militia, John Adams
 Fast Day Proclamation of the Continental Congress
 First Annual Address to Congress, George Washington
 Thanksgiving Proclamation, George Washington
 Letter to the Hebrew Congregation, George Washington
 To the Society of Quakers, George Washington
 The Virginia Statute for Religious Freedom
 "Memorial and Remonstrance Against Religious Assessments," James Madison
 Letter to the Danbury Baptist Association, Thomas Jefferson
 Fragment on the French Revolution, Alexander Hamilton
 "Property," James Madison
 Bill for the Support of the Poor, Thomas Jefferson
 The Examination Number No. 7, Alexander Hamilton
Notes on the State of Virginia, Query 8, Thomas Jefferson

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — Liberty, Equality, Rights, and Self-Government

6-7 classes

LESSON OBJECTIVE

Students learn how the thought and practice of republicanism and liberalism, as expressed especially in the Declaration of Independence and through the practice of self-government, formed the philosophical and practical underpinnings of the United States.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101

Lectures 1, 2, 3, and 4
 Lectures 1 and 2

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions (included in appendix) to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

On the Laws, Book I, Marcus Tullius Cicero
Second Treatise of Government, Chapter 9, John Locke
 The Mayflower Compact
 The Declaration of Independence
 The Massachusetts Constitution of 1780, Preamble and Part the First
 Virginia Declaration of Rights
 Fragment on the Constitution and Union, Abraham Lincoln

TERMS AND TOPICS

polis	state of nature
politics	Laws of Nature and of Nature's God
political philosophy	natural rights
public policy	social contract
natural law	consent of the governed
principles	limited government
morality	tyranny
virtue	revolution
liberalism	equality
democratic republicanism	natural rights
rule of law	unalienable
self-evident	liberty
objectivity	pursuit of happiness

QUESTIONS FOR THE AMERICAN MIND

- What are natural rights and why do human beings have them? Where do they come from?
- What does human equality mean in the statement, “all men are created equal”? Equal in what respects? In which ways are people *not* equal according to the Founders?
- What view of human nature does this presuppose?
- What does “unalienable” mean? Who or what, precisely, can alienate our rights?
- What are the overall ideas that we collectively call “liberalism”?
- What is the relationship between the state of nature, the social contract, representative government, and consent of the governed?
- Why did the founding generation consider government’s powers to be “just” only when government is instituted by the consent of the governed?
- Was the Founders’ idea of justice based on nothing more than consent? What considerations might be more important to consider than consent?
- What is the purpose of government?
- How do natural rights both empower and limit the government?
- What is meant by “limited government”?
- What are “the Laws of Nature and of Nature’s God”?
- What is a “self-evident” truth?
- What is the importance of individual freedom within liberalism?
- What is tyranny?
- What is the right to revolution, why do people have this right, and when may it be exercised?
- How does natural-rights liberalism help overcome the problems of religious and class-based factionalism and the great political evils they can produce, namely, civil war and tyranny?
- What is meant by a “natural aristocracy”?
- How is life in democracy different from life in aristocracy, especially in considering the idea of “the equality of conditions” compared to a nobility and established social classes?
- Questions from the U.S. Civics Test:
 - Question 8: Why is the Declaration of Independence important?
 - Question 10: Name two important ideas from the Declaration of Independence and the U.S. Constitution.
 - Question 11: The words “Life, Liberty, and the pursuit of Happiness” are in what founding document?
 - Question 12: What is the economic system of the United States?
 - Question 13: What is the rule of law?

KEYS TO THE LESSON

America is like other nations in that it has a people, a geographic location, and laws that govern it. But America is also very different. It was founded at a particular time on the basis of particular ideas. In the end, America is not bound by an ethnic character, a common religion, or even a shared history as much as by a set of principles held to true and universal and established as the basis for this particular nation. These principles bind America’s extraordinarily diverse people into one nation through a shared belief and commitment to these principles. Students must understand this unique quality about their country and know what these principles are: there are self-evident truths, that all are equal and equally possess rights by

nature, and that chief among these are life, liberty, and the pursuit of happiness. The reason people join together to form a government is to secure their rights and preserve their safety and happiness.

Teachers might best plan and teach Liberty, Equality, Rights, and Self-Government with emphasis on the following approaches:

- Begin the year considering what *politics* is. Briefly sketch its origins in the ancient world and what virtues it demands of those who would practice it well, particularly that cardinal virtue of prudence.
- While scheduling may limit the study of other thinkers related to political order and the American founding, it would be best for teachers to familiarize themselves with those thinkers who, while disagreeing in many ways, were at least united in conversation around what human nature is and what it means for the civic body. These would include those who contributed to the western philosophical tradition and experience in government up to and during the American founding, such as Plato, Aristotle, Cicero, Niccolò Machiavelli, Thomas Hobbes, and Adam Smith; those who more directly informed the Founders, such as Algernon Sidney, William Blackstone, and Montesquieu; and the relevant political histories of ancient civilizations (e.g., Babylonians, Hebrews, Greeks, Romans), medieval society, the Enlightenment, England, and the British North American colonies. Spending some time to review these figures, ideas, and histories with students or at least to refer to them where appropriate may be helpful in teaching the first three units of this course.
- Outline with students (or if they have already studied early American history, review) the key historical circumstances in which the Founding occurred, especially the following:
 - The colonists who settled in British North America came from many nations (chiefly but not exclusively those of Europe) for many different reasons, but one thing they did not bring with them were the class distinctions that defined the aristocratic and monarchical nations they left behind. These individuals (except for their British governors) were common people who immigrated to America seeking their freedom and to better their station in life.
 - Religious faith strongly defined colonial culture, largely because so many came to America to escape the religious persecutions of the old world. From the pilgrims and the Puritans to Roman Catholics and Jews, a wide variety of denominations (mostly Christian) are found throughout colonial settlements. This diversity fostered religious liberty and toleration at the same time that it strengthened a common morality rooted in religious faith and practice, which was widespread and imbued colonial society.
 - Colonial America was highly literate and the leading members of colonial society and government were educated in classical thought, ancient and contemporary history, and philosophy and politics (including thinkers of the moderate Enlightenment).
 - Consider the year 1619 at Jamestown as an insight into colonial America:
 - On one hand, it was in 1619 that the first Africans, having been taken from a Portuguese slave ship en route to Mexico by an English privateer, landed at Jamestown. What appeared to be an initial status as indentured servants was either borderline slavery or devolved to such in subsequent decades.
 - On the other hand, it was also in 1619 at Jamestown that the Virginia House of Burgesses first convened, marking the beginning of representative self-government in the colonies. This self-government would flourish for over a

hundred and fifty years as the British colonists of North America largely governed themselves and developed the thought, practice, and habits of a self-governing people (a phenomenon that Edmund Burke described as “salutary neglect”).

- Have students read and annotate excerpts from John Locke’s *Second Treatise of Government*. Locke was the political theorist most quoted by the Founders during the 1770s, and his articulation of the principles of equality and consent shaped the principles on which America was founded. Students should pay special attention to the state of nature, the existence of natural rights, the equal possession thereof, the source of these rights, and how and why governments are created with respect to these rights. Guide students through the form a government should have based on the types of powers it needs to enforce the law of nature and protect natural rights. Students should be able to draw connections between Locke’s ideas and the subsequent ideas and institutions of the American Founders.
- Have students read and annotate the Declaration of Independence. Much of the lesson should involve connecting ideas in the Declaration to the primary sources in this lesson. Utilize these sources to provide further elaboration on what Thomas Jefferson meant by certain statements in the Declaration. Students should understand how other colonial documents, certain ancient and British thinkers, and British legal customs informed the Declaration, but also how the Declaration was a new articulation and combination of such ideas, particularly as principles that were universal and thus formed the basis of a new country.
- Help students to consider that the Founders were making assertions about the existence of objective truth by referencing “the Laws of Nature and of Nature’s God” and by describing the truths as self-evident. This line of thinking adheres to the first law of logic, that of contradiction, which is the basis of all reasoning and of our capacity to make sense of reality: i.e., that something cannot both be and not be at the same time in the same way. The use of the words “the Laws of Nature and of Nature’s God” ties truth to an external reality (nature) with fixed and reliable features (laws). “Self-evident” ties truth to fixed definitions—a “self-evident” claim is one that is true by definition of the idea in question, like the claim that a triangle has three sides. A “self-evident” truth is not merely a matter of perspective; it can be known and understood by anyone at any time.
- Note that for the Founders, the “Laws...of Nature’s God” implied that this understanding of nature was consistent with the Christian tradition within which the American founding occurred. Other references to divine sources of truth in the Declaration include that men are “endowed by their Creator” and its appeals to “the Supreme Judge of the world” and to “the protection of divine Providence.”
- Emphasize with students the importance of an understanding of “nature,” particularly human nature. “Nature” here means not *the physical world* but *the purpose of things*, that toward which a thing’s very existence aims: why something exists. The feature of human nature that distinguishes people from animals is man’s ability to think, communicate, and live together. This means that humans can speak, debate, and agree on certain things. Since man has the ability to deliberate and choose, he is responsible morally for his actions and is also capable of liberty. When we consider human beings living with other human beings, the ends of politics are determined by human nature. That is, the justness of one’s actions or the actions of a people depend on what it means to be human, and should comport with truth.
- Ask students what the Declaration means by “all men are created equal.” The meaning of *equality* in the Declaration refers to universal human dignity and to the equal possession by each person of

natural rights, freedoms that are simply part of being human. Individuals are obviously different by almost any measure. Yet, by nature, human beings are all the same in that they are human and have a human nature. The Declaration does not suggest there is in nature equality of talent, property, or other accidental aspects of one's humanity.

- Have students consider whether women and slaves were included in this understanding of equality. For one thing, “men” means human being not male as opposed to female. Based on the totality of their writings available, the Founders meant that men and women share equally in human dignity and in possession of natural rights or freedoms that are simply part of being human. A consistent application of equality would make slavery impossible—and the Second Continental Congress could scarcely have missed this point.
- Consider with students that, according to the Declaration, rights do not come from government. Rights are inherent in nature, that is, they come with being a human person. Likewise, individuals do not give up their rights by forming government. People *may* give to government their individual power to secure those rights in certain circumstances in order that the government might use that power to protect the rights of all. But the natural rights possessed by each individual cannot be given up, or taken away unless one has violated the rights of another. This is what is meant by “unalienable.”
- Ask students what the Declaration states to be the purpose of government. Students should be able to see in the Declaration that the purpose of government is to secure the natural rights of each person.
- Ask students about the source of a government's legitimate power. The basis of rule in the American regime is the sovereignty of the people: since all are equal by nature, no one is born to rule or to be ruled. Legitimate government can only arise out of the consent of those governed. The powers of government are defined when they are delegated by agreement of those who possess rights. Thus, the principle of natural rights both empowers government at the same time that it limits it to these specific purposes.
- Ask students how the establishment and recognition of equal natural rights guards against discrimination based on class, religion, or race, and against the factions and civil divisions that often result from such unjust distinctions. Upholding equal natural rights preserves the humanity of each person, encourages all to recognize that humanity in others despite differences, and reminds all to be mindful that one's own dignity is protected insofar as others also hold to the belief in natural rights.
- Help students to understand what is meant by self-government in the political body, i.e., that government derives its “just powers from the consent of the governed,” that is, from the people themselves. Consent requires the people, directly or indirectly, to be involved in making the laws. It also implies participation in the activities of governing (office holding, voting, serving as jurors, etc.).
- Consider with students the colonists' “appeal to heaven.” King George III was neither securing the rights of the colonists nor providing for the protection. In fact, he and the British Parliament were doing many things that denied the colonists' rights. When a government fails to protect fundamental rights, the people may alter or abolish the current government and form a new one to assure their safety and happiness. This is called the right of revolution.
- Read with students aloud in class Abraham Lincoln's commentary on the relationship between the Declaration of Independence and the Constitution. Students should be able to think within this analogy throughout the study of the founding.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the principles that make America—namely, the law of nature, natural rights, equality, self-government, the purpose of government, and the objectivity of truth (4–5 paragraphs).

Name_____

Date_____

Unit 1 — Formative Quiz

Covering Lesson 1
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. What are natural rights and why do human beings have them? Where do they come from?

2. What is the purpose of government?

3. What is meant by “limited government”?

4. What are “the Laws of Nature and of Nature’s God”?

5. How are “all men created equal”? In what ways are people *not* equal according to the Founders?

Lesson 2 — Necessities for Freedom and Self-Government

3-4 classes

LESSON OBJECTIVE

Students learn about the conditions necessary for the flourishing and perpetuation of freedom and self-government, particularly in a constitutional republic.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101

Lecture 9
 Lecture 5

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Inaugural Address, George Washington
 Farewell Address, George Washington
 The Northwest Ordinance, Article III
 Report of the Commissioners for the University of Virginia, Thomas Jefferson
 Letter to the Massachusetts Militia, John Adams
 Fast Day Proclamation of the Continental Congress
 First Annual Address to Congress, George Washington
 Thanksgiving Proclamation, George Washington
 Letter to the Hebrew Congregation, George Washington
 To the Society of Quakers, George Washington
 The Virginia Statute for Religious Freedom
 “Memorial and Remonstrance Against Religious Assessments,” James Madison
 Letter to the Danbury Baptist Association, Thomas Jefferson
 Fragment on the French Revolution, Alexander Hamilton
 “Property,” James Madison

TERMS AND TOPICS

self-government
 morality
 virtue
 liberal education
 property

commercial republic
 religion
 free exercise of religion
 freedom of speech

QUESTIONS FOR THE AMERICAN MIND

- What are the virtues and character necessary for freedom and self-government?
- How did the Founders promote morality?
- Why are self-reliance and martial virtue important for a free people?
- How are liberal and civic education necessary for freedom and self-government?
- How did the Land Ordinance of 1785 promote public vs. private ownership of land and public education?
- How did the Northwest Ordinance of 1787 promote public education and prevent the expansion of slavery?
- How did the Founders promote education?
- How does religion help promote morality and freedom?
- What is the free exercise of religion and why is it important?
- What is freedom of speech and why is it so crucial to freedom and self-government?
- What is the significance of property rights, commerce, and work?
- What economic conditions make American democracy possible? Could American democracy under the forthcoming Constitution be reconciled with any and every economic system?
- Why do critics of American democracy such as Karl Marx believe that private property is the root of injustice? How would Madison and Hamilton have responded to Marx and his followers' criticism?
- Why are social mobility and a large, functioning middle class important?
- What is the commercial republic and how does it shape character?
- Questions from the U.S. Civics Test:
 - Question 6: What does the Bill of Rights protect?
 - Question 12: What is the economic system of the United States?
 - Question 13: What is the rule of law?
 - Question 65: What are three rights of everyone living in the United States?
 - Question 67: Name two promises that new citizens make in the Oath of Allegiance.
 - Question 69: What are two examples of civic participation in the United States?
 - Question 70: What is one way Americans can serve their country?

KEYS TO THE LESSON

Benjamin Franklin, on departing the Constitutional Convention, was asked what the convention's delegates had proposed. Franklin responded, "A republic, if you can keep it." The American system of self-government rests ultimately on the capacity of Americans to govern themselves in political terms and to exercise personal self-government (good character) in their own lives. Students preparing for the full responsibilities of citizenship ought to understand thoroughly this necessity to life in the American republic. The key facets to preserving free government involve citizens being knowledgeable, morally upright, spirited, and free to use their minds, voices, and possessions to maintain liberty and the rule of law. Schools, religion, civic organizations, and the family are the key institutions by which citizens are formed to be able to govern themselves. The public and private contributions of the vast majority of citizens who govern their own lives as such is the determining factor in the health of the American republic and in the experiment in free self-government. Should these falter or fail in the individual lives of citizens, the preservation of liberty and equal human dignity will not long last.

Teachers might best plan and teach *Necessities for Freedom and Self-Government* in consultation with Appendix II of *The 1776 Report* (pages 64–75) and with emphasis on the following approaches:

- Teach students about the two major achievements of Congress under the Articles of Confederation: the Land Ordinance of 1785 and the Northwest Ordinance of 1787. Students should understand the historic emphasis the Founders placed on public education, private land ownership, and preventing the spread of slavery as evident in these laws. The Northwest Ordinance in particular articulates principles that would later be reflected in the Constitution, namely, consent of the governed, private property, and the liberty of individuals. Each of these, the Founders argued, would be indispensable if freedom and self-government were to succeed in the United States.
- Consider with students George Washington’s observation in his First Inaugural that “the foundations of our national policy will be laid in the pure and immutable principles of private morality” and in his Farewell Address that “Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports” and that “let us with caution indulge the supposition that morality can be maintained without religion.”
- Emphasize with students the most famous line from Article III of the Northwest Ordinance: “Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” Make clear for students the significance of knowledge and character as fostered by education. Public (meaning taxpayer-funded) support for education, both secular and religious, was present in colonial Massachusetts for decades prior to the founding and would continue through the Land Ordinance of 1785 and the Northwest Ordinance. The township system portioned out land reserved for education explicitly. America was a trailblazer in allocating so many resources exclusively for education. In addition to instruction in knowledge, character-building and the development of patriotic and dutiful citizens were chief purposes of these public schools.
- Have students consider the Founders’ arguments for the necessity of religion in fostering morality, virtue, and character. While opinions varied on religious belief and the extent to which government should endorse a single church, specifically at the state-level, there was general consensus that the instruction in moral conduct, duty, and charity in religion warranted at least the encouragement of religious practice by governments. Read and discuss with students the writings of Washington, Jefferson, and Madison on the topic of religion, both to see the degrees to which the Founders agreed and disagreed regarding religion. They should see, at the very least, that the free exercise of religion was of paramount importance. Hamilton’s commentary on the French Revolution shows the dangers inherent in a society that disregards or outright oppresses religion.
- Review with students James Madison’s “Property” from the previous lesson. Rights to hold and preserve property are intimately tied to one’s right to defend oneself and to better one’s condition. The “pursuit of happiness” aims at and recognizes goods higher than mere material prosperity. The right to property, if not sufficient to human happiness, is most certainly necessary to the individual liberty to pursue such happiness. Moreover, the free allocation of scarce resources through commerce ensures that all can have what they most need at the times in which they most need it while contributing to ideas and positive activity conducive to the general improvement of human life.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain why the American Founders argued that education, religion, private property, and freedom of speech were necessary in a citizenry in order for freedom and self-government to exist (3–4 paragraphs).

Lesson 3 — Public Policy and Partisanship

2-3 classes

LESSON OBJECTIVE

Students learn about the Founders' thoughts in various public policy areas and their concern about and attempts to avoid the rise of partisanship in American politics.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101

Lecture 7
 Lectures 3 and 5

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Bill for the Support of the Poor, Thomas Jefferson
 Farewell Address, George Washington
 The Examination Number No. 7, Alexander Hamilton
Notes on the State of Virginia, Query 8, Thomas Jefferson

TERMS AND TOPICS

public policy
 economics
 taxation
 regulation
 property rights
 diplomacy
 immigration

criminal law
 marriage and family law
 factionalism
 partisanship
 civil war
 tyranny
 revolution

QUESTIONS FOR THE AMERICAN MIND

- How did the Founders think about public policy, especially in the following areas:
 - economics
 - taxation
 - regulation
 - the protection of property
 - war and diplomacy
 - immigration
 - criminal law
 - laws affecting morality
 - obscenity laws
 - marriage and family law
- Why were the Founders worried about partisanship? How did they attempt to overcome it?

- How did partisanship nonetheless arise?
- Questions from the U.S. Civics Test:
 - Question 12: What is the economic system of the United States?
 - Question 70: What is one way Americans can serve their country?
 - Question 71: Why is it important to pay federal taxes?

KEYS TO THE LESSON

Often we think of and look to the American Founders only in terms of the principles and institutions they set down as the American foundation. This is their primary benefit to us, but we ought not lose sight of the real public policy issues and positions that the Founders had to address in their own time. They approached these issues with the principles of the founding fresh in mind and cognizant of the importance that beginnings have in all affairs, especially that of a country. Students should understand the Founders' policy positions, why they held them, and how they might guide us today while navigating the challenges of partisanship.

Teachers might best plan and teach Public Policy and Partisanship with emphasis on the following approaches:

- Talk with students about how the Founders saw the economic role of government as being to uphold the rule of law, enforce contracts, protect property, and permit economic activity that did not violate natural rights. This ensured broad latitude to the liberty of private individuals to trade with one another freely with only minimal regulation. Taxation at the federal level was limited largely to matters of national defense.
- While opinions varied, help students to see how George Washington's actions and advice regarding foreign policy sought to abstain as much as possible from permanent alliances and passionate foreign attachments in order to establish and maintain an independent national character.
- Read aloud with students in class Alexander Hamilton's Examination No. 7 on the need for a citizenry that holds certain principles and habits of conduct conducive to respecting the rights of fellow citizens. In a nation as diverse as the United States and that is not bound by blood, understanding of, adherence to, and practice in these principles of self-government become all the more important. Immigration policy for Hamilton, therefore, sought to encourage as much immigration as was possible while still achieving these prerequisites to maintaining free government. In brief, an immigrant had to understand and be willing and able to practice the responsibilities of self-government.
- Consider with students the Founders' positions on the preservation of morality and the role of the family. While freedom of speech was given broad interpretation, the public utterance and promotion of obscenity was understood to undermine the moral habits of the citizenry, especially the young, and government thus had an interest in restricting such speech to private quarters. The primacy of the family was also significant, as the security, material support, education, sense of duty, and work ethic cultivated first in the family were all equally important to a self-governing citizenry.
- Explain to students how strongly the Founders sought to resist the rise of factions and partisanship. It should be made clear, however, that the Founders' resistance to partisanship was not in some general idea of bipartisanship for bipartisanship's sake. Instead, the Founders

believed that if all Americans held to the ideas of the American founding, then there were few disagreements so fundamental as to justify separate and permanent parties. The Founders had no qualms, however, with resisting movements and ideas that rejected the principles of the founding, mainly because such a rejection was, in their view, a rejection of objective truth and justice themselves. Such a rejection of these founding principles was thought irrational and almost certainly to lead to tyranny.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the Founders' arguments on the government's role in economic activity, foreign policy, immigration, and family life (2–3 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — The Principles of America Test

Unit 1

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

polis	social contract	free exercise of religion
politics	consent of the governed	freedom of speech
political philosophy	limited government	public policy
natural law	tyranny	economics
principles	revolution	taxation
morality	equality	regulation
virtue	unalienable	property rights
liberalism	liberty	diplomacy
rule of law	pursuit of happiness	immigration
self-evident	natural aristocracy	criminal law
objectivity	self-government	marriage and family law
state of nature	liberal education	factionalism
Laws of Nature and of	property	partisanship
Nature's God	commercial republic	civil war
natural rights	religion	

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of America's founding principles.

On the Laws, Book I, Marcus Tullius Cicero
Second Treatise of Government, Chapter 9, John Locke
 The Mayflower Compact
 The Declaration of Independence
 Fragment on the Constitution and Union, Abraham Lincoln
 "Property," James Madison
 Farewell Address, George Washington
 Report of the Commissioners of the University of Virginia, Thomas Jefferson
 First Inaugural Address, George Washington
 The Northwest Ordinance, Article III
 First Annual Address to Congress, George Washington
 Thanksgiving Proclamation, George Washington
 Letter to the Hebrew Congregation, George Washington
 Letter to the Danbury Baptist Association, Thomas Jefferson
 Bill for the Support of the Poor, Thomas Jefferson
Notes on the State of Virginia, Query 8, Thomas Jefferson

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | Liberty, Equality, Rights, and Self-Government

- ☐ What are natural rights and why do human beings have them? Where do they come from?
- ☐ What does human equality mean in the statement that “all men are created equal”? Equal in what respects? In what ways are people *not* equal according to the Founders?
- ☐ What view of human nature does this presuppose?
- ☐ What does “unalienable” mean? Who or what, precisely, can alienate our rights?
- ☐ What are the overall ideas that we collectively call “liberalism”?
- ☐ What is the relationship between the state of nature, the social contract, representative government, and consent of the governed?
- ☐ Why did the founding generation consider government’s powers to be “just” only when government is instituted by the consent of the governed?
- ☐ Was the Founders’ idea of justice based on nothing more than consent? What considerations might be more important than consent?
- ☐ What is the purpose of government?
- ☐ How do natural rights both empower and limit the government?
- ☐ What is the importance of individual freedom with liberalism?
- ☐ What is the right to revolution, why do people have this right, and when may it be exercised?
- ☐ How does natural-rights liberalism help overcome the problems of religious and class-based factionalism and the great political evils they can produce, namely, civil war and tyranny?
- ☐ What is meant by a “natural aristocracy”?
- ☐ How is life in democracy different from life in aristocracy, especially in considering the idea of “the equality of conditions” compared to a nobility and established social classes?

Lesson 2 | The Necessities for Freedom and Self-Government

- ☐ What are the virtues and character necessary for freedom and self-government?
- ☐ How did the Founders promote morality?
- ☐ Why are self-reliance and martial virtue important for a free people?
- ☐ How are liberal and civic education necessary for freedom and self-government?
- ☐ How did the Land Ordinance of 1785 promote public vs. private ownership of land and public education?
- ☐ How did the Northwest Ordinance of 1787 promote public education and prevent the expansion of slavery?
- ☐ How did the Founders promote education?
- ☐ How does religion help promote morality and freedom?
- ☐ What is the free exercise of religion, and why is it important?
- ☐ What is freedom of speech and why is it so crucial to freedom and self-government?
- ☐ What is the significance of property rights, commerce, and work?
- ☐ Why are social mobility and a large, functioning middle class important?
- ☐ What is the commercial republic and how does it shape character?

Lesson 3 | Public Policy and Partisanship

- ☐ How did the Founders think about public policy, especially in the following areas:
 - economics
 - immigration
 - taxation
 - criminal law
 - regulation
 - laws affecting morality
 - the protection of property
 - obscenity laws
 - war and diplomacy
 - marriage and family law
- ☐ Why were the Founders worried about partisanship? How did they attempt to overcome it?
- ☐ How did partisanship nonetheless arise?

Name_____

Date_____

Test — The Principles of America

Unit 1

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. politics
2. principles
3. morality
4. virtue
5. liberalism
6. rule of law
7. self-evident
8. Laws of Nature and of Nature's God
9. social contract
10. limited government
11. tyranny
12. liberty

13. self-government

14. liberal education

15. partisanship

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of America's founding principles.

16. *Second Treatise of Government*, Chapter 9, John Locke

17. Farewell Address, George Washington

18. The Northwest Ordinance, Article III

19. Letter to the Hebrew Congregation, George Washington

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

20. What are natural rights and why do human beings have them? Where do they come from?
21. What is the relationship between the state of nature, the social contract, representative government, and consent of the governed?
22. What is the purpose of government?
23. What is the right to revolution, why do people have this right, and when may it be exercised?
24. How are “all men created equal”? In what ways are people not equal according to the Founders?
25. What are the virtues and character necessary for freedom and self-government?
26. How did the Founders promote morality?
27. How are liberal and civic education necessary for freedom and self-government?
28. How does religion help promote morality and freedom?
29. What is freedom of speech and why is it so crucial to freedom and self-government?

30. What is the significance of property rights, commerce, and work?
31. How did the Founders think about taxation?
32. How did the Founders think about regulation?
33. How did the Founders think about war and diplomacy?
34. How did the Founders think about immigration?
35. How did the Founders think about marriage and family law?

Writing Assignment — The Principles of America

Unit 1

Due on _____

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question:

What are the principles on which America was founded, and what qualities must American citizens and society exhibit in order to sustain such principles of civic life?

APPENDIX B

Primary Sources

Marcus Tullius Cicero

John Locke

The Pilgrims

The Second Continental Congress

The People of Massachusetts

The Fifth Virginia Convention

Abraham Lincoln

James Madison

George Washington

Thomas Jefferson

John Adams

Alexander Hamilton

The United States Congress

The Virginia General Assembly

MARCUS TULLIUS CICERO*De Legibus*, Book I

BOOK EXCERPTS

51 BC

*On the Laws***BACKGROUND**

The Roman lawyer and statesman Marcus Tullius Cicero wrote this treatise, modeled after Plato's dialogue *The Laws*, amidst his efforts to resist the rise of dictatorship in the Roman Republic.

ANNOTATIONS**NOTES & QUESTIONS**

...It is therefore an absurd extravagance in some philosophers to assert that all things are necessarily just, which are established by the civil laws and the institutions of the people. Are then the laws of tyrants just, simply because they are laws? If the thirty tyrants of Athens imposed certain laws on the Athenians, and if these Athenians were delighted with these tyrannical laws, are we therefore bound to consider these laws as just? For my own part, I do not think such laws deserve any greater estimation than that past during our own interregnum, which ordained, that the dictator should be empowered to put to death with impunity, whatever citizens he pleased, without hearing them in their own defence.

There can be but one essential justice, which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked.

But if justice consists in submission to written laws and national customs, and if, as the Epicureans persist in affirming, every thing must be measured by utility alone, he who

Marcus Tullius Cicero, *Treatise on the Laws* (51 BC), The Online Library of Liberty, Liberty Fund, Inc., http://files.libertyfund.org/files/545/Cicero_0044.02.pdf. [Original Source: *The Political Works of Marcus Tullius Cicero: Comprising his Treatise on the Commonwealth; and his Treatise on the Laws. Translated from the original, with Dissertations and Notes in Two Volumes*, Vol. 2, trans. Francis Barham (London: Edmund Spettigue, 1841-42).]

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wishes to find an occasion of breaking such laws and customs, will be sure to discover it. So that real justice remains powerless if not supported by nature, and this pretended justice is overturned by that very utility which they call its foundation.

But this is not all. If nature does not ratify law, all the virtues lose their sway. What becomes
5 of generosity, patriotism, or friendship? Where should we find the desire of benefitting our neighbours, or the gratitude that acknowledges kindness? For all these virtues proceed from our natural inclination to love and cherish our associates. This is the true basis of justice, and without this, not only the mutual charities of men, but the religious services of the gods, would become obsolete; for these are preserved, as I imagine, rather by the natural
10 sympathy which subsists between divine and human beings, than by mere fear and timidity.

If the will of the people, the decrees of the senate, the adjudications of magistrates, were sufficient to establish justice, the only question would be how to gain suffrages, and to win
15 over the votes of the majority, in order that corruption and spoliation, and the falsification of wills, should become lawful. But if the opinions and suffrages of foolish men had sufficient weight to outbalance the nature of things, might they not determine among them, that what is essentially bad and pernicious should henceforth pass for good and beneficial? Or why should not a law able to enforce injustice, take the place of equity? Would not this
20 same law be able to change evil into good, and good into evil?

As far as we are concerned, we have no other rule capable of distinguishing between a good or a bad law, than our natural conscience and reason. These, however, enable us to separate justice from injustice, and to discriminate between the honest and the scandalous. For com-
25 mon sense has impressed in our minds the first principles of things, and has given us a general acquaintance with them, by which we connect with Virtue every honourable and excellent quality, and with Vice all that is abominable and disgraceful.

Now we must entirely take leave of our senses, ere we can suppose that law and justice have
30 no foundation in nature, and rely merely on the transient opinions of men. We should not

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venture to praise the virtue of a tree or a horse, in which expression there is an abuse of terms, were we not convinced that this virtue was in their nature, rather than in our opinion. For a stronger reason, it is mainly with respect to the moral nature of things, that we ought to speak of honour and shame among men.

5

If opinion could determine respecting the character of universal virtue, it might also decide respecting particular or partial virtues. But who will dare to determine that a man is prudent and cautious in his moral disposition, from any external appearances. For virtue evidently lies in perfect rationality, and this resides in the inmost depths of our nature. The same remark applies to all honour and honesty, for we judge of true and false, creditable and discreditable, rather by their essential qualities, than their external relations. Thus we judge according to their intrinsic nature, that rationality of life, which is virtue, must be ever constant and perpetual, and that inconstancy must necessarily be vicious....

10

ANONYMOUS (JOHN LOCKE)

Two Treatises of Government

BOOK EXCERPTS

December 1689
England

BACKGROUND

English doctor and political thinker John Locke published this work on government during the time of Glorious Revolution in England, which was read and influential among colonial leaders in the British North American colonies during the following century.

GUIDING QUESTIONS

1. Why do men form political societies according to Locke?
2. What are the two powers man possesses in the state of nature?

John Locke, "Book II," in *Two Treatises of Government* (London: C. and J. Rivington, 1824).

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123. If man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to nobody, why will he part with his freedom? Why will he give up his empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties, and estates, which I call by the general name, property.

124. The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property. To which in the state of nature there are many things wanting. First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biased by their interest, as well as ignorant for want of studying it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

125. Secondly, In the state of nature there wants a known and indifferent judge, with authority to determine all differences according to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat, in their own cases; as well as negligence, and unconcernedness, to make them too remiss in other men's.

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126. Thirdly, In the state of nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offend, will seldom fail, where they are able, by force to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it.

127. Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society. Hence it comes to pass that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this makes them so willingly give up every one his single power of punishing, to be exercised by such alone, as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original right of both the legislative and executive power, as well as of the governments and societies themselves.

128. For in the state of nature, to omit the liberty he has of innocent delights, a man has two powers. The first is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of nature: by which law, common to them all, he and all the rest of mankind are one community, make up one society, distinct from all other creatures. And, were it not for the corruption and viciousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations. The other power a man has in the state of nature, is the power to punish the crimes committed against that law. Both these he gives up, when he joins in a private, if I may so call it, or particular politic society, and incorporates into any commonwealth, separate from the rest of mankind.

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129. The first power, viz. “of doing whatsoever he thought fit for the preservation of himself,” and the rest of mankind, he gives up to be regulated by laws made by the society, so far forth as the preservation of himself and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of nature.

- 5 130. Secondly, The power of punishing he wholly gives up, and engages his natural force, (which he might before employ in the execution of the law of nature, by his own single authority, as he thought fit) to assist the executive power of the society, as the law thereof shall require: for being now in a new state, wherein he is to enjoy many conveniencies, from the labor, assistance, and society of others in the same community, as well as protection
- 10 from its whole strength; he is to part also, with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require; which is not only necessary, but just, since the other members of the society do the like....

THE UNDERSIGNED SUBJECTS OF KING JAMES

Agreement Between
the Settlers of New Plymouth

LAW

November 11, 1620

Mayflower | Off the Coast of Cape Cod

The Mayflower Compact

BACKGROUND

The settlers who traveled to the British possession of Virginia on the *Mayflower* drafted and signed this agreement pertaining to their governance before disembarking in the New World.

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IN THE NAME OF GOD, AMEN. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage

5 to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Further-

ance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall

10 be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience.

IN WITNESS whereof we have hereunto subscribed our names at Cape-Cod the eleventh of November, in the Reign of our Sovereign Lord King James, of England, France, and Ireland, the eighteenth, and of Scotland the fifty-fourth, Anno Domini; 1620.

"The Mayflower Compact," in *History of Plymouth Plantation* by William Bradford, ed. Charles Deane (Boston, 1856), 89-90.

THE THIRTEEN UNITED STATES OF AMERICA

The Unanimous Declaration

A DECLARATION

July 4, 1776

Pennsylvania State House | Philadelphia, Pennsylvania

Declaration of Independence

BACKGROUND

The delegates from each colony at the Second Continental Congress announced their votes to form a new country separate from Great Britain in this statement to mankind that expounds both the principles on which this new country would be founded and the reasons they judged themselves justified to separate.

GUIDING QUESTIONS

1. Why do the United States believe they need to release a statement about their decision to form a country separate from Great Britain?
2. What do they consider about the truths they posit?
3. How are all men equal?
4. From where comes their rights?
5. What is the reason why people create governments?
6. From where comes a government's powers?
7. What may a people do if a government does not fulfill its ends?

"The Declaration of Independence," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 5-9.

8. Although governments should not be changed for small reasons, when should the people change them?
9. Against which person does the Declaration of Independence level its charges?
10. What actions involving the military has this person carried out against the colonists?
11. What legal practices has this person violated?
12. What efforts have the colonists made to seek redress and reconciliation with Great Britain?
13. To whom do the representatives appeal for the justness of their intentions?
14. By whose authority do the representatives declare independence?
15. What do each of the representatives pledge to one another?

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
5 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
10 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 estab-
15 lished 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 right, it is their duty, to throw off such
20 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
25 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, un-
30 less suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

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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.

- 5 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.

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

- 15 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.

- 20 He has endeavored 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.

- 25 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 harass our people, and eat out their substance.

- 30 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:

5

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:

10

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

For imposing Taxes on us without our Consent:

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

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring 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:

20

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

25

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.

30

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

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

10 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.

15 He has excited domestic insurrections amongst us, and has endeavored 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.

20 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
25 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.

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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

5 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

10 on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Georgia

Button Gwinnett, Lyman Hall, George Walton

15

North Carolina

William Hooper, Joseph Hewes, John Penn

South Carolina

20 Edward Rutledge, Thomas Heyward, Jr., Thomas Lynch, Jr., Arthur Middleton

Maryland

Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton

25 Virginia

George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee, Carter Braxton

Pennsylvania

30 Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross

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Delaware

Caesar Rodney, George Read, Thomas McKean

New York

5 William Floyd, Philip Livingston, Francis Lewis, Lewis Morris

New Jersey

Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark

10 New Hampshire

Josiah Bartlett, William Whipple, Matthew Thornton

Massachusetts

John Hancock, Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry

15

Rhode Island

Stephen Hopkins, William Ellery

Connecticut

20 Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott

THE STATE OF MASSACHUSETTS

A Constitution or Frame of Government

LAW EXCERPTS

October 25, 1780
Massachusetts

BACKGROUND

Massachusetts adopted this new constitution in the midst of the Revolutionary War.

GUIDING QUESTIONS

1. How is a political community or body-politic formed?
2. What are some of the rights with which men are born?
3. Upon what does the happiness, order, and preservation of a people and government depend?
4. What duties are required of citizens of Massachusetts?

Oscar Handlin and Mary Flug Handlin, ed. *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780*, (Cambridge: Belknap Press of Harvard University Press, 1966).

Preamble

The end of the institution, maintenance and administration of government, is to secure the existence of the body-politic; to protect it, and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights, and the blessings
5 of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body-politic is formed by a voluntary association of individuals: It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the
10 people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of His providence,
15 an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of Civil Government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, DO agree upon, ordain and establish, the following Declaration of Rights, and Frame of Government, as the CONSTITUTION of the COMMON-
20 WEALTH of MASSACHUSETTS.

Part the First. A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

Art. I.--All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and
25 liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

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II.--It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great creator and preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worship-
5 or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III.--As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally dif-
10 fused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this Com-
monwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes,
15 precincts, and other bodies-politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

And the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the
20 public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

25 And all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on

whose instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law.

IV.--The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

V.--All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

VI.--No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII.--Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII.--In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

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IX.--All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

5 X.--Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual, can, with justice, be taken from him, or applied to public uses without his own consent, or that of the representative body of the people: In fine, the people of this Commonwealth are not controlable
10 by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

15 XI.--Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

20 XII.--No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put
25 out of the protection of the law, exiled, or deprived of his life, liberty, or estate; but by the judgment of his peers, or the law of the land.

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And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

5 XIII.--In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

10 XIV.--Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

15 XV.--In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high-seas, and such as relate to mariners wages, the legislature shall hereafter find it necessary to alter it.

XVI.--The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

20 XVII.--The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

25 XVIII.--A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free gov-

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ernment: The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: And they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

XIX.--The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX.--The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

XXI.--The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXII.--The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII.--No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

XXIV.--Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV.--No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

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XXVI.--No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments

XXVII.--In time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

XXVIII.--No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

XXIX.--It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

XXX.--In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

FIFTH VIRGINIA CONVENTION

A Declaration of Rights

DECLARATION

June 12, 1776
The Capitol | Williamsburg, Virginia

BACKGROUND

As the delegates to the Second Continental Congress were recessed and considering a vote for independence, Virginia adopted the following declaration.

GUIDING QUESTIONS

1. What is the basis of Virginians' rights?
2. Which rights refer specifically to government?

George Mason, "Final Draft of the Virginia Declaration of Rights," in *The Papers of George Mason, 1727-1792*, ed. Robert A. Rutland (Chapel Hill, NC: University of North Carolina Press, 1970).

A DECLARATION OF RIGHTS made by the representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

1. THAT all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.
3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.
4. That no man, or set of men, are entitled to exclusive or separate emoluments and privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.
5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens³ of the people, they should, at fixed periods, be reduced to a private station, return into that body from

which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

- 5 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses without their own consent, or that of their representative so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.
- 10 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.
- 15 8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage,⁴ without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.
- 20 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
10. That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.
- 25 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.
13. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.
14. That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.
15. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.
16. That religion, or the duty which we owe to our CREATOR, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.

PRESIDENT-ELECT ABRAHAM LINCOLN (R-IL)**On the Constitution and Union**

UNPUBLISHED WRITING FRAGMENT

January 1861

BACKGROUND

Abraham Lincoln scrawled these words on the relationship between the Constitution and the Declaration of Independence, potentially as part of his drafts for his First Inaugural Address, though they were not used in the final speech nor in any other public comments.

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All this is not the result of accident. It has a philosophical cause. Without the Constitution and the Union, we could not have attained the result; but even these, are not the primary cause of our great prosperity. There is something back of these, entwining itself more closely about the human heart. That something, is the principle of "Liberty to all"—the principle that clears the path for all—gives hope to all—and, by consequence, enterprise, and industry to all.

The expression of that principle, in our Declaration of Independence, was most happy, and fortunate. Without this, as well as with it, we could have declared our independence of Great Britain; but without it, we could not, I think, have secured our free government, and consequent prosperity. No oppressed, people will fight, and endure, as our fathers did, without the promise of something better, than a mere change of masters.

The assertion of that principle, at that time, was the word, "fitly spoken" which has proved an "apple of gold" to us. The Union, and the Constitution, are the picture of silver, subsequently framed around it. The picture was made, not to conceal, or destroy the apple; but

Abraham Lincoln, "Fragment on the Constitution and the Union," January 1861, in *The Collected Works of Abraham Lincoln*, Vol. 4, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 168-69.

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to adorn, and preserve it. The picture was made for the apple—not the apple for the picture.

So let us act, that neither picture, or apple shall ever be blurred, or bruised or broken.

That we may so act, we must study, and understand the points of danger.

PRESIDENT GEORGE WASHINGTON**First Inaugural Address**

SPEECH

April 30, 1789

Federal Hall | New York City, New York

BACKGROUND

George Washington gave this address to Congress on the occasion of his inauguration.

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Fellow Citizens of the Senate and the House of Representatives.

Among the vicissitudes incident to life, no event could have filled me with greater anxieties than that of which the notification was transmitted by your order, and received on the fourteenth day of the present month. On the one hand, I was summoned by my Country, whose voice I can never hear but with veneration and love, from a retreat which I had chosen with the fondest predilection, and, in my flattering hopes, with an immutable decision, as the asylum of my declining years: a retreat which was rendered every day more necessary as well as more dear to me, by the addition of habit to inclination, and of frequent interruptions in my health to the gradual waste committed on it by time. On the other hand, the magnitude and difficulty of the trust to which the voice of my Country called me, being sufficient to awaken in the wisest and most experienced of her citizens, a distrustful scrutiny into his qualifications, could not but overwhelm with dispondence, one, who, inheriting inferior endowments from nature and unpractised in the duties of civil administration, ought to be peculiarly conscious of his own deficiencies. In this conflict of emotions, all I dare aver, is, that it has been my faithful study to collect my duty from a just appreciation of every circumstance, by which it might be affected. All I dare hope, is, that, if in executing

George Washington, "First Inaugural Address," in *George Washington: A Collection*, ed. W.B. Allen (Indianapolis: Liberty Classics, 1988), 460-63.

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this task I have been too much swayed by a grateful remembrance of former instances, or by an affectionate sensibility to this transcendent proof, of the confidence of my fellow-citizens; and have thence too little consulted my incapacity as well as disinclination for the weighty and untried cares before me; my error will be palliated by the motives which misled me, and its consequences be judged by my Country, with some share of the partiality in which they originated.

Such being the impressions under which I have, in obedience to the public summons, repaired to the present station; it would be peculiarly improper to omit in this first official Act, my fervent supplications to that Almighty Being who rules over the Universe, who presides in the Councils of Nations, and whose providential aids can supply every human defect, that his benediction may consecrate to the liberties and happiness of the People of the United States, a Government instituted by themselves for these essential purposes: and may enable every instrument employed in its administration to execute with success, the functions allotted to his charge. In tendering this homage to the Great Author of every public and private good I assure myself that it expresses your sentiments not less than my own; nor those of my fellow-citizens at large, less than either. No People can be bound to acknowledge and adore the invisible hand, which conducts the Affairs of men more than the People of the United States. Every step, by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency. And in the important revolution just accomplished in the system of their United Government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted, cannot be compared with the means by which most Governments have been established, without some return of pious gratitude along with an humble anticipation of the future blessings which the past seem to presage. These reflections, arising out of the present crisis, have forced themselves too strongly on my mind to be suppressed. You will join with me I trust in thinking, that there are none under the influence of which, the proceedings of a new and free Government can more auspiciously commence.

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By the article establishing the Executive Department, it is made the duty of the President "to recommend to your consideration, such measures as he shall judge necessary and expedient." The circumstances under which I now meet you, will acquit me from entering into that subject, farther than to refer to the Great Constitutional Charter under which you are assembled; and which, in defining your powers, designates the objects to which your attention is to be given. It will be more consistent with those circumstances, and far more congenial with the feelings which actuate me, to substitute, in place of a recommendation of particular measures, the tribute that is due to the talents, the rectitude, and the patriotism which adorn the characters selected to devise and adopt them. In these honorable qualifications, I behold the surest pledges, that as on one side, no local prejudices, or attachments; no separate views, nor party animosities, will misdirect the comprehensive and equal eye which ought to watch over this great assemblage of communities and interests: so, on another, that the foundations of our National policy will be laid in the pure and immutable principles of private morality; and the pre-eminence of a free Government, be exemplified by all the attributes which can win the affections of its Citizens, and command the respect of the world.

I dwell on this prospect with every satisfaction which an ardent love for my Country can inspire: since there is no truth more thoroughly established, than that there exists in the economy and course of nature, an indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity: Since we ought to be no less persuaded that the propitious smiles of Heaven, can never be expected on a nation that disregards the eternal rules of order and right, which Heaven itself has ordained: And since the preservation of the sacred fire of liberty, and the destiny of the Republican model of Government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people.

Besides the ordinary objects submitted to your care, it will remain with your judgment to decide, how far an exercise of the occasional power delegated by the Fifth article of the Constitution is rendered expedient at the present juncture by the nature of objections

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which have been urged against the System, or by the degree of inquietude which has given birth to them. Instead of undertaking particular recommendations on this subject, in which I could be guided by no lights derived from official opportunities, I shall again give way to my entire confidence in your discernment and pursuit of the public good: For I assure myself that whilst you carefully avoid every alteration which might endanger the benefits of an United and effective Government, or which ought to await the future lessons of experience; a reverence for the characteristic rights of freemen, and a regard for the public harmony, will sufficiently influence your deliberations on the question how far the former can be more impregnably fortified, or the latter be safely and advantageously promoted.

10 To the preceeding observations I have one to add, which will be most properly addressed to the House of Representatives. It concerns myself, and will therefore be as brief as possible. When I was first honoured with a call into the Service of my Country, then on the eve of an arduous struggle for its liberties, the light in which I contemplated my duty required that I should renounce every pecuniary compensation. From this resolution I have in no instance departed. And being still under the impressions which produced it, I must decline as inapplicable to myself, any share in the personal emoluments, which may be indispensably included in a permanent provision for the Executive Department; and must accordingly pray that the pecuniary estimates for the Station in which I am placed, may, during my continuance in it, be limited to such actual expenditures as the public good may be thought to require.

Having thus imparted to you my sentiments, as they have been awakened by the occasion which brings us together, I shall take my present leave; but not without resorting once more to the benign parent of the human race, in humble supplication that since he has been pleased to favour the American people, with opportunities for deliberating in perfect tranquility, and dispositions for deciding with unparelled unanimity on a form of Government, for the security of their Union, and the advancement of their happiness; so his divine blessing may be equally conspicuous in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend.

PRESIDENT GEORGE WASHINGTON

To the People of America

LETTER

September 19, 1796

American Daily Advertiser | Philadelphia, Pennsylvania

Farewell Address

BACKGROUND

George Washington wrote this letter to the American people announcing his retirement from the Presidency after his second term. At the time, there were no term limits on the presidency.

GUIDING QUESTIONS

1. What is one of the main pillars supporting American independence, according to Washington?
2. How are the various geographical parts of the country connected to one another?
3. What are Washington's main criticisms of partisanship?
4. Which habits are necessary for political prosperity and popular government?
5. Why is Washington opposed to permanent alliances with other nations?
6. What should be the foreign policy of the United States in relation to other nations?

George Washington, "Farewell Address," 19 September 1796, in *George Washington: A Collection*, ed. W. B. Allen (Indianapolis, IN: Liberty Fund, 1988), 512–17.

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Friends, and Fellow Citizens:

The period for a new election of a Citizen, to Administer the Executive government of the United States, being not far distant, and the time actually arrived, when your thoughts must be employed in designating the person, who is to be clothed with that important trust, it
5 appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those, out of whom a choice is to be made.

I beg you, at the same time, to do me the justice to be assured, that this resolution has not been taken, without a strict regard to all the considerations appertaining to the relation,
10 which binds a dutiful citizen to his country, and that, in withdrawing the tender of service which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness; but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in, the office to which your Suffrages have
15 twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire.

I constantly hoped, that it would have been much earlier in my power, consistently with motives, which I was not at liberty to disregard, to return to that retirement, from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last
20 Election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our Affairs with foreign Nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice, that the state of your concerns, external as well as internal, no longer renders the
25 pursuit of inclination incompatible with the sentiment of duty, or propriety; and am persuaded whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove my determination to retire.

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The impressions, with which I first undertook the arduous trust, were explained on the proper occasion. In the discharge of this trust, I will only say, that I have, with good intentions, contributed towards the Organization and Administration of the government, the best exertions of which a very fallible judgment was capable. Not unconscious, in the outset, of the inferiority of my qualifications, experience in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and every day the increasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe, that while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment, which is intended to terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country, for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that, under circumstances in which the Passions agitated in every direction were liable to mislead, amidst appearances sometimes dubious, vicissitudes of fortune often discouraging, in situations in which not unfrequently want of Success has countenanced the spirit of criticism, the constancy of your support was the essential prop of the efforts, and a guarantee of the plans by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence; that your Union and brotherly affection may be perpetual; that the free constitution, which is the work of your hands, may be sacredly maintained; that its Administration in every department may be stamped with wisdom and Virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a

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preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

5 Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments; which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a People. These will be offered to you with the more freedom, as you can only see in them
10 the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel. Nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

15 The Unity of Government which constitutes you one people is also now dear to you. It is justly so; for it is a main Pillar in the Edifice of your real independence, the support of your tranquility at home; your peace abroad; of your safety; of your prosperity; of that very Liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in
20 your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment, that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual, and immoveable attachment
25 to it; accustoming yourselves to think and speak of it as of the Palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our

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Country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice, of a common country, that country has a right to concentrate your affections. The name of American, which belongs to You, in your national capacity, must always exalt the just pride of Patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same Religion, Manners, Habits and political Principles. You have in a common cause fought and triumphed together. The independence and liberty you possess are the work of joint councils, and joint efforts; of common dangers, sufferings and successes.

But these considerations, however powerfully they address themselves to your sensibility are greatly outweighed by those which apply more immediately to your Interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the Union of the whole.

The *North*, in an unrestrained intercourse with the *South*, protected by the equal Laws of a common government, finds in the productions of the latter, great additional resources of Maritime and commercial enterprise and precious materials of manufacturing industry. The *South* in the same Intercourse, benefitting by the Agency of the *North*, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the North, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the National navigation, it looks forward to the protection of a Maritime strength, to which itself is unequally adapted. The *East*, in a like intercourse with the *West*, already finds, and in the progressive improvement of interior communications, by land and water, will more and more find, a valuable vent for the commodities which it brings from abroad, or manufactures at home. The *West* derives from the *East* supplies requisite to its growth and comfort, and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions to the weight, influence, and the future Maritime strength of the

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Atlantic side of the Union, directed by an indissoluble community of interest as *one Nation*. Any other tenure by which the *West* can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connection with any foreign Power, must be intrinsically precarious.

- 5 While then every part of our country thus feels an immediate and particular Interest in Union, all the parts combined cannot fail to find in the united mass of means and efforts greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their Peace by foreign Nations; and, what is of inestimable value! they must derive from Union an exemption from those broils and Wars between
10 themselves, which so frequently afflict neighboring countries, not tied together by the same government; which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues would stimulate and embitter. Hence likewise they will avoid the necessity of those overgrown Military establishments, which under any form of Government are inauspicious to liberty, and which are to be regarded
15 as particularly hostile to Republican Liberty: In this sense it is, that your Union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

- These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the Union as a primary object of Patriotic desire. Is there a
20 doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective Subdivisions, will afford a happy issue to the experiment. 'Tis well worth a fair and full experiment. With such powerful and obvious motives to Union, affecting all parts
25 of our country, while experience shall not have demonstrated its impracticability, there will always be reason, to distrust the patriotism of those, who in any quarter may endeavor to weaken its bands.

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In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by Geographical discriminations: Northern and Southern—Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of Party to acquire influence, within particular districts, is to misrepresent the opinions and aims of other Districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations. They tend to render Alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our Western country have lately had a useful lesson on this head. They have seen, in the Negotiation by the Executive; and in the unanimous ratification by the Senate, of the Treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the General Government and in the Atlantic States unfriendly to their interests [in] regard to the Mississippi. They have been witnesses to the formation of two Treaties, that with Great Britain and that with Spain, which secure to them every thing they could desire, in respect to our Foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the Union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their Brethren and connect them with Aliens?

To the efficacy and permanency of your Union, a Government for the whole is indispensable. No alliances however strict between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all Alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of Government, better calculated than your former for an intimate Union, and for the efficacious management of your common concerns. This government, the offspring of our own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its

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own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its Laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true Liberty. The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. But the Constitution
5 which at any time exists, 'til changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all. The very idea of the power and the right of the People to establish Government presupposes the duty of every Individual to obey the established Government.

All obstructions to the execution of the Laws, all combinations and Associations, under
10 whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the Constituted authorities, are destructive of this fundamental principle and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation, the will of a party; often a small but artful and enterprising minority of the Community; and, ac-
15 cording to the alternate triumphs of different parties, to make the public administration the Mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils and modified by mutual interests. However combinations or Associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become po-
20 tent engines, by which cunning, ambitious and unprincipled men will be enabled to subvert the Power of the People, and to usurp for themselves the reins of Government; destroying afterwards the very engines which have lifted them to unjust dominion.

Towards the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its
25 acknowledged authority, but also that you resist with care the spirit of innovation upon its principles however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of

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Governments, as of other human institutions; that experience is the surest standard, by which to test the real tendency of the existing Constitution of a country; that facility in changes upon the credit of mere hypotheses and opinion exposes to perpetual change, from the endless variety of hypotheses and opinion, and remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a Government of as much vigor as is consistent with the perfect security of Liberty is indispensable. Liberty itself will find in such a Government, with powers properly distributed and adjusted, its surest Guardian. It is indeed little else than a name, where the Government is too feeble to withstand the enterprises of faction, to confine each member of the Society within the limits prescribed by the Laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of Parties in the State, with particular reference to the founding of them on Geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the Spirit of Party, generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human Mind. It exists under different shapes in all Governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissention, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an Individual; and sooner or later the chief of some prevailing faction more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.

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Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight) the common and continual mischiefs of the spirit of Party are sufficient to make it the interest and the duty of a wise People to discourage and restrain it.

It serves always to distract the Public Councils and enfeeble the Public administration. It agitates the Community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passions. Thus the policy and the will of one country, are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the Administration of the government and serve to keep alive the spirit of Liberty. This within certain limits is probably true, and in Governments of a Monarchical cast Patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in Governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion to mitigate and assuage it. A fire not to be quenched; it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming, it should consume.

It is important, likewise, that the habits of thinking in a free Country should inspire caution in those entrusted with its administration, to confine themselves within their respective Constitutional spheres; avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power; by dividing and distributing it into different depositories, and constituting each the Guardian of the Public Weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our

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country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great Pillars of human happiness, these firmest props of the duties of Men and citizens. The mere Politician, equally with the pious man ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle.

'Tis substantially true, that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free Government. Who that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric.

Promote then as an object of primary importance, Institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible: avoiding occasions of expense by cultivat-

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- ing peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of Peace to discharge the Debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your Representatives, but it is necessary that public opinion should cooperate. To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts there must be Revenue; that to have Revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseparable from the selection of the proper objects (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the Conduct of the Government in making it, and for a spirit of acquiescence in the measures for obtaining Revenue which the public exigencies may at any time dictate.
- 15 Observe good faith and justice towards all Nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great Nation, to give to mankind the magnanimous and too novel example of a People always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be, that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human Nature. Alas! is it rendered impossible by its vices?
- 25 In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular Nations and passionate attachments for others should be excluded; and that in place of them just and amicable feelings towards all should be cultivated. The Nation, which indulges towards another an habitual hatred, or an habitual fondness, is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one Nation against

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another, disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur. Hence frequent collisions, obstinate, envenomed, and bloody contests. The Nation, prompted by ill will and resentment sometimes impels to War the Government, contrary to the best calculations of policy. The Government sometimes participates in the national propensity, and adopts through passion what reason would reject; at other times, it makes the animosity of the Nation subservient to projects of hostility instigated by pride, ambition and other sinister and pernicious motives. The peace often, sometimes perhaps the Liberty, of Nations has been the victim.

So, likewise, a passionate attachment of one Nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest, in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and Wars of the latter, without adequate inducement or justification: It leads also to concessions to the favorite Nation of privileges denied to others, which is apt doubly to injure the Nation making the concession; by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate, in the parties from whom equal privileges are withheld: And it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite Nation) facility to betray, or sacrifice the interests of their own country, without odium sometimes even with popularity; gilding with the appearances of a virtuous sense of obligation a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition[, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent Patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public Councils! Such an attachment of a small or weak, towards a great and powerful Nation, dooms the former to be the satellite of the latter.

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Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens), the jealousy of a free people ought to be constantly awake; since history and experience prove that foreign influence is one of the most baneful foes of Republican Government. But that jealousy to be useful must be impartial; else it becomes the instrument of
5 the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real Patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to
10 surrender their interests.

The Great rule of conduct for us, in regard to foreign Nations is in extending our commercial relations, to have with them as little political connections as possible. So far as we have already formed engagements let them be fulfilled, with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation.
15 Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships, or enmities:

Our detached and distant situation invites and enables us to pursue a different course. If
20 we remain one People, under an efficient government, the period is not far off, when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest
25 guided by justice shall Counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle

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our peace and prosperity in the toils of European Ambition, Rivalship, Interest, Humor or Caprice?

'Tis our true policy to steer clear of permanent Alliances, with any portion of the foreign world. So far, I mean, as we are now at liberty to do it, for let me not be understood as capable of patronizing infidelity to existing engagements (I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy). I repeat it therefore, let those engagements be observed in their genuine sense. But in my opinion, it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves, by suitable establishments, on a respectably defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, liberal intercourse with all Nations, are recommended by policy, humanity and interest. But even our commercial policy should hold an equal and impartial hand: neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of Commerce, but forcing nothing; establishing with Powers so disposed; in order to give to trade a stable course, to define the rights of our Merchants, and to enable the Government to support them; conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary, and liable to be from time to time abandoned or varied, as experience and circumstances shall dictate; constantly keeping in view, that 'tis folly in one Nation to look for disinterested favors from another; that it must pay with a portion of its Independence for whatever it may accept under that character; that by such acceptance, it may place itself in the condition of having given equivalents for nominal favors and yet, of being reproached with ingratitude for not giving more. There can be no greater error than to expect, or calculate upon real favors from Nation to Nation. 'Tis an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my Countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression, I could wish; that they will control the usual current of the passions, or prevent our Nation from running the course which

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has hitherto marked the Destiny of Nations. But if I may even flatter myself that they may be productive of some partial benefit, some occasional good; that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, to guard against the Impostures of pretended patriotism; this hope will be a full recompense
5 for the solicitude for your welfare, by which they have been dictated.

How far in the discharge of my Official duties, I have been guided by the principles which have been delineated, the public Records and other evidences of my conduct must Witness to You and to the world. To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them.

10 In relation to the still subsisting War in Europe, my Proclamation of the 22d of April, 1793 is the index to my Plan. Sanctioned by your approving voice and by that of Your Representatives in both Houses of Congress, the spirit of that measure has continually governed me; uninfluenced by any attempts to deter or divert me from it.

15 After deliberate examination with the aid of the best lights I could obtain I was well satisfied that our Country, under all the circumstances of the case, had a right to take, and was bound in duty and interest, to take a Neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it, with moderation, perseverance, and firmness.

The considerations, which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe, that according to my understanding of the matter,
20 that right, so far from being denied by any of the Belligerent powers has been virtually admitted by all.

The duty of holding a Neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every Nation, in cases in which it is free to act, to maintain inviolate the relations of Peace and amity towards other Nations.

25 The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me, a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress without

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interruption, to that degree of strength and consistency, which is necessary to give it, humanly speaking, the command of its own fortunes.

Though in reviewing the incidents of my Administration, I am unconscious of intentional error, I am nevertheless too sensible of my defects not to think it probable that I may have
5 committed many errors. Whatever they may be I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my Country will never cease to view them with indulgence; and that after forty-five years of my life dedicated to its Service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the Mansions of rest.

10 Relying on its kindness in this as in other things, and actuated by that fervent love towards it, which is so natural to a man who views in it the native soil of himself and his progenitors for several Generations, I anticipate with pleasing expectation that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow Citizens, the benign influence of good Laws under a free Government, the ever fa-
15 vorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors and dangers.

THE U.S. CONGRESS OF THE CONFEDERATION

An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio

LAW EXCERPT

July 13, 1787

Federal Hall | New York City, New York

BACKGROUND

Congress passed the Northwest Ordinance to provide the governing structure for all of the territories of the young United States, lands that would later become the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin.

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Article III

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall
5 never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them....

"The Northwest Ordinance," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 121-27.

BOARD OF COMMISSIONERS OF THE UNIVERSITY OF VIRGINIA

Report of the Board of Commissioners

REPORT EXCERPTS

August 4, 1818
Rockfish Gap, Virginia

BACKGROUND

Thomas Jefferson and James Madison had a role in forming these ideas on education and the public support thereof as members of the Board of Commissioners for the University of Virginia.

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...In proceeding to the third and fourth duties prescribed by the Legislature, of reporting "the branches of learning, which should be taught in the University, and the number and description of the professorships they will require," the Commissioners were first to consider at what point it was understood that university education should commence? Certainly not with the alphabet, for reasons of expediency and impracticability, as well from the obvious sense of the Legislature, who, in the same act, make other provision for the primary instruction of the poor children, expecting, doubtless, that in other cases it would be provided by the parent, or become, perhaps, subject of future and further attention of the Legislature. The objects of this primary education determine its character and limits.

5 These objects would be,

10

To give to every citizen the information he needs for the transaction of his own business;

To enable him to calculate for himself, and to express and preserve his ideas, his contracts and accounts, in writing;

"Report of the Board of Commissioners for the University of Virginia to the Virginia General Assembly," 4 August 1818," in *The Papers of James Madison*, "Retirement Series," Vol. 1, 4 March 1817–31 January 1820, ed. David B. Mattern, J. C. A. Stagg, Mary Parke Johnson, and Anne Mandeville Colony (Charlottesville: University of Virginia Press, 2009), 326–40.

To improve, by reading, his morals and faculties;

To understand his duties to his neighbors and country, and to discharge with competence the functions confided to him by either;

5 To know his rights; to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he delegates; and to notice their conduct with diligence, with candor, and judgment;

And, in general, to observe with intelligence and faithfulness all the social relations under which he shall be placed.

10 To instruct the mass of our citizens in these, their rights, interests and duties, as men and citizens, being then the objects of education in the primary schools, whether private or public, in them should be taught reading, writing and numerical arithmetic, the elements of mensuration, (useful in so many callings,) and the outlines of geography and history.

15 And this brings us to the point at which are to commence the higher branches of education, of which the Legislature require the development; those, for example, which are,

To form the statesmen, legislators and judges, on whom public prosperity and individual happiness are so much to depend;

20 To expound the principles and structure of government, the laws which regulate the intercourse of nations, those formed municipally for our own government, and a sound spirit of legislation, which, banishing all arbitrary and unnecessary restraint on individual action, shall leave us free to do whatever does not violate the equal rights of another;

25 To harmonize and promote the interests of agriculture, manufactures and commerce, and by well informed views of political economy to give a free scope to the public industry;

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To develop the reasoning faculties of our youth, enlarge their minds, cultivate their morals, and instill into them the precepts of virtue and order;

To enlighten them with mathematical and physical sciences, which advance the arts, and administer to the health, the subsistence, and comforts of human life;

5 And, generally, to form them to habits of reflection and correct action, rendering them examples of virtue to others, and of happiness within themselves.

These are the objects of that higher grade of education, the benefits and blessings of which the Legislature now propose to provide for the good and ornament of their country, the gratification and happiness of their fellow-citizens, of the parent especially, and his progeny, on which all his affections are concentrated.

10

PRESIDENT JOHN ADAMS (FEDERALIST)**To the Officers of the Militia of Massachusetts**

LETTER

October 11, 1798
Quincy, Massachusetts

BACKGROUND

President John Adams responds to a message sent to him from the militia of his home state of Massachusetts.

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To the Officers of the first Brigade of the third Division of the Militia of Massachusetts

Quincy October 11. 1798

Gentlemen

I have received from Major General Hull and Brigadier General Walker your unanimous

- 5 Address from Lexington, animated with a martial Spirit and expressed with a military Dignity, becoming your Characters and the memorable Plains, in which it was adopted.

- 10 While our Country remains untainted with the Principles and manners, which are now producing desolation in so many Parts of the World: while she continues Sincere and incapable of insidious and impious Policy: We shall have the Strongest Reason to rejoice in the local destination assigned Us by Providence. But should the People of America, once become capable of that deep simulation towards one another and towards foreign nations, which assumes the Language of Justice and moderation while it is practicing Iniquity and Extravagance; and displays in the most captivating manner the charming Pictures of Candour frankness & sincerity while it is rioting in rapine and Insolence: this Country will be

John Adams, "From John Adams to Massachusetts Militia," 11 October 1798, Founders Online, National Archives, <https://founders.archives.gov/documents/Adams/99-02-02-3102>.

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the most miserable Habitation in the World. Because We have no Government armed with Power capable of contending with human Passions unbridled by morality and Religion. Avarice, Ambition Revenge or Galantry, would break the strongest Cords of our Constitution as a Whale goes through a Net. Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other

5

An Address so unanimous and firm from the officers commanding two thousand Eight hundred Men, consisting of such substantial Citizens as are able and willing at their own Expence, compleatly to arm, And cloath themselves in handsome Uniforms does honor to that Division of the Militia which has done so much honor to their Country. Oaths, in this Country, are as yet universally considered as Sacred Obligations. That which you have taken and so solemnly repeated on that venerable Spot is an ample Pledge of your sincerity, and devotion to your Country and its Government.

10

John Adams

SECOND CONTINENTAL CONGRESS

Fast Day Proclamation

PROCLAMATION

December 11, 1776
United States of America

BACKGROUND

The Continental Congress called Americans to prayer and fasting in the first winter of the Revolutionary War.

GUIDING QUESTIONS

1. Why is the Continental Congress asking Americans to fast?
2. What conduct is expected of all members and officers of the United States?

"Fast Day Proclamation of the Continental Congress," 11 December 1776, in *The Journals of the Continental Congress, 1774–1789*, Vol. 6, ed. Worthington C. Ford, Gaillard Hunt et al. (Washington, D.C.: Government Printing Office, 1904), 1022.

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Whereas, the war in which the United States are engaged with Great Britain, has not only been prolonged, but is likely to be carried to the greatest extremity; and whereas, it becomes all public bodies, as well as private persons, to reverence the Providence of God, and look up to him as the supreme disposer of all events, and the arbiter of the fate of nations; therefore,

Resolved, That it be recommended to all the United States, as soon as possible, to appoint a day of solemn fasting and humiliation; to implore of Almighty God the forgiveness of the many sins prevailing among all ranks, and to beg the countenance and assistance of his Providence in the prosecution of the present just and necessary war.

10 The Congress do also, in the most earnest manner, recommend to all the members of the United States, and particularly the officers civil and military under them, the exercise of repentance and reformation; and further, require of them the strict observation of the articles of war, and particularly, that part of the said articles, which forbids profane swearing, and all immorality, of which all such officers are desired to take notice.

15 It is left to each state to issue out proclamations fixing the days that appear most proper within their several bounds....

PRESIDENT GEORGE WASHINGTON

Annual Message to Congress

SPEECH EXCERPTS

January 8, 1790

Senate Chamber, Federal Hall | New York City, New York

BACKGROUND

President George Washington gave this address as the first annual message to Congress on the state of the Union, as required per the Constitution.

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Fellow Citizens of the Senate, and House of Representatives...

Among the many interesting objects which will engage your attention, that of providing for the common defence will merit particular regard. To be prepared for war is one of the most effectual means of preserving peace....

- 5 Nor am I less persuaded, that you will agree with me in opinion, that there is nothing which can better deserve your patronage, than the promotion of Science and Literature. Knowledge is in every country the surest basis of publick happiness. In one, in which the measures of government receive their impression so immediately from the sense of the community, as in our's, it is proportionately essential. To the security of a free Constitu-
- 10 tion it contributes in various ways: By convincing those who are entrusted with the publick administration, that every valuable end of government is best answered by the enlightened confidence of the people: And by teaching the people themselves to know, and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority; between burthens proceeding

George Washington, "First Annual Address," 8 January 1790, in *A Compilation of the Messages and Papers of the Presidents: Section 1 (of 4) of Volume 1: George Washington*, ed. James D. Richardson (New York : Bureau of National Literature, Inc., 1897; Project Gutenberg, 2004), <https://www.gutenberg.org/files/11314/11314.txt>.

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from a disregard to their convenience, and those resulting from the inevitable exigencies of society; to discriminate the spirit of liberty from that of licentiousness, cherishing the first, avoiding the last, and uniting a speedy, but temperate vigilance against encroachments, with an inviolable respect to the laws.

- 5 Whether this desirable object will be best promoted by affording aids to seminaries of learning already established, by the institution of a national university, or by any other expedients, will be well worthy of a place in the deliberations of the Legislature....

PRESIDENT GEORGE WASHINGTON**Thanksgiving Proclamation**

PROCLAMATION

October 3, 1789

Federal Hall | New York City, New York

BACKGROUND

President George Washington established a day of thanksgiving to God for peaceably establishing a new form of government, to be observed around the one-year anniversary of the new Constitution.

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By the President of the United States of America, a Proclamation.

Whereas it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor—and whereas both Houses of Congress have by their joint Committee requested me

5 “to recommend to the People of the United States a day of public thanksgiving and prayer to be observed by acknowledging with grateful hearts the many signal favors of Almighty God especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness.”

Now therefore I do recommend and assign Thursday the 26th day of November next to be

10 devoted by the People of these States to the service of that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be—That we may then all unite in rendering unto him our sincere and humble thanks—for his kind care and protection of the People of this Country previous to their becoming a Nation—for the signal and manifold mercies, and the favorable interpositions of his Providence which we experienced

15 in the course and conclusion of the late war—for the great degree of tranquillity,

George Washington, “Thanksgiving Proclamation,” 3 October 1789, in *The Papers of George Washington*, “Presidential Series,” Vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig (Charlottesville: University Press of Virginia, 1993), 131–32.

Thanksgiving Proclamation
George Washington

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union, and plenty, which we have since enjoyed—for the peaceable and rational manner, in which we have been enabled to establish constitutions of government for our safety and happiness, and particularly the national One now lately instituted—for the civil and religious liberty with which we are blessed; and the means we have of acquiring and diffusing
5 useful knowledge; and in general for all the great and various favors which he hath been pleased to confer upon us.

And also that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations and beseech him to pardon our national and other transgressions—to enable us all, whether in public or private stations, to perform our sev-
10 eral and relative duties properly and punctually—to render our national government a blessing to all the people, by constantly being a Government of wise, just, and constitutional laws, discreetly and faithfully executed and obeyed—to protect and guide all Sovereigns and Nations (especially such as have shewn kindness unto us) and to bless them with good government, peace, and concord—To promote the knowledge and practice of true religion
15 and virtue, and the encrease of science among them and us—and generally to grant unto all Mankind such a degree of temporal prosperity as he alone knows to be best.

Given under my hand at the City of New-York the third day of October in the year of our Lord 1789.

George Washington

PRESIDENT GEORGE WASHINGTON

To the Hebrew Congregation in Newport

LETTER

August 18, 1790
Newport, Rhode Island

BACKGROUND

In his response to a congratulatory note sent by the congregation on the occasion of his election, George Washington expresses his gratitude and discusses religious liberty.

GUIDING QUESTIONS

1. What has "toleration" been replaced with? What is the distinction Washington makes?
2. What natural rights does Washington refer to, and how are they to be protected?

George Washington, "To the Hebrew Congregation in Newport, Rhode Island," 18 August 1790, in *The Papers of George Washington, 1748-1799*, "Presidential Series," Vol. 6, ed. W. W. Abbott et al. (Charlottesville, VA: University of Virginia Press, 1996), 284-85.

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Gentlemen:

While I receive, with much satisfaction, your Address replete with expressions of esteem; I rejoice in the opportunity of assuring you, that I shall always retain grateful remembrance of the cordial welcome I experienced in my visit to Newport, from all classes of Citizens.

- 5 The reflection on the days of difficulty and danger which are past is rendered the more sweet, from a consciousness that they are succeeded by days of uncommon prosperity and security. If we have wisdom to make the best use of the advantages with which we are now favored, we cannot fail, under the just administration of a good Government, to become a great and happy people.
- 10 The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the
- 15 United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.

- It would be inconsistent with the frankness of my character not to avow that I am pleased with your favorable opinion of my Administration and fervent wishes for my felicity. May
- 20 the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid. May the father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here, and in his own due time and way everlastingly happy.

PRESIDENT GEORGE WASHINGTON**To the Society of Quakers**

LETTER

October 13, 1789

BACKGROUND

President George Washington responds to a note of congratulations from the Society of Quakers on the occasion of his election.

ANNOTATIONS**NOTES & QUESTIONS**

Gentlemen,

I receive with pleasure your affectionate address, and thank you for the friendly Sentiments & good wishes which you express for the Success of my administration, and for my personal Happiness.

- 5 We have Reason to rejoice in the prospect that the present National Government, which by the favor of Divine Providence, was formed by the common Counsels, and peaceably established with the common consent of the People, will prove a blessing to every denomination of them. To render it such, my best endeavours shall not be wanting.

- 10 Government being, among other purposes, instituted to protect the Persons and Consciences of men from oppression, it certainly is the duty of Rulers, not only to abstain from it themselves, but according to their Stations, to prevent it in others.

The liberty enjoyed by the People of these States, of worshipping Almighty God agreeable to their Consciences, is not only among the choicest of their Blessings, but also of their Rights—While men perform their social Duties faithfully, they do all that Society or

George Washington, "From George Washington to the Society of Quakers, 13 October 1789," in *The Papers of George Washington*, "Presidential Series," Vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig (Charlottesville: University Press of Virginia, 1993), 265–69.

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the State can with propriety demand or expect; and remain responsible only to their Maker for the Religion or modes of faith which they may prefer or profess.

Your principles & conduct are well known to me—and it is doing the People called Quakers no more than Justice to say, that (except their declining to share with others the burthen of
5 the common defence) there is no Denomination among us who are more exemplary and useful Citizens.

I assure you very explicitly that in my opinion the Consciencious scruples of all men should be treated with great delicacy & tenderness, and it is my wish and desire that the Laws may always be as extensively accomodated to them, as a due regard to the Protection and essen-
10 tial Interests of the Nation may Justify, and permit.

George Washington

COMMONWEALTH OF VIRGINIA

Statute for Religious Freedom

LAW

January 16, 1786
Virginia

BACKGROUND

Drafted in 1777, but not enacted until 1786, this law was one of three actions for which Thomas Jefferson wanted credited mentioned on his tombstone, in addition to being author of the Declaration of Independence and founder of the University of Virginia.

GUIDING QUESTIONS

1. What has Almighty God given man with respect to his mind?
2. What does this statute say are the problems with compelled contributions of money to religion?
3. What particular right of man does this statute protect?

Thomas Jefferson, "A Bill for Establishing Religious Freedom," in *The Papers of Thomas Jefferson*, Vol. 2, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1950), 545-47.

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I. *Well aware that the opinions and belief of men depend not on their own will but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free; and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand*

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such temptation, yet neither are those innocent who lay the bait in their way *that the opinions of men are not the object of civil government, nor under its jurisdiction*; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgement, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

II. *We the General Assembly of Virginia do enact*, that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

ANONYMOUS (VIRGINIA HOUSE DELEGATE JAMES MADISON)

A Memorial and Remonstrance

ESSAY

June 20, 1785

General Assembly of the Commonwealth of Virginia | Richmond, Virginia

BACKGROUND

Madison circulated this anonymous essay in order to support the passage of the Virginia Statute for Religious Freedom.

GUIDING QUESTIONS

1. Why must each man's religion be left to his individual conscience?
2. What is the extent of the legislature's power over religion, according to Madison?
3. How does Madison link the founding principle of equality to religious freedom?
4. According to Madison's interpretation, what does the Christian religion itself say about religious freedom?
5. What does Madison think imposing religious assessments will do for the public harmony?
6. In what way would religious assessments impede the "victorious progress of Truth," according to Madison?
7. Among the rights of citizens, what rank does religious freedom have, in Madison's view?

James Madison, "To the Honorable the General Assembly of the Commonwealth of Virginia A Memorial and Remonstrance," 20 June 1785, in *The Papers of James Madison*, Vol. 8, ed. William T. Hutchinson, et al. (Chicago: University of Chicago Press, 1973), 298-304.

To the Honorable the General Assembly of the Commonwealth of Virginia: A Memorial and Remonstrance

We the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill
5 establishing a provision for Teachers of the Christian Religion," and conceiving that the same if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty
10 which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own
15 minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as
20 a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no mans right is abridged by the institution of Civil
25 Society and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.

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2. Because if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinate departments, more necessarily is it limited with regard to the constituents.

5 The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are
10 governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened
15 ened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? that the same
20 authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because the Bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable
25 to be impeached. If "all men are by nature equally free and independent," all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of Conscience." Whilst we assert for ourselves a freedom to embrace, to profess

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and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by
5 subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their Religions unnecessary and unwarrantable? Can their piety alone be entrusted with the care of public worship? Ought their Religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others?
10 We think too favorably of the justice and good sense of these denominations to believe that they either covet pre-eminences over their fellow citizens or that they will be seduced by them from the common opposition to the measure.

5. Because the Bill implies either that the Civil Magistrate is a competent Judge of Religious Truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant
15 pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: the second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world: it is a contradiction to
20 fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them, and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of Providence. Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by
25 human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

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7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. Inquire of the Teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive State in which its Teachers depended on the voluntary rewards of their flocks, many of them predict its downfall. On which Side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within the cognizance of Civil Government how can its legal establishment be necessary to Civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries. A just Government instituted to secure and perpetuate it needs them not. Such a Government will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a luster to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all

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those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his Troubles.

10. Because it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish Religious discord, by proscribing all difference in Religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theater has exhibited proofs that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bounds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed "that Christian forbearance, love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of a law?

12. Because the policy of the Bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former!

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Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the Region of it; and countenances by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of Levelling as far as possible, every obstacle to the victorious progress of Truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defense against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the Government, on its general authority?

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the "Declaration of those rights which pertain to the good people of Virginia, as the basis and foundation of Government," it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the Will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they

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may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may control the freedom of the press, may abolish the Trial by Jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves

5 into an independent and hereditary Assembly or, we must say, that they have no authority to enact into law the Bill under consideration. We the Subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by

10 illuminating those to whom it is addressed, may on the one hand, turn their Councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his blessing, may redound to their own praise, and may establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.

PRESIDENT THOMAS JEFFERSON (DEMOCRATIC-REPUBLICAN)

To the Danbury Baptist Association

LETTER

January 1, 1802
Danbury, Connecticut

BACKGROUND

President Thomas Jefferson responds to the Danbury Baptist Association's request that as president, he aid them in overcoming laws inhibiting religious liberty in Connecticut.

GUIDING QUESTIONS

1. How does Jefferson interpret the First Amendment's Establishment and Free Exercise clauses?
2. Given the principle of federalism, what, as president, is Jefferson able to do for the Association?

Thomas Jefferson, "Replies to Public Addresses," 1 January 1802, in *The Writings of Thomas Jefferson*, Vol. 16, ed. A. A. Lipscomb and A. E. Bergh (Washington, D.C.: Thomas Jefferson Memorial Association, 1907), 281-82.

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Gentlemen:

The affectionate sentiments of esteem and approbation which you are so good as to express towards me, on behalf of the Danbury Baptist Association, give me the highest satisfaction. My duties dictate a faithful and zealous pursuit of the interests of my constituents, and in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing. Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection and blessing of the common Father and Creator of man, and tender you for yourselves and your religious association, assurances of my high respect and esteem.

TREASURY SECRETARY ALEXANDER HAMILTON

On the French Revolution

UNPUBLISHED WRITING FRAGMENT

1794

BACKGROUND

In an unpublished and unfinished piece, Alexander Hamilton expresses serious concerns over the irreligiosity of the French Revolution.

GUIDING QUESTIONS

1. What are the opinions that threaten the foundations of religion, morality, and society?
2. Which two groups are the enemies of religion and government?
3. How is the French Revolution the practical development of these irreligious and anarchic opinions?

Alexander Hamilton, "Fragment on the French Revolution," 1794, in *The Works of Alexander Hamilton*, Vol. 8, Federal Edition, ed. Henry Cabot Lodge (New York: G.P. Putnam's Sons, 1904), 425-29.

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Facts, numerous and unequivocal, demonstrate that the present aera is among the most extraordinary, which have occurred in the history of human affairs. Opinions, for a long time, have been gradually gaining ground, which threaten the foundations of Religion, Morality and Society. An attack was first made upon the Christian Revelation; for which natural Religion was offered as the substitute. The Gospel was to be discarded as a gross imposture; but the being and attributes of a God, the obligations of piety, even the doctrine of a future state of rewards and punishments were to be retained and cherished.

In proportion as success has appeared to attend the plan, a bolder project has been unfolded. The very existence of a Deity has been questioned, and in some instances denied.

The duty of piety has been ridiculed, the perishable nature of man asserted and his hopes bounded to the short span of his earthly state. Death has been proclaimed an Eternal Sleep—"the dogma of the *immortality* of the soul a *cheat* invented to torment the living for the benefit of the dead." Irreligion, no longer confined to the closets of concealed sophists, nor to the haunts of wealthy riot, has more or less displayed its hideous front among all classes.

Wise and good men took a lead in delineating the odious character of Despotism; in exhibiting the advantages of a moderate and well-balanced government, in inviting nations to contend for the enjoyment of rational liberty. Fanatics in political science have since exaggerated and perverted their doctrines. Theories of Government unsuited to the nature of man, miscalculating the force of his passions, disregarding the lessons of experimental wisdom, have been projected and recommended. These have every where attracted sectaries and every where the fabric of Government has been in different degrees undermined.

A league has at length been cemented between the apostles and disciples of irreligion and of anarchy. Religion and Government have both been stigmatised as abuses; as unwarrantable restraints upon the freedom of man; as causes of the corruption of his nature, intrinsically good; as sources of an artificial and false morality, which tyrannically robs him of the enjoyments for which his passions fit him; and as cloggs upon his progress to the perfection for which he was destined.

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As a corollary from these premisses, it is a favourite tenet of the sect that religious opinion of any sort is unnecessary to Society; that the maxims of a genuine morality and the authority of the Magistracy and the laws are a sufficient and ought to be the only security for civil rights and private happiness.

- 5 As another corollary, it is occasionally maintained by the same sect, that but a small portion of power is requisite to Government; that even this portion is only temporarily necessary, in consequence of the bad habits which have been produced by the errors of ancient systems; and that as human nature shall refine and ameliorate by the operation of a more enlightened plan, government itself will become useless, and Society will subsist and flourish free from its shackles.
- 10

If all the votaries of this new philosophy do not go the whole length of its frantic creed; they all go far enough to endanger the full extent of the mischiefs which are inherent in so wild and fatal a scheme; every modification of which aims a mortal blow at the vitals of human happiness.

- 15 The practical developement of this pernicious system has been seen in France. It has served as an engine to subvert all her antient institutions civil and religious, with all the checks that served to mitigate the rigour of authority; it has hurried her headlong through a rapid succession of dreadful revolutions, which have laid waste property, made havoc among the arts, overthrow cities, desolated provinces, unpeopled regions, crimsoned her soil with blood and deluged it in crime poverty and wretchedness; and all this as yet for no better purpose than to erect on the ruins of former things a despotism unlimited and uncontrolled; leaving to a deluded, an abused, a plundered, a scourged and an oppressed people not even the shadow of liberty, to console them for a long train of substantial misfortunes, of bitter sufferings.
- 20

- 25 This horrid system seemed awhile to threaten the subversion of civilized Society and the introduction of general disorder among mankind. And though the frightful evils, which have been its first and only fruits, have given a check to its progress, it is to be feared that the poison has spread too widely and penetrated too deeply, to be as yet eradicated. Its

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activity has indeed been suspended, but the elements remain concocting for new eruptions as occasion shall permit. It is greatly to be apprehended, that mankind is not near the end of the misfortunes, which it is calculated to produce, and that it still portends a long train of convulsion, Revolution, carnage, devastation, and misery.

- 5 Symptoms of the too great prevalence of this system in the United States are alarmingly visible. It was by its influence, that efforts were made to embark this country in a common cause with France in the early period of the present war; to induce our government to sanction and promote her odious principles and views with the blood and treasure of our citizens. It is by its influence, that every succeeding revolution has been approved or excused—
- 10 all the horrors that have been committed justified or extenuated—that even the last usurpation, which contradicts all the ostensible principles of the Revolution, has been regarded with complacency; and the despotic constitution engendered by it slyly held up as a model not unworthy of our Imitation.

In the progress of this system, impiety and infidelity have advanced with gigantic strides.

- 15 Prodigious crimes heretofore unknown among us are seen. The chief and idol of...[ENDS]

REP. JAMES MADISON (VA)

“Property”

ESSAY

March 27, 1792

The National Gazette | Philadelphia, Pennsylvania

BACKGROUND

James Madison included this essay as part of a series of articles he wrote for *The National Gazette* in the early years of American government under the Constitution.

GUIDING QUESTIONS

1. What are the two senses of the word "property" according to Madison?
2. In what way can man's rights, opinions, and the use of his faculties be his property?
3. According to Madison, what must a government do to secure the various senses of property?

James Madison, “Property,” 27 March 1792, in *The Papers of James Madison*, Vol. 14, ed. William T. Hutchinson, et al. (Chicago: University of Chicago Press, 1983), 266–68.

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This term in its particular application means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.”

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

- 5 In the former sense, a man’s land, or merchandise, or money is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

- 10 He has a property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

- 15 Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.

Where there is an excess of liberty, the effect is the same, though from an opposite cause.

- 20 Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.

According to this standard of merit, the praise of affording a just securing to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of

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their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government, where a man’s religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and unalienable right. To guard a man’s house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man’s conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest. A magistrate issuing his warrants to a press gang, would be in his proper functions in Turkey or Indostan, under appellations proverbial of the most complete despotism.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called. What must be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favor his neighbour who manufactures woolen cloth; where the manufacturer and wearer of woolen cloth are again forbidden the economical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

A just security to property is not afforded by that government, under which unequal taxes oppress one species of property and reward another species: where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes

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are again applied, by an unfeeling policy, as another spur; in violation of that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him, in the small repose that could be spared from the supply of his necessities.

5 If there be a government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken directly even for public use without indemnification to the owner, and yet directly violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which indirectly violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and
10 soothe their cares, the influence will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in
15 violating the latter, will make themselves a pattern to that and all other governments.

COMMITTEE OF THE VIRGINIA ASSEMBLY

A Bill for the Support of the Poor

DRAFT BILL

June 18, 1779
Williamsburg, Virginia

BACKGROUND

As a representative in the Virginia Assembly, Thomas Jefferson drafted this bill that would provide some government support for poor Virginians.

GUIDING QUESTIONS

1. How will the government support the poor?
2. What is required of recipients in exchange for this support?

Thomas Jefferson, "A Bill for Support of the Poor," in *The Papers of Thomas Jefferson*, Vol. 2, 1777–18 June 1779, ed. Julian P. Boyd (Princeton: Princeton University Press, 1950), 419–24.

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Be it enacted by the General Assembly, that the Aldermen of every county wherein such provision, as is herein after required for setting the poor of the county to work, shall not have been made, shall, so soon as conveniently may be, purchase the inheritance, or procure a lease, of one hundred acres of land, or any less quantity that is sufficient for the purpose intended, in the county, and thereon cause a house to be built, if a proper one be not there already, and kept in repair, and shall cause all persons in their county, who are maintained thereby, or who seek relief therefrom, to be put into such house, to be there maintained and employed in such work as they shall be able to perform; and may also, by their warrant, apprehend and send to the same place all persons found wandering and begging alms, in the county, other than seamen, who having been shipwrecked or discharged from vessels they had belonged to, and returning to their habitations, or going to some port to seek employment, and not loitering on the way thither, or abiding in port and offering to be employed, shall ask subsistence on their journey, or until any be willing to employ them, and shall put such beggar to work for any time not exceeding twenty days. And the said Aldermen shall hire some discreet man to oversee those who shall come or be put into such work-house, and shall, from time to time, ordain rules for his conduct, and for the government, employment, and correction of the persons subject to him, restraining him from correcting any of them with more stripes than ten, at one time, or for one offence. And in order to keep them at work shall provide wool, cotton, flax, hemp and other materials, with the tools and implements necessary for the manufacture thereof. And the said Aldermen shall meet together, at the court-house of their county, at some time between the second Tuesday in July and the first day of August in every year, and by taxation of the persons and property, in their county, according to the mode of assessment prescribed by the law which shall be then in force, for raising money for the public exigencies, shall raise competent sums of money for the necessary relief of such poor, lame, impotent, blind, and other inhabitants of the county as are not able to maintain themselves. And also for the putting out the poor children apprentices, as well as for defraying the expences of putting so much of this act in execution as relates to setting the poor to work and keeping them so employed; they shall moreover on or before the first day of August annually, make up in

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their minutes an exact account of the persons to, and for whom, such monies are to be paid, the purposes for which and the particular sums; a copy of which they shall, on or before the same day, deliver to the collector of the public tax, together with a list of the persons charge-
able with the poor rates, and the sums to be paid by each for his poor rate, and also a list of
5 the debts due to them on behalf of their county: which collector shall give bond with re-
sponsible security for the discharge of his duty herein; and shall collect the said debts and
poor rates in the same time, with the same powers, for the same commission, and subject
to the same fines, forfeitures, and prosecutions as in the case of public taxes. The said col-
lector shall proceed, so soon as his collection shall have enabled him, to pay the several
10 sums as shall be specially directed in the account rendered him: and if he shall fail so to do,
and also to settle his account with the Aldermen, on or before the first day of November
following, it shall be lawful for the court of the county, on the motion of the said Aldermen,
or of the person to whom any sum of money is directed to be paid, ten days previous notice
of such motion having been given, to render judgment against such collector for the sum
15 and costs; or if it be for failure to account, then to render such judgment or judgments as
are usual in actions on writs of account, and thereon to award execution, unless the sum
shall not exceed twenty five shillings, in which case it shall be determinable before a Justice
of the Peace, in like manner. And at such annual meeting, and at other times when they
shall think proper, the said Aldermen shall cause the overseer of the poor to render account
20 of the persons under his care, the produce of their labor, and the disposition of such pro-
duce, and of all other things committed to his care, or belonging to his office, and apply the
profits arising from their work towards defraying the expences of their maintenance. The
Aldermen shall register in a book, to be provided at the expence of the county, and trans-
mitted to their successors, the names of all persons who receive relief from the county,
25 entering the times they were admitted, and stating the reasons of their admissions. When
a person shall have resided twelve months in a county, without any intermediate change of
habitation, such residence shall be deemed a settlement in that county, of such person, and
those of his children who remain a part of his family. A bastard child shall be deemed a
settled inhabitant of that county in which, at the birth, the mother was settled. Any person
30 acknowledged by the Aldermen of a county to be a settled inhabitant thereof, producing a

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certificate of such acknowledgement, signed by the said Aldermen, and delivering the certificate to the Aldermen of another county, wherein he shall not have such leasehold, or greater estate as is herein after mentioned, shall be adjudged to continue a settled inhabitant of the former county, which shall reimburse all expences incurred by the latter, for his
5 maintenance, or curing, or attempting to cure him of any disease he may labor under, to be recovered, in case of refusal to repay them, in an action on the case, brought by the Aldermen of one county against those of the other. A widow shall be adjudged a settled inhabitant of that county in which her husband shall have gained a settlement, although his death happen before she shall have resided there twelve months: But if he had no settlement any where, she shall be considered with respect to her settlement as if she were an
10 unmarried woman. A person holding any estate of freehold, in lands or possessing an estate, for one or more years, in lands, and coming to dwell in the county wherein such lands lie, shall have the same right to remain there as if he had been a settled inhabitant thereof. When a settled inhabitant of any county, or one who according to this act is deemed such,
15 shall leave it, and the Aldermen, or any two of them, in any other county, in which he shall come to dwell, or abide, if he have not therein such estate as aforesaid, or do not give security to indemnify the county, and shall be apprehensive he will become chargeable to their county, they may, by their warrant, cause such emigrant to be removed to the county whereof he was a settled inhabitant, and delivered to one of the Aldermen thereof; and if
20 he be unable to travel immediately, the Alderman who signed the warrant, shall, at the charge of their county, provide for his maintenance and cure, until he shall recover strength and health sufficient for the journey, the expence of which removal shall be reimbursed, and may be recovered in the same manner as those of the maintenance and cure are before directed to be. Any Alderman refusing to receive a settled parishioner, so removed, shall
25 be himself answerable for his maintenance and cure, in like manner as his county is declared to be. All able bodied persons not having wherewithal to maintain themselves, who shall waste their time in idle and dissolute courses, or shall loiter or wander abroad, refusing to work for reasonable wages, or to betake themselves to some honest and lawful calling, or who shall desert wives or children, without so providing for them as that they shall not
30 become chargeable to a county, shall be deemed vagabonds, and shall be sent, by order of

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an Alderman, to the poor house, there to be kept to labor during such time as shall be limited by the order, not exceeding thirty days; or if he be a settled inhabitant of another county, shall, by warrant of the said Alderman, be conveyed, by constable to constable, to some Alderman of such other county, who shall, by his order, send him to the proper poor house, to be there kept to labor as aforesaid; unless, in either of the cases, the vagabond shall give surety for his good behavior, and that he shall betake himself to some honest and lawful calling for twelve months; from which order the party thereby condemned may appeal to the county court, who, if the order be affirmed, shall award him to pay the costs. The assessors of the several hundreds, in every county, shall be aiding and assisting to their Aldermen, in the execution of this act, by giving information of such persons, within their respective hundreds, as ought to be supported by the county; and of these who shall come from any other county, where they had a settled residence, to dwell within their hundred, and be likely to become chargeable, by apprehending, and carrying before the said Aldermen, any person found wandering or begging within their hundred, or coming within the description of a vagabond before given; and by dispensing, according to the instructions of the said Aldermen, any reliefs which may, by them, be deposited with such assessors for the use of the poor of their hundred. The Aldermen of every county and their successors shall have power to call upon the former vestrymen of any parish which, or any part of which, is within their county, to render account of the expenditure of all money, or tobacco, by them received, and to pay into their hands any balance, or their due proportion of any balance, which may remain, to be applied to the lessening of the poor rates, and on failure may maintain proper actions in law, or equity, against them for enforcing the same.

LUCIUS CRASSUS (ALEXANDER HAMILTON)

The Examination Number VII

ARTICLE

January 7, 1802

New-York Evening Post | New York City, New York

BACKGROUND

Alexander Hamilton wrote this article examining President Thomas Jefferson's message to Congress at the beginning of his presidency.

GUIDING QUESTIONS

1. According to Hamilton, what are the several principles that ought to govern immigration?

Alexander Hamilton, "The Examination Number VII," 7 January 1802, in *The Papers of Alexander Hamilton*, Vol. 25, July 1800–April 1802, ed. Harold C. Syrett (New York: Columbia University Press, 1977), 491–95.

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The next exceptionable feature in the Message, is the proposal to abolish all restriction on naturalization, arising from a previous residence. In this the President is not more at variance with the concurrent maxims of all commentators on popular governments, than he is with himself. The Notes on Virginia are in direct contradiction to the Message, and furnish
5 us with strong reasons against the policy now recommended. The passage alluded to is here presented: Speaking of the *population* of America, Mr. Jefferson there says, "Here I will beg leave to propose a doubt. The present desire of America, is to produce rapid population, by as great *importations of foreigners* as possible. *But is this founded in good policy?*" "Are there no inconveniences to be thrown into the scale, against the advantage expected from a mul-
10 tiplication of numbers, by the *importation of foreigners*? It is for the happiness of those united in society, to harmonize as much as possible, in matters which they must of necessity transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles: Ours, perhaps, are more peculiar than those of any other in the universe. *It*
15 *is a composition of the freest principles of the English Constitution*, with others, derived from natural right and reason. To these, nothing can be more opposed than the maxims of absolute monarchies. Yet from such, we are to expect the *greatest number of emigrants*. *They will bring with them the principles of the governments they leave, imbibed in their early youth; or if able to throw them off, it will be in exchange for an unbounded licentiousness,*
20 *passing as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. Their principles with their language, they will transmit to their children.* In proportion to their numbers, *they will share with us in the legislation.* They will infuse into it their spirit, warp and bias its direction, and render it a *heterogeneous, incoherent, distracted mass.* I may appeal to experience, during the present
25 contest, for a verification of these conjectures: but if they be not certain in event, are they not possible, are they not probable? *Is it not safer to wait with patience for the attainment of any degree of population desired or expected?* May not our government be more homogeneous, *more peaceable, more durable?* Suppose 20 millions of republican Americans, thrown all of a sudden into France, what would be the condition of that kingdom? If it
30 would be more turbulent, less happy, less strong, we may believe that the addition of half a

ANNOTATIONS

NOTES & QUESTIONS

million of foreigners, to our present numbers, would produce a similar effect here.” Thus wrote Mr. Jefferson in 1781....

...The impolicy of admitting foreigners to an immediate and unreserved participation in the right of suffrage, or in the sovereignty of a Republic, is as much a received axiom as any
5 thing in the science of politics, and is verified by the experience of all ages. Among other instances, it is known, that hardly any thing contributed more to the downfall of Rome, than her precipitate communication of the privileges of citizenship to the inhabitants of Italy at large. And how terribly was Syracuse scourged by perpetual seditions, when, after the overthrow of the tyrants, a great number of foreigners were suddenly admitted to the
10 rights of citizenship? Not only does ancient but modern, and even domestic history furnish evidence of what may be expected from the dispositions of foreigners, when they get too early footing in a country. Who wields the sceptre of France, and has erected a Despotism on the ruins of a Republic? A foreigner. Who rules the councils of our own ill-fated, unhappy country? And who stimulates persecution on the heads of its citizens, for daring to
15 maintain an opinion, and for exercising the rights of suffrage? *A foreigner!* Where is the virtuous pride that once distinguished Americans? Where the indignant spirit which in defence of principle, hazarded a revolution to attain that independence now *insidiously* attacked?

LUCIUS CRASSUS

ANONYMOUS (THOMAS JEFFERSON)

Notes on the State of Virginia

BOOK EXCERPT

May 1785
Paris, France

BACKGROUND

Thomas Jefferson wrote *Notes on the State of Virginia* in response to questions posed to him by the Secretary of the French delegation to the United States.

ANNOTATIONS**NOTES & QUESTIONS**

...But are there no inconveniences to be thrown into the scale against the advantage expected from a multiplication of numbers by the importation of foreigners? It is for the happiness of those united in society to harmonize as much as possible in matters which they must of necessity transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours perhaps are more peculiar than those of any other in the universe. It is a composition of the freest principles of the English constitution, with others derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet, from such, we are to expect the greatest number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers, they will share with us the legislation. They will infuse into it their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass. I may appeal to ex-

Thomas Jefferson, *Notes on the State of Virginia*, ed. William Peden (Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture, Williamsburg, Virginia, 1954), 84-85.

perience, during the present contest, for a verification of these conjectures. But, if they be not certain in event, are they not possible, are they not probable? Is it not safer to wait with patience 27 years and three months longer, for the attainment of any degree of population desired, or expected? May not our government be more homogeneous, more peaceable,
5 more durable? Suppose 20 millions of republican Americans thrown all of a sudden into France, what would be the condition of that kingdom? If it would be more turbulent, less happy, less strong, we may believe that the addition of half a million of foreigners to our present numbers would produce a similar effect here. If they come of themselves, they are entitled to all the rights of citizenship: but I doubt the expediency of inviting them by ex-
10 traordinary encouragements....

UNIT 2

A Constitution of Principles

45-50-minute classes | 12-16 classes

UNIT PREVIEW**Structure**

LESSON 1	The Case for the Constitution	3-4 classes	p. 7
LESSON 2	The Case for Union	2-3 classes	p. 12
LESSON 3	Federalism	2-3 classes	p. 17
LESSON 4	Separation of Powers and Checks & Balances	3-4 classes	p. 19
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 23
APPENDIX B	Primary Sources		p. 35

Why Teach a Constitution of Principles

“[I]t seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.” Thus wrote Alexander Hamilton in the opening paragraph of *Federalist* 1 in support of the newly proposed United States Constitution. Indeed, it is the Constitution that gives institutional form to the principles of the Declaration of Independence. The Constitution is the vehicle for the American experiment in self-government. Study of the Constitution therefore shows students how and *that* human beings are able to govern themselves in freedom, securing the equal protection of rights and the dignity of each person through reflection, deliberation, and choice. This is a significant thing for students to grasp, for if the Constitution cannot achieve these ends, then force and violence are the only alternatives left to humankind.

What Teachers Should Consider

From *The 1776 Report*, Pages 15-17

It is one thing to discern and assert the true principles of political legitimacy and justice. It is quite another to establish those principles among an actual people, in an actual government, here on earth. As Winston Churchill put it in a not dissimilar context, even the best of men struggling in the most just of causes cannot guarantee victory; they can only deserve it.

The founders of the United States, perhaps miraculously, achieved what they set out to achieve. They defeated the world's strongest military and financial power and won their independence. They then faced the task of forming a country that would honor and implement the principles upon which they had declared their independence.

The bedrock upon which the American political system is built is the rule of law. The vast difference between tyranny and the rule of law is a central theme of political thinkers back to classical antiquity. The idea that the law is superior to rulers is the cornerstone of English constitutional thought as it developed over the centuries. The concept was transferred to the American colonies, and can be seen expressed throughout colonial pamphlets and political writings. As Thomas Paine reflected in *Common Sense*:

“For as in absolute governments the King is law, so in free countries the law ought to be king; and there ought to be no other. But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is.”

To assure such a government, Americans demanded a written legal document that would create both a structure and a process for securing their rights and liberties and spell out the divisions and limits of the powers of government. That legal document must be above ordinary legislation and day-to-day politics. That is what the founders meant by “constitution,” and why our Constitution is “the supreme Law of the Land.”

Their first attempt at a form of government, the Articles of Confederation and Perpetual Union, was adopted in the midst of the Revolutionary War and not ratified until 1781. During that time, American statesmen and citizens alike concluded that the Articles were too weak to fulfill a government's core functions. This consensus produced the Constitutional Convention of 1787, which met in Philadelphia that summer to write the document which we have today. It is a testament to those framers' wisdom and skill that the Constitution they produced remains the longest continually-operating written constitution in all of human history.

The meaning and purpose of the Constitution of 1787, however, cannot be understood without recourse to the principles of the Declaration of Independence—human equality, the requirement for government by consent, and the securing of natural rights—which the Constitution is intended to embody, protect, and nurture. Lincoln famously described the principles of the Declaration (borrowing from Proverbs 25:11) as an “apple of gold” and the Constitution as a “frame of silver” meant to “adorn and preserve” the apple. The latter was made for the former, not the reverse.

How Teachers Can Learn More

TEXTS

<i>The 1776 Report</i> , The President's Advisory 1776 Commission	Pages 15–25
<i>The U.S. Constitution: A Reader</i> , Ed. Hillsdale College Politics Faculty	Chapters 4–6
<i>The Federalist</i> , Alexander Hamilton, James Madison, and John Jay	
<i>The Anti-Federalist</i>	
<i>American Government and Politics</i> , Joseph Bessette and John Pitney	Chapters 2–3

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101
The Federalist Papers
Civil Rights in American History

Primary Sources Studied in This Unit

The Articles of Confederation
The U.S. Constitution
The Federalist, Nos. 1, 2, 6, 9, 10, 23, 37, 39, 45, 47, 48, 49, and 51

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — The Case for the Constitution

3-4 classes

LESSON OBJECTIVE

Students learn about the Articles of Confederation, the need for a new constitution, the debate for and against the proposed Constitution, and the basic structure and powers of the government that the United States Constitution establishes.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution

Lectures 4, 5, 6, 7

Constitution 101

Lectures 1 and 3

The Federalist Papers

Lecture 1

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The Articles of Confederation

The U.S. Constitution

The Federalist, Nos. 1, 2, 37

TERMS AND TOPICS

Articles of Confederation

power

republic

vesting clauses

Federalists

constitutional veneration

Anti-Federalists

QUESTIONS FOR THE AMERICAN MIND

- How did the Articles of Confederation structure the government? Why did its framers structure it in these ways?
- What were the weaknesses and failures of the Articles of Confederation?
- What was the Anti-Federalists' case against the Constitution?
- Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?
- What was the Federalists' case for the Constitution?

- What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change? What did they mean by "constitutional veneration"?
- What is the relationship between the Declaration of Independence and the Constitution?
- The first stated purpose of the Constitution is "to form a more perfect union." What two realities are suggested by this language of "more perfect"?
- How did the Constitution structure and arrange the powers of the government?
- What was involved in the act of founding?
- What must every government official take an oath to do?
- To whom are elected officials and the Constitution itself ultimately subject?
- Questions from the U.S. Civics Test:
 - Question 1: What is the form of government of the United States?
 - Question 3: Name one thing the U.S. Constitution does.
 - Question 4: The U.S. Constitution starts with the words "We the People." What does "We the People" mean?
 - Question 10: Name two important ideas from the Declaration of Independence and the U.S. Constitution.
 - Question 13: What is the rule of law?
 - Question 14: Many documents influenced the U.S. Constitution. Name one.
 - Question 82: What founding document was written in 1787?
 - Question 83: The Federalist Papers supported the passage of the U.S. Constitution. Name one of the writers.
 - Question 84: Why were the Federalist Papers important?
 - Question 88: James Madison is famous for many things. Name one.
 - Question 89: Alexander Hamilton is famous for many things. Name one.

KEYS TO THE LESSON

"The intent of the framers of the Constitution was to construct a government that would be sufficiently strong to perform those essential tasks that only a government can perform (such as establishing justice, ensuring domestic tranquility, providing for the common defense, and promoting the general welfare—the main tasks named in the document's preamble), but not so strong as to jeopardize the people's liberties. In other words, the new government needed to be strong enough to have the power to secure rights without having so much power as to enable or encourage it to infringe rights."

— *The 1776 Report*, Pages 18–19

Students ought to learn the principal reasons the delegates to the Constitutional Convention opted to replace the Articles of Confederation with a new Constitution. The reasons were not the result of high-sounding ideas and flights of fancy but were instead tied to the delegates' knowledge of history, the problems they had faced under British rule and under the Articles of Confederation, and careful deliberation about how to produce the best government for a free people. This lesson should help students to understand what

the Federalists considered to be the virtues of adopting the Constitution and the basic principles around which it was framed.

Teachers might best plan and teach the Case for the Constitution with emphasis on the following approaches:

- Survey with students the various main forms of government from which America is distinct, including pure democracy, monarchy, aristocracy, oligarchy, theocracy, autocracy, socialist, communist, fascist, etc. Drawing on their study of history, students should be asked often throughout this unit and the course to draw specific distinctions between the American system of a self-governing republic and these other kinds of regimes.
- Review with students the structure of the Articles of Confederation and the issues that emerged under such a structure. The Articles were drafted by Americans wary of a strong central government in light of their experience with the British. They wanted to keep the states as independent as possible. To prevent the national government from becoming too powerful, the second Article asserted the sovereignty of each state except in case when a power is explicitly delegated to the United States Congress. While united on some matters of foreign policy, the Articles would prove to be ineffective as a federal government charter, because they did not provide a strong and unified executive, and they had no power to enforce laws or levy taxes to pay for the expenses of government.
- Proceed to considering the issues that dominated the 1780s, especially the debt cancellation laws by states (a clear example of majority tyranny) and the event that impressed upon George Washington and James Madison the importance of reforming the Articles: Shays' Rebellion.
- Review with students their history knowledge concerning past experiments with democratic government. Democracies and republics had historically been short-lived because of two primary faults. The first was the tyranny of the majority, when the rights of the minority are trampled by the majority. Second was the ineptitude of democratic governments. Such a government was usually inefficient, weak, divided, and susceptible to the passions of the mob. Factions divided the institutions of such a regime. The result was civil war or conquest by an outside nation. The Constitution intended to form a government that would preserve the benefits of republicanism while guarding against its defects.
- Note for students the senses in which the Framers believed they were in the best position to achieve a free, self-governing republic in 1787, as opposed to previous times. The Framers argued that certain experiences and intelligent thinkers had helped mankind learn from past failures and improve the science of politics. This improved science of politics included the principles of the separation of powers, the office of an independent judiciary serving lifetime appointments, representatives selected by the people, and the extended sphere of a nation's geographic size. This did not mean that they believed human nature changed or improved or that people and governments naturally evolve to become better over time. Human nature, as with all natures, was and is unchanging and therefore would always be prone to certain faults in character and intellect. So, too, would governments, as people are those who govern.
- Help students to appreciate the difficulty of what the delegates to the Constitutional Convention were attempting to do. They had to account, above all, for human nature, mitigating its negative tendencies while channeling its neutral and good tendencies toward constructive governance. Simultaneously, the delegates had to account for the myriad interests and situations of the various

states. The issue of how the people and the states would be represented was a chief contention, one that resulted in a bicameral legislature with different means of representation. Other results were strong debates and compromises over the question of slavery.

- Introduce students briefly to the origins and purpose of *The Federalist*, including the backgrounds and roles of their principal authors, James Madison and Alexander Hamilton. It is worth noting that each would disagree strongly with one another on future issues, but on the Constitution, they found common ground, a good model for civil dialogue today.
- Ask students about the source and purpose of a government's power. Review how the Declaration of Independence makes it clear that a legitimate government's power—and, in the case of the United States Constitution, each branch's delegation of powers—comes from the free consent of the sovereign people, and ask students to identify and explain the ways in which the Constitution reflects this understanding. *Federalist* 1 and 2 underscore how regime change in America is based on reflection and choice rather than on force or fraud. It is worth noting that for Publius, Americans are already united by their common experience and the War of Independence. The question of the adoption of the Constitution is whether this people is capable of self-government based on the principles of asserted in the Declaration of Independence.
- Make sure students are mindful of the overall goals toward which the Founders directed every decision: freedom and self-government. In other words, they needed to arrange the government and distribute powers so as to enable representatives chosen by the people to protect the rights of the people while avoiding tyranny, either by the one, the few, or the many. To help them so craft the government, they relied on their deep knowledge of history and human nature that they gained from both history and what Jefferson called “the elementary books of public right.”
- Spend some time considering the Preamble to the Constitution. It is remarkable in stating two things: first, what the purposes of the government established by the Constitution are to be, and second, that it is the people who are establishing it for these purposes. Students should be able to relate everything mentioned in the Constitution to both of these elements of the Preamble: how does each arrangement achieve these stated purposes of government; and how does it reflect the consent of the governed?
- Pay close attention to the way the Framers carefully chose the words of the Constitution. The government has powers, not rights, that are granted by the consent of those being governed. The people do not give up their rights. Rather, they delegate or vest some of their power to protect their rights to establish a government. Thus do they vest those powers to protect their rights in a government that they control. The natural rights mentioned in the Declaration of Independence are not themselves given to the government by the Constitution. Instead, the people enact the Constitution to vest power in the core branches of the government to secure the natural rights and fundamental purposes outlined in the Declaration. The people are ultimately sovereign, and only the people, not the federal government (or the state governments, for that matter). Make clear that the various powers are not vested in the federal government as a whole, but rather specifically vested in specific branches separate from one another.
- Emphasize that the Constitution, moreover, is specific about what parts of the government receive which powers and how. The Constitution gives enumerated powers not to the federal government itself but rather to each of its branches. Emphasize the meaning of the word “enumerated.” These enumerated powers are limited to the ones explicitly listed in the Constitution. Close attention to this wording will keep students from misinterpreting each branch to have more powers than it has been specifically granted.

- The separation of powers (along with checks and balances between the branches) is the key “mechanism” of the Constitution. Remind students that the separation of powers is not an arbitrary design, but serves two purposes: 1) it upholds the rule of law (and good government) by focusing government on its core functions of making law, enforcing law, and adjudicating law; and 2) it preserves liberty (and limited government) by preventing the accumulation of power in the hands of any one branch, which Madison defines as the very definition of tyranny.
- Have students converse about the importance of the rule of law. With deep historical roots (especially British constitutional history and particular events such as the Magna Carta), the rule of law is a general concept of government that is straightforward but extremely important and historically rare. First, it states that all of the governed abide by the law and are equally protected by the law; and second, that even those who govern must abide by the same law. It means that everyone—citizens and government officials alike—should be governed by agreed-upon rules that apply equally to everyone, rather than by the arbitrary judgment of government officials applying one set of rules to the governed and a separate set to themselves. The law is above any one person or group of people and their interests, and everyone is equally accountable to the law. John Adams put it simply when he described the purpose of a constitution government as “a government of laws, not of men.”

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENTS

Assignment: Explain the reasons why a new Constitution was necessary and the main qualities the Constitution brought to bear on American government, according to *The Federalist* (2–3 paragraphs).

Lesson 2 — The Case for Union

2-3 classes

LESSON OBJECTIVE

Students learn about the Federalists' argument for union, particularly the unexpected benefits of a large republic with a diversity of opinions and interests.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Constitution 101
The Federalist Papers

Lecture 3
 Lectures 2 and 3

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution
The Federalist, Nos. 6, 9, 10, 23

TERMS AND TOPICS

Constitution
 Federalists
 Anti-Federalists
 union
 republic
 representative democracy
 direct democracy
 representation
 extended sphere
 interest
 faction

parties
 property
 material inequality
 majority tyranny
 human nature
 national security
 commercial republic
 taxation
 regulation
 commerce

QUESTIONS FOR THE AMERICAN MIND

- What was the Federalists' case for union?
- How is representative democracy distinct from direct democracy? Why did the Founders opt for representative democracy over the "pure" version of democracy practiced in ancient Athens? What did the Founders assert was the inadequacy of ancient democracy?
- What are the benefits of representation? What role do elections serve?

- What are the merits and challenges of a large republic?
- Why does *The Federalist* argue for the size of the republic to be larger than commonly thought possible? What are the advantages of this “extended sphere”?
- What are the positive and negative potentials of interests?
- What is the problem with factions?
- What concerns did the Founders have with parties?
- How are property and inequality sources of faction? How are these issues addressed in the Constitution?
- How does the Constitution seek to reconcile democracy (which means “rule by the majority”) with the rights of minorities? Stated differently, how does the Constitution do justice both to the equality of all and to the liberty of each?
- How did the Constitution balance freedom (majority rule) and justice (preserving minority rights)?
- According to *The Federalist*, what are the virtues and limitations of human nature?
- In what ways does the Constitution have the virtues of energy, stability, and responsibility?
- How does the Constitution address national security threats?
- Why is energetic government necessary for national security?
- What is the relationship between the government’s ends and its powers (means)?
- Why had there historically been doubts about the peacefulness of commercial republics?
- How does the Constitution address taxation, regulation, commerce, and protections for private property?
- Questions from the U.S. Civics Test:
 - Question 2: What is the supreme law of the land?
 - Question 3: Name one thing the U.S. Constitution does.
 - Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
 - Question 58: Name one power that is only for the federal government.
 - Question 59: Name one power that is only for the states.

KEYS TO THE LESSON

Students should understand that “[T]he framers intended the new Constitution to keep the thirteen states *united*—to prevent the breakup of the Union into two or more smaller countries—while maintaining sufficient latitude and liberty for the individual states.

“The advantages of union are detailed in the first fourteen papers of *The Federalist*...and boil down to preventing and deterring foreign adventurism in North America, avoiding conflicts between threats, achieving economies of scale, and best utilizing the diverse resources of the continent.

“While the Constitution is fundamentally a compact among the American people (its first seven words are ‘We the People of the United States’), it was ratified by special conventions in the states. The peoples of the states admired and cherished their state governments, all of which had adopted republican constitutions before a federal constitution was completed. Hence the framers of the new national government had to respect the states’ prior existence and jealous guarding of their own prerogatives....

“For the founders, the principle that just government requires the consent of the governed in turn requires republicanism, because the chief way that consent is granted to a government on an ongoing basis is through the people’s participation in the political process. This is the reason the Constitution ‘guarantee[s] to every State in this Union a Republican Form of Government.’

“Under the United States Constitution, the people are sovereign. But the people do not directly exercise their sovereignty, for instance, by voting directly in popular assemblies. Rather, they do so indirectly, through representative institutions. This is, on the most basic level, a practical requirement in a republic with a large population and extent of territory. But it is also intended to be a remedy to the defects common to all republics up to that time.

“The framers of the Constitution faced a twofold challenge. They had to assure those alarmed by the historical record that the new government was not *too republican* in simply copying the old, failed forms, while also reassuring those concerned about overweening centralized power that the government of the new Constitution was *republican enough* to secure equal natural rights and prevent the reemergence of tyranny.

“The main causes of prior republican failure were class conflict and tyranny of the majority. In the simplest terms, the largest single faction in any republic would tend to band together and unwisely wield their numerical strength against unpopular minorities, leading to conflict and eventual collapse. The founders’ primary remedy was union itself. Against the old idea that republics had to be small, the founders countered that the very smallness of prior republics all but guaranteed their failure. In small republics, the majority can more easily organize itself into a dominant faction; in large republics, interests become too numerous for any single faction to dominate.”

— *The 1776 Report*, Pages 19–21

Teachers might best plan and teach the Case for Union with emphasis on the following approaches:

- Emphasize for students the reality of majority tyranny. There is a straightforward though mistaken belief nowadays that justice is the rule of the majority and that 51 percent of the people have a moral right to impose whatever they wish on the 49 percent. The Founders rejected this idea of democracy and morality as “might makes right.” They asserted objective standards of right and wrong by which government must abide in protecting rights if it is to be a just government. One of the keys to the Constitution was the attempt to make sure the majority would rule but that they would rule justly with respect to the rights of the minority.
- Highlight for students how *Federalist* 6, 9, and 10 all argue for improvements in mankind’s understanding of politics. This, however, was not and is not inevitable. While human knowledge may expand, judgments on that knowledge and the prudence to apply it properly do not automatically evolve in a positive manner. In fact, *The Federalist* emphasizes in these sections that human nature itself does not change, that human beings are as they always have been and would continue to be. The Federalists’ case for union, indeed, for the entire Constitution, depends on holding both of these positions: that we have learned much with respect to governing but that those who govern are human beings, and human beings will always have the capacity to be tyrants.
- Explain to students how the extended territory under American rule was thought to prevent majority tyranny by taking in a wider array of opinions and interests, many of which depended on

geography, with the ties of occupation, culture, and religious beliefs that are connected to a certain location. To achieve a majority in government the representatives would have to achieve a broad consensus on the issues, meaning that only the most universally held positions would be possible to enact.

- Consider with students a second benefit of an extended sphere, namely that the pool of potential representatives would be larger, resulting in a greater number of quality persons who might represent the people. The larger population would also make it more likely that ideologues would be known and identified as such, thus making it harder for such persons to harness the support of such a diverse and large populace.
- Help students to see in the *Federalist* how national security for the fledgling country was of utmost importance in establishing union. *Federalist* 23 underscores this point while also entrusting the civilian army to the legislative representatives of the people.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the reasons and benefits of union as expressed by *The Federalist* (2–3 paragraphs).

Name_____

Date_____

Unit 2 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change? What did they mean by "constitutional veneration"?

2. The first stated purpose of the Constitution is "to form a more perfect union." What two realities are suggested by this language of "more perfect"?

3. What are the merits and challenges of a large republic?

4. What is the problem with factions?

5. According to *The Federalist*, what are the virtues and limitations of human nature?

Lesson 3 — Federalism

2-3 classes

LESSON OBJECTIVE

Students learn the Federalists' case for union with a federated republic, including the benefits, challenges, purposes, and powers of its various governments.

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Constitution 101

Lecture 4

The Federalist Papers

Lecture 4

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution

The Federalist, Nos. 39 and 45

TERMS AND TOPICS

Constitution

Federalists

Anti-Federalists

union

federalism

local government

state government

federal government

township

republic

commerce

expressed powers

implied powers

concurrent powers

reserved powers

QUESTIONS FOR THE AMERICAN MIND

- What is federalism? Why is it important?
- What are the distinctions among the local, state, and federal governments? What purposes does each serve, and what powers does each have to carry out its purposes?
- What are the ways the states can control the federal government?
- How does the Constitution control all the other governments?
- How was the New England township structured and why was it planned this way? What is the significance of the township model?
- Questions from the U.S. Civics Test:

- Question 2: What is the supreme law of the land?
- Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
- Question 58: Name one power that is only for the federal government.
- Question 59: Name one power that is only for the states.

KEYS TO THE LESSON

Students should understand that “[The Founders] believed that the role of the federal government should be limited to performing those tasks that only a national government can do, such as providing for the nation’s security or regulating commerce between the states, and that most tasks were properly the responsibility of the states. And they believed that strong states, as competing power centers, would act as counterweights against a potentially overweening central government, in the same way that the separation of powers checks and balances the branches of the federal government.”

— *The 1776 Report*, Pages 19–20

Teachers might best plan and teach Federalism with emphasis on the following approaches:

- Clarify for students the purposes of the federal government per the Preamble to the Constitution and the second paragraph of the Declaration of Independence. In particular, students should be able to articulate the purposes of government that a federal government might more effectively achieve, without compromising liberty, than a state government could. Students should see that these things are relatively few in number and pertain to fostering domestic tranquility and trade among the states while also defending against foreign threats.
- Explain how the division of power between the national government and the states (like the separation of powers within government) is another key way to protect liberty. Moreover, by recognizing that the powers not delegated to the federal government are reserved to the states or to the people, the Constitution prevents the federal government from becoming administratively centralized and too powerful.
- Read and discuss with students the arguments in *Federalist* 39 and 45 regarding sovereignty and representation in the Constitution. Publius rejects the notion that the states are sovereign, asserting that it is the entire American people who are sovereign but who have organized themselves by states. The necessary condition for republican government is indeed that all of the power comes in one way or another from the people. *Federalist* 39 also outlines the ways in which the national government is both national and federal based on the origins of members in each branch of government. *Federalist* 45 reinforces the point that the purpose of the Constitution is the happiness of the people and is not ultimately concerned with whether the national or state governments are sovereign. After all, the people are sovereign.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment 1: Explain the principle, structure, and benefits of federalism as expressed by *The Federalist* (2–3 paragraphs).

Lesson 4 — Separation of Powers and Checks and Balances

3-4 classes

LESSON OBJECTIVE

Students learn why the Constitution separates the powers in the federal government among three branches, how these powers are distributed, and the means by which each branch may check the authority of the others and so maintain a balance in power.

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Introduction to the Constitution

Lecture 8

Constitution 101

Lecture 4

The Federalist Papers

Lecture 5

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution

The Federalist, Nos. 47, 48, 49, 51

TERMS AND TOPICS

separation of powers

implied powers

branch

concurrent powers

checks and balances

reserved powers

expressed powers

QUESTIONS FOR THE AMERICAN MIND

- What is meant by the powers of the federal government being separately divided?
- What is the case for structuring the federal government so that its powers are separated from one another?
- How does the Constitution divide and allocate the various powers of the federal government?
- What are checks and balances? What is their purpose?
- To what in human nature do checks and balances appeal, and what do they channel?
- How can each branch check the power of the others?
- Questions from the U.S. Civics Test:
 - Question 15: There are three branches of government. Why?
 - Question 16: Name the three branches of government.

KEYS TO THE LESSON

Students should understand that “The form of the new government that the Constitution delineates is informed in part by the charges the Declaration levels at the British crown. For instance, the colonists charge the British king with failing to provide, or even interfering with, representative government; hence the Constitution provides for a representative legislature. It also charges the king with concentrating executive, legislative, and judicial power into the same hands, which James Madison pronounced “the very definition of tyranny.” Instead, the founders organized their new government into three coequal branches, checking and balancing the power of each against the others to reduce the risk of abuse of power....”

“[T]he separation of powers would work in concert with the principle of representation by incentivizing individual officeholders to identify their personal interests with the powers and prerogatives of their offices, and thus keep them alert to the danger of encroachments from other branches and offices.”

— *The 1776 Report*, Pages 17–18, 22

Teachers might best plan and teach Separation of Powers and Checks and Balances with emphasis on the following approaches:

- Help students understand the importance of the principles of separation of powers and federalism, and why these ideas are central to the Constitution’s safeguards against the exponential and corrupting tendencies of power.
- Emphasize that a chief concern of the Framers of the Constitution was to allow the will of the majority to rule, thus guaranteeing the consent of the governed, while still preserving the rights of the minority, thus securing justice. Separation of powers is perhaps the best and most significant example of how the Founders sought to achieve this consent and justice.
- Show students how the Constitution does not deny, demonize, or elevate human nature, but rather recognizes and seeks to channel the proclivities of human nature into constructive governing while mitigating against man’s baser tendencies. In brief, the Constitution is constructed in light of a fundamental understanding of man’s unchanging human nature, born of the Founders’ knowledge of history and political thought as well as their own experience and the lessons of prudence.
- Help students understand how the separation of powers is rooted in the Founders’ argument that human nature is fixed and unchanging, good but also flawed and tending toward corruptive power. The dangers of tyranny and lawlessness are always present and must be guarded against. Therefore, a good government would account for the realities of human nature and reject utopias as impossible. Separation of powers accounts for this.
- Read with students this passage from *Federalist* 51, harnessing the ambitions of human nature for the sake of constitutional government:

“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.”

- Walk students through how the separation of powers guards against the ability of one (in the presidency) or a faction (in Congress) to dominate and control the other, while an independent judiciary provides an impartial application of law. Note that the people (by elections and constitutional amendment) have the ultimate authority to check any and all of the branches of government. Each branch is delegated specific powers to fulfill the core functions of government (legislative, executive, and judicial). The system of checks and balances encourages each branch to protect its own powers and to do its assigned duty. The separation of powers coupled with checks and balances was intended to prevent the defects of republican government (namely, the tyrannical rule of a majority faction) while retaining what was good: the consent of the governed under the constitutional rule of law.
- Read with students from the corresponding *Federalist* essays. In *Federalist* 47, note with students how Publius takes up Thomas Jefferson and James Madison’s understanding of tyranny as the accumulation of power in the same set of hands, where the same person or group is lawmaker, law-enforcer, and judge. In brief, tyranny comes from the absence of a separation of powers. *Federalist* 48 demonstrates that the tendency of those who have power is to ignore barriers and expand their power if others do not have the means to check and counter-balance those tendencies.
- Moreover, Publius highlights how in the Constitution it is not only the legislature that represents the people, but *every* branch of government. As such, each must have the ability to defend both the Constitution and encroachments on its own power by the other branches. *Federalist* 49 argues for the coequality of the branches with respect to the meaning of the Constitution: each branch has a duty to uphold and interpret the Constitution. And *Federalist* 51 makes the case for checks and balances, along with stating the end of government is justice, especially meaning that the weaker (or the minority) is defended against the stronger (or the tyranny of the majority). This is a fundamentally different understanding of justice than that which gripped the twentieth century through totalitarianism: that the might of the majority and the powerful makes right.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain why the Constitution separates power into distinct branches and how it does so (2–3 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — A Constitution of Principles Test

Unit 2

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

Articles of Confederation	extended sphere	regulation
republic	interest	commerce
Federalists	faction	federalism
Anti-Federalists	parties	local government
power	property	state government
constitutional veneration	material inequality	federal government
Constitution	majority tyranny	township
union	human nature	separation of powers
representative democracy	national security	branch
direct democracy	commercial republic	checks and balances
representation	taxation	

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to understanding the principles of the Constitution.

The Articles of Confederation
 The U.S. Constitution
Federalist 10
Federalist 39
Federalist 47
Federalist 51

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | The Case for the Constitution

- ☐ How did the Articles of Confederation structure the government? Why did its framers structure it in these ways?
- ☐ What were the weaknesses and failures of the Articles of Confederation?
- ☐ What was the Anti-Federalists' case against the Constitution?
- ☐ Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?
- ☐ What was the Federalists' case for the Constitution?

- ☐ What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change? What did they mean by "constitutional veneration"?
- ☐ What is the relationship between the Declaration of Independence and the Constitution?
- ☐ The first stated purpose of the Constitution is "to form a more perfect union." What two realities are suggested by this language of "more perfect"?
- ☐ How did the Constitution structure and arrange the powers of the government?
- ☐ What was involved in the act of founding?
- ☐ What must every government official take an oath to do?
- ☐ To whom are elected officials and the Constitution itself ultimately subject?

Lesson 2 | The Case for Union

- ☐ What was the Federalists' case for union?
- ☐ How is representative democracy distinct from direct democracy? Why did the Founders opt for representative democracy over the "pure" version of democracy practiced in ancient Athens? What did the Founders assert was the inadequacy of ancient democracy?
- ☐ What are the benefits of representation? What role do elections serve?
- ☐ What are the merits and challenges of a large republic?
- ☐ Why does *The Federalist* argue for the size of the republic to be larger than commonly thought possible? What are the advantages of this "extended sphere"?
- ☐ What are the positive and negative potentials of interests?
- ☐ What is the problem with factions?
- ☐ What concerns did the Founders have with parties?
- ☐ How are property and inequality sources of faction? How are these issues addressed in the Constitution?
- ☐ How does the Constitution seek to reconcile democracy (which means "rule by the majority") with the rights of minorities? Stated differently, how does the Constitution do justice both to the equality of all and to the liberty of each?
- ☐ How did the Constitution balance freedom (majority rule) and justice (preserving minority rights)?
- ☐ According to *The Federalist*, what are the virtues and limitations of human nature?
- ☐ In what ways does the Constitution have the virtues of energy, stability, and responsibility?
- ☐ How does the Constitution address national security threats?
- ☐ Why is energetic government necessary for national security?
- ☐ What is the relationship between the government's ends and its powers (means)?
- ☐ Why had there historically been doubts about the peacefulness of commercial republics?
- ☐ How does the Constitution address taxation, regulation, commerce, and protections for private property?

Lesson 3 | Federalism

- ☐ What is federalism? Why is it important?
- ☐ What are the distinctions between the local, state, and federal governments? What purposes does each serve, and what powers does each have to carry out its purposes?
- ☐ What are the ways the states can control the federal government?
- ☐ How does the Constitution control all the other governments?

- ☐ How was the New England township structured and why was it planned this way? What is the significance of the township model?

Lesson 4 | Separation of Powers and Checks and Balances

- ☐ What is meant by the powers of the federal government being separately divided?
- ☐ What is the case for structuring the federal government so that its powers are separated from one another?
- ☐ How does the Constitution divide and allocate the various powers of the federal government?
- ☐ What are checks and balances? What are their purposes?
- ☐ To what in human nature do checks and balances appeal, and what do they channel?
- ☐ How can each branch check the powers of the others?

Name_____

Date_____

Test — A Constitution of Principles

Unit 2

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. republic
2. constitutional veneration
3. representative democracy
4. direct democracy
5. representation
6. extended sphere
7. faction
8. majority tyranny
9. human nature
10. federalism
11. local government
12. federal government

13. township

14. separation of powers

15. checks and balances

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to understanding America's founding principles.

16. *Federalist 10*

17. *Federalist 47*

18. *Federalist 51*

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

19. Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?
20. What was the Federalists' case for the Constitution?
21. What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change?
22. What is the relationship between the Declaration of Independence and the Constitution?
23. What was the Federalists' case for union?
24. What are the benefits of representation? What role do elections serve?
25. Why does *The Federalist* argue for the size of the republic to be larger than commonly thought possible? What are the advantages of this "extended sphere"?
26. What is the problem with factions?
27. How are property and inequality sources of faction? How are these issues addressed in the Constitution?

28. According to *The Federalist*, what are the virtues and limitations of human nature?
29. What is the relationship between the government's ends and its powers (means)?
30. Why is federalism important?
31. What are the ways the states can control the federal government?
32. How was the New England township structured and why was it planned this way? What is the significance of the township model?
33. What is the case for structuring the federal government so that its powers are separated from one another?
34. To what in human nature do checks and balances appeal, and what do they channel?
35. How can each branch check the powers of the others?

Writing Assignment — A Constitution of Principles

Unit 2

Due on _____

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question:

What are the most significant principles to which the United States Constitution adheres?

APPENDIX B

Primary Sources

The American People

James Madison

Alexander Hamilton

John Jay

THE DELEGATES OF THE UNITED STATES OF AMERICA IN CONGRESS

Articles of Confederation

LAW

March 1, 1781
United States of America

BACKGROUND

After forming their own country with the Declaration of Independence, the Congress created the Articles of Confederation during the Revolutionary War as the first national government for the United States.

ANNOTATIONS

NOTES & QUESTIONS

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names, send greeting:

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and

5 Seventy-Seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in the words following, viz.

10 Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

"Articles of Confederation," in *The U.S. Constitution: A Reader* (Hillsdale, MI: Hillsdale College Press, 2012), 163-71.

Article I

The stile of this confederacy shall be "The United States of America."

Article II

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.

Article III

The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article IV

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

- 5 Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V

- For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct,
10 to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

- No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any
15 term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

- 20 In determining questions in the United States, in Congress assembled, each State shall have one vote.

- Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and
25 attendance on Congress, except for treason, felony, or breach of the peace.

Article VI

No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the

danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue or until the United States in Congress assembled shall determine otherwise.

Article VII

When land-forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no

treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities, whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party

absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like
5 manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter
10 in question, according to the best of his judgment, without favor, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which
15 passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

20 The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not
25 infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the

service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States", and to consist
5 of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit
10 bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition
15 shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration
20 of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case
25 they shall raise, officer, cloth, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

- The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow
- 5 money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.
- 10 The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on
- 15 any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

Article X

- 20 The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States
- 25 assembled is requisite.

Article XI

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

5 **Article XII**

All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

10**Article XIII**

Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

15

And whereas it hath pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual Union. Know Ye that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the

20
25

said confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July, in the year of our Lord, one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part and behalf of the State of New Hampshire:

Josiah Bartlett, John Wentworth, Jr.

On the part and behalf of the State of Massachusetts Bay:

John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten

On the part and behalf of the State of Rhode Island and Providence Plantations:

William Ellery, Henry Marchant, John Collins

On the part and behalf of the State of Connecticut:

Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams

On the part and behalf of the State of New York:

James Duane, Francis Lewis, William Duer, Gouverneur Morris

ANNOTATIONS

NOTES & QUESTIONS

On the part and behalf of the State of New Jersey:

John Witherspoon, Nathaniel Scudder

On the part and behalf of the State of Pennsylvania:

5 Robert Morris, Daniel Roberdeau, Jonathan Bayard Smith, William Clingan, Joseph Reed

On the part and behalf of the State of Delaware:

Thomas McKean, John Dickinson, Nicholas Van Dyke

10 On the part and behalf of the State of Maryland:

John Hanson, Daniel Carroll

On the part and behalf of the State of Virginia:

Richard Henry Lee, John Banister, Thomas Adams, John Harvie, Francis Lightfoot Lee

15

On the part and behalf of the State of North Carolina:

John Penn, Cornelius Harnett, John Williams

On the part and behalf of the State of South Carolina:

Henry Laurens, William Henry Drayton, John Matthews, Richard Hutson, Thomas Heyward, Jr.

5 On the part and behalf of the State of Georgia:

John Walton, Edward Telfair, Edward Langworthy

THE PEOPLE OF THE UNITED STATES OF AMERICA

The Constitution

LAW

March 4, 1789
United States of America

BACKGROUND

Delegates to the Constitutional Convention drafted and the states ratified this Constitution, forming the second national government for the United States of America.

ANNOTATIONS**NOTES & QUESTIONS****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 defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and

5 establish this Constitution for the United States of America.

Article I

Section 1. 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 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

10 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,

"The Constitution of the United States of America," in *The U.S. Constitution: A Reader* (Hillsdale, MI: Hillsdale College Press, 2012), 47-66.

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
5 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 enu-
10 meration shall be made, the State of New Hampshire shall be entitled to choose 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
15 thereof shall issue Writs of Election to fill such Vacancies.

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

Section 3. 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.

20 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
25 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.

5 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 choose 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.

10 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.

15 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.

20 Section 4. 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 choosing 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.

25 Section 5. 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 Behavior, 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. 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 encreased 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. 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
 5 (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 pre-
 10 sented 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. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and
 15 Excises, to pay the Debts and provide for the common Defense 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
 20 Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bank-
 ruptcies throughout the United States;

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

25 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;

5 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;

10 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;

15 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;

20 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

25 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. 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.

- 5 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.

- 10 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.

- 15 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.

- 20 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. 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.

- 25 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 its 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 Control of the Congress.

5 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

10 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:

15 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.

20 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, 25 then the House of Representatives shall immediately choose 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 choose 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. 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
5 shall choose from them by Ballot the Vice President.

The Congress may determine the Time of choosing 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
10 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,
15 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,
20 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
25 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.

5 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
10 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
15 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,
20 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

25 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

Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

5 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,
10 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
15 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.

20 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
25 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 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.

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
5 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
10 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 Con-
15 federation.

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.
20

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
25 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.

5 Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

10 George Washington—

President and deputy from Virginia

Delaware

George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom

15 **Maryland**

James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll

Virginia

John Blair, James Madison, Jr.

North Carolina

20 William Blount, Richard Dobbs Spaight, Hugh Williamson

South Carolina

John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

ANNOTATIONS

NOTES & QUESTIONS

Georgia

William Few, Abraham Baldwin

New Hampshire

John Langdon, Nicholas Gilman

5 **Massachusetts**

Nathaniel Gorham, Rufus King

Connecticut

William Samuel Johnson, Roger Sherman

New York

10 Alexander Hamilton

New Jersey

William Livingston, David Brearley, William Paterson, Jonathan Dayton

Pennsylvania

15 Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas FitzSimmons, Jared Ingersoll, James Wilson, Gouverneur Morris

Attest William Jackson Secretary

Amendments to the Constitution of the United States of America

Amendment I

Ratified December 15, 1791

5 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.

Amendment II

Ratified December 15, 1791

10 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.

Amendment III

Ratified December 15, 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.

15 Amendment IV

Ratified December 15, 1791

20 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.

Amendment V

Ratified December 15, 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 offense 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.

10 Amendment VI

Ratified December 15, 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 defense.

Amendment VII

Ratified December 15, 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 re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Ratified December 15, 1791

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

5 **Amendment IX**

Ratified December 15, 1791

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

Amendment X

10 Ratified December 15, 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.

Amendment XI

Ratified February 7, 1795

15 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.

Amendment XII

Ratified June 15, 1804

20 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 per-

- sons 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
- 5 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.
- 10 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
- 15 Vice-President shall act as President, as in the 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
- 20 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.

Amendment XIII

Ratified December 6, 1865

- 25 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.

Amendment XIV

Ratified July 9, 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 power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

10 Ratified February 3, 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 power to enforce this article by appropriate legislation.

15 **Amendment XVI**

Ratified February 3, 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.

20 **Amendment XVII**

Ratified April 8, 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.

25

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.

- 5 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.

Amendment XVIII

Ratified January 16, 1919

- 10 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.

- 15 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.

Amendment XIX

- 20 Ratified August 18, 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.

Amendment XX

Ratified January 23, 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 3rd day of
5 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 3rd 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
10 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
15 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
20 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 amend-
25 ment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Ratified December 5, 1933

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

- 5 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.

- 10 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.

Amendment XXII

Ratified February 27, 1951

- 15 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 the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term
20 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.

Amendment XXIII

Ratified March 29, 1961

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

- 5 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
- 10 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.

Amendment XXIV

Ratified January 23, 1964

- Section 1. The right of citizens of the United States to vote in any primary or other election
- 15 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 any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

- 20 Ratified February 10, 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
- 25 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.

Amendment XXVI

Ratified July 1, 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
5 age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

Ratified May 7, 1992

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

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 1

ESSAY

October 27, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) advocates for the proposed Constitution by introducing the forthcoming series of articles in its support and arguing for the necessity of union.

GUIDING QUESTIONS

1. What are the two choices Hamilton gives for people to establish a new government?
2. How will the Union be favorable to political prosperity?
3. How is the confederacy insufficient at present?
4. Why is there a need for an energetic government?
5. What is the preferred form of government?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 1-4.

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Introduction

After full experience of the insufficiency of the existing federal government, you are invited to deliberate upon a New Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of
5 the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country to decide, by their conduct and example, the important question, whether societies of men are really capable or not, of
10 establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis at which we are arrived may, with propriety, be regarded as the period when that decision is to be made; and a wrong election of the part we shall act, may, in this view, deserve to be considered as the general misfortune of mankind.

This idea, by adding the inducements of philanthropy to those of patriotism, will heighten
15 the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, uninfluenced by considerations foreign to the public good. But this is more ardently to be wished for, than seriously to be expected. The plan offered to our deliberations, affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion
20 a variety of objects extraneous to its merits, and of views, passions and prejudices little favourable to the discovery of truth.

Among the most formidable of the obstacles which the new constitution will have to encounter, may readily be distinguished the obvious interest of a certain class of men in every state to resist all changes which may hazard a diminution of the power, emolument and
25 consequence of the offices they hold under the state establishments . . . and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from

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the subdivision of the empire into several partial confederacies, than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men into
5 interested or ambitious views, merely because their situations might subject them to suspicion. Candour will oblige us to admit, that even such men may be actuated by upright intentions; and it cannot be doubted, that much of the opposition, which has already shown itself, or that may hereafter make its appearance, will spring from sources blameless at least, if not respectable . . . the honest errors of minds led astray by preconceived jealousies and
10 fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgement, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions, of the first magnitude to society. This circumstance, if duly attended to, would always furnish a lesson of moderation to those, who are engaged in any controversy, however well persuaded of being in the right. And a further reason for
15 caution, in this respect, might be drawn from the reflection, that we are not always sure, that those who advocate the truth are actuated by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives, not more laudable than these, are apt to operate as well upon those who support, as upon those who oppose, the right side of a question. Were there not even these inducements to mod-
20 eration, nothing could be more ill judged than that intolerant spirit, which has, at all times, characterized political parties. For, in politics as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, just as these sentiments must appear to candid men, we have already sufficient indications, that it will happen in this, as in all former cases of great national discussion. A
25 torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude, that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts, by the loudness of their declamations, and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government, will be stigmatized as the offspring of a temper fond

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of power, and hostile to the principles of liberty. An over scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretence and artifice . . . the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual
5 concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten, that the vigour of government is essential to the security of liberty; that, in the contemplation of a sound and well informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness and
10 efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism, than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career, by paying an obsequious court to the people . . . commencing demagogues, and ending
15 tyrants.

In the course of the preceding observations it has been my aim, fellow citizens, to put you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions, other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected
20 from the general scope of them, that they proceed from a source not unfriendly to the new constitution. Yes, my countrymen, I own to you, that, after having given it an attentive consideration, I am clearly of opinion, it is your interest to adopt it. I am convinced, that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves, which I do not feel. I will not amuse you with an appearance of deliberation, when
25 I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not however multiply professions on this head. My motives must remain in the depository of my own breast: my arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit, which will not disgrace the cause of truth.

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I propose, in a series of papers, to discuss the following interesting particulars . . . *The utility of the UNION to your political prosperity . . . The insufficiency of the present confederation to preserve that Union . . . The necessity of a government at least equally energetic with the one proposed, to the attainment of this object . . . The conformity of the proposed constitution to the true principles of republican government . . . Its analogy to your own state constitution . . . and lastly, The additional security, which its adoption will afford to the preservation of that species of government, to liberty and to property.*

In the progress of this discussion, I shall endeavour to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every state, and one which, it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new constitution, that the Thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance its open avowal. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the constitution, or a dismemberment of the Union. It may, therefore, be essential to examine particularly the advantages of that Union, the certain evils, and the probable dangers, to which every state will be exposed from its dissolution. This shall accordingly be done.

Publius

PUBLIUS (SECRETARY OF FOREIGN AFFAIRS JOHN JAY)

Federalist No. 2

ESSAY

October 31, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (John Jay) argues for the proposed Constitution by explaining how the government it proposes is fitting to the American states, the people living within them, and their past dispositions toward government.

GUIDING QUESTIONS

1. Is government convenient or necessary?
2. What are some of the topographical features that are conducive to union?
3. What are some of the features that Americans share that make union possible?
4. How do these features help the states to be united?
5. What are some of the ways in which the states have already acted in unison?
6. Why is it important that the new Constitution is being recommended rather than imposed?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 5-9.

Concerning Dangers From Foreign Force & Influence

When the people of America reflect, that the question now submitted to their determination, is one of the most important that has engaged, or can well engage, their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it, must be
5 evident.

Nothing is more certain than the indispensable necessity of government; and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers. It is well worthy of consideration, therefore, whether it would conduce more to the interest of the people of America,
10 that they should, to all general purposes, be one nation, under one federal government, than that they should divide themselves into separate confederacies, and give to the head of each, the same kind of powers which they are advised to place in one national government.

It has until lately been a received and uncontradicted opinion, that the prosperity of the
15 people of America depended on their continuing firmly united, and the wishes, prayers and efforts of our best and wisest citizens have been constantly directed to that object. But politicians now appear, who insist that this opinion is erroneous, and that instead of looking for safety and happiness in union, we ought to seek it in a division of the states into distinct confederacies or sovereignties. However extraordinary this new doctrine may appear, it
20 nevertheless has its advocates; and certain characters who were formerly much opposed to it, are at present of the number. Whatever may be the arguments or inducements which have wrought this change in the sentiments and declarations of these gentlemen, it certainly would not be wise in the people at large to adopt these new political tenets, without being fully convinced that they are founded in truth and sound policy.

25 It has often given me pleasure to observe, that independent America was not composed of detached and distant territories, but that one connected, fertile, wide spreading country, was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams,

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for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities.

With equal pleasure I have as often taken notice, that Providence has been pleased to give this one connected country, to one united people; a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence.

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous and alien sovereignties.

Similar sentiments have hitherto prevailed among all orders and denominations of men among us. To all general purposes we have uniformly been one people . . . each individual citizen every where enjoying the same national rights, privileges, and protection. As a nation we have made peace and war: as a nation we have vanquished our common enemies: as a nation we have formed alliances and made treaties, and entered into various compacts and conventions with foreign states.

A strong sense of the value and blessings of Union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time, when their habitations were in flames, when many of them were bleeding in the field, and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections, which must ever precede the formation of a wise and well balanced government for a free people. It is not to be wondered at that a government instituted in times so inauspicious, should

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on experiment be found greatly deficient and inadequate to the purpose it was intended to answer.

This intelligent people perceived and regretted these defects. Still continuing no less attached to union, than enamoured of liberty, they observed the danger which immediately threatened the former, and more remotely the latter; and being persuaded that ample security for both, could only be found in a national government more wisely framed, they, as with one voice, convened the late convention at Philadelphia, to take that important subject under consideration.

This convention, composed of men who possessed the confidence of the people, and many of whom had become highly distinguished by their patriotism, virtue, and wisdom, in times which tried the souls of men, undertook the arduous task. In the mild season of peace, with minds unoccupied by other subjects, they passed many months in cool uninterrupted and daily consultations; and finally, without having been awed by power, or influenced by any passion, except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous councils.

Admit, for so is the fact, that this plan is only *recommended*, not imposed, yet let it be remembered, that it is neither recommended to *blind* approbation, nor to *blind* reprobation; but to that sedate and candid consideration, which the magnitude and importance of the subject demand, and which it certainly ought to receive. But, as has been already remarked, it is more to be wished than expected that it may be so considered and examined. Experience on a former occasion teaches us not to be too sanguine in such hopes. It is not yet forgotten, that well grounded apprehensions of imminent danger induced the people of America to form the memorable Congress of 1774. That body recommended certain measures to their constituents, and the event proved their wisdom; yet it is fresh in our memories how soon the press began to teem with pamphlets and weekly papers against those very measures. Not only many of the officers of government who obeyed the dictates of personal interest, but others from a mistaken estimate of consequences, from the undue

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influence of ancient attachments, or whose ambition aimed at objects which did not correspond with the public good, were indefatigable in their endeavours to persuade the people to reject the advice of that patriotic congress. Many indeed were deceived and deluded, but the great majority reasoned and decided judiciously; and happy they are in reflecting that they did so.

They considered that the congress was composed of many wise and experienced men. That being convened from different parts of the country, they brought with them and communicated to each other a variety of useful information. That in the course of the time they passed together in inquiring into and discussing the true interests of their country, they must have acquired very accurate knowledge on that head. That they were individually interested in the public liberty and prosperity, and therefore that it was not less their inclination, than their duty, to recommend such measures only, as after the most mature deliberation they really thought prudent and advisable.

These and similar considerations then induced the people to rely greatly on the judgment and integrity of the congress; and they took their advice, notwithstanding the various arts and endeavours used to deter and dissuade them from it. But if the people at large had reason to confide in the men of that congress, few of whom had then been fully tried or generally known, still greater reason have they now to respect the judgment and advice of the convention; for it is well known that some of the most distinguished members of that congress, who have been since tried and justly approved for patriotism and abilities, and who have grown old in acquiring political information, were also members of this convention, and carried into it their accumulated knowledge and experience.

It is worthy of remark, that not only the first, but every succeeding congress, as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it, was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt. With what propriety, therefore, or for what good

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purposes, are attempts at this particular period made, by some men, to depreciate the importance of the union? or why is it suggested that three or four confederacies would be better than one? I am persuaded in my own mind, that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the union, rests on great and weighty reasons. They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention, seem clearly to foresee that the rejection of it would put the continuance of the union in the utmost jeopardy: that certainly would be the case; and I sincerely wish that it may be as clearly foreseen by every good citizen, that whenever the dissolution of the union arrives, America will have reason to exclaim in the words of the Poet, “FAREWELL! A LONG FAREWELL, TO ALL MY GREATNESS.”

Publius

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 6

ESSAY

November 14, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by outlining the benefits of forming a union given the propensity of human nature to division and war.

GUIDING QUESTIONS

1. How does Hamilton describe human nature?
2. What is it about human nature that leads men to conflict?
3. Will engaging in commerce be sufficient to keep the peace between nations?
4. What are some historical examples of nations engaging in war that Hamilton notes in particular?
5. What are the reasons people have gone to war in the past?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 20-26.

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Concerning Dangers From War Between The States

The three last numbers of this work have been dedicated to an enumeration of the dangers to which we should be exposed, in a state of disunion, from the arms and arts of foreign nations. I shall now proceed to delineate dangers of a different, and, perhaps, still more
5 alarming kind, those which will in all probability flow from dissensions between the states themselves, and from domestic factions and convulsions. These have been already in some instances slightly anticipated; but they deserve a more particular and more full investigation.

If these states should either be wholly disunited, or only united in partial confederacies, a
10 man must be far gone in Utopian speculations, who can seriously doubt that the subdivisions into which they might be thrown, would have frequent and violent contests with each other. To presume a want of motives for such contests, as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent unconnected sovereignties,
15 situated in the same neighbourhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power, or the desire of pre-eminence and dominion . . . the jealousy of power,
20 or the desire of equality and safety. There are others which have a more circumscribed, though an equally operative influence, within their spheres: such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears, of leading individuals in the communities of which they are members. Men of this class, whether the favourites of a king or of a
25 people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquillity to personal advantage, or personal gratification.

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The celebrated Pericles, in compliance with the resentments of a prostitute, at the expense of much of the blood and treasure of his countrymen, attacked, vanquished, and destroyed the city of the *Samnians*. The same man, stimulated by private pique against the *Magarensians*, another nation of Greece, or to avoid a prosecution with which he was threatened as an accomplice in a supposed theft of the statuary *Phidias*, or to get rid of the accusations prepared to be brought against him for dissipating the funds of the state in the purchase of popularity, or from a combination of all these causes, was the primitive author of that famous and fatal war, distinguished in the Grecian annals by the name of the *Peloponnesian* war; which, after various vicissitudes, intermissions, and renewals, terminated in the ruin of the Athenian commonwealth.

The ambitious cardinal, who was prime minister to Henry VIIIth, permitting his vanity to aspire to the triple crown, entertained hopes of succeeding in the acquisition of that splendid prize by the influence of the emperor Charles Vth. To secure the favour and interest of this enterprising and powerful monarch, he precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels, as of Europe in general. For if there ever was a sovereign who bid fair to realize the project of universal monarchy, it was the emperor Charles Vth, of whose intrigues Wolsey was at once the instrument and the dupe.

The influence which the bigotry of one female, the petulances of another, and the cabals of a third, had in the cotemporary policy, ferments, and pacifications, of a considerable part of Europe, are topics that have been too often descanted upon not to be generally known.

To multiply examples of the agency of personal considerations in the production of great national events, either foreign or domestic, according to their direction, would be an unnecessary waste of time. Those who have but a superficial acquaintance with the sources from which they are to be drawn, will themselves recollect a variety of instances; and those who have a tolerable knowledge of human nature, will not stand in need of such lights, to

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form their opinion either of the reality or extent of that agency. Perhaps, however, a reference, tending to illustrate the general principle, may with propriety be made to a case which has lately happened among ourselves. If SHAYS had not been a *desperate debtor*, it is much to be doubted whether Massachusetts would have been plunged into a civil war.

- 5 But notwithstanding the concurring testimony of experience, in this particular, there are still to be found visionary, or designing men, who stand ready to advocate the paradox of perpetual peace between the states, though dismembered and alienated from each other. . . . The genius of republics, say they, is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humours which have so often
10 kindled into wars. Commercial republics, like ours, will never be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.

- We may ask these projectors in politics, whether it is not the true interest of all nations to cultivate the same benevolent and philosophic spirit? If this be their true interest, have they
15 in fact pursued it? Has it not, on the contrary, invariably been found, that momentary passions, and immediate interests, have a more active and imperious control over human conduct, than general or remote considerations of policy, utility, or justice? Have republics in practice been less addicted to war than monarchies? Are not the former administered by men as well as the latter? Are there not aversions, predilections, rivalships, and desires of
20 unjust acquisition, that affect nations, as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known, that their determinations are often governed by a few individuals in whom they place confidence, and that they are of course liable to be tainted by the passions and views of those individuals? Has commerce hitherto done any
25 thing more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have there not been as many wars founded upon commercial motives, since that has become the prevailing system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite both for the one and for the

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other? Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries.

Sparta, Athens, Rome, and Carthage, were all republics; two of them, Athens and Carthage, of the commercial kind. Yet were they as often engaged in wars, offensive and defensive, as
5 the neighbouring monarchies of the same times. Sparta was little better than a well regulated camp; and Rome was never sated of carnage and conquest.

Carthage, though a commercial republic, was the aggressor in the very war that ended in her destruction. Hannibal had carried her arms into the heart of Italy, and even to the gates of Rome, before Scipio, in turn, gave him an overthrow in the territories of Carthage, and
10 made a conquest of the commonwealth.

Venice, in latter times, figured more than once in wars of ambition; till becoming an object of terror to the other Italian states, Pope Julius the Second found means to accomplish that formidable league, which gave a deadly blow to the power and pride of that haughty republic.

15 The provinces of Holland, till they were overwhelmed in debts and taxes, took a leading and conspicuous part in the wars of Europe. They had furious contests with England for the dominion of the sea; and were among the most persevering and most implacable of the opponents of Lewis XIV.

In the government of Britain the representatives of the people compose one branch of the
20 national legislature. Commerce has been for ages the predominant pursuit of that country. Yet few nations have been more frequently engaged in war; and the wars, in which that kingdom has been engaged, have in numerous instances proceeded from the people. There have been, if I may so express it, almost as many popular as royal wars. The cries of the nation and the importunities of their representatives have, upon various occasions, dragged
25 their monarchs into war, or continued them in it, contrary to their inclinations, and sometimes contrary to the real interests of the state. In that memorable struggle for superiority, between the rival houses of *Austria* and *Bourbon*, which so long kept Europe in a flame, it

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is well known that the antipathies of the English against the French, seconding the ambition, or rather the avarice, of a favourite leader, protracted the war beyond the limits marked out by sound policy, and for a considerable time in opposition to the views of the court.

- 5 The wars of these two last mentioned nations have in a great measure grown out of commercial considerations: the desire of supplanting, and the fear of being supplanted either in particular branches of traffic, or in the general advantages of trade and navigation; and sometimes even the more culpable desire of sharing in the commerce of other nations, without their consent.
- 10 The last war but two between Britain and Spain, sprang from the attempts of the English merchants, to prosecute an illicit trade with the Spanish main. These unjustifiable practices on their part, produced severities on the part of the Spaniards, towards the subjects of Great Britain, which were not more justifiable; because they exceeded the bounds of a just retaliation, and were chargeable with inhumanity and cruelty. Many of the English who were
- 15 taken on the Spanish coasts, were sent to dig in the mines of Potosi; and by the usual progress of a spirit of resentment, the innocent were after a while confounded with the guilty in indiscriminate punishment. The complaints of the merchants kindled a violent flame throughout the nation, which soon after broke out in the house of commons, and was communicated from that body to the ministry. Letters of reprisal were granted, and a war ensued; which, in its consequences, overthrew all the alliances that but twenty years before
- 20 had been formed, with sanguine expectations of the most beneficial fruits.

From this summary of what has taken place in other countries, whose situations have borne the nearest resemblance to our own, what reason can we have to confide in those reveries, which would seduce us into the expectation of peace and cordiality between the members

25 of the present confederacy, in a state of separation? Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, the weaknesses, and the evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt

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as a practical maxim for the direction of our political conduct, that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?

5 Let the point of extreme depression to which our national dignity and credit have sunk; let the inconveniencies felt every where from a lax and ill administration of government; let the revolt of a part of the state of North Carolina; the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare!

10 So far is the general sense of mankind from corresponding with the tenets of those, who endeavour to lull asleep our apprehensions of discord and hostility between the states, in the event of disunion, that it has from long observation of the progress of society become a sort of axiom in politics, that vicinity, or nearness of situation, constitutes nations natural enemies. An intelligent writer expresses himself on this subject to this effect: "NEIGHBOURING NATIONS (says he) are naturally ENEMIES of each other, unless their common weakness forces them to league in a CONFEDERATE REPUBLIC, and their constitution prevents the differences that neighbourhood occasions, extinguishing that secret jealousy, which disposes all states to aggrandize themselves at the expense of their neighbours." This passage, at the same time, points out the EVIL and suggests the REMEDY.

Publius

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 9

ESSAY

November 21, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining the new understandings in political philosophy that informed its creation.

GUIDING QUESTIONS

1. What was the problem with disunited republics of the past?
2. What are the five key elements of the advanced understanding of politics?
3. How does Publius respond to Anti-Federalist arguments claiming that Montesquieu rejected large republics?
4. According to Publius, does Montesquieu support a federal government intervening in the affairs of the states?

"Federalist 9," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 215-19.

The Union as a Safeguard Against Domestic Faction and Insurrection

A firm Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrast to the furious storms that are to succeed. If now and then intervals of felicity open to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices, not less magnificent, which will be equally permanent monuments of their errors.

But it is not to be denied that the portraits they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as

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indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided. To this catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new Constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single State or to the consolidation of several smaller States into one great Confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single State, which shall be attended to in another place.

The utility of a Confederacy, as well to suppress faction and to guard the internal tranquility of States, as to increase their external force and security, is in reality not a new idea. It has been practiced upon in different countries and ages, and has received the sanction of the most approved writers on the subject of politics. The opponents of the PLAN proposed have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence.

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When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can by any means be compared with the models from which he reasoned and to which the terms of his description apply. If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here that, in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the Union, but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general Union of the States, that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

"It is very probable," (says he) "that mankind would have been obliged at length to live constantly under the government of a SINGLE PERSON, had they not contrived a kind of

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constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a CONFEDERATE REPUBLIC.

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

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

15 "If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped and overpower him before he could be settled in his usurpation.

20 "Should a popular insurrection happen in one of the confederate states the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

25 "As this government is composed of small republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies."

30 I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the Union, and must effectually remove the false impressions which a misapplication of other parts of the work was calculated to make. They have, at the same time, an intimate connection with the more

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immediate design of this paper; which is, to illustrate the tendency of the Union to repress domestic faction and insurrection.

A distinction, more subtle than accurate, has been raised between a *confederacy* and a *consolidation* of the States. The essential characteristic of the first is said to be, the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown in the course of this investigation that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a *confederate republic* seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

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In the Lycian confederacy, which consisted of twenty-three CITIES or republics, the largest were entitled to *three* votes in the COMMON COUNCIL, those of the middle class to *two*, and the smallest to *one*. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most, delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia." Thus we perceive that the distinctions insisted upon were not within the contemplation of this enlightened civilian; and we shall be led to conclude, that they are the novel refinements of an erroneous theory.

PUBLIUS (JAMES MADISON)

Federalist No. 10

ESSAY

November 22, 1787

Daily Advertiser | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the risks of factions and majority tyranny and how the Constitution addresses them.

GUIDING QUESTIONS

1. How does Madison define faction?
2. How is faction part of human nature?
3. Can the problem of faction be solved by removing the causes of faction?
4. Is it practicable to make all people of one mind? How are opinions and passions related to the problem of faction?
5. What is the first task of government?
6. Since the causes of faction cannot be removed, what must be controlled?
7. How is minority faction solved?
8. What is the solution for majority faction?
9. What is the role of elected representatives in solving the problem of faction?
10. How does a large republic address the problem of majority faction?
11. What are the concerns of a republic being too large or too small?

"Federalist 10," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 231-37.

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.

- 5 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
- 10 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
- 15 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
- 20 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
- 25 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 administration.

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By a faction I understand a number of citizens, whether amounting to a majority or 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.

5

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

10 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.

15 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 a 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.

20 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.

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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 as speculation as of practice; an attachment to different
5 leaders ambitiously contending for preeminence 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 cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities that where no substantial
10 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
15 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 government.
20

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
25 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
30 hold the balance between them. Yet the parties are, and must be, themselves the judges;

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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

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are directed. Let me add that it is the great desideratum by which alone 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.

- 5 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
10 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
15 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
20 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
25 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
30 the nature of the cure and the efficacy which it must derive from the Union.

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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.

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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 most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

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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 greatest 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

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practise 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 on men who possess the most attractive merit and the most diffusive and established characters.

- 5 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 representative 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
10 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
15 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,
20 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
25 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
30 in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed

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by the Union over the States composing it. Does this advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to 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 ought to be our zeal in cherishing the spirit and supporting the character of federalists.

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 23

ESSAY

December 18, 1787

The New-York Packet | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining how the new government will have the energy necessary to function better than the Articles of Confederation.

GUIDING QUESTIONS

1. What are the objects of the federal government?
2. What are the principal purposes of the Union?
3. What does it mean to say that the powers granted by the Constitution to the federal government are enumerated but limitless?
4. Did the Articles of Confederation give the government an adequate means to enforce its authority? Why or why not?
5. What does Hamilton believe is the strongest argument for an energetic government?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 112-16.

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The Necessity Of A Government, At Least Equally Energetic With The One Proposed

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.

5 This inquiry will naturally divide itself into three branches. The objects to be provided for by a 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.

10 The principal purposes to be answered by union, are these: the common defence 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.

15 The authorities essential to the care of the common defence, 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 to define the extent and variety of national exigencies, and 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 co-extensive 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 defence.

20 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.

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Whether there ought to be a federal government intrusted with the care of the common defence, is a question, in the first instance, open to 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 the complete execution of its trust. And unless it can be shown, that the

5 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 defence 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

10 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

15 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 defence 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

20 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

25 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

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which will be required for the formation and support of an army and navy, in the customary and ordinary modes practised 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
5 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 THOSE which may be 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,
10 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
15 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 vigour and success.

Who so likely to make suitable provisions for the public defence, as that body to which the
20 guardianship of the public safety is confided? Which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exactions; and which, by the extension of its authority throughout the states, can alone establish uniformity and concert in the plans and measures, by
25 which the common safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defence, and leaving in the state governments the *effective* powers, by which it is to be provided for? Is not a want of cooperation the infallible consequence of such a system? And will not weakness, disorder, an

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undue distribution of the burthens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just achieved?

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, in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled 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 intrusted 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, would have given a better impression of their candour, if they had 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. They ought not to have wandered into inflammatory declamations and unmeaning cavils, about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face, of confiding to a government the direction of the most essential national concerns, without daring to trust it with the authorities

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which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative.

I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself, that the observations which have been made in the course of these papers, have
5 served to place the reverse of that position in as clear a light as any matter, still in the womb of time and experience, is susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favour of an energetic government; for any other can certainly never preserve the union of so large
10 an empire. If we embrace, as the standard of our political creed, the tenets of those who oppose the adoption of the proposed constitution, we cannot fail to verify the gloomy doctrines, which predict the impracticability of a national system, pervading the entire limits of the present confederacy.

Publius

PUBLIUS (JAMES MADISON)

Federalist No. 37

ESSAY EXCERPT

January 11, 1788

Daily Advertiser | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the arduous task of the convention but also the confidence Americans should have in light of the ease with which the delegates arrived at a consensus structure of government.

GUIDING QUESTIONS

1. What are some of the difficulties the convention encountered in producing the Constitution?
2. Were there difficulties in delineating the different branches of government?
3. Did different states have different interests they wanted to pursue? What were some of these differences?
4. What facets to human nature made the task difficult?
5. Does Madison believe their work was in some way divinely guided?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 179-85.

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Concerning The Difficulties Which The Convention Must Have Experienced In The Formation Of A Proper Plan

...With equal readiness will it be perceived, that besides these inducements to candour, many allowances ought to be made, for the difficulties inherent in the very nature of the undertaking referred to the convention.

The novelty of the undertaking immediately strikes us. It has been shown in the course of these papers, that the existing confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it, the superstructure resting upon it. It has been shown, that the other confederacies which could be consulted as precedents, have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors as future experience may unfold them.

Among the difficulties encountered by the convention, a very important one must have lain, in combining the requisite stability and energy in government, with the inviolable attention due to liberty, and to the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public: yet, that it could not be easily accomplished, will be denied by no one who is unwilling to betray his ignorance of the subject. Energy in government, is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good government. Stability in government, is essential to national character, and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil in itself, than it is odious to the people; and it may be pronounced with assurance, that the people of this country, enlightened as they are, with regard to the nature,

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and interested, as the great body of them are, in the effects of good government, will never be satisfied, till some remedy be applied to the vicissitudes and uncertainties, which characterize the state administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. The genius of republican liberty, seems to demand on one side, not only that all power should be derived from the people; but, that those intrusted with it should be kept in dependence on the people, by a short duration of their appointments; and that, even during this short period, the trust should be placed not in a few, but in a number of hands. Stability, on the contrary, requires, that the hands, in which power is lodged, should continue for a length of time the same. A frequent change of men will result from a frequent return of electors; and a frequent change of measures, from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand....

When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself, as from the organ by which it is contemplated; we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. Experience has instructed us, that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the legislative, executive, and judiciary; or even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science.

The experience of ages, with the continued and combined labours of the most enlightened legislators and jurists, have been equally unsuccessful in delineating the several objects and limits of different codes of laws, and different tribunals of justice. The precise extent of the common law, the statute law, the maritime law, the ecclesiastical law, the law of corporations, and other local laws and customs, remain still to be clearly and finally established in

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Great Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world....

Here then are three sources of vague and incorrect definitions; indistinctness of the object, imperfection of the organ of perception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The convention, in delineating the boundary between the federal and state jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned, may be added the interfering pretensions of the larger and smaller states. We cannot err, in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them....

Would it be wonderful if, under the pressure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry, which an abstract view of the subject might lead an ingenious theorist to bestow on a constitution planned in his closet, or in his imagination? The real wonder is, that so many difficulties should have been surmounted; and surmounted with an unanimity almost as unprecedented, as it must have been unexpected. It is impossible for any man of candour to reflect on this circumstance, without partaking of the astonishment. It is impossible, for the man of pious reflection, not to perceive in it a finger of that Almighty Hand, which has been so frequently and signally extended to our relief in the critical stages of the revolution.

We had occasion in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands, for reforming the baneful and notorious vices of their constitution. The history of almost all the great councils and consultations, held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments; and may be classed among the most dark and degrading pictures, which

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display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying

5 them to the particular instance before us, we are necessarily led to two important conclusions. The first is, that the convention must have enjoyed in a very singular degree, an exemption from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion

10 is, that all the deputations composing the convention, were either satisfactorily accommodated by the final act; or were induced to accede to it, by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good; and by a despair of seeing this necessity diminished by delays or by new experiments.

Publius

PUBLIUS (JAMES MADISON)

Federalist No. 39

ESSAY

January 16, 1788

The Independent Journal | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by noting that the proposed Constitution is compatible with a republican form of government and that it contains both federal and national elements to its arrangement of power.

GUIDING QUESTIONS

1. How does Madison define a republican form of government?
2. How is the election of the members of the three branches of government consistent with the principles of republicanism defined by Madison?
3. How are the different branches set up to be both national and federal in character? Explain each one.
4. How is Madison using the terms "national" and "federal"?
5. What historical examples does Madison use to support his points?

"Federalist 39," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 251-56.

The Conformity Of The Plan To Republican Principles

The last paper having concluded the observations, which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

- 5 The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution; or with that honourable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the
10 convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

- What then are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different states, no satisfactory one would ever be
15 found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the
20 same appellation. The government of England, which has one republican branch only, combined with a hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

- 25 If we resort for a criterion, to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited

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period, or during good behaviour. It is *essential* to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honourable title of republic. It is *sufficient* for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been, or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every state in the union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behaviour.

On comparing the constitution planned by the convention, with the standard here fixed, we perceive at once, that it is, in the most rigid sense, conformable to it. The house of representatives, like that of one branch at least of all the state legislatures, is elected immediately by the great body of the people. The senate, like the present congress, and the senate of Maryland, derives its appointment indirectly from the people. The president is indirectly derived from the choice of the people, according to the example in most of the states. Even the judges, with all other officers of the union, will, as in the several states, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of the state constitutions. The house of representatives is periodically elective, as in all the states; and for the period of two years, as in the state of South Carolina. The senate is elective, for the period of six

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years; which is but one year more than the period of the senate of Maryland; and but two more than that of the senates of New York and Virginia. The president is to continue in office for the period of four years; as in New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the other states the election is annual. In several of the states, however, no explicit provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia, he is not impeachable till out of office. The president of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behaviour. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case, and the example of the state constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the state governments; and in its express guarantee of the republican form to each of the latter.

“But it was not sufficient,” say the adversaries of the proposed constitution, “for the convention to adhere to the republican form. They ought, with equal care, to have preserved the *federal* form, which regards the union as a *confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the union as a *consolidation* of the states.” And it is asked, by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires, that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country, could supply any defect of regular authority.

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First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

- 5 On examining the first relation, it appears, on one hand, that the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratification of the several states, derived from the supreme authority in each state . . . the authority of the people themselves. The act, therefore, establishing the constitution, will not be a *national*, but a *federal* act.

- 15 That it will be a federal, and not a national act, as these terms are understood by the objectors, the act of the people, as forming so many independent states, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the union, nor from that of a *majority* of the states. It must result from the *unanimous* assent of the several states that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority; in the same manner as the majority in each state must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the states, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted.
- 20 Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new constitution will, if established, be a *federal*, and not a *national* constitution.
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The next relation is, to the sources from which the ordinary powers of government are to be derived. The house of representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular state. So far the government is *national*, not *federal*.

- 5 The senate, on the other hand, will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the senate, as they now are in the existing congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the president is to be made by the states in their political characters. The votes allotted to
- 10 them are in a compound ratio, which considers them partly as distinct and co-equal societies; partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act, they are to be thrown into the form of individual delegations, from so many distinct and co-equal bodies politic. From this aspect of the government, it appears
- 15 to be of a mixed character, presenting at least as many *federal* as *national* features.

- The difference between a federal and national government, as it relates to the *operation of the government*, is, by the adversaries of the plan of the convention, supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy, in their political capacities; in the latter, on the individual citizens composing the
- 20 nation, in their individual capacities. On trying the constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which states may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual ca-
- 25 pacities, in its ordinary and most essential proceedings, will, on the whole, in the sense of its opponents, designate it in this relation, a *national* government.

But if the government be national, with regard to the *operation* of its powers, it changes its aspect again, when we contemplate it in relation to the *extent* of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but

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an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general, and partly in the municipal legislatures. In the former case, all

5 local authorities are subordinate to the supreme; and may be controled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its

10 jurisdiction extends to certain enumerated objects only, and leaves to the several states, a residuary and inviolable sovereignty over all other objects. It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the

15 constitution: and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

20 If we try the constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly *national*, nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal on the other

25 hand, the concurrence of each state in the union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention, is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by *states*, not by *citizens*, it departs from the *national*, and advances

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towards the *federal* character. In rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal*, and partakes of the *national* character.

The proposed constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal constitution; but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal, and partly national; in the operation of these powers, it is national, not federal; in the extent of them again, it is federal, not national; and finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national.

10 Publius

PUBLIUS (JAMES MADISON)

Federalist No. 45

ESSAY EXCERPT

January 26, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by describing the responsibilities of the state governments and the federal government, including the new power to regulate commerce.

GUIDING QUESTIONS

1. What is the difference between the powers the federal constitution gives to the federal government and those left to state governments?
2. According to Publius' intent, would the federal government interfere with the power of state governments?
3. If the powers listed by Publius already existed in the Articles of Confederation, why was the Constitution needed?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 241-42.

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A Further Discussion Of The Supposed Danger From The Powers Of The Union, To The State Governments

...The powers delegated by the proposed constitution to the federal government, are few and defined. Those which are to remain in the state governments, are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the state.

10 The operations of the federal government will be most extensive and important in times of war and danger; those of the state governments in times of peace and security. As the former periods will probably bear a small proportion to the latter, the state governments will here enjoy another advantage over the federal government. The more adequate indeed the federal powers may be rendered to the national defence, the less frequent will be those
15 scenes of danger which might favour their ascendancy over the governments of the particular states.

If the new constitution be examined with accuracy and candour, it will be found that the change which it proposes, consists much less in the addition of NEW POWERS to the union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it
20 is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing congress by the articles of confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating
25 to taxation, may be regarded as the most important: and yet the present congress have as complete authority to require of the states, indefinite supplies of money for the common defence and general welfare, as the future congress will have to require them of individual citizens; and the latter will be no more bound than the states themselves have been, to pay

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the quotas respectively taxed on them. Had the states complied punctually with the articles of confederation, or could their compliance have been enforced by as peaceable means as may be used with success towards single persons, our past experience is very far from countenancing an opinion, that the state governments would have lost their constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an event would have ensued, would be to say at once, that the existence of the state governments is incompatible with any system whatever, that accomplishes the essential purposes of the union.

PUBLIUS (JAMES MADISON)

Federalist No. 47

ESSAY EXCERPTS

February 1, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining its core principle: the separation of powers.

GUIDING QUESTIONS

1. What is one of the main objections to the Constitution?
2. What does Madison consider to be the very definition of tyranny?
3. Whom does Madison chiefly cite in support of the separation of powers?

"Federalist 47," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 269-75.

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The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts

HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and
5 the distribution of this mass of power among its constituent parts.

One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor
10 of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of
15 more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a danger-
20 ous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of
25 liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit

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at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect
5 model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his
10 meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have,
15 under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases
20 of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the
25 same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no PARTIAL AGENCY in, or no CONTROL over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye,

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can amount to no more than this, that where the WHOLE power of one department is exercised by the same hands which possess the WHOLE power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had
5 possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment
10 of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The
15 entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or
20 body," says he, "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: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR. Were it joined to the executive power, THE JUDGE might behave with all
25 the violence of AN OPPRESSOR. " Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author....

PUBLIUS (JAMES MADISON)

Federalist No. 48

ESSAY

February 1, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution in outlining the various checks and balances each branch of the government is afforded to guard itself against the encroachments of the others.

GUIDING QUESTIONS

1. Which branch of government in the U.S. is thought to be the strongest and most ambitious for power?
2. What is not sufficient to prevent tyranny?
3. What historical evidence does Madison give to show the tendency of branches to encroach on one another?

"Federalist 48," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 277-81.

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IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary

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branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

5 In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended,
10 on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude,
15 yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures,
20 the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the
25 judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards

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of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without
5 end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will refer to the example of two States, attested by two unexceptionable authorities.

10 The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting "Notes on the State of
15 Virginia," p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would
20 surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An ELECTIVE DESPOTISM was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention
25 which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. BUT NO BARRIER WAS PROVIDED BETWEEN THESE SEVERAL POWERS. The judiciary and the

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executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, IN MANY instances, DECIDED RIGHTS which should have been left to JUDICIARY CONTROVERSY, and THE DIRECTION OF THE EXECUTIVE, DURING THE WHOLE TIME OF THEIR SESSION, IS BECOMING HABITUAL AND FAMILIAR.”

The other State which I shall take for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution. "

In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the constitution.

Executive powers had been usurped.

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The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: FIRST, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; SECONDLY, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; THIRDLY, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

PUBLIUS (JAMES MADISON)

Federalist No. 49

ESSAY

February 5, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the risks in changing the form of government too often.

GUIDING QUESTIONS

1. What is Jefferson's proposal (the author of *Notes on the State of Virginia*)?
2. Why does Madison think Jefferson's proposal would weaken the necessary reverence for the Constitution?

"Federalist 49," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 283-86.

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THE author of the "Notes on the State of Virginia," quoted in the last paper, has subjoined to that valuable work the draught of a constitution, which had been prepared in order to be laid before a convention, expected to be called in 1783, by the legislature, for the establishment of a constitution for that commonwealth. The plan, like every thing from the same pen, marks a turn of thinking, original, comprehensive, and accurate; and is the more worthy of attention as it equally displays a fervent attachment to republican government and an enlightened view of the dangerous propensities against which it ought to be guarded. One of the precautions which he proposes, and on which he appears ultimately to rely as a palladium to the weaker departments of power against the invasions of the stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present inquiry, ought not to be overlooked.

His proposition is, "that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or CORRECTING BREACHES OF IT, a convention shall be called for the purpose. "

As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others. The several departments being perfectly co-ordinate by the terms of their common commission, none of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers; and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as the grantors of the commissions, can alone declare its true meaning, and enforce its observance?

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There is certainly great force in this reasoning, and it must be allowed to prove that a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions. But there appear to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the
5 several departments of power within their constitutional limits.

In the first place, the provision does not reach the case of a combination of two of the departments against the third. If the legislative authority, which possesses so many means of operating on the motives of the other departments, should be able to gain to its interest either of the others, or even one third of its members, the remaining department could
10 derive no advantage from its remedial provision. I do not dwell, however, on this objection, because it may be thought to be rather against the modification of the principle, than against the principle itself.

In the next place, it may be considered as an objection inherent in the principle, that as every appeal to the people would carry an implication of some defect in the government,
15 frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability. If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when
20 left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ANCIENT as well as NUMEROUS, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated
25 by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side.

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- The danger of disturbing the public tranquillity by interesting too strongly the public passions, is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government, and which does so much honor to the virtue and intelligence of the people of America, it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect that all the existing constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite forms, produced by a universal resentment and indignation against the ancient government; and whilst no spirit of party connected with the changes to be made, or the abuses to be reformed, could mingle its leaven in the operation. The future situations in which we must expect to be usually placed, do not present any equivalent security against the danger which is apprehended.
- But the greatest objection of all is, that the decisions which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of the government. We have seen that the tendency of republican governments is to an aggrandizement of the legislative at the expense of the other departments. The appeals to the people, therefore, would usually be made by the executive and judiciary departments.
- But whether made by one side or the other, would each side enjoy equal advantages on the trial? Let us view their different situations. The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their prepossessions. The former are generally the objects of jealousy, and their administration is always liable to be discolored and rendered unpopular. The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large. Their connections of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of the society. The nature of their public trust implies a personal

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influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people. With these advantages, it can hardly be supposed that the adverse party would have an equal chance for a favorable issue.

5 But the legislative party would not only be able to plead their cause most successfully with the people. They would probably be constituted themselves the judges. The same influence which had gained them an election into the legislature, would gain them a seat in the convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters, on whom every thing depends in such bodies. The convention, in short, would be composed chiefly of men who had been, who
10 actually were, or who expected to be, members of the department whose conduct was arraigned. They would consequently be parties to the very question to be decided by them.

It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to admit of no specious coloring. A strong party
15 among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favorite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question
20 itself. It would be connected with persons of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate. The PASSIONS, therefore, not the REASON, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be
25 controlled and regulated by the government.

We found in the last paper, that mere declarations in the written constitution are not sufficient to restrain the several departments within their legal rights. It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision for

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that purpose. How far the provisions of a different nature contained in the plan above quoted might be adequate, I do not examine. Some of them are unquestionably founded on sound political principles, and all of them are framed with singular ingenuity and precision.

PUBLIUS (JAMES MADISON)

Federalist No. 51

ESSAY

February 8, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the risks of a concentration of power and how the Constitution addresses them.

GUIDING QUESTIONS

1. What does it mean for each branch of government to have a will of its own?
2. Is the separation of powers absolute, or should the powers overlap? Why or why not?
3. What additional methods help the government to control itself?
4. How is the executive branch strengthened?
5. How is the power surrendered by the people divided to protect from government encroachment?
6. How does the argument against majority tyranny here relate to the argument made in Federalist 10?
7. What is the end of government and civil society according to Publius in Federalist 51?

"Federalist 51," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 287-91.

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
5 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. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps
10 place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

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
15 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,
20 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.

25 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.
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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.

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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.

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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.

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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

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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?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

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.

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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,

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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
5 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
10 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,
15 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
20 of the *federal principle*.

UNIT 3

Governing in the Constitution

45-50-minute classes | 12-16 classes

UNIT PREVIEW**Structure**

LESSON 1	The Congress in the Constitution	4-5 classes	p. 5
LESSON 2	The Presidency in the Constitution	2-3 classes	p. 9
LESSON 3	The Judiciary in the Constitution	2-3 classes	p. 13
LESSON 4	The Bill of Rights	2-3 classes	p. 16
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 21
APPENDIX B	Primary Sources		p. 31

Why Teach Governing in the Constitution

It is common for traditional American government classes to teach the “nuts and bolts” of government. While this class seeks a deeper and more meaningful understanding than the mere mechanics of government, students do need to know how lawmaking works in the United States. In the twenty-first century, however, there are effectively two sets of “nuts and bolts.” Unit 6, on “Institutions and Policy,” deals with the way government functions today after the changes the progressive movement has brought to federal and state institutions. This unit, “Governing in the Constitution,” is reserved for a study of the Framers’ original design and intentions for the government they established through the Constitution. It is important for students to understand how and why the Framers formed the three branches and how they were intended to operate just as they will later study the ways in which progressives departed from this arrangement. This unit also covers the added safeguards to freedom in the first ten amendments to the Constitution: The Bill of Rights.

What Teachers Should Consider

From *The 1776 Report*, pages 21-22

[In the Constitution,] the inherent or potential partisan unwisdom of a dominant faction ... would be tempered by representative government. Rather than the people acting as a body, the people would instead select officeholders to represent them. This would

... 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.”
(*Federalist* 10)

... One important feature of our written Constitution is the careful way that it *limits* the powers of each branch of government—that is, states what those branches may do, and by implication what they may *not* do. This is the real meaning of “limited government”: not that the government’s size or funding levels remain small, but that government’s powers and activities must remain limited to certain carefully defined areas and responsibilities as guarded by bicameralism, federalism, and the separation of powers.

How Teachers Can Learn More

TEXTS

<i>The 1776 Report</i> , The President’s Advisory 1776 Commission	Pages 15–25
<i>The U.S. Constitution: A Reader</i> , ed. Hillsdale College Politics Faculty	Chapters 4–6
<i>The Federalist</i> , Alexander Hamilton, James Madison, and John Jay	
<i>The Anti-Federalist</i>	
<i>American Government and Politics</i> , Joseph Bessette and John Pitney	Chapters 2, 3, and 15

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101
The Federalist Papers
Civil Rights in American History

Primary Sources Studied in This Unit

The U.S. Constitution
The Federalist, Nos. 55, 57, 62, 63, 70, 78, and 84
 Essay 11, Brutus
Marbury v. Madison
McCulloch v. Maryland
 The Bill of Rights

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — The Congress in the Constitution

4-5 classes

LESSON OBJECTIVE

Students learn how the Constitution structures the federal legislature to ensure that the will of the people is both expressed as well as refined and enlarged by the people's representatives to effect good government.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

The Federalist Papers
Congress

Lecture 6
Lectures 1 and 2

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution, Articles I and IV
The Federalist, Nos. 55, 57, 62, 63

TERMS AND TOPICS

legislature
legislative power
Virginia Plan
New Jersey Plan
Great Compromise
bill

Congress
bicameralism
House of Representatives
Senate
term
refine and enlarge

QUESTIONS FOR THE AMERICAN MIND

- Which purposes and powers does Congress have?
- How does the Constitution place and structure the legislative power in the Congress?
- What is bicameralism, and what are its advantages?
- What are the similarities and differences between the structure of the House of Representatives and the Senate?
- What are the chief characteristics of the House of Representatives, and why?
- What are the chief characteristics of the Senate, and why?
- How does the design of the legislature provide stability?

- How does representation itself and the differences between the House of Representatives and the Senate combine to refine and enlarge the will of the people?
- Questions from the U.S. Civics Test:
 - Question 18: What part of the federal government writes laws?
 - Question 19: What are the two parts of the U.S. Congress?
 - Question 20: Name one power of the U.S. Congress.
 - Question 21: How many U.S. senators are there?
 - Question 22: How long is a term for a U.S. senator?
 - Question 24: How many voting members are in the House of Representatives?
 - Question 25: How long is a term for a member of the House of Representatives?
 - Question 26: Why do U.S. representatives serve shorter terms than U.S. senators?
 - Question 27: How many senators does each state have?
 - Question 28: Why does each state have two senators?
 - Question 31: Who does a U.S. senator represent?
 - Question 32: Who elects U.S. senators?
 - Question 33: Who does a member of the House of Representatives represent?
 - Question 34: Who elects members of the House of Representatives?
 - Question 35: Some states have more representatives than other states. Why?

KEYS TO THE LESSON

The United States Congress, composed of the House Representatives and the Senate, was intended by the Framers to be the embodiment of representative self-government. Hence it is listed first among the three equal branches of government. Its bicameral structure satisfied both large and small states and has proven to be a bulwark against the accumulation of power and against momentary passions that sweep through the country while carrying out government's core function of making law. While representation in and of itself seeks to elevate the will of the majority through relatively talented and mindful Representatives, the further refinement and broadening of legislation through the Senate brings an additional safeguard. Prudent and effective legislation supported by a broad legislative consensus was the goal the Framers had in mind when forming the Congress. For all of these reasons, over much of American history, the Congress has operated as the core representative branch—and thus the heart—of American constitutional government.

Teachers might best plan and teach the Congress in the Constitution with emphasis on the following approaches:

- Throughout this lesson, have students consider how the Constitution repeatedly structures the government to refine and enlarge public opinion so as to reflect their consent through the rule of law.
- Help students to understand the very meaningful words *legislative*, *executive*, *judicial*, and *power*. All four words are not merely conventions but are full of significance. In fact, they are true to the very nature of the rule of law. They connote the act of lawmaking, the act of enforcing the law made, and the act of determining whether the law has been violated, either by an individual against a specific law, or by a law itself against the Supreme Law of the Land, the Constitution.
- Clarify for students that under the Constitution the United States is not a democracy but rather a republic. The main distinction is that in a pure democracy, everyone votes on actually making

every law, and the only factor to consider in enacting a law is 51 percent of the people. In a republic, the people elect certain of the fellow citizens to represent their views and interests in deliberating and making decisions. The deliberations and voting record of representatives should not only reflect the opinions of the people they represent but also their settled concerns and common good as understood by the representative. How well they have represented the opinions and good of their constituents is determined by election of those being represented. Other terms relevant to these distinctions are *direct democracy* versus *representative democracy*.

- Ask students why the Constitution begins by describing the legislative power and legislative branch. The reason is Congress is most connected with the people at large. Lawmaking is the chief governing act, and in a democratic republic, it is the representatives of the people who do the lawmaking. Students should understand how very different the locus of lawmaking and power is today when one considers the present executive, judiciary, and bureaucracy.
- Have students discuss and understand the purpose of each legislative power granted to Congress. Students should be able to connect each of these powers with the purposes of the Constitution as outlined in the Preamble. The structure, character, and operation of Congress are designed in the way most fitting to the function of lawmaking, that is, to exercise the power of making law on behalf of (or as representatives of) the people. Make clear that the legislative power is vested uniquely in the legislative branch, not in the federal government as a whole or in another branch.
- Note also how the Constitution limits the number and kind of legislative powers to those “herein granted.” There are other implied legislative powers, such as under things “necessary and proper” to carry out is granted powers, but the Constitution intended to limit significantly the scope of what the Congress could do with its lawmaking power.
- Spend some time considering the *necessary and proper clause*. Although this clause could be mistaken as a way for the Congress to do whatever it wants, this clause only enables the Congress to carry out its enumerated powers. The Founders wanted to create an energetic yet limited government, and enumerating the powers of the legislature (even with the necessary and proper clause) restricted the scope of the federal government overall, leaving most of the general powers of government to the state governments or undelegated to remain with the people themselves. They wanted each separate branch of the government, which together make up the federal government, to do only the things specified by the Constitution—but to do them well.
- Explain the ways in which the House of Representatives is meant to be a purer or more direct expression of popular opinion while the Senate is meant to be more reflective and refining of the people’s will.
- Read with students the relevant essays of the *Federalist* on the House of Representatives. *Federalist* 55 explains the appropriateness of the quantity of representatives that the Constitution had originally set, while *Federalist* 57 speaks to the quality required of such representatives and the ways in which the Constitution seeks to ensure such individuals are more likely to be elected.
- Read with students the relevant essays of the *Federalist* on the Senate. *Federalist* 62 and 63 explain how the Senate is structured and chosen, and how these features provide stability and wisdom to the legislature, as well as strengthen federalism and the importance of states in the federal government structure. It is worth noting how the 17th Amendment in 1913 altered this arrangement and changed the role played by the Senate.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENTS

Assignment 1: Explain the overall powers of Congress and why Congress, as opposed to other branches, has these powers (2–3 paragraphs).

Assignment 2: Explain the differences between the House of Representatives and the Senate and the reasons for the distinctions (2–3 paragraphs).

Lesson 2 — The Presidency in the Constitution

2-3 classes

LESSON OBJECTIVE

Students learn how the Constitution arranges the executive power in the presidency and the purposes and powers of the office.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

The Federalist Papers

The Presidency and the Constitution

Lecture 7

Lectures 2 and 3

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution, Article II

The Federalist, No. 70

TERMS AND TOPICS

executive power

presidency

Electoral College

term

veto power

impeachment

cabinet

Commander-in-Chief

QUESTIONS FOR THE AMERICAN MIND

- What purposes and powers does the presidency have?
- How does the Constitution place and structure the executive power in the presidency?
- What are the chief characteristics of the presidency, and why?
- How does the presidency ensure energy in the executive?
- What is the importance of the executive power being unitive?
- What is the Electoral College, how did it originally work, and what is its purpose?
- Questions from the U.S. Civics Test:
 - Question 17: The President of the United States is in charge of which branch of government?
 - Question 36: The President of the United States is elected for how many years?
 - Question 37: The President of the United States can serve only two terms. Why?
 - Question 40: If the president can no longer serve, who becomes president?

- Question 41: Name one power of the president.
- Question 42: Who is Command in Chief of the U.S. military?
- Question 43: Who signs bills to become laws?
- Question 44: Who vetoes bills?
- Question 45: Who appoints federal judges?
- Question 46: The executive branch has many parts. Name one.
- Question 47: What does the President's cabinet do?
- Question 48: What are two Cabinet-level positions?
- Question 49: Why is the Electoral College important?

KEYS TO THE LESSON

The office of president demonstrated some of the most significant changes the Framers put into the Constitution, compared to the Articles of Confederation. The Framers saw the need of a stronger executive, especially in the area of representing the United States on the world stage and in providing for the nation's security and carrying out its foreign policy. The president's first responsibility, however, was simply to enforce the laws passed by Congress. This job required cooperation with Congress to pass laws but then the restraint to act under the laws that Congress had passed. The presidency has since then taken on a sort of aura and power all its own, but students should understand that the original intention for the office was to execute laws passed by Congress, uphold the rule of law, and defend the Constitution.

Teachers might best plan and teach the Presidency in the Constitution with emphasis on the following approaches:

- Share with students that the office of the president was crafted by the Framers with both hindsight and foresight. On one hand, they had learned that the legitimate concern of the Articles of Confederation to prevent executive tyranny resulted in a weak if non-existent executive with no independent power to enforce the laws or conduct foreign policy. The Constitution defined the proper ground by creating the president vested with the executive power to enforce the law and administer the affairs of government at home and abroad while also preventing and checking executive tyranny. On the other hand, the Founders created the office with the knowledge that George Washington—who had already relinquished his military authority as general—would assuredly be the first president to exercise these powers and in doing so set precedents for the future. They were confident he would do so with vigor but also with prudence and justice for the sake of establishing the Constitution.
- Note for students that the president's executive power in Article II is a general grant of power, not "herein granted" or enumerated as in Article I. While Congress has great powers to control and influence the means of the president, especially through its control of the budget, the presidency is designed to embody the executive power of government, primarily enforcing all the laws enacted by Congress but also maintaining the rule of law, seeing to the nation's security, and conducting the nation's foreign policy. Make clear that the executive power is vested uniquely in the president, not in the federal government as a whole or in any other branch.
- Explain the circumstances under which the president can exercise the powers of Commander-in-Chief. Students should be aware that, as the most popular branch, only Congress has the power to declare war, while the president has the power to carry out that declaration and otherwise direct the armed forces in circumstances of military necessity. Emphasize for students how a unique

trait of the American armed forces is that they are under civilian control, in particular a civilian, elected president, checked by Congress (and a Supreme Court), subservient to the Constitution and the rule of law.

- Read aloud and discussion with students the president's unique oath of office, found in Article II, Section 1, Clause 8: "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."
- Clarify with students how the Electoral College works and why the Founders decided on this process for choosing the president. The first original reason was to provide a way for the people's representatives in the states to check against a tyrannical or fraudulent choice of the president, a purpose which most states abandoned when they enacted laws tying a state's choice of electors to the state's popular vote and then usually requiring those electors to be faithful to the state's popular vote. The second reason was to ensure that presidential candidates would have to pay attention to the interests and opinions of all the states and their populations. This prevented regional and encourage national candidates, and forced presidential candidates to address the concerns not merely of large population centers like cities but also of rural and more remote populations. Together with the equal representation among states in the Senate, the Electoral College has discouraged majority tyranny in favor of a broader and more settled national consensus.
- Read with students *Federalist* 70 and examine Publius's arguments for the presidency and the necessity of an energetic executive, especially the unity (one person) that is necessary for "decision, activity, secrecy, and dispatch" in executive actions.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the overall powers of the presidency and why the presidency, as opposed to other branches, has these powers (2–3 paragraphs).

Name_____

Date_____

Unit 3 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. What is bicameralism, and what are its advantages?

2. What are the chief characteristics of the House of Representatives, and why?

3. What are the chief characteristics of the Senate, and why?

4. What are the chief characteristics of the presidency, and why?

5. What is the Electoral College, how did it originally work, and what is its purpose?

Lesson 3 — The Judiciary in the Constitution

2-3 classes

LESSON OBJECTIVE

Students learn about the judicial power in the Constitution and about the Supreme Court's power of judicial review.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

The Federalist Papers
The U.S. Supreme Court

Lecture 8
Lecture 1

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution, Article III
The Federalist, No. 78
Essay 11, Brutus
Marbury v. Madison
McCulloch v. Maryland

TERMS AND TOPICS

judicial power
Supreme Court
coequality of branches
Judiciary Act of 1789
appellate courts

jurisdiction
original jurisdiction
appellate jurisdiction
judicial review

QUESTIONS FOR THE AMERICAN MIND

- Which purposes and powers does the Supreme Court have?
- How does the Constitution place and structure the judicial power in the Supreme Court?
- What are the chief characteristics of the Supreme Court, and why?
- What is judicial review? How was the power first claimed and asserted?
- What were the arguments for and against the Supreme Court?
- Who has the power to establish “lesser courts”?
- Questions from the U.S. Civics Test:
 - Question 2: What is the supreme law of the land?

- Question 13: What is the rule of law?
- Question 50: What is one part of the judicial branch?
- Question 51: What does the judicial branch do?
- Question 52: What is the highest court in the United States?
- Question 53: How many seats are on the Supreme Court?
- Question 54: How many Supreme Court justices are usually needed to decide a case?
- Question 55: How long do Supreme Court justices serve?
- Question 56: Supreme Court justices serve for life. Why?

KEYS TO THE LESSON

In many respects, the Supreme Court was not given much consideration by the founding generation. They certainly never envisioned the tremendous power the Court has acquired today. The relatively minimal amount of detail and deliberation concerning the judiciary may have been the result of the rather straightforward nature of the judicial power: to use reason to judge whether or not a law has been violated in particular cases. The keys to exercising such a power, which has historic origins, depended on the wisdom of the judge as well as their understanding of the law. The requirement that the more deliberative Senate would have to consent to an elected president's appointment of federal judges acted as a check against judicial tyranny. A key innovation the Framers brought to the judiciary was making it separate from the lawmaking or law-enforcing parts of the government and independent by lifetime appointment. The coequality of the judiciary was also an important element in enacting the separation of powers to ensure that justice would be effectively served. Most important was that the judiciary would be the constant guard of the Constitution and the rule of law.

Teachers might best plan and teach the Judiciary in the Constitution with emphasis on the following approaches:

- Explain that the judicial power is vested by Article III in the Supreme Court and in such inferior Courts as Congress creates by law. The judicial power (and the judiciary's function) is to decide (or adjudicate) the "cases and controversies" that come before the courts according to the jurisdiction assigned by the Constitution or by Congress.
- Point out that the key to understanding the role of the judiciary in upholding the rule of law is that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof" is "the supreme Law of the Land" (Article VI). This means not only that all laws consistent with the Constitution must be followed but also that the Constitution is above ordinary laws.
- Explain that while lower court decision may be appealed, the decisions of the Supreme Court in particular cases before it are final. While the precedents of the Supreme Court (the doctrine of *stare decisis*) are important for instructing lower courts and predicting how the Supreme Court might decide similar cases in the future, the precedent of a particular case is neither final nor absolute. Significant cases (such as *Dred Scott v. Sandford* in 1857 and *Plessy v. Ferguson* in 1896) have been overturned years later despite the Court's earlier decisions.
- Read with students *Federalist* 78. Consider how Publius explains and defends the judicial power and the principle of judicial review—the authority of the courts to declare a law unconstitutional. It is important to note what Publius considered the role of the judge to be: not a legislator who

makes laws but rather an impartial judge in a particular case who will uphold and apply the law fairly. In carrying out the judicial power, the judge must also support and defend the Constitution, which means that in making their decisions they are obligated to side with the Constitution if a law is inconsistent with the “supreme Law of the Land.” The judge must therefore interpret the laws and the Constitution. In doing so they should look at the intentions of Congress in making the laws, and to the courts’ own precedents, but most important they should abide by the original meaning of the Constitution as the intent expressed by the American people.

- Explain that while judicial review is rightly understood as a crucial element implied in the Constitution’s grant of judicial power, this does not mean that the Supreme Court has either the only or the final say over the Constitution and its meaning. Each branch of government is responsible to the Constitution as the source and extent of their authority, and are obligated to uphold it in carrying out their constitutional duties. This means Congress should consider the constitutionality of the laws it passes (and repeal those it considers unconstitutional), presidents should veto bills that they believe are unconstitutional and execute laws only in a constitutional manner, and that courts should strike down laws that are inconsistent with the Constitution. Nevertheless, when the three branches are at odds about the Constitution, the sovereign people have the final say as to the meaning of the Constitution by electing legislators who will make different laws, presidents who will appoint different judges, or by amending the Constitution itself. No singular branch has a monopoly on what the Constitution means.
- Share with students excerpts from the anti-Federalist writer Brutus and the Supreme Court decisions *Marbury v. Madison* and *McCulloch v. Maryland* in which the idea of judicial review is debated and asserted. As explained above, note how the argument for judicial review asserted by the Supreme Court in *Marbury v. Madison* is distinct from judicial absolutism or judicial finality.
- Note for students how Congress began to establish lesser courts, per the Constitution, with the Judiciary Act of 1789. Students should be generally familiar with lower courts established throughout American history, their jurisdictions, and the general workings of lawsuits, trials, etc. Some of these elements to the judiciary will be revisited in Unit 8 on “Late 20th Century Government and Politics,” but since the Constitution lets Congress determine much of the structure and operation of the judiciary, it is best to teach about the institutions of the judicial branch in this lesson instead of a separate lesson in Unit 6 on “Institutions and Policy.” Referencing Chapter 15 of American Government and Politics may be helpful.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the overall structure and powers of the Supreme Court and lesser courts, and why the judiciary, as opposed to other branches, has these powers (2-3 paragraphs).

Lesson 4 — The Bill of Rights

2-3 classes

LESSON OBJECTIVE

Students learn about the arguments for and against a Bill of Rights, what each of the first ten amendments to the Constitution protects, and why each was included and written the way it was.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

The Federalist Papers

Lecture 9

Civil Rights in American History

Lecture 2

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution, Articles V-VII

The Bill of Rights

The Federalist, No. 84

TERMS AND TOPICS

Bill of Rights

freedom of religion

free exercise

establishment clause

freedom of speech

freedom of the press

right to assembly

right to bear arms

due process

QUESTIONS FOR THE AMERICAN MIND

- What were the arguments for and against a Bill of Rights?
- What do each of the following amendments in the Bill of Rights guarantee and why: 1st, 2nd, 4th, 5th, 9th, and 10th?
- What is the origin of the rights protected in the Bill of Rights?
- Where does the phrase “separation of church and state” come from? Does it have any legal authority?
- Why does the 2nd Amendment make it evident that the Founders found it necessary to guarantee to private citizens the right to possess tools used for their self-defense?
- What is due process? Why is it such an important legal guarantor of freedom?
- Questions from the U.S. Civics Test:

- Question 5: How are changes made to the U.S. Constitution?
- Question 7: How many amendments does the U.S. Constitution have?
- Question 60: What is the purpose of the 10th Amendment?
- Question 65: What are three rights of everyone living in the United States?

KEYS TO THE LESSON

“The Constitution was intended to endure. But because the founders well knew that no document written by human beings could ever be perfect or anticipate every future contingency, they provided for a process to amend the document—but only by popular decision-making and not by ordinary legislation or judicial decree.

“The first ten amendments, which would come to be known as the Bill of Rights, were included at the demand of those especially concerned about vesting the federal government with too much power and who wanted an enumeration of specific rights that the new government lawfully could not transgress. But all agreed that substantive rights are not granted by government; any just government exists only to secure these rights. And they specifically noted in the Ninth Amendment that the Bill of Rights was a selective and not an exclusive list; that is, the mere fact that a right is not mentioned in the Bill of Rights is neither proof nor evidence that it does not exist.

“It is important to note the founders’ understanding of three of these rights that are decisive for republican government and the success of the founders’ project.

“Our first freedom, religious liberty, is foremost a moral requirement of the natural freedom of the human mind.... [I]t is also the indispensable solution to the political-religious problem that emerged in the modern world. Faith is both a matter of private conscience and public import, which is why the founders encouraged religious free exercise but barred the government from establishing any one national religion. The point is not merely to protect the state from religion but also to protect religion from the state so that religious institutions would flourish and pursue their divine mission among men.

“Like religious liberty, freedom of speech and of the press is required by the freedom of the human mind. More plainly, it is a requirement for any government in which the people choose the direction of government policy. To choose requires public deliberation and debate. A people that cannot publicly express its opinions, exchange ideas, or openly argue about the course of its government is not free.

“Finally, the right to keep and bear arms is required by the fundamental natural right to life: no man may justly be denied the means of his own defense. The political significance of this right is hardly less important. An armed people is a people capable of defending their liberty no less than their lives and is the last, desperate check against the worst tyranny.”

— *The 1776 Report*, Pages 22-25

Teachers might best plan and teach the Bill of Rights with emphasis on the following approaches:

- Before looking at the Bill of Rights itself, read with students Articles V-VII of the Constitution. Students should be familiar with what these Articles, particularly concerning the amendment process and the status of the Constitution in the American constitutional system of law. Remind

them that the Bill of Rights are ten amendments to the Constitution but do not replace or redefine the main Constitution as the main bulwark of liberty.

- Teach students about the Anti-Federalists' concerns with the Constitution, the arguments for and against a Bill of Rights, and how the Federalists ultimately convinced key states to support the Constitution by guaranteeing to add a Bill of Rights if it was ratified. Of special note is the argument in *Federalist* 84 that a Bill of Rights was not needed and would be potentially dangerous as it may be interpreted as implying powers that government had not been granted concerning other rights that were not listed.
- Lead students through a complete reading of the Bill of Rights. Pause frequently to ask students questions on the various parts of the text. Sometimes the Bill of Rights comes across as special rights that the government has given to the people (and, therefore, may conceivably take away). This is not the case. These are fundamental rights recognized and protected by the Constitution. The people may point to and claim these rights when government threatens them.
- Help students understand how the rights found in the Bill of Rights are related to the preservation of life, liberty, property, or the pursuit of happiness, or how they answer some of the grievances in the Declaration of Independence or problems discovered under the Articles of Confederation. Spend time especially considering the 1st, 2nd, 4th, 5th, 9th, and 10th Amendments and the following guarantees:
 - Religious Liberty: When the Founders wrote that "Congress shall make no law respecting an establishment of religion," they were not at all against religion playing a significant public role in society. But they did not want to establish an official church and creed, because they feared this would become a threat to "the free exercise of religion," which was also protected in the First Amendment. They wanted to encourage and protect religious belief and exercise from a government that was either hostile to religion in general or to a specific religion, as was the case in other countries where church and state were not officially separated. The Founders emphatically believed that religion was necessary to promote morality, to shape civil society, and to form virtuous, responsible, wise, and caring citizens. They believed that government should encourage and support religion in general. But they did not think the government should endorse or fund one single, official church or do anything to obstruct the people from exercising their religious faith.
 - Freedom of Speech: It is essential for any free society to have freedom of speech for citizens to hold government accountable and to discuss and debate ideas. Freedom of speech helps society to flourish by promoting the sharing of ideas, innovations, scientific thought, and virtue. The Founders also wanted to keep politicians and the government accountable to the people by allowing for the free expression of ideas in support of or critical of elected officials' choices and character. Freedom of the Press applies freedom of speech to printed speech as well.
 - Freedom of Assembly and to Petition. Any group of citizens can gather without the government's permission as long as their activities are peaceful. Similarly, citizens have the right to make their interests known to the government, including to specific branches of the government and specific elected members of the government.
 - The Right of Self-Defense: The right to bear arms reflects two essential principles: 1) individuals have a natural right to protect and defend their own lives, families, and property against the tyrannical actions of another person; and 2) citizens may protect their own lives, families, and properties against the tyrannical actions of the government

itself. The right to bear arms protects citizens' ability and right to counter any attempt at oppression by the government.

- Due Process: Due process is the legal process that every person under the rule of law is due as a matter of equal justice. It establishes that any deprivations of a person's natural rights to life, liberty, and property must be accompanied by a legal process in which the law was already a law at the time of being violated and in which the opportunity to defend one's innocence is afforded. Innocence is presumed until evidence is judged in a fair trial to prove guilt. All are equal before the law and are guaranteed the same fair and impartial justice and the equal protection of the law. The right of the criminally accused to a jury of their peers (meaning fellow citizens) is also an important and long established element of due process. This ensures that the government's executives and judges are held accountable to public opinion and that those judging whether a law was broken are those who could one day have that same judgment applied to them, thus ensuring a fair trial and verdict.
- Explain that the Founders did not believe the Bill of Rights encompassed all the rights of men in society. While some of the rights in the Bill of Rights are natural rights, others are generally civil rights (rights existing in law) intended to preserve certain natural rights, particularly from the misapplication of government power. Many of these rights, moreover, require prudential judgment to determine if they have been violated in a particular instance. There are certainly other natural and civil rights retained by the people that might not be listed in the Constitution. Note that the 9th Amendment suggests and guarantees just that.
- Discuss how the 10th Amendment was written to affirm that any other powers that are not delegated to the government by the Constitution are reserved to the States or to the people. By this amendment, the Constitution recognizes that key powers remain with the States, which have the general authority over the safety and well-being of their state citizens. It also means (especially when read in conjunction with the 9th Amendment) that the ultimate sovereign are the people, who are endowed with all rights and (as a result) are the only ones who can delegate any power to government.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the meaning and importance of the freedom of religion, the freedom of speech, the right to bear arms, due process, and the 10th Amendment (3–4 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — Governing in the Constitution Test

Unit 3

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

legislature	presidency	appellate jurisdiction
legislative power	Electoral College	judicial review
Virginia Plan	veto power	Bill of Rights
New Jersey Plan	impeachment	freedom of religion
Great Compromise	cabinet	free exercise
Congress	Commander-in-Chief	establishment clause
bicameralism	judicial power	freedom of speech
House of Representatives	Supreme Court	freedom of the press
Senate	coequality of branches	right to assembly
term	Judiciary Act of 1789	right to bear arms
refine and enlarge	appellate courts	due process
bill	jurisdiction	
executive power	original jurisdiction	

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of the how governing was originally intended to function in the Constitution.

The U.S. Constitution, Article I
Federalist 57
Federalist 62
Federalist 63
 The U.S. Constitution, Article II
Federalist 70
 The U.S. Constitution, Article III
Federalist 78
Marbury v. Madison
 1st Amendment
 2nd Amendment
 4th Amendment
 5th Amendment
 9th Amendment
 10th Amendment

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | The Congress in the Constitution

- ☐ What purposes and powers does Congress have?
- ☐ How does the Constitution place and structure the legislative power in the Congress?
- ☐ What is bicameralism, and what are its advantages?
- ☐ What are the similarities and differences in the structure of the House of Representatives and the Senate?
- ☐ What are the chief characteristics of the House of Representatives, and why?
- ☐ What are the chief characteristics of the Senate, and why?
- ☐ How does the design of the legislature provide stability?
- ☐ How does representation itself and the differences between the House of Representatives and the Senate combine to refine and enlarge the will of the people?

Lesson 2 | The Presidency in the Constitution

- ☐ What purposes and powers does the presidency have?
- ☐ How does the Constitution place and structure the executive power in the presidency?
- ☐ What are the chief characteristics of the presidency, and why?
- ☐ How does the presidency ensure energy in the executive?
- ☐ What is the importance of the executive power being unitive?
- ☐ What is the Electoral College, how did it originally work, and what is its purpose?

Lesson 3 | The Judiciary in the Constitution

- ☐ Which purposes and powers does the Supreme Court have?
- ☐ How does the Constitution place and structure the judicial power in the Supreme Court?
- ☐ What are the chief characteristics of the Supreme Court, and why?
- ☐ What is judicial review? How was the power first claimed and asserted?
- ☐ What were the arguments for and against the Supreme Court?
- ☐ Who has the power to establish “lesser courts”?

Lesson 4 | The Bill of Rights

- ☐ What were the arguments for and against a Bill of Rights?
- ☐ What do each of the following amendments in the Bill of Rights guarantee, and why: 1st, 2nd, 4th, 5th, 9th, and 10th?
- ☐ What is the origin of the rights protected in the Bill of Rights?
- ☐ Where does the phrase “separation of church and state” come from? Does it have any legal authority?
- ☐ Why does the 2nd Amendment make it evident that the Founders found it necessary to guarantee to private citizen the right to possess tools used for their self-defense?
- ☐ What is due process? Why is it such an important legal guarantor of freedom?

Name_____

Date_____

Test — Governing in the Constitution

Unit 3

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. legislative power
2. Great Compromise
3. bicameralism
4. refine and enlarge
5. executive power
6. Electoral College
7. impeachment
8. cabinet
9. judicial power
10. coequality of branches
11. judicial review
12. Bill of Rights

13. free exercise

14. right to assembly

15. due process

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of the how governing was originally intended to function in the Constitution.

16. *Federalist 62*

17. The U.S. Constitution, Article II

18. *Marbury v. Madison*

19. 1st Amendment

20. 2nd Amendment

21. 10th Amendment

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

22. Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?

23. What purposes and powers does Congress have?

24. What are the similarities and differences between the structure of the House of Representatives and the Senate?

25. What are the chief characteristics of the House of Representatives, and why?

26. How does representation itself and the differences between the House of Representatives and the Senate combine to refine and enlarge the will of the people?

27. How does the presidency ensure energy in the executive?

28. What is the importance of the executive power being unitive?
29. What is the Electoral College, how did it originally work, and what is its purpose?
30. What were the arguments for and against the Supreme Court?
31. What purposes and powers does the Supreme Court have?
32. What are the chief characteristics of the Supreme Court, and why?
33. What is the origin of the rights protected in the Bill of Rights?
34. Where does the phrase “separation of church and state” come from? Does it have any legal authority?
35. What is due process? Why is it such an important legal guarantor of freedom?

Writing Assignment — Governing in the Constitution

Unit 3

Due on _____

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question...

Across all three branches of the federal government, what are the most important designs that the Constitution puts in place to ensure the very best governance, i.e., governance that will be effective at protecting natural rights, representing the majority, and avoiding tyranny?

APPENDIX B

Primary Sources

The American People

James Madison

Alexander Hamilton

Brutus

John Marshall

THE PEOPLE OF THE UNITED STATES OF AMERICA

The Constitution

LAW

March 4, 1789
United States of America

BACKGROUND

Delegates to the Constitutional Convention drafted and the states ratified this Constitution, forming the second national government for the United States of America.

ANNOTATIONS**NOTES & QUESTIONS****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 defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and

5 establish this Constitution for the United States of America.

Article I

Section 1. 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 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

10 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,

"The Constitution of the United States of America," in *The U.S. Constitution: A Reader* (Hillsdale, MI: Hillsdale College Press, 2012), 47-66.

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
5 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 enu-
10 meration shall be made, the State of New Hampshire shall be entitled to choose 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
15 thereof shall issue Writs of Election to fill such Vacancies.

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

Section 3. 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.

20 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
25 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.

5 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 choose 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.

10 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.

15 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.

20 Section 4. 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 choosing 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.

25 Section 5. 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 Behavior, 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. 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 encreased 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. 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
5 (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 pre-
10 sented 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. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and
15 Excises, to pay the Debts and provide for the common Defense 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
20 Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bank-
ruptcies throughout the United States;

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

25 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;

5 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;

10 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;

15 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;

20 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

25 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. 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.

- 5 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.

- 10 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.

- 15 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.

- 20 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. 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.

- 25 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 its 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 Control of the Congress.

5 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

10 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
15 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
20 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,
25 then the House of Representatives shall immediately choose 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 choose 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. 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
5 shall choose from them by Ballot the Vice President.

The Congress may determine the Time of choosing 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
10 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,
15 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,
20 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
25 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.

5 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
10 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
15 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,
20 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

25 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

Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

5 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,
10 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
15 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.

20 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
25 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 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.

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
5 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
10 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 Con-
15 federation.

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.
20 ing.

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
25 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.

5 Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

10 George Washington—

President and deputy from Virginia

Delaware

George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom

15 **Maryland**

James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll

Virginia

John Blair, James Madison, Jr.

North Carolina

20 William Blount, Richard Dobbs Spaight, Hugh Williamson

South Carolina

John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

ANNOTATIONS

NOTES & QUESTIONS

Georgia

William Few, Abraham Baldwin

New Hampshire

John Langdon, Nicholas Gilman

5 **Massachusetts**

Nathaniel Gorham, Rufus King

Connecticut

William Samuel Johnson, Roger Sherman

New York

10 Alexander Hamilton

New Jersey

William Livingston, David Brearley, William Paterson, Jonathan Dayton

Pennsylvania

15 Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas FitzSimmons, Jared Ingersoll, James Wilson, Gouverneur Morris

Attest William Jackson Secretary

Amendments to the Constitution of the United States of America

Amendment I

Ratified December 15, 1791

5 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.

Amendment II

Ratified December 15, 1791

10 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.

Amendment III

Ratified December 15, 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.

15 Amendment IV

Ratified December 15, 1791

20 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.

Amendment V

Ratified December 15, 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 offense 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.

10 **Amendment VI**

Ratified December 15, 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 defense.

Amendment VII

Ratified December 15, 1791

20 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 re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Ratified December 15, 1791

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

5 **Amendment IX**

Ratified December 15, 1791

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

Amendment X

10 Ratified December 15, 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.

Amendment XI

Ratified February 7, 1795

15 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.

Amendment XII

Ratified June 15, 1804

20 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 per-

sons 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

5 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.

10 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

15 Vice-President shall act as President, as in the 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

20 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.

Amendment XIII

Ratified December 6, 1865

25 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.

Amendment XIV

Ratified July 9, 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 power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

10 Ratified February 3, 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 power to enforce this article by appropriate legislation.

15 Amendment XVI

Ratified February 3, 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.

20 Amendment XVII

Ratified April 8, 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.

- 5 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.

Amendment XVIII

Ratified January 16, 1919

- 10 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.

- 15 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.

Amendment XIX

- 20 Ratified August 18, 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.

Amendment XX

Ratified January 23, 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 3rd day of
5 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 3rd 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
10 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
15 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
20 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 amend-
25 ment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Ratified December 5, 1933

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

- 5 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.

- 10 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.

Amendment XXII

Ratified February 27, 1951

- 15 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 the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term
- 20 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.

Amendment XXIII

Ratified March 29, 1961

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

- 5 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
- 10 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.

Amendment XXIV

Ratified January 23, 1964

- Section 1. The right of citizens of the United States to vote in any primary or other election
- 15 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 any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

- 20 Ratified February 10, 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
- 25 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.

Amendment XXVI

Ratified July 1, 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
5 age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

Ratified May 7, 1992

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

PUBLIUS (JAMES MADISON)

Federalist No. 55

ESSAY

February 13, 1788

The Independent Journal | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by showing how the number of representatives for the House is appropriate considering the rate of growth of the population at the time.

GUIDING QUESTIONS

1. Is there a straight-forward answer to the question of how many representatives the U.S. House should have? Why or why not?
2. Is having more representatives necessarily better? Why or why not?
3. What are some of the checks imposed on representatives?
4. How does Madison portray human nature here?
5. Is virtue important for a republican form of government? Why?

"Federalist 55," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 319-23.

The Total Number Of The House Of Representatives

- The number of which the house of representatives is to consist, forms another, and a very interesting point of view, under which this branch of the federal legislature may be contemplated. Scarce any article indeed in the whole constitution, seems to be rendered more
- 5 worthy of attention, by the weight of character, and the apparent force of argument, with which it has been assailed. The charges exhibited against it are, first, that so small a number of representatives will be an unsafe depository of the public interests; secondly, that they will not possess a proper knowledge of the local circumstances of their numerous constituents; thirdly, that they will be taken from that class of citizens which will sympathize least
- 10 with the feelings of the mass of the people, and be most likely to aim at a permanent elevation of the few, on the depression of the many; fourthly, that defective as the number will be in the first instance, it will be more and more disproportionate, by the increase of the people, and the obstacles which will prevent a correspondent increase of the representatives.
- 15 In general it may be remarked on this subject, that no political problem is less susceptible of a precise solution, than that which relates to the number most convenient for a representative legislature: nor is there any point on which the policy of the several states is more at variance; whether we compare their legislative assemblies directly with each other, or consider the proportions which they respectively bear to the number of their constituents.
- 20 Passing over the difference between the smallest and largest states, as Delaware, whose most numerous branch consists of twenty-one representatives, and Massachusetts, where it amounts to between three and four hundred; a very considerable difference is observable among states nearly equal in population. The number of representatives in Pennsylvania is not more than one-fifth of that in the state last mentioned. New York, whose population is
- 25 to that of South Carolina as six to five, has little more than one-third of the number of representatives. As great a disparity prevails between the states of Georgia and Delaware or Rhode Island. In Pennsylvania, the representatives do not bear a greater proportion to their constituents, than of one for every four or five thousand. In Rhode Island, they bear a proportion of at least one for every thousand. And according to the constitution of Georgia,

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the proportion may be carried to one for every ten electors; and must unavoidably far exceed the proportion in any of the other states.

- Another general remark to be made is that the ratio between the representatives and the people, ought not to be the same, where the latter are very numerous, as where they are very few. Were the representatives in Virginia to be regulated by the standard in Rhode Island, they would, at this time, amount to between four and five hundred; and twenty or thirty years hence, to a thousand. On the other hand, the ratio of Pennsylvania, if applied to the state of Delaware, would reduce the representative assembly of the latter to seven or eight members. Nothing can be more fallacious, than to found our political calculations on arithmetical principles. Sixty or seventy men may be more properly trusted with a given degree of power, than six or seven. But it does not follow, that six or seven hundred would be proportionably a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is, that in all cases, a certain number at least seems to be necessary to secure the benefits of free consultation and discussion; and to guard against too easy a combination for improper purposes: as on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.
- It is necessary also to recollect here, the observations which were applied to the case of biennial elections. For the same reason that the limited powers of the congress, and the control of the state legislatures, justify less frequent elections than the public safety might otherwise require; the members of the congress need be less numerous than if they possessed the whole power of legislation, and were under no other than the ordinary restraints of other legislative bodies.

With these general ideas in our minds, let us weigh the objections which have been stated against the number of members proposed for the house of representatives. It is said, in the first place, that so small a number cannot be safely trusted with so much power.

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The number of which this branch of the legislature is to consist, at the outset of the government, will be sixty-five. Within three years a census is to be taken, when the number may be augmented to one for every thirty thousand inhabitants; and within every successive period of ten years, the census is to be renewed, and augmentations may continue to be made under the above limitation. It will not be thought an extravagant conjecture, that the first census will, at the rate of one for every thirty thousand, raise the number of representatives to at least one hundred. Estimating the negroes in the proportion of three-fifths, it can scarcely be doubted, that the population of the United States will, by that time, if it does not already, amount to three millions. At the expiration of twenty-five years, according to the computed rate of increase, the number of representatives will amount to two hundred; and of fifty years, to four hundred. This is a number, which I presume will put an end to all fears arising from the smallness of the body. I take for granted here, what I shall, in answering the fourth objection, hereafter show, that the number of representatives will be augmented, from time to time, in the manner provided by the constitution. On a contrary supposition, I should admit the objection to have very great weight indeed.

The true question to be decided, then, is whether the smallness of the number, as a temporary regulation, be dangerous to the public liberty? Whether sixty-five members for a few years, and a hundred, or two hundred, for a few more, be a safe depository for a limited and well-guarded power of legislating for the United States? I must own that I could not give a negative answer to this question, without first obliterating every impression which I have received, with regard to the present genius of the people of America, the spirit which actuates the state legislatures, and the principles which are incorporated with the political character of every class of citizens. I am unable to conceive, that the people of America, in their present temper, or under any circumstances which can speedily happen, will choose, and every second year repeat the choice, of sixty-five or a hundred men, who would be disposed to form and pursue a scheme of tyranny or treachery. I am unable to conceive, that the state legislatures, which must feel so many motives to watch, and which possess so many means of counteracting the federal legislature, would fail either to detect or to defeat a conspiracy of the latter against the liberties of their common constituents. I am equally

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- unable to conceive, that there are at this time, or can be in any short time in the United States, any sixty-five or a hundred men, capable of recommending themselves to the choice of the people at large, who would either desire or dare, within the short space of two years, to betray the solemn trust committed to them. What change of circumstances, time, and a fuller population of our country, may produce, requires a prophetic spirit to declare, which makes no part of my pretensions. But judging from the circumstances now before us, and from the probable state of them within a moderate period of time, I must pronounce, that the liberties of America cannot be unsafe, in the number of hands proposed by the federal constitution.
- 10 From what quarter can the danger proceed? Are we afraid of foreign gold? If foreign gold could so easily corrupt our federal rulers, and enable them to ensnare and betray their constituents, how has it happened that we are at this time a free and independent nation? The congress which conducted us through the revolution, were a less numerous body than their successors will be: they were not chosen by, nor responsible to, their fellow citizens at large: 15 though appointed from year to year, and recallable at pleasure, they were generally continued for three years; and prior to the ratification of the federal articles, for a still longer term: they held their consultations always under the veil of secrecy: they had the sole transaction of our affairs with foreign nations: through the whole course of the war, they had the fate of their country more in their hands, than it is to be hoped will ever be the case with our 20 future representatives; and from the greatness of the prize at stake, and the eagerness of the party which lost it, it may well be supposed, that the use of other means than force would not have been scrupled: yet we know by happy experience, that the public trust was not betrayed; nor has the purity of our public councils in this particular ever suffered, even from the whispers of calumny.
- 25 Is the danger apprehended from the other branches of the federal government? But where are the means to be found by the president or the senate, or both? Their emoluments of office, it is to be presumed, will not, and without a previous corruption of the house of representatives cannot, more than suffice for very different purposes: their private fortunes, as they must all be American citizens, cannot possibly be sources of danger. The only means

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then which they can possess, will be in the dispensation of appointments. Is it here that suspicion rests her charge? Sometimes we are told, that this fund of corruption is to be exhausted by the president, in subduing the virtue of the senate. Now, the fidelity of the other house is to be the victim. The improbability of such a mercenary and perfidious combination of the several members of government, standing on as different foundations as republican principles will well admit, and at the same time accountable to the society over which they are placed, ought alone to quiet this apprehension. But fortunately, the constitution has provided a still further safeguard. The members of the congress are rendered ineligible to any civil offices, that may be created, or of which the emoluments may be increased, during the term of their election. No offices therefore can be dealt out to the existing members, but such as may become vacant by ordinary casualties; and to suppose that these would be sufficient to purchase the guardians of the people, selected by the people themselves, is to renounce every rule by which events ought to be calculated, and to substitute an indiscriminate and unbounded jealousy, with which all reasoning must be vain. The sincere friends of liberty, who give themselves up to the extravagancies of this passion, are not aware of the injury they do their own cause. As there is a degree of depravity in mankind, which requires a certain degree of circumspection and distrust: so there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us, faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

Publius

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PUBLIUS (JAMES MADISON)

Federalist No. 57

ESSAY

February 19, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by defending the House of Representatives against the criticism that it would become the rule of the few above the many.

GUIDING QUESTIONS

1. What ought to be the aim of every political constitution?
2. In what way is the federal House of Representatives the most popular branch of government?
3. What has always been deemed one of the strongest bonds by which a society can connect the people and the rulers together?
4. What examples does Madison give to justify his claim that size will not adversely affect the choice of representatives?

"Federalist 57," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 325-29.

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The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation

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.

5 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.

10 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.

15 Let me now ask, what circumstance there is in the constitution of the house of representatives, that violates the principles of republican government; or favours the elevation of the few, on the ruins of the many? Let me ask, whether every circumstance is not, on the contrary, strictly conformable to these principles; and scrupulously impartial to the rights and pretensions of every class and description of citizens?

20 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 obscure 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 correspondent branch of the legislature of the state.

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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 judgment, 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 honour, of favour, 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 favours his pretensions, and gives him a share in its honours 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 their favour, than from innovations in the government subversive of the authority of the people.

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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 for ever 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 interest, 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 favour 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 any thing 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 men. 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

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union relies for the attainment of these important ends? What then are we to understand by the objection which this paper has combatted? What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it; who pretend to be champions for the right and the capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them?

Were the objection to be read by one who had not seen the mode prescribed by the constitution for the choice of representatives, he could suppose nothing less, than that some unreasonable qualification of property was annexed to the right of suffrage; or that the right of eligibility was limited to persons of particular families or fortunes; or at least, that the mode prescribed by the state constitutions was, in some respect or other, very grossly departed from. We have seen how far such a supposition would err, as to the two first points. Nor would it, in fact, be less erroneous as to the last. 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 hundred. 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

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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*? It was shown in the last paper, that the real representation in the British house of commons, very little exceeds the proportion of one for every thirty thousand inhabitants. Besides a variety of powerful causes, not existing here, and which favour in that country the pretensions of rank and wealth, no person is eligible as a representative of a county, unless he possess real estate of the clear value of six hundred pounds sterling per year; nor of a city or borough, unless he possess a like estate of half that annual value. To this qualification, on the part of the county representatives, is added another on the part of the county electors, which restrains the right of suffrage to persons having a freehold estate of the annual value of more than twenty pounds sterling, according to the present rate of money. Notwithstanding these unfavourable circumstances, and notwithstanding some very unequal laws in the British code, it cannot be said, that the representatives of the nation have elevated the few, on the ruins of the many.

But we need not resort to foreign experience on this subject. Our own is explicit and decisive. 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. Some of her counties, which elect her state representatives, are almost as large as her districts will be by which her federal representatives will be elected. The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will, therefore, form nearly two districts for the choice of federal representatives. It forms, however, but one county, in which every elector votes for each of its

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representatives in the state legislature. And what may appear to be still more directly to our purpose, the whole city actually elects a *single member* for the executive council. This is the case in all the other counties of the state.

5 Are not these facts the most satisfactory proofs of the fallacy, which has been employed against the branch of the federal government under consideration? Has it appeared on trial, that the senators of New Hampshire, Massachusetts, and New York; or the executive council of Pennsylvania; or the members of the assembly in the two last states, have betrayed any peculiar disposition to sacrifice the many to the few; or are in any respect less worthy of their places, than the representatives and magistrates appointed in other states, by very
10 small divisions of the people?

But there are cases of a stronger complexion than any which I have yet quoted. One branch of the legislature of Connecticut is so constituted, that each member of it is elected by the whole state. So is the governor of that state, of Massachusetts, and of this state, and the president of New Hampshire. I leave every man to decide, whether the result of any one of
15 these experiments can be said to countenance a suspicion, that a diffusive mode of choosing representatives of the people, tends to elevate traitors, and to undermine the public liberty.

PUBLIUS (JAMES MADISON)

Federalist No. 62

ESSAY

February 27, 1788

The Independent Journal | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by introducing the Senate and explaining how it is structured.

GUIDING QUESTIONS

1. What are the qualifications for senators?
2. The Senate exhibits what principle of representation?
3. Why is having a second branch in the legislature a good thing?
4. How does a Senate provide stability to government?

"Federalist 62," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 331-36.

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The Senate

Having examined the constitution of the House of Representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the Senate.

5 The heads into which this member of the government may be considered are: I. The qualification of senators; II. The appointment of them by the State legislatures; III. The equality of representation in the Senate; IV. The number of senators, and the term for which they are to be elected; V. The powers vested in the Senate.

10 I. 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, 15 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 20 create a channel for foreign influence on the national councils.

II. 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 25 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.

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III. 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

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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.

IV. 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.

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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.

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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. The remark is verified in private life, and becomes more just, as well as more important, in national transactions.

To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others.

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former, with fewer of the benevolent emotions than the latter, are under fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that

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they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

- 5 Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils
10 and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.

- In another point of view, great 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
15 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
20 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
25 than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.

PUBLIUS (JAMES MADISON)

Federalist No. 63

ESSAY

March 1, 1788

The Independent Journal | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by continuing the discussion of the Senate.

GUIDING QUESTIONS

1. How does a Senate provide a due sense of national character?
2. How does a Senate provide responsibility in government?
3. What is the chief difference between ancient republics and American republics?
4. What must happen to the Senate before it can become tyrannical?

"Federalist 63," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 337-43.

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A *fifth* desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence.

An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind?

Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual; or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that State, by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by the sister States; whilst it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring.

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I add, as a *sixth* defect the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important.

Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party, and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the SHARE of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a NUMEROUS body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little

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blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.

It may be suggested, that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar importance. I have, on the contrary, endeavored in a former paper to show, that it is one of the principal recommendations of a confederated republic. At the same time, this advantage ought not to be considered as superseding the use of auxiliary precautions. It may even be remarked, that the same extended situation, which will exempt the people of America from some of the dangers incident to lesser republics, will expose them to the inconveniency of remaining for a longer time under the influence of those misrepresentations which the combined industry of interested men may succeed in distributing among them.

It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that character can be applied. In each of the two first there was a senate

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for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only
5 for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as
10 well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently
15 elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is re-
20 quired in every public act.

The difference most relied on, between the American and other republics, consists in the principle of representation; which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will
25 have shown that I am disposed neither to deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance.

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In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and REPRESENTING the people in their EXECUTIVE capacity.

5 Prior to the reform of Solon, Athens was governed by nine Archons, annually ELECTED BY THE PEOPLE AT LARGE. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually ELECTED BY THE PEOPLE; and PARTIALLY representing them in their LEGISLATIVE capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative
10 propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been ELECTIVE by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity.

15 Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually ELECTED BY THE WHOLE BODY OF THE PEOPLE, and considered as the REPRESENTATIVES of the people, almost in their PLENIPOTENTIARY capacity. The Cosmi of Crete were also annually ELECTED BY THE PEOPLE, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of
20 suffrage was communicated to a part only of the people.

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies IN THE TOTAL EXCLUSION OF THE PEOPLE, IN THEIR COLLECTIVE CAPACITY,
25 from any share in the LATTEr, and not in the TOTAL EXCLUSION OF THE REPRESENTATIVES OF THE PEOPLE from the administration of the FORMER. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful

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not to separate it from the other advantage, of an extensive territory. For it cannot be believed, that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece.

5 In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy.

10 To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States. But a more particular reply may be given.

15 Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the
20 means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address,
25 arrive at the object of a lawless ambition, through all these obstructions?

If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example. The Senate of that State is elected, as the federal Senate will be, indirectly by the people, and for a term less by one

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year only than the federal Senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment, and, at the same time, is not under the control of any such rotation as is provided for the federal Senate. There are some other lesser distinctions, which would expose the former to colorable objections, that do not lie against the latter. If the federal Senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal Constitution, have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in the Union.

But if any thing could silence the jealousies on this subject, it ought to be the British example. The Senate there instead of being elected for a term of six years, and of being confined to particular families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives, instead of being elected for two years, and by the whole body of the people, is elected for seven years, and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch.

As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable,

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as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second Punic War, lost almost the whole of its original portion.

Besides the conclusive evidence resulting from this assemblage of facts, that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body, we are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves.

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 70

ESSAY

March 15, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining how an energetic executive is compatible with republican government.

GUIDING QUESTIONS

1. What does Hamilton say is a leading character in the definition of good government?
2. What kind of executive is conducive to energy?
3. What is one of the weightiest objections to a plural executive?
4. What are the two greatest securities of which a plural executive deprives people?
5. From what does the idea of a plural executive originate?

"Federalist 70," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 345-51.

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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.

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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
5 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 despatch will generally characterize the proceedings of one man in a much more eminent degree
10 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
15 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 intrusted the executive authority wholly to single men. 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,
20 if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches any thing, it teaches us not to be enamoured of plurality in the Executive. We have seen that the Achaeans, on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions
25 between the Consuls, and between the military Tribunes, who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal, is a matter of astonishment, until we

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advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the Consuls to divide the administration between themselves by lot one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever.

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.

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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
5 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
10 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,
15 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 jarrings 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.
20 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
25 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, every thing would be to be apprehended from its plurality.

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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. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

"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

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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?

In the single instance in which the governor of this State is coupled with a council that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine, by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

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

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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.

10 The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be ``deep, solid, and ingenious," that ``the executive power is more easily confined when it is ONE'; that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is attainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of

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his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number³, were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive
5 much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often
10 the instruments and accomplices of his bad and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for
15 an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution.

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 78

ESSAY

May 28, 1788
New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining how the federal judiciary works.

GUIDING QUESTIONS

1. How long are judges to hold office?
2. Why is the judicial branch the least dangerous of the three?
3. Why must the judiciary be independent?
4. Why must judges possess permanent appointments?
5. How does Hamilton define a limited Constitution?

"Federalist 78," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 379-85.

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

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. 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.

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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 power¹; 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."² And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing 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.

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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
5 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
10 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
15 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
20 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
25 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.

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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
5 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
10 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
15 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;
20 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
25 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.

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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 any thing, 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 incon-

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sistent 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
5 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,
10 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
15 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,
20 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;
25 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 to-day. And every

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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.

5 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
10 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.

15 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
20 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.
25 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

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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
5 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
10 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.

BRUTUS

Essay XI

ESSAY EXCERPT

January 31, 1788

New-York Journal, and Weekly Register | New York City, New York

BACKGROUND

The anonymous Brutus penned this article criticizing the proposed Constitution, focusing on the power of the independent judiciary.

GUIDING QUESTIONS

1. Why will the opinions of the Supreme Court have the force of law, according to Brutus?
2. How will the independent judiciary affect the powers and rights of the state governments?
3. Why does Brutus expect the federal judiciary to try to extend its authority and power?

Anonymous, "Essays, of Brutus, XI," 31 January 1788, in *The Complete Anti-Federalist*, Vol. 2, ed. Herbert J. Storing (Chicago: University of Chicago Press, 1981), 417–22.

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The nature and extent of the judicial power of the United States, proposed to be granted by this constitution, claims our particular attention.

Much has been said and written upon the subject of this new system on both sides, but I have not met with any writer, who has discussed the judicial powers with any degree of accuracy. And yet it is obvious, that we can form but very imperfect ideas of the manner in which this government will work, or the effect it will have in changing the internal police and mode of distributing justice at present subsisting in the respective states, without a thorough investigation of the powers of the judiciary and of the manner in which they will operate. This government is a complete system, not only for making, but for executing laws.

And the courts of law, which will be constituted by it, are not only to decide upon the constitution and the laws made in pursuance of it, but by officers subordinate to them to execute all their decisions. The real effect of this system of government, will therefore be brought home to the feelings of the people, through the medium of the judicial power. It is, moreover, of great importance, to examine with care the nature and extent of the judicial power, because those who are to be vested with it, are to be placed in a situation altogether unprecedented in a free country. They are to be rendered totally independent, both of the people and the legislature, both with respect to their offices and salaries. No errors they may commit can be corrected by any power above them, if any such power there be, nor can they be removed from office for making ever so many erroneous adjudications.

The only causes for which they can be displaced, is, conviction of treason, bribery, and high crimes and misdemeanors.

This part of the plan is so modeled, as to authorize the courts, not only to carry into execution the powers expressly given, but where these are wanting or ambiguously expressed, to supply what is wanting by their own decisions.

That we may be enabled to form a just opinion on this subject, I shall, in considering it,

1st. Examine the nature and extent of the judicial powers—and

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2d. Inquire, whether the courts who are to exercise them, are so constituted as to afford reasonable ground of confidence, that they will exercise them for the general good....

In article 3d, section 2d, it is said, "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
5 which shall be made, under their authority, etc."...

This article...vests the judicial with a power to resolve all questions that may arise on any case on the construction of the constitution, either in law or in equity.

1st. They are authorized to determine all questions that may arise upon the meaning of the constitution in law. This article vests the courts with authority to give the constitution a
10 legal construction, or to explain it according to the rules laid down for construing a law.—
These rules give a certain degree of latitude of explanation. According to this mode of construction, the courts are to give such meaning to the constitution as comports best with the common, and generally received acceptance of the words in which it is expressed, regarding their ordinary and popular use, rather than their grammatical propriety. Where words
15 are dubious, they will be explained by the context....

2d. The judicial are not only to decide questions arising upon the meaning of the constitution in law, but also in equity.

By this they are empowered, to explain the constitution according to the reasoning spirit of it, without being confined to the words or letter....

20 From these remarks, the authority and business of the courts of law, under this clause, may be understood.

They will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and
25 spirit of the constitution. The opinions of the supreme court, whatever they may be, will

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have the force of law; because there is no power provided in the constitution, that can correct their errors, or control their adjudications. From this court there is no appeal. And I conceive the legislature themselves, cannot set aside a judgment of this court, because they are authorized by the constitution to decide in the last resort. The legislature must be controlled by the constitution, and not the constitution by them. They have therefore no more
5 right to set aside any judgment pronounced upon the construction of the constitution, than they have to take from the president, the chief command of the army and navy, and commit it to some other person. The reason is plain; the judicial and executive derive their authority from the same source, that the legislature do theirs; and therefore in all cases, where the
10 constitution does not make the one responsible to, or controllable by the other, they are altogether independent of each other.

The judicial power will operate to affect, in the most certain, but yet silent and imperceptible manner, what is evidently the tendency of the constitution:—I mean, an entire subversion of the legislative, executive and judicial powers of the individual states. Every adjudication of the supreme court, on any question that may arise upon the nature and extent of
15 the general government, will affect the limits of the state jurisdiction. In proportion as the former enlarge the exercise of their powers, will that of the latter be restricted.

That the judicial power of the United States, will lean strongly in favor of the general government, and will give such an explanation to the constitution, as will favor an extension
20 of its jurisdiction, is very evident from a variety of considerations.

1st. The constitution itself strongly countenances such a mode of construction. Most of the articles in this system, which convey powers of any considerable importance, are conceived in general and indefinite terms, which are either equivocal, ambiguous, or which require long definitions to unfold the extent of their meaning. The two most important powers
25 committed to any government, those of raising money, and of raising and keeping up troops, have already been considered, and shown to be unlimited by any thing but the discretion of the legislature. The clause which vests the power to pass all laws which are proper

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- and necessary, to carry the powers given into execution, it has been shown, leaves the legislature at liberty, to do every thing, which in their judgment is best. It is said, I know, that this clause confers no power on the legislature, which they would not have had without it—though I believe this is not the fact, yet, admitting it to be, it implies that the constitution is
- 5 not to receive an explanation strictly, according to its letter; but more power is implied than is expressed. And this clause, if it is to be considered, as explanatory of the extent of the powers given, rather than giving a new power, is to be understood as declaring, that in construing any of the articles conveying power, the spirit, intent and design of the clause, should be attended to, as well as the words in their common acceptance.
- 10 This constitution gives sufficient color for adopting an equitable construction, if we consider the great end and design it professedly has in view—these appear from its preamble to be, “to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity.” The design of this system is here expressed, and it is proper to
- 15 give such a meaning to the various parts, as will best promote the accomplishment of the end; this idea suggests itself naturally upon reading the preamble, and will countenance the court in giving the several articles such a sense, as will the most effectually promote the ends the constitution had in view—how this manner of explaining the constitution will operate in practice, shall be the subject of future inquiry.
- 20 2d. Not only will the constitution justify the courts in inclining to this mode of explaining it, but they will be interested in using this latitude of interpretation. Every body of men invested with office are tenacious of power; they feel interested, and hence it has become a kind of maxim, to hand down their offices, with all its rights and privileges, unimpaired to their successors; the same principle will influence them to extend their power, and increase
- 25 their rights; this of itself will operate strongly upon the courts to give such a meaning to the constitution in all cases where it can possibly be done, as will enlarge the sphere of their own authority. Every extension of the power of the general legislature, as well as of the judicial powers, will increase the powers of the courts; and the dignity and importance of the judges, will be in proportion to the extent and magnitude of the powers they exercise. I

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add, it is highly probable the emolument of the judges will be increased, with the increase of the business they will have to transact and its importance. From these considerations the judges will be interested to extend the powers of the courts, and to construe the constitution as much as possible, in such a way as to favor it; and that they will do it, appears probable.

- 5 3d. Because they will have precedent to plead, to justify them in it. It is well known, that the courts in England, have by their own authority, extended their jurisdiction far beyond the limits set them in their original institution, and by the laws of the land....

- 10 When the courts will have a precedent before them of a court which extended its jurisdiction in opposition to an act of the legislature, is it not to be expected that they will extend theirs, especially when there is nothing in the constitution expressly against it? and they are authorized to construe its meaning, and are not under any control?

This power in the judicial, will enable them to mold the government, into almost any shape they please....

CHIEF JUSTICE JOHN MARSHALL

*William Marbury v. James Madison,
Secretary of State of the United States*

U.S. SUPREME COURT MAJORITY OPINION EXCERPT

February 24, 1803
Supreme Court | Washington, D.C.

BACKGROUND

The Supreme Court issued its ruling after William Marbury sued then-Secretary of State James Madison over his appointment to a government office.

GUIDING QUESTIONS

1. What is Marbury seeking?
2. What authority does the Supreme Court have, according to Marshall's discussion of the judicial power of the United States?
3. What is a writ of mandamus?
4. What kind of law is the Constitution?
5. According to Marshall, what is the essence of judicial duty?

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

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Mr. Chief Justice Marshall delivered the Opinion of the Court:

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

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

5 3rd. If they do afford him a remedy, is it a mandamus issuing from this court?...

It is...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
10 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.

2nd. 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.

15 It remains to be inquired whether,

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

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

2nd. The power of this court.

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

Whether it can issue from this court....

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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."

5 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.

10 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.

15 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."

20 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.

25 If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested. The subsequent part of the section is

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mere surplusage, is entirely without meaning, if such is to be the construction. If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance....

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 inquire 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.

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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.

5 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, 10 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 15 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.

20 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 25 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

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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.

- 5 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

- 10 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.

- 15 Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

- 25 That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But

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the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

- 5 Could it be the intention of those who gave this power, to say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

- 10 In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

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

- 15 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?

- 20 "No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same 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?

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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.

5 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!...

10 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.

15 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.

CHIEF JUSTICE JOHN MARSHALL

James McCulloch v. the State of Maryland, *John James*

U.S. SUPREME COURT MAJORITY OPINION EXCERPT

March 6, 1819

Supreme Court | Washington, D.C.

BACKGROUND

The Supreme Court issued its ruling in a case involving the constitutionality of the national bank and a tax which the state of Maryland imposed on the bank.

GUIDING QUESTIONS

1. What was the nature of the Maryland law at issue in this case?
2. From where does the Constitution derive its authority?
3. What does it mean to say that the U.S. government is one of "enumerated powers"?
4. What does the Necessary and Proper Clause add to the idea of enumerated powers?
5. How does Marshall interpret the word "necessary"?
6. What "means" are appropriate and constitutional for executing an act of the national legislature?
7. Why does Marshall deem the Maryland tax to be contrary to the Constitution?
8. What is the extent of a state's sovereignty with respect to the Constitution?

McCulloch v. Maryland, 17 U.S. 316 (1819).

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Chief Justice MARSHALL delivered the opinion of the court...

... [Maryland] denies the obligation of a law enacted by the legislature of the Union, and [McCulloch], on his part, contests the validity of an act which has been passed by the legislature of that state. . . . No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps, of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the United States has the Constitution of our country devolved this important duty.

10 The first question made in the cause is—has Congress power to incorporate a bank? It has been truly said, that this can scarcely be considered as an open question entirely unprejudiced by the former proceedings of the Nation respecting it. The principle now contested was introduced at a very early period of our history, has been recognized by many successive legislatures, and has been acted upon by the Judicial Department, in cases of peculiar delicacy, as a law of undoubted obligation. . . .

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. They acted upon it in the only manner in which

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they can act safely, effectively and wisely, on such a subject—by assembling in convention. It is true, they assembled in their several States—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.

From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is “ordained and established” in the name of the people, and is declared to be ordained, “in order to form a more perfect union, establish justice, insure domestic tranquility, and secure the blessings of liberty to themselves and to their posterity.” The assent of the States in their sovereign capacity is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their act was final. It required not the affirmance, and could not be negatived, by the State Governments. The Constitution, when thus adopted, was of complete obligation, and bound the State sovereignties. . . .

. . . The Government of the Union then . . . is, emphatically and truly, a Government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise so long as our system shall exist. In discussing these questions, the conflicting powers of the General and State governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

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If any one proposition could command the universal assent of mankind, we might expect it would be this—that the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all.

5 Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying [in Article VI, section 2], “this Constitution, and the laws of the United States, which shall be made in pursuance thereof,” “shall be the supreme
10 law of the land,” and by requiring that the members of the State legislatures and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land, “anything in the Constitution or laws of any State to the contrary notwithstanding.”

15 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 Tenth Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word
20 “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. . . . A Constitution, to contain an accurate detail of all the subdivisions
25 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

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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.

Although, among the enumerated powers of Government, we do not find the word “bank” or “incorporation,” we find the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. . . . [A] government intrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be intrusted with ample means for their execution. The power being given, it is the interest of the Nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. . . . The exigencies of the Nation may require that the treasure raised in the north should be transported to the south that raised in the east, conveyed to the west, or that this order should be reversed. Is that construction of the Constitution to be preferred which would render these operations difficult, hazardous and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise, by withholding a choice of means? If, indeed, such be the mandate of the Constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential, to the beneficial exercise of those powers. It is, then, the subject of fair inquiry, how far such means may be employed.

It is not denied that the powers given to the Government imply the ordinary means of execution. That, for example, of raising revenue and applying it to national purposes is

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admitted to imply the power of conveying money from place to place as the exigencies of the Nation may require, and of employing the usual means of conveyance. But it is denied that the Government has its choice of means, or that it may employ the most convenient means if, to employ them, it be necessary to erect a corporation. On what foundation does
5 this argument rest? On this alone: the power of creating a corporation is one appertaining to sovereignty, and is not expressly conferred on Congress. This is true. But all legislative powers appertain to sovereignty. The original power of giving the law on any subject whatever is a sovereign power, and if the Government of the Union is restrained from creating a corporation as a means for performing its functions, on the single reason that the creation
10 of a corporation is an act of sovereignty, if the sufficiency of this reason be acknowledged, there would be some difficulty in sustaining the authority of congress to pass other laws for the accomplishment of the same objects. The government which has a right to do an act and has imposed on it the duty of performing that act must, according to the dictates of reason, be allowed to select the means, and those who contend that it may not select any
15 appropriate means that one particular mode of effecting the object is excepted take upon themselves the burden of establishing that exception. . . .

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
20 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.” . . .

But the argument [against the Bank] 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
25 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

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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 [sic] 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. The comment on the word is well illustrated by the passage cited at the bar from the 10th section of the 1st article of the Constitution. It is, we think, impossible to compare the sentence which prohibits a State from laying “imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws,” with that which authorizes Congress “to make all laws which shall be necessary and proper for carrying into execution” the powers of the General Government without feeling a conviction that the convention understood itself to change materially the meaning of the word “necessary,” by prefixing the word “absolutely.” This word, then, like others, is used in various senses, and, in its

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construction, the subject, the context, the intention of the person using them are all to be taken into view.

Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a Nation essentially depends. It must have been the intention of those who gave these powers to insure, so far as human prudence could insure, their beneficial execution. This could not be done, by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a Constitution intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs. To have prescribed the means by which Government should, in all future time, execute its powers would have been to change entirely the character of the instrument and give it the properties of a legal code. It would have been an unwise attempt to provide by immutable rules for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. . . .

But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the State of Maryland is founded on the intention of the convention as manifested in the whole clause. To waste time and argument in proving that, without it, Congress might carry its powers into execution would be not much less idle than to hold a lighted taper to the sun. As little can it be required to prove that in the absence of this clause, Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means which tended directly to the execution of the constitutional powers of the Government, were in themselves Constitutional. This clause, as construed by the state of Maryland, would abridge, and almost annihilate, this useful and necessary right of the legislature to select its means. That this could not be intended is, we should think, had it not been already controverted, too apparent for controversy.

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We think so for the following reasons: 1st. The clause is placed among the powers of Congress, not among the limitations on those powers. 2d. Its terms purport to enlarge, not to diminish, the powers vested in the Government. It purports to be an additional power, not a restriction on those already granted. . . .

- 5 The result of the most careful and attentive consideration bestowed upon this clause is that, if it does not enlarge, it cannot be construed to restrain, the powers of Congress, or to impair the right of the legislature to exercise its best judgment in the selection of measures to carry into execution the Constitutional powers of the Government. If no other motive for its insertion can be suggested, a sufficient one is found in the desire to remove all doubts
10 respecting the right to legislate on that vast mass of incidental powers which must be involved in the Constitution if that instrument be not a splendid bauble.

- We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which
15 the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional. . . .

- 20 After the most deliberate consideration, it is the unanimous and decided opinion of this Court that the act to incorporate the Bank of the United States is a law made in pursuance of the Constitution, and is a part of the supreme law of the land. . . .

- It being the opinion of the Court that the act incorporating the bank is constitutional, and that the power of establishing a branch in the State of Maryland might be properly exercised
25 by the bank itself, we proceed to inquire:

Whether the State of Maryland may, without violating the Constitution, tax that branch?

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That the power of taxation is one of vital importance; that it is retained by the States; that it is not abridged by the grant of a similar power to the Government of the Union; that it is to be concurrently exercised by the two Governments—are truths which have never been denied. But such is the paramount character of the Constitution that . . . if it may restrain a State from the exercise of its taxing power on imports and exports[,] the same paramount character would seem to restrain, as it certainly may restrain, a State from such other exercise of this power as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union. A law absolutely repugnant to another as entirely repeals that other as if express terms of repeal were used.

On this ground, the counsel for the bank place its claim to be exempted from the power of a State to tax its operations. There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds. This great principle is that the Constitution and the laws made in pursuance thereof are supreme; that they control the Constitution and laws of the respective States, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are, 1st. That a power to create implies a power to preserve; 2d. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve; 3d. That, where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. . . .

That the power of taxing [the Bank] by the States may be exercised so as to destroy it is too obvious to be denied. . . .

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. . . .

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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. . . .

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. . . .

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It has also been insisted that, as the power of taxation in the General and State Governments is acknowledged to be concurrent, every argument which would sustain the right of the General Government to tax banks chartered by the States, will equally sustain the right of the States to tax banks chartered by the general government.

- 5 But the two cases are not on the same reason. The people of all the States have created the General Government, and have conferred upon it the general power of taxation. The people of all the States, and the States themselves, are represented in Congress, and, by their representatives, exercise this power. When they tax the chartered institutions of the States, they tax their constituents, and these taxes must be uniform. But when a State taxes the
- 10 operations of the government of the United States, it acts upon institutions created not by their own constituents, but by people over whom they claim no control. It acts upon the measures of a Government created by others as well as themselves, for the benefit of others in common with themselves. The difference is that which always exists, and always must exist, between the action of the whole on a part, and the action of a part on the whole—
- 15 between the laws of a Government declared to be supreme, and those of a Government which, when in opposition to those laws, is not supreme.

But if the full application of this argument could be admitted, it might bring into question the right of Congress to tax the State banks, and could not prove the rights of the States to tax the Bank of the United States.

- 20 The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.
- 25 We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void. . . .

FIRST CONGRESS

Proposed Amendments to the Constitution

JOIN RESOLUTION EXCERPT

September 25, 1789

Federal Hall | City of New-York, New York

Bill of Rights

BACKGROUND

As part of a compromise to secure the ratification of the Constitution, Federalists introduced in the first Congress a Bill of Rights as twelve amendments to the new Constitution. Below are the ten amendments that were ultimately ratified.

ANNOTATIONS**NOTES & QUESTIONS****Amendment I**

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.

5 **Amendment II**

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.

Amendment III

10 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.

"The Constitution of the United States of America," in *The U.S. Constitution: A Reader* (Hillsdale, MI: Hillsdale College Press, 2012), 58-60.

Amendment IV

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.

Amendment V

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.

Amendment VI

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.

Amendment VII

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 re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

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

Amendment IX

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

Amendment X

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.

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 84

ESSAY EXCERPT

July 16, 1788
New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining Publius's objections to a Bill of Rights.

GUIDING QUESTIONS

1. What is the cornerstone of republican government, according to Hamilton?
2. Why does Hamilton think a bill of rights would be unnecessary and dangerous?
3. In what way is the Constitution itself a bill of rights?

"Federalist 84," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 293-97.

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In the course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. There, however, remain a few which either did not fall naturally under any particular head or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament.

I add that New York is of the number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most intemperate partisans of a bill of rights. To justify their zeal in this matter, they allege two things: one is that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges and rights, which, in substance amount to the same thing; the other is, that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured.

To the first I answer, that the Constitution proposed by the convention contains, as well as the constitution of this State, a number of such provisions.

Independent of those which relate to the structure of the government, we find the following: Article 1, section 3, clause 7 "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 9, of the same article, clause 2 "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." Clause 3 "No bill of attainder or ex-post-facto law shall be passed." Clause 7 "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under

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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." Article 3, section 2, clause 3 "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
5 not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Section 3, of the same article "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." And clause 3, of the same
10 section "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."

It may well be a question, whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this State. The establishment of the writ of
15 habeas corpus, the prohibition of ex-post-facto laws, and of TITLES OF NOBILITY, TO WHICH WE HAVE NO CORRESPONDING PROVISION IN OUR CONSTITUTION, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the prac-
20 tice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone,[1](#) in reference to the latter, are well worthy of recital: "To bereave a man of life, Usays he,e or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but
25 confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore A MORE DANGEROUS ENGINE of arbitrary government." And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the habeas-corpus act, which in one place he calls "the BULWARK of the British Constitution.

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Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

- 5 To the second that is, to the pretended establishment of the common and state law by the Constitution, I answer, that they are expressly made subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law
10 and to remove doubts which might have been occasioned by the Revolution. This consequently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself.

- It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by
15 the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into
20 the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. "WE, THE PEOPLE of the United
25 States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

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But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamors against the plan of the convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this State. But the truth is, that both of them contain all which, in relation to their objects, is reasonably to be desired.

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the next, I contend, that whatever has been said about it in that of any other State, amounts to nothing. What signifies a declaration, that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in

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any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.³ And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights.

5 There remains but one other view of this matter to conclude the point. The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights in Great Britain form its Constitution, and conversely the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner
10 in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the State constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in
15 the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are to be found in
20 any part of the instrument which establishes the government. And hence it must be apparent, that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing....

UNIT 4

Equality in America

45-50-minute classes | 16-20 classes

UNIT PREVIEW**Structure**

LESSON 1	Self-Government vs. Slavery	4-5 classes	p. 7
LESSON 2	Slavery and Moral Relativism	3-4 classes	p. 14
LESSON 3	Lincoln’s Statesmanship and the End of Slavery	4-5 classes	p. 18
LESSON 4	Civil Rights and Reconstruction	3-4 classes	p. 21
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 25
APPENDIX B	Primary Sources		p. 37

Why Teach Equality in America

The United States was the first country in history founded on a commitment to equality: that “all men are created equal.” Since 1776, Americans’ efforts to live and govern by this principle have resulted in the greatest degrees of freedom, prosperity, and security for most people in human history, both for American citizens and for the peoples of the world. It is unprecedented. It is what makes America exceptional. But it is also true that America has not always lived up to the great truth of equality. Thus while the American Founders were at the vanguard of asserting and securing the equal natural rights of all people—setting the nation on the path to establishing such equality—they also allowed the inhumane institution of slavery to become the foremost stumbling block toward achieving the fundamental human equality they had proclaimed. Nevertheless, by the 1850s and 1860s a strong majority of Americans, growing out of an abolitionist movement inspired by the principles of the Declaration of Independence, and led by Abraham Lincoln and the soldiers of the Union, would take up the Founders’ charge to ensure that America would be a nation of equality and freedom for all.

What Teachers Should Consider

From *The 1776 Report*, Pages 26-28

Challenges to constitutional government are frequent and to be expected in a popular government based on consent. In his Farewell Address, George Washington advised his countrymen that when it came to the preservation of the Constitution they should “resist with care the spirit of innovation upon its principles however specious the pretexts.” The Constitution has proven sturdy against narrow interest groups that seek to change its elements of the Constitution merely to get their way.

At the same time, it is important to note that by design there is room in the Constitution for significant change and reform. Indeed, great reforms ... have often come forward that improve our dedication to the principles of the Declaration of Independence under the Constitution.

More problematic have been movements that reject the fundamental truths of the Declaration of Independence and seek to destroy our constitutional order. The arguments, tactics, and names of these movements have changed, and the magnitude of the challenge has varied, yet they are all united by adherence to the same falsehood—that people do not have equal worth and equal rights.

At the infancy of our Republic, the threat was a despotic king who violated the people’s rights and overthrew the colonists’ longstanding tradition of self-government. After decades of struggle, the colonists succeeded in establishing a more perfect Union founded not upon the capricious whims of a tyrant, but republican laws and institutions founded upon self-evident and eternal truths.

It is the sacred duty of every generation of American patriots to defend this priceless inheritance.

The most common charge levelled against the Founders, and hence against our country itself, is that they were hypocrites who didn’t believe in their stated principles, and therefore the country they built rests on a lie. This charge is untrue, and has done enormous damage, especially in recent years, with a devastating effect on our civic unity and social fabric.

Many Americans labor under the illusion that slavery was somehow a uniquely American evil. It is essential to insist at the outset that the institution be seen in a much broader perspective. It is very hard for people brought up in the comforts of modern America, in a time in which the idea that all human beings have inviolable rights and inherent dignity is almost taken for granted, to imagine the cruelties and enormities that were endemic in earlier times. But the unfortunate fact is that the institution of slavery has been more the rule than the exception throughout human history.

It was the Western world’s repudiation of slavery, only just beginning to build at the time of the American Revolution, which marked a dramatic sea change in moral sensibilities. The American Founders were living on the cusp of this change, in a manner that straddled two worlds.

How Teachers Can Learn More

TEXTS

<i>The 1776 Report</i> , The President's Advisory 1776 Commission	Pages 26–34
<i>The U.S. Constitution: A Reader</i> , ed. Hillsdale College Politics Faculty	Chapters 7–9

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101
Civil Rights in American History

Primary Sources Studied in This Unit

Statements on slavery, George Washington, John Adams, Benjamin Franklin, Alexander Hamilton, James Madison
Notes on the State of Virginia, Query 18: “Manners,” Thomas Jefferson
“What to the Slave Is the Fourth of July?” Frederick Douglass
“The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?” Frederick Douglass
Speech on the reception of abolition petitions, John C. Calhoun
Speech on the Oregon Bill, John C. Calhoun
The Perpetuation of Our Political Institutions, Abraham Lincoln
Speech at Peoria, Abraham Lincoln
Dred Scott v. Sandford
Speech on the *Dred Scott* decision, Abraham Lincoln
“House Divided” speech, Abraham Lincoln
Speech at Chicago, Stephen Douglas
The Seventh Lincoln-Douglas Debate
Address at Cooper Institute, Abraham Lincoln
Cornerstone Speech, Alexander Stephens
First inaugural address, Abraham Lincoln
Message to Congress in Special Session, Abraham Lincoln
The Emancipation Proclamation, Abraham Lincoln
Gettysburg Address, Abraham Lincoln
Second inaugural address, Abraham Lincoln
Civil Rights Act of 1866
13th Amendment to the Constitution
14th Amendment to the Constitution
15th Amendment to the Constitution
The Atlanta Exposition Address, Booker T. Washington
“The Talented Tenth,” W.E.B. DuBois

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — Self-Government vs. Slavery

4-5 classes

LESSON OBJECTIVE

Students learn about the status of slavery during the American founding and the ways in which its status changed afterward.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution

Lecture 3

Constitution 101

Lecture 6

Civil Rights in American History

Lectures 1 and 2

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Statements on slavery, George Washington, John Adams, Benjamin Franklin, Alexander Hamilton, James Madison

Notes on the State of Virginia, Query 18: “Manners,” Thomas Jefferson

“What to the Slave Is the Fourth of July?” Frederick Douglass

“The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?” Frederick Douglass

Speech on the reception of abolition petitions, John C. Calhoun

Speech on the Oregon Bill, John C. Calhoun

The Perpetuation of Our Political Institutions, Abraham Lincoln

TERMS AND TOPICS

equality

Compromise of 1850

slavery

self-government

Northwest Ordinance

rule of law

abolition

civic education

cotton gin

civic religion

Missouri Compromise

statesmanship

positive good

morality

concurrent majority

political persuasion

sectionalism

political moderation

QUESTIONS FOR THE AMERICAN MIND

- How did the Founders understand the tension between slavery and the principle of equality in the Declaration of Independence?
- What was the nature of the Founders' compromise with slavery at the time of the founding for the sake of the union? How did those who were opposed to slavery believe that slavery could be abolished only if the union were preserved?
- Why did the Founders expect that slavery would eventually die out?
- What efforts did the founding generation make to abolish slavery?
- What are the three clauses related to slavery in the Constitution? Explain each.
- In the debate leading up to the Three-Fifths Clause, how was the northerners' insistence on limiting the value of a slave for purposes of representation an effort both to call the South's bluff on the personhood of slaves and to prohibit disproportionate power for those who wished to defend and expand slavery?
- How did Frederick Douglass's views on the founding with respect to slavery change during his work for abolition?
- What were the unforeseen consequences of the cotton gin, invented in 1793, four years after the adoption of the Constitution?
- What was the argument in the defense of slavery as a "positive good" that emerged among Southern apologists in the decades after the founding?
- How did the idea of slavery as a "positive good" challenge the Constitution's stance on slavery and the path on which the founding generation had set slavery?
- How did John C. Calhoun critique the Founders on equality, natural rights, and the social contract?
- How did John C. Calhoun reject the ideas of the Declaration of Independence in arguing for slavery?
- How did John C. Calhoun's theory of the concurrent majority differ and depart from the Founders' constitutionalism?
- How did sectionalism rise after the founding generation?
- What was Abraham Lincoln's understandings of the following?
 - the vulnerabilities of self-government
 - how to preserve self-government
 - the rule of law
 - the need for civic education
 - the need for civic religion
 - statesmanship
 - morality
 - political persuasion
 - political moderation

KEYS TO THE LESSON

Students should understand the Founders' words and deeds with respect to slavery, both in their private lives and in public office. They should learn, as the 1776 Report states, that "George Washington owned slaves, but came to detest the practice, and wished for 'a plan adopted for the abolition of it.' By the end of his life, he freed all the slaves in his family estate.

"Thomas Jefferson also held slaves, and yet included in his original draft of the Declaration a strong condemnation of slavery, which was removed at the insistence of certain slaveholding delegates. Inscribed

in marble at his memorial in Washington, DC, is Jefferson's foreboding reference to the injustice of slavery: 'I tremble for my country when I reflect that God is just; that His justice cannot sleep forever.'

"James Madison saw to it at the Constitutional Convention that, even when the Constitution compromised with slavery, it never used the word "slave" to do so. No mere semantics, he insisted that it was 'wrong to admit in the Constitution the idea that there could be property in men.'

"Indeed, the compromises at the Constitutional Convention were just that: compromises. The Three-Fifths Compromise was proposed by an antislavery delegate to prevent the South from counting their slaves as whole persons for purposes of increasing their congressional representation. The so-called fugitive-slave clause, perhaps the most hated protection of all, accommodated pro-slavery delegates but was written so that the Constitution did not sanction slavery in the states where it existed. There is also the provision in the Constitution that forbade any restriction of the slave trade for twenty years after ratification—at which time Congress immediately outlawed the slave trade.

"The First Continental Congress agreed to discontinue the slave trade and boycott other nations that engaged in it, and the Second Continental Congress reaffirmed this policy. The Northwest Ordinance, a pre-Constitution law passed to govern the western territories (and passed again by the First Congress and signed into law by President Washington) explicitly bans slavery from those territories and from any states that might be organized there.

"Above all, there is the clear language of the Declaration itself: "We hold these truths to be self-evident, that all men are created equal." The Founders knew slavery was incompatible with *that* truth.

"It is important to remember that, as a question of practical politics, no durable union could have been formed without a compromise among the states on the issue of slavery. Is it reasonable to believe that slavery could have been abolished sooner, had the slave states not been in a union with the free? Perhaps. But what is momentous is that a people that included slaveholders founded their nation on the proposition that 'all men are created equal.'

"So why did they say that without immediately abolishing slavery? To establish the principle of consent as the ground of all political legitimacy and to check against any possible future drift toward or return to despotism, for sure. But also, in Lincoln's words, "to declare the right, so that the enforcement of it might follow as fast as circumstances should permit."

"The foundation of our Republic planted the seeds of the death of slavery in America. The Declaration's unqualified proclamation of human equality flatly contradicted the existence of human bondage and, along with the Constitution's compromises understood in light of that proposition, set the stage for abolition. Indeed, the movement to abolish slavery *that first began in the United States* led the way in bringing about the end of legal slavery.

"Benjamin Franklin was president of the Pennsylvania Society for Promoting the Abolition of Slavery, and John Jay (the first Chief Justice of the Supreme Court) was the president of a similar society in New York. John Adams opposed slavery his entire life as a 'foul contagion in the human character' and 'an evil of colossal magnitude.'

“Frederick Douglass had been born a slave but escaped and eventually became a prominent spokesman for the abolitionist movement. He initially condemned the Constitution, but after studying its history came to insist that it was a ‘glorious liberty document’ and that the Declaration of Independence was ‘the ring-bolt to the chain of your nation’s destiny.’

“And yet over the course of the first half of the nineteenth century, a growing number of Americans increasingly denied the truth at the heart of the founding. Senator John C. Calhoun of South Carolina famously rejected the Declaration’s principle of equality as ‘the most dangerous of all political error’ and a ‘self-evident lie.’ He never doubted that the Founders meant what they said.

“To this rejection, Calhoun added a new theory in which rights inhere not in every individual by ‘the Laws of Nature and of Nature’s God’ but in groups or races according to historical evolution. This new theory was developed to protect slavery—Calhoun claimed it was a ‘positive good’—and specifically to prevent lawful majorities from stopping the spread of slavery into federal territories where it did not yet exist.”

— *The 1776 Report*, pages 28–33

Teachers might best plan and teach Self-Government vs. Slavery with emphasis on the following approaches:

- Familiarize students with the views of the leading Founders on slavery. Northern Founders—most of whom were strongly opposed to slavery—and even some southern Founders who believed slavery immoral were unable to end slavery in 1776. For instance, Thomas Jefferson included a condemnation of the slave trade in the draft of the Declaration of Independence but the slaveholding interest objected to including such a statement. They continued nevertheless in the belief that a country united with the southern states would provide the best prospects for actually abolishing slavery. They concluded this because without unity, the Americans would have lost the Revolutionary War (giving up their independence and freedom to continued British rule that would perpetuate slavery anyways) or the southern colonies would have formed their own country, in which case those who opposed slavery would have no power to abolish slavery where it existed in the South (and very likely would have lost their own liberty to England or some other European colonial power). During the Civil War, Frederick Douglass made similar arguments for preserving the Union against fellow abolitionists who wanted to let the South secede with slavery intact.
- Consider with students how America is unprecedented in the history of the world because it was founded on the principle that “all men are created equal and that they are endowed by their Creator with certain unalienable rights.” Consider the view of many Founders—as well as abolitionists Abraham Lincoln and Frederick Douglass, and the meaning of the “promissory note” of Martin Luther King Jr.—that America is founded on this principle of the inherent equality of every human being based on humanity and natural rights; and that consequently, the role of the American nation and her citizens, as well as her history, has been one of trying to establish this principle in practice through a self-governing people. Almost all of the Founders recognized at the very least that the statement of the principle of equality, despite a compromise

that allowed for the pre-existing institution's continuing existence, undermined the legitimacy of slavery.

- Take the time to consider, read, and discuss the ways in which slavery was addressed in the Constitution. While the Constitution did not abolish slavery, it did place new significant, national limits on it. Indeed, at the time it was adopted, the Constitution marked one of the most significant moves to restrict slavery in the world. As Frederick Douglass and Abraham Lincoln would later acknowledge, the Declaration's principle of equality and the Constitution's arrangements gave the Founders the belief that they had placed slavery on the path to eventual extinction.
- Note for students the history-changing invention of Eli Whitney's cotton gin in 1793, four years after the adoption of the Constitution. The cotton gin would greatly increase the profitability of slavery in the cotton-growing states of the South and thereby create a significant (and regional) interest in perpetuating the institution of slavery. The new economics of slavery that would grow out of the cotton gin and the vast cotton industry questioned the assumption and changed the projection of the founding generation concerning the viability and eventual demise of slavery.
- Clarify for students the arguments of northerners and southerners concerning the Three-Fifths Clause. The clause is not about the humanity of slaves; it is strictly about how much representation slave-owning states would receive in Congress and the Electoral College. The great hypocrisy of the slaveholders was that while they refused to call a slave a human being, they insisted that each slave be counted as a whole person for purposes of representation. In fact, it was the anti-slavery Founders who did not want slaves counted at all in the Constitution for the purposes of representation, and it was an opponent of slavery who proposed the Three-Fifths Clause. The fact that slaves were only counted as three-fifths for the purposes of representation was a disappointment for southern states, as they had demanded they be counted as a whole person. It was a partial victory for northern opponents to slavery, as it would give the slaveholding states less influence in lawmaking. Additionally, students should understand that this compromise was to secure the southern support for the Constitution, without which the country would become disunited and unable to move as a nation toward eventual abolition.
- Remind students that the slave trade was not formally limited in the states (the Continental Congress had temporarily banned the practice in 1774) until the passage of the Constitution, which allowed for it to be outlawed nationwide in 1808 (which it was) and for Congress to discourage it by imposing tariffs on the slave trade in the meantime. Students should understand that without the compromise that allowed this twenty-year delay, the power to abolish the slave trade would not have been granted in the first place.
- Consider with students the significance of the Constitution not using the word "slave" and instead using "person." Refusing to use the word "slave" avoided giving legal legitimacy to slavery. Even Article IV, Section 2, Clause 3 emphasizes that slavery was legal based on certain state, not federal, laws. The use of the word "person" forced even slaveholders to recognize the humanity of the slave: that he or she was in fact a human person, not property.
- Point out for students that clauses that were not about slavery but which slaveholding interests could use to their benefit were not therefore pro-slavery clauses. Such a logical fallacy would

implicate as evil anything hijacked for use in committing a wrong act, for example, a road used by bank robbers in their getaway would be “pro-robbery.”

- Consider with students the sectional nature of views on slavery during the founding. The majority of northerners and northern Founders (e.g., John Adams, Benjamin Franklin, Benjamin Rush, Gouverneur Morris, and John Jay) spoke and wrote extensively on the immorality of slavery and its need to be abolished. Some northern Founders, such as John Jay, Alexander Hamilton, and Benjamin Franklin, founded or served in abolitionist societies.
- Consider also that even among the southern Founders who supported slavery or held slaves, several leading Founders expressed regret and fear of divine retribution for slavery in America, such as Thomas Jefferson, James Madison, and George Washington. Some freed their slaves as well, such as George Washington, who by the end of his life freed the slaves in his family estate. And many, like Thomas Jefferson, nevertheless maintained that slaves were men in full possession of the natural rights of all men. Making these observations does not diminish the inhumaneness of slavery or dismiss the wrong of racism by certain colonists or other individual Americans living in other generations.
- Ask students how to judge the Founders who owned slaves and yet supported the Declaration of Independence and Constitution. Students should consider their public and private lives as well as their words and deeds. Taken altogether, students should recognize the difficulty in assigning an absolute moral judgment that a person is entirely bad or entirely good.
- Have students also consider the distinction between judging character absolutely versus judging individual actions. When they do, students will encounter figures who did both much that was good and also some that was bad, and that this contradiction runs through the heart of every person.
- Be careful with the phrase “consider the times,” as this phrase can easily give the impression that truth and morality (good and evil) are merely relative to one’s viewpoint or historical time period. Instead, help students understand that “to consider the times” in which the American colonists and Founders lived is not to excuse moral injustices or to justify relativism. We should consider the circumstances at the time and weigh them against principles that transcend time. It’s not whitewashing or rewriting history. It is recognizing the reality of history and honestly assessing how figures at the time acted within their circumstances in light of the truth.
- Have students consider the status of slavery over the initial decades of the country’s history. At the founding, slavery was either openly condemned by northerners or defended (but seldom celebrated) by southerners. Its toleration at the time of the founding was for the sake of a unity that even many abolitionists believed was the only eventual path toward abolition. Based on the evidence at the time, many leading Founders believed slavery was naturally destined for extinction, that public opinion had steadily grown toward seeing slavery for the moral evil that it was, and that the principles of the Declaration of Independence and Revolution helped shape this public opinion and would also be the vehicle for eventual equality. The Founders also believed the Constitution restricted slavery, created a path to restricting it further (by holding the union together), and kept slavery on the path it was already travelling: to extinction. The Declaration of Independence founded the country on principles of equality that could and would be used to demand the end of slavery. The Northwest Ordinance had prohibited the expansion of slavery.

The Constitution refused to give legal standing to the institution, and many states had abolished slavery outright. Even Founders who held slaves believed the profitability of slavery was gradually but decisively waning and that slavery would die out on its own in a short period of time.

- Explain to students how the growth in population in the North would eventually allow northern states to restrict slavery further and perhaps even abolish it via a constitutional amendment. Southern slaveholders recognized that they had to expand the number of slave states if they were to prohibit such actions by northerners. The challenge, however, was that they needed northern states to acquiesce to such expansion. To do so, they appealed first to the argument that slavery was a positive good, as captured in the writings of John C. Calhoun. Students should read Calhoun's writings in order to examine his arguments and to understand how Calhoun explicitly rejected the American founding as captured in the Declaration of Independence. Students should work through and identify the serious faults in Calhoun's arguments.
- Have students read and annotate Frederick Douglass's works and follow his thoughts as he moved away from viewing the Constitution as pro-slavery.
- Spend time with students to understand Abraham Lincoln's moral and political philosophy in reading his early speeches.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the ways the Founders addressed the issue of slavery during the American founding and how subsequent events and individuals changed the status of slavery between 1793 and 1850 (4–5 paragraphs).

Lesson 2 — Slavery and Moral Relativism

3-4 classes

LESSON OBJECTIVE

Students learn how Abraham Lincoln understood the nation's division over slavery to be a question of objective moral truth, and how only in acknowledging the moral evil of slavery and working to return it to the path of extinction would America's founding ideas be proven true.

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Constitution 101

Lecture 6

Civil Rights in American History

Lectures 2 and 3

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Speech at Peoria, Abraham Lincoln

*Dred Scott v. Sandford*Speech on the *Dred Scott* decision, Abraham Lincoln

“House Divided” speech, Abraham Lincoln

Speech at Chicago, Stephen Douglas

The Seventh Lincoln-Douglas Debate

Address at Cooper Institute, Abraham Lincoln

Cornerstone Speech, Alexander Stephens

TERMS AND TOPICS

Kansas-Nebraska Act

majority tyranny

Dred Scott v. Sandford

objective truth

“a house divided”

moral relativism

popular sovereignty

“don’t care”

QUESTIONS FOR THE AMERICAN MIND

- What was Abraham Lincoln’s understanding of the following?
 - the vulnerabilities in self-government
 - how to preserve self-government
 - the rule of law
 - the need for civic education
 - the need for civic religion
 - statesmanship
 - morality
 - political persuasion
 - political moderation
- What did the Kansas-Nebraska Act and *Dred Scott v. Sandford* do, both in law and as a threat to public opinion on slavery at the time, and how did they contribute to the coming civil war?
- Why did Abraham Lincoln argue that it was impossible to remain a “house divided”?
- How did Abraham Lincoln try to halt the expansion of slavery and win the moral battle against it?
- Contrary to its status at the founding, how was mid-nineteenth-century slavery unlikely to die out on its own?
- What were Abraham Lincoln’s reasons not to assume that politics always progresses toward freedom?
- How did Abraham Lincoln and Stephen Douglas disagree on each of the following?
 - the meaning of the founding, the Declaration of Independence, and the Constitution
 - the meaning of self-government as either unchecked popular sovereignty and majority rule, or grounded and limited by our equal natural rights
 - the limits of democracy and the danger of majority tyranny
- As he expressed in his debates with Stephen Douglas, how did Abraham Lincoln understand equality and the injustice of slavery?
- What were Abraham Lincoln’s arguments against moral neutrality or relativism (“don’t care”) on the fundamental question of slavery?
- How was slavery the true cause of the Civil War?
- In which ways did the Confederacy reject the principle of equality from the Declaration of Independence and insist on the inequality of the races?

KEYS TO THE LESSON

“In the way our Fathers originally left the slavery question, the institution was in the course of ultimate extinction, and the public mind rested in the belief that it was in the course of ultimate extinction,’ Abraham Lincoln observed in 1858. ‘All I have asked or desired anywhere, is that it should be placed back again upon the basis that the Fathers of our government originally placed it upon.’

“This conflict was resolved, but at a cost of more than 600,000 lives. Constitutional amendments were passed to abolish slavery, grant equal protection under the law, and guarantee the right to vote regardless of race. Yet the damage done by the denial of core American principles and by the attempted substitution of a theory of group rights in their place proved widespread and long-lasting. These, indeed, are the direct ancestors of some of the destructive theories that today divide our people and tear at the fabric of our country.”

— *The 1776 Report*, pages 33–34

The passage of the Kansas-Nebraska Act in 1854 brought Abraham Lincoln back to the political arena. He saw a tremendous threat in the argument put forward by the bill’s sponsor, Stephen Douglas, namely that

slavery was not a moral question but rather one that should simply be decided by the will of the majority. From 1854 to the outbreak of the Civil War in 1861, Lincoln would combat this notion that slavery was morally relative depending on the will of the majority. Students must learn about this arc to Lincoln's words and deeds and how he took up and articulated the heart of the matter regarding slavery: that the morality of slavery struck at the very founding idea of the United States, i.e., that all men are created equal. Roger Taney's majority opinion in *Dred Scott v. Sandford* confirmed Lincoln's predictions, and Lincoln argued the same points throughout his debates with Douglas.

Teachers might best plan and teach Slavery and Moral Relativism with emphasis on the following approaches:

- Read with students parts of Lincoln's speech in Peoria in response to the Kansas-Nebraska Act. Students should understand that Lincoln saw slavery to be, above all, a moral question, and one that every American ought to take seriously as such. Lincoln also believed that moral relativism over the question of slavery, as conveyed in the idea of popular sovereignty, was antithetical to the ideas of the Declaration of Independence, and that slavery was simply a form of majority tyranny, the very danger latent in democracy that the Founders had warned against. Finally, Lincoln condemned the Kansas-Nebraska Act as achieving a complete reversal of the stance the Constitution, the Northwest Ordinance, and the founding generation had toward slavery: that it should be contained until it was abolished and by no means allowed to spread.
- Have students consider Abraham Lincoln's arguments on how Roger Taney's majority opinion in *Dred Scott v. Sandford* effectively ruled that slaves are not humans but property, and that the Constitution protects their enslavement just as it does any other property. Lincoln points out that Taney's ruling rejected the Founders' view on slavery and would lead, in tandem with Stephen Douglas's popular sovereignty, to the spread of slavery throughout the country. By extension, this reasoning would also allow for any form of majority tyranny. Put another way, Taney's argument in *Dred Scott*, the idea of "might makes right," is the same argument that animated despotic regimes like Communist Russia, Fascist Italy, or Nazi Germany.
- Help students think through Lincoln's understanding of the morality of slavery and its relationship to the founding ideas of America: that all men are created equal, have unalienable rights, and that legitimate government is based on the consent of the governed. Students should see that, although central to the Civil War, the practical question regarding the expansion of slavery ultimately turned on the moral status of slavery.
- Consider the apparently benign stance that Stephen Douglas takes in his position of popular sovereignty—that he does not care about what a group of people does regarding slavery so long as the majority opinion decides it. Students should be asked why this is problematic.
- Emphasize that the governing state known as the Confederacy was founded on the rejection of the principle of equality from the Declaration of Independence, and on an argument of the inequality of races, as asserted in Alexander Stephens's "Cornerstone Speech."

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how Abraham Lincoln saw slavery as a moral question and how this question was related to the moral foundation on which America was established (2–3 paragraphs).

Name_____

Date_____

Unit 4 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. How did those who were opposed to slavery believe that slavery could be abolished only if the union were preserved?
2. Why did the Founders expect that slavery would eventually die out?
3. How did the idea of slavery as a “positive good” challenge the Constitution’s stance on slavery and the path on which the founding generation had set slavery?
4. How did Abraham Lincoln and Stephen Douglas disagree about the limits of democracy and the danger of majority tyranny?
5. What were Abraham Lincoln’s arguments against moral neutrality or relativism (“don’t care”) on the fundamental question of slavery?

Lesson 3 — Lincoln's Statesmanship and the End of Slavery

4-5 classes

LESSON OBJECTIVE

Students learn about the statesmanship of Abraham Lincoln during the Civil War, which required Lincoln to maintain the union, preserve the Constitution and rule of law, and end slavery, all of which he accomplished successfully.

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Constitution 101

Lecture 7

Civil Rights in American History

Lecture 3

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

First inaugural address, Abraham Lincoln

Message to Congress in Special Session, Abraham Lincoln

The Emancipation Proclamation, Abraham Lincoln

Gettysburg Address, Abraham Lincoln

Second inaugural address, Abraham Lincoln

TERMS AND TOPICS

prudence

states' rights

justice

war powers

rule of law

Emancipation Proclamation

secession

tragedy

QUESTIONS FOR THE AMERICAN MIND

- In what ways did Abraham Lincoln manifest the ideal qualities of a statesman and the virtue of prudence?
- How did Abraham Lincoln manage to accomplish his competing objectives to maintain the union, preserve the Constitution and the rule of law, and end slavery?
- What were the arguments for and against Southern secession?
- What were the arguments for and against the Union fighting to keep the South from seceding?
- What were the benefits of union, including for the prospects of abolishing slavery?

- How did secession threaten to undermine the Constitution and the moral integrity of the people and its government?
- What are a president's war powers per the Constitution?
- What were the arguments for and against the legality and necessity of the extraordinary measures taken by Abraham Lincoln to win the war and put down the rebellion?
- How did Abraham Lincoln strive to maintain the rule of law?
- What did the Emancipation Proclamation do? How was Abraham Lincoln able to justify, issue, and enforce it successfully?
- How does the example of Abraham Lincoln show the need and benefits of an energetic executive?
- How does Abraham Lincoln's Gettysburg Address assert that freedom and self-government require devotion—and even a willingness to sacrifice for—the country and its principles of justice? How are these principles of justice grounded in nature?
- As presented in his second inaugural address, how did Abraham Lincoln view the Civil War as a tragedy, and what do these reflections reveal about the tragic nature of politics and the need for political moderation?
- What are Abraham Lincoln's reflections on providence?
- Questions from the U.S. Civics Test:
 - Question 94: Abraham Lincoln is famous for many things. Name one.
 - Question 95: What did the Emancipation Proclamation do?
 - Question 97: What amendment gives citizenship to all persons born in the United States?

KEYS TO THE LESSON

“Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure.” These famous opening lines from President Abraham Lincoln on the battlefield at Gettysburg is what the Civil War was about. And whether America, founded in liberty and equality, could long endure depended on whether the nation's original sin, slavery, would be abolished while still preserving the country's existence as a union. American students must know how the ideas at the heart of their country were undermined by slavery; but they must also learn how heroic Americans committed to America's founding ideas sacrificed their all, that these ideas of liberty and equality should prevail over the tyranny and dehumanization of slavery. And students must learn that, like those in Lincoln's audience, it is up to each of them to similarly conduct themselves if “government of the people, by the people, for the people, shall not perish from the earth.”

Teachers might best plan and teach Lincoln's Statesmanship and the End of Slavery with emphasis on the following approaches:

- Have students consider the arguments by the South and by Abraham Lincoln regarding the idea of “states' rights” and the constitutionality of secession, particularly by reading and discussing Abraham Lincoln's first inaugural address. Students should understand that there is no such thing as a “state right,” since rights belong only to persons. States (as governments) possess powers (not rights), as outlined in their state and in the federal Constitution, which the states are to use to protect the rights and the common good of their citizens (including from encroachment by the federal government). Lincoln's first inaugural address presents the case for how secession is

unconstitutional and how he, having taken an oath in his office as president, can and must preserve the Constitution and Union.

- Teach students about the delicacy with which Abraham Lincoln had to approach the border states (slave states that remained in the Union) and why this delicacy was needed. Have students work with Lincoln's first inaugural address, one purpose of which was to keep wavering states in the Union.
- Explain that Abraham Lincoln's first goal in fighting the Civil War was to preserve the Union. It is important that students understand Lincoln's reasoning. He was against slavery and wanted it abolished, but his constitutional obligation was to preserve the Union. If he acted otherwise, he would violate the Constitution and the rule of law, becoming no better than the seceding states and forfeiting his moral authority as the defender of the rule of law. Students should also know that while Lincoln did not believe he could abolish slavery alone or that abolishing slavery was the purpose for fighting the war, he nonetheless believed, like many of the Founders, that the only way to abolish slavery would be if the Union were preserved.
- Read aloud in class the Emancipation Proclamation and teach students the technicalities Abraham Lincoln navigated in thinking of it, drawing it up, and the timing of its promulgation. He had to retain the border states, abide by the Constitution, achieve victory, and earn the support of public opinion in order for slaves to be effectively freed—and he did it all. Students should understand that Lincoln's justification for freeing the slaves involved exercising his executive powers as commander-in-chief of the armed forces during an armed rebellion. This is why Lincoln only had the authority to apply the Emancipation Proclamation to those states in actual rebellion, why it could not be applied to slave-holding border states not in rebellion, and why he knew that after the war, an amendment to the Constitution would be necessary to bring emancipation to all the states and make it permanent.
- Have students read and hold a seminar conversation on the Gettysburg Address. It is a magnificent work of oratory, but it also gets at the heart of the American founding and the ideas that maintain the United States. It also shows the importance of defending and advancing those ideas, both in the Civil War and in our own day, as is incumbent on every American citizen.
- Read and have a seminar conversation about Abraham Lincoln's second inaugural address. Lincoln addresses many topics within the speech, both reflecting on the war and outlining a plan for after the war. In some respects, this speech is “part two” of what Lincoln began to assert in the Gettysburg Address. One of the main ideas Lincoln suggests, however, is that the Civil War was a punishment for the whole nation. This punishment was not necessarily for the mere existence of slavery but because, unlike the founding generation, the nation had in the time since the founding not continued to work for the abolition of the evil of slavery. While no country will ever be perfect, a people should work to make sure its laws do not promote the perpetuation of a practice that violates the equal natural rights of its fellow citizens.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the qualities of statesmanship that Abraham Lincoln exhibited and examples of how they were employed during the Civil War (3–4 paragraphs).

Lesson 4 — Civil Rights and Reconstruction

3-4 classes

LESSON OBJECTIVE

Students learn about the remarkable realization of civil rights for freedmen during Reconstruction and the immediate reversal of many of those realizations in Southern states with the sudden end of Reconstruction in 1877.

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Constitution 101

Lecture 7

Civil Rights in American History

Lectures 4 and 5

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Civil Rights Act of 1866

13th Amendment to the Constitution

14th Amendment to the Constitution

15th Amendment to the Constitution

The Atlanta Exposition Address, Booker T. Washington

“The Talented Tenth,” W.E.B. DuBois

TERMS AND TOPICS

Civil Rights Act of 1866

15th Amendment

13th Amendment

black codes

14th Amendment

Compromise of 1877

QUESTIONS FOR THE AMERICAN MIND

- What were Abraham Lincoln’s plans for reconstruction following the Civil War, as outlined in his second inaugural address and from what we know of his private meetings in the war’s final weeks?
- Compare Andrew Johnson’s Reconstruction actions and those of the Radical Republicans.
- What did a Confederate state have to do in order to be readmitted fully into the Union?
- Regarding the 13th, 14th, and 15th Amendments, what did each do?
- What did the Ku Klux Klan Acts do?
- In which ways did Southern states attempt to curtail the rights of freedmen during Reconstruction? How did they respond to the actions of Republicans in the north?

- What kinds of gains did African Americans attain during Reconstruction after slavery was explicitly abolished via the 13th Amendment?
- What happened in the election of 1876 and in the subsequent compromise of 1877?
- What were the immediate consequences, especially for African Americans living in the South, of the end to Reconstruction in 1877?
- How do Booker T. Washington and W.E.B. DuBois agree and disagree on how to secure civil rights for African Americans? In which ways are their views each compatible with the American founding?
- Questions from the U.S. Civics Test:
 - Question 63: There are four amendments to the U.S. Constitution about who can vote. Describe one of them.
 - Question 97: What amendment gives citizenship to all persons born in the United States?
 - Question 98: When did all men get the right to vote?

KEYS TO THE LESSON

“The Thirteenth Amendment to the Constitution, passed after the Civil War, brought an end to legal slavery. Blacks enjoyed a new equality and freedom, voting for and holding elective office in states across the Union. But it did not bring an end to racism, or to the unequal treatment of blacks everywhere.

“Despite the determined efforts of the postwar Reconstruction Congress to establish civil equality for freed slaves, the postbellum South ended up devolving into a system that was hardly better than slavery. The system enmeshed freedmen in relationships of extreme dependency, and used poll taxes, literacy tests, and the violence of vigilante groups like the Ku Klux Klan to prevent them from exercising their civil rights, particularly the right to vote. Jim Crow laws enforced the strict segregation of the races and gave legal standing in some states to a pervasive subordination of blacks.

“It would take a national movement composed of people from different races, ethnicities, nationalities, and religions to bring about an America fully committed to ending legal discrimination.”

— *The 1776 Report*, Pages 40–41

Teachers might best plan and teach Civil Rights and Reconstruction with emphasis on the following approaches:

- Have students consider the effect of Abraham Lincoln’s assassination on Reconstruction and the future of America, especially as regards civil rights for African Americans. Lincoln’s focus was healing the nation while simultaneously providing for the effective and long-term establishment of equal rights for African Americans. Lincoln was succeeded after his assassination by Vice President Andrew Johnson.
- The transformation of a society away from decades of slavery was no small task. Depict Reconstruction as being tragically undermined and strained by the conflicts between congressional Republicans (who strongly opposed slavery), President Andrew Johnson (a pro-Union Democrat with little sympathy for former slaves), and lawmakers in the Southern states (who mostly wished to restrict the rights of the new freedmen), all of whom operated out of distrust following a painful and bloody Civil War.

- Have students read the three amendments to the Constitution and the laws passed during Reconstruction, especially the Civil Rights Act of 1866, related to the abolition of slavery and citizenship of freedmen. It is important to note the major and meaningful efforts Republicans made to guarantee the rights of African Americans.
- Teach students about both the important gains and protections Republicans won for African Americans during Reconstruction as well as the ways in which these were undermined by actions in the former Confederate states and Johnson himself. Students should gain an appreciation of the remarkable speed and degrees to which former slaves were incorporated into the civil body early in Reconstruction, including the thousands of African Americans who would hold office at the local, state, and even federal level. But they should also understand the ways that Johnson resisted equal treatment of African Americans and in doing so encouraged and allowed certain bad policies (such as “black codes” passed by state legislatures and movements such as what would become the Ku Klux Klan) in the former Confederacy. In fact, many of the reversals of reconstruction began during the presidential reconstruction of Johnson, who was decidedly against secession but by no means opposed to slavery. Congress repeatedly had to override his vetoes and enact Constitutional amendments to prevent his defense of inequalities. Such Congressional action, however, also laid the groundwork for the expansion of federal power into and over state law, especially through the 14th Amendment and military government.
- Have students learn about the ways in which many civil rights achievements were thwarted or undone both during and after Reconstruction. For instance, spend time discussing how as Southerners were re franchised, African American officials were voted out of office and how “black codes” would eventually become Jim Crow laws. Discuss how “black codes” limited freedmen’s civil rights and imposed economic restrictions, including making being unemployed illegal, prohibiting landownership, requiring long-term labor contracts, prohibiting assemblies of freedmen only, prohibiting teaching freedmen to read or write, segregating public facilities, prohibiting freedmen from serving on juries, and carrying out corporal punishments for violators, among other restrictions and injustices. Note also the use of poll taxes and literacy tests to prohibit African Americans from voting.
- Teach students how Republicans passed and President Ulysses S. Grant signed into law the Ku Klux Klan Acts to prohibit intimidation of freedmen exercising their civil rights. Grant also empowered the president to use the armed forces against those who tried to deny freedmen equal protection under the laws. Nonetheless, such measures were usually sloppily enforced.
- At the same time, note the improvements during Reconstruction in building hospitals, creating a public school system, securing civil rights in principle, and fostering community within the freedmen community, especially in marital and family stability and through vibrant churches.
- Explain that Reconstruction effectively ended with the Compromise of 1877 that settled the disputed election of 1876. Congress (now controlled by the Democratic Party) would allow Republican Rutherford B. Hayes to be declared president in exchange for his withdrawing federal troops in former confederate states. Point out that in the backdrop was both continuing Southern resistance and a gradual waning of Northern zeal for (and political interest in) reform within the South.
- Ask students to consider the tragic nature of Reconstruction: a time of so much hoped for and achieved in applying the principle of equal natural rights was repeatedly undermined and mismanaged, then suddenly ended for political expediency, enabling new forms of injustice in

certain areas of the country, after a war to end injustice had consumed the lives of hundreds of thousands of Americans.

- Nevertheless, make sure students do not lose sight of the momentous achievements in liberty, equality, and self-government fulfilled because of the Civil War. Students should appreciate the very significant achievements of Lincoln and the Civil War while looking forward to future generations of Americans who would seek to live up to the fundamental principles of America in their own times.
- Following Reconstruction and in referencing American history, read with students Booker T. Washington's and W.E.B. DuBois's two sometimes complementary and sometimes competing approaches to securing equal civil rights for African Americans. These two pieces capture the major responses to Jim Crow during the late 19th and early 20th centuries.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the fulfillments in civil rights during Reconstruction and the attempts to undermine and reverse these realizations during and especially after Reconstruction (2–3 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — Equality in America Test

Unit 4

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

equality	civic education	objective truth
slavery	civic religion	moral relativism
Northwest Ordinance	statesmanship	“don’t care”
abolition	morality	prudence
cotton gin	political persuasion	justice
Missouri Compromise	political moderation	secession
positive good	Kansas-Nebraska Act	states’ rights
concurrent majority	<i>Dred Scott v. Sandford</i>	war powers
sectionalism	a house divided	Emancipation Proclamation
Compromise of 1850	popular sovereignty	black codes
self-government	majority tyranny	Compromise of 1877
rule of law		

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of equality in America.

Notes on the State of Virginia, Query 18: “Manners,” Thomas Jefferson
 “The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?” Frederick Douglass
 Speech on the reception of abolition petitions, John C. Calhoun
 Speech at Peoria, Abraham Lincoln
 Speech on the *Dred Scott* Decision, Abraham Lincoln
 “House Divided” speech, Abraham Lincoln
 The Seventh Lincoln-Douglas Debate
 First inaugural address, Abraham Lincoln
 Gettysburg Address, Abraham Lincoln
 Second inaugural address, Abraham Lincoln
 Civil Rights Act of 1866
 13th Amendment
 14th Amendment
 15th Amendment

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | Self-Government vs. Slavery

- ☐ How did the Founders understand the tension between slavery and the principle of equality in the Declaration of Independence?
- ☐ What was the nature of the Founders' compromise with slavery at the time of the founding for the sake of the union? How did those who were opposed to slavery believe that slavery could be abolished only if the union were preserved?
- ☐ Why did the Founders expect that slavery would eventually die out?
- ☐ What efforts did the founding generation make to abolish slavery?
- ☐ What are the three clauses related to slavery in the Constitution? Explain each.
- ☐ In the debate leading up to the Three-Fifths Clause, how was the northerners' insistence on limiting the value of a slave for purposes of representation an effort both to call the South's bluff on the personhood of slaves and to prohibit disproportionate power for those who wished to defend and expand slavery?
- ☐ How did Frederick Douglass's views on the founding with respect to slavery change during his work for abolition?
- ☐ What were the unforeseen consequences of the cotton gin, invented in 1793, four years after the adoption of the Constitution?
- ☐ What was the argument in the defense of slavery as a "positive good" that emerged among Southern apologists in the decades after the founding?
- ☐ How did the idea of slavery as a "positive good" challenge the Constitution's stance on slavery and the path on which the founding generation had set slavery?
- ☐ How did John C. Calhoun critique the Founders on equality, natural rights, and the social contract?
- ☐ How did John C. Calhoun reject the ideas of the Declaration of Independence in arguing for slavery?
- ☐ How did sectionalism rise after the founding generation?

Lesson 2 | Slavery and Moral Relativism

- ☐ What was Abraham Lincoln's understanding of the following?
 - the vulnerabilities of self-government
 - how to preserve self-government
 - the rule of law
 - the need for civic education
 - the need for civic religion
 - statesmanship
 - morality
 - political persuasion
 - political moderation
- ☐ What did the Kansas-Nebraska Act and *Dred Scott v. Sandford* do, both in law and as a threat to public opinion on slavery at the time, and how did they contribute to the coming civil war?
- ☐ Why did Abraham Lincoln argue that it was impossible to remain a "house divided"?
- ☐ How did Abraham Lincoln try to halt the expansion of slavery and win the moral battle against it?

- ☐ Contrary to its status at the founding, how was mid-nineteenth-century slavery unlikely to die out on its own?
- ☐ What were Abraham Lincoln's reasons not to assume that politics always progresses toward freedom?
- ☐ How did Abraham Lincoln and Stephen Douglas disagree on each of the following?
 - the meaning of the founding, the Declaration of Independence, and the Constitution
 - the meaning of self-government as either unchecked popular sovereignty and majority rule, or grounded and limited by our equal natural rights
 - the limits of democracy and the danger of majority tyranny
- ☐ As he expressed in his debates with Stephen Douglas, how did Abraham Lincoln understand equality and the injustice of slavery?
- ☐ What were Abraham Lincoln's arguments against moral neutrality or relativism ("don't care") on the fundamental question of slavery?
- ☐ In what sense was slavery the true cause of the Civil War?
- ☐ In what ways did the Confederacy reject the principle of equality from the Declaration of Independence and insist on the inequality of the races?

Lesson 3 | Lincoln's Statesmanship and the End of Slavery

- ☐ In what ways did Abraham Lincoln manifest the ideal qualities of a statesman and the virtue of prudence?
- ☐ How did Abraham Lincoln manage to accomplish his competing efforts to maintain the union, preserve the Constitution and the rule of law, and end slavery?
- ☐ What were the arguments for and against Southern secession?
- ☐ What were the arguments for and against the Union fighting to keep the South from seceding?
- ☐ What were the benefits of union, including for the prospects of abolishing slavery?
- ☐ How did secession threaten to undermine the Constitution and the moral integrity of the people and its government?
- ☐ What are a president's war powers per the Constitution?
- ☐ What were the arguments for and against the legality and necessity of the extraordinary measures taken by Abraham Lincoln to win the war and put down the rebellion?
- ☐ How did Abraham Lincoln strive to maintain the rule of law?
- ☐ What did the Emancipation Proclamation do? How was Abraham Lincoln able to justify, issue, and enforce it successfully?
- ☐ How does the example of Abraham Lincoln show the need and benefits of an energetic executive?
- ☐ How does Abraham Lincoln's Gettysburg Address assert that freedom and self-government require devotion—and even a willingness to sacrifice for—the country and its principles of justice? How are these principles of justice grounded in nature?
- ☐ As presented in his second inaugural address, how did Abraham Lincoln view the Civil War as a tragedy, and what do these reflections reveal about the tragic nature of politics and the need for political moderation?
- ☐ What are Abraham Lincoln's reflections on providence?

Lesson 4 | Civil Rights and Reconstruction

- ☐ What were Abraham Lincoln's plans for reconstruction following the Civil War, as outlined in his second inaugural address and from what we know of his private meetings in the war's final weeks?

- ☐ Compare Andrew Johnson's Reconstruction actions and those of the Radical Republicans.
- ☐ What did a Confederate state have to do in order to be readmitted fully into the Union?
- ☐ Regarding the 13th, 14th, and 15th amendments, what did each do?
- ☐ In what ways did Southern states attempt to curtail the rights of freedmen during Reconstruction? How did they respond to the actions of Republicans in the North?
- ☐ What kinds of gains did African Americans attain during Reconstruction after slavery was explicitly abolished via the 13th Amendment?
- ☐ What were the immediate consequences, especially for African Americans living in the South, of the end to Reconstruction in 1877?
- ☐ How do Booker T. Washington and W.E.B. DuBois agree and disagree on how to secure civil rights for African Americans? In which ways are their views each compatible with the American founding?

Name_____

Date_____

Test — Equality in America

Unit 4

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. Northwest Ordinance
2. abolition
3. Missouri Compromise
4. positive good
5. Compromise of 1850
6. rule of law
7. statesmanship
8. political persuasion
9. Kansas-Nebraska Act
10. *Dred Scott v. Sandford*
11. popular sovereignty
12. majority tyranny

13. “don’t care”

14. Emancipation Proclamation

15. black codes

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of equality in America.

16. *Notes on the State of Virginia*, Query 18: “Manners,” Thomas Jefferson

17. “The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?” Frederick Douglass

18. “House Divided” speech, Abraham Lincoln

19. First inaugural address, Abraham Lincoln

20. Gettysburg Address, Abraham Lincoln

21. Second inaugural address, Abraham Lincoln

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

22. What was the nature of the Founders' compromise with slavery at the time of the founding for the sake of the union? How did those who were opposed to slavery believe that slavery could be abolished only if the union were preserved?

23. Why did the Founders expect that slavery would eventually die out? Why did it not?

24. What efforts did the founding generation make to abolish slavery?

25. What are the three clauses related to slavery in the Constitution? Explain each.

26. How did John C. Calhoun reject the ideas of the Declaration of Independence in arguing for slavery?

27. What was Abraham Lincoln's understanding of self-government's vulnerabilities, the rule of law, morality, and civic education?
28. What were Abraham Lincoln's reasons not to assume that politics always progresses toward freedom?
29. How did Abraham Lincoln and Stephen Douglas disagree on the meaning of self-government as either popular sovereignty and majority rule, or grounded and limited by our equal natural rights?
30. What were Abraham Lincoln's arguments against moral neutrality or relativism ("don't care") on the fundamental question of slavery?
31. How was slavery the true cause of the Civil War?
32. How did Abraham Lincoln manage to accomplish his competing efforts to maintain the union, preserve the Constitution and the rule of law, and end slavery?
33. How did secession threaten to undermine the Constitution and the moral integrity of the people and its government?
34. Regarding the 13th, 14th, and 15th amendments, what did each do?
35. What kinds of gains did African Americans attain during Reconstruction after slavery was officially abolished?

Writing Assignment — Equality in America

Unit 4

Due on _____

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question:

How did America’s principles allow for the abolition of slavery as demonstrated by the founding generation and the statesmanship of Abraham Lincoln? To what extent have some Americans and government failed to pursue equality before the law during the founding, before the Civil War, and after Reconstruction?

APPENDIX B

Primary Sources

George Washington

John Adams

Benjamin Franklin

Alexander Hamilton

James Madison

Thomas Jefferson

Frederick Douglass

John C. Calhoun

Abraham Lincoln

Roger Taney

Stephen Douglas

Alexander Stephens

The United States Congress

The American People

Booker T. Washington

W.E.B. DuBois

Statements on Slavery

EXCERPTS FROM FIVE FOUNDERS

1786-1819

BACKGROUND

The following excerpts catalog views of five leading Founders on the slave trade and the institution of slavery in America during the first few decades of the country's existence.

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George Washington

Letter to Robert Morris, April 12, 1786

"...[T]here is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it...."

5

John Adams

Letter to Robert J. Evans, June 8, 1819

"...Every measure of prudence, therefore, ought to be assumed for the eventual total extirpation of slavery from the United States.... I have, through my whole life, held the practice of slavery in...abhorrence...."

10

George Washington, "To Robert Morris," 12 April 1786, in *The Papers of George Washington, 1748-1799*, "Confederation Series," Vol. 4, ed. W. W. Abbot, et al. (Charlottesville, VA: University of Virginia Press, 1992), 16; John Adams, "To Robert J. Evans," 8 June 1819, in *Selected Writings of John and John Quincy Adams*, ed. Adrienne Koch, et al. (New York: Knopf, 1946), 209-10; Benjamin Franklin, "An Address to the Public from the Pennsylvania Society for Promoting the Abolition of Slavery, and the Relief of Free Negroes Unlawfully Held in Bondage," 9 November 1789, in *The Works of Benjamin Franklin*, Vol. 12, ed. John Bigelow (New York: G. P. Putnam's Sons, 1904), 157-58; Alexander Hamilton, "Philo Camillus no. 2," August 1795, in *The Papers of Alexander Hamilton*, Vol. 19, ed. Harold C. Syrett (New York: Columbia University Press, 1973), 101-02; James Madison, "Speech at the Constitutional Convention," 6 June 1787, in *Records of the Federal Convention of 1787*, Vol. 1, ed. Max Farrand (New Haven, CT: Yale University Press, 1937), 135.

Benjamin Franklin

An Address to the Public from the Pennsylvania Society, November 9, 1789

"...Slavery is such an atrocious debasement of human nature, that its very extirpation, if not performed with solicitous care, may sometimes open a source of serious evils...."

5

Alexander Hamilton

Philo Camillus no. 2, August 1795

10 "...The laws of certain states which give an ownership in the service of negroes as personal property, constitute a similitude between them and other articles of personal property, and thereby subject them to the right of capture by war. But being men, by the laws of God and nature, they were capable of acquiring liberty—and when the captor in war, to whom by the capture the ownership was transferred, thought fit to give them liberty, the gift was not only valid, but irrevocable...."

15 **James Madison**

Speech at the Constitutional Convention, June 6, 1787

"...We have seen the mere distinction of color made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man...."

ANONYMOUS (THOMAS JEFFERSON)

Query XVIII: Manners

CHAPTER FROM *NOTES ON THE STATE OF VIRGINIA*

May 1785
Paris, France

BACKGROUND

Thomas Jefferson responded to a series of questions posed by a French diplomat in his book *Notes on the State of Virginia*, here discussing slavery in America.

GUIDING QUESTIONS

1. How did the institution of slavery harm both the enslaved and their masters?
2. Why does Jefferson fear God's wrath?
3. What does Jefferson think of the prospects for an end to slavery?

Thomas Jefferson, "Query XVIII: Manners," from *Notes on the State of Virginia*, in *The Writings of Thomas Jefferson*, Vol. 2, ed. A.A. Lipscomb and A.E. Bergh (Washington, D.C.: Thomas Jefferson Memorial Association, 1907), 225–28.

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The particular customs and manners that may happen to be received in that state?

It is difficult to determine on the standard by which the manners of a nation may be tried, whether *catholic* or *particular*. It is more difficult for a native to bring to that standard the manners of his own nation, familiarized to him by habit. There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love, for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. But generally it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to the worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who, permitting one half the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the *amor patriae* of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another; in which he must lock up the faculties of his nature, contribute as far as depends on his individual endeavors to the evanishment of the human race, or entail his own miserable condition on the endless generations proceeding from him. With the morals of the people, their industry also is destroyed. For in a warm climate, no man will labor for himself who can make another labor for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labor. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with His wrath? Indeed I tremble for

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my country when I reflect that God is just; that his justice cannot sleep forever; that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events; that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest. But it is impossible to be temperate and to pursue this subject through the various considerations of policy, of morals, of history natural and civil. We must be contented to hope they will force their way into every one's mind. I think a change already perceptible, since the origin of the present revolution. The spirit of the master is abating, that of the slave rising from the dust, his condition mollifying, the way I hope preparing, under the auspices of heaven, for a total emancipation, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation.

FREDERICK DOUGLASS

What to the Slave Is the Fourth of July?

SPEECH

July 5, 1852

Corinthian Hall | Rochester, New York

BACKGROUND

Frederick Douglass gave this speech to the Ladies' Anti-Slavery Society, intentionally on the day following the celebration of the nation's birthday.

GUIDING QUESTIONS

1. Why does Douglass use July 4th for the backdrop of his point on slavery?
2. Does Douglass think that slavery is consistent with the principles of America?
3. At this time, does Douglass view the Constitution as a pro-slavery document?

Frederick Douglass, *Selected Speeches and Writings*, ed. Philip S. Foner (Chicago: Lawrence Hill, 1999), 188-206.

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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!

5 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
10 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
15 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
20 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
25 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,

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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
5 to distinguish the slave from a brute, then 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
10 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
15 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. Must I argue the wrongfulness of slavery? Is that a question for Republicans? Is it to be settled by the rules of logic and argumentation,
20 as a matter beset with great difficulty, involving a doubtful application of the principle of justice, hard to be understood? How should I look to-day, in the presence of Americans, dividing, and subdividing a discourse, to show that men have a natural right to freedom? speaking of it relatively, and positively, negatively, and affirmatively. To do so, would be to make myself ridiculous, and to offer an insult to your understanding. There is not a man
25 beneath the canopy of heaven, that does not know that slavery is wrong for him.

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

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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
5 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 passed.

10 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
15 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
20 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
25 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. . . .

Take the American slave trade, which, we are told by the papers, is especially prosperous just now. . . . That trade has long since been denounced by this government, as piracy. It

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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. . . . 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. . . .

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 and 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.

. . . 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! . . .

[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

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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. . . .

5 Let the religious press, the pulpit, the Sunday school, the conference meeting, the great ecclesiastical, missionary, Bible and tract associations of the land array their immense powers against slavery and slaveholding; and the whole system of crime and blood would be scattered to the winds; and that they do not do this involves them in the most awful responsibility of which the mind can conceive. . . .

10 Fellow-citizens! I will not enlarge further on your national inconsistencies. The existence of slavery in this country brands your republicanism as a sham, your humanity as a base pretense, and your Christianity as a lie. It destroys your moral power abroad; it corrupts your politicians at home. It saps the foundation of religion; it makes your name a hissing, and a bye-word to a mocking earth. It is the antagonistic force in your government, the
15 only thing that seriously disturbs and endangers your Union. It fetters your progress; it is the enemy of improvement, the deadly foe of education; it fosters pride; it breeds insolence; it promotes vice; it shelters crime; it is a curse to the earth that supports it; and yet, you cling to it, as if it were the sheet anchor of all your hopes. Oh! be warned! be warned! a horrible reptile is coiled up in your nation's bosom; the venomous creature is nursing at
20 the tender breast of your youthful republic; for the love of God, tear away, and fling from you the hideous monster, and let the weight of twenty millions crush and destroy it forever!

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
25 Republic. . . .

. . . 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. . . .

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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, slave-holding, nor slave can anywhere be found in it. What would be thought of an instrument, drawn up, legally drawn up, for the purpose of entitling the city of Rochester to a track of land, in which no mention of land was made? . . .

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. . . .

. . . Allow me to say, in 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 time was when such could be done. Long established customs of hurtful character could formerly fence themselves in, and do their evil work with social impunity. Knowledge was then confined and enjoyed by the privileged few, and the multitude walked on in mental darkness. But a change has now come over the affairs of mankind. Walled cities and empires have become unfashionable. 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

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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. The iron shoe, and crippled foot of China must be seen, in contrast with nature. Africa must rise and put on her yet unwoven garment. "Ethiopia shall stretch out her hand unto God." In the fervent aspirations of William Lloyd Garrison, I say, and let every heart join in saying it:

God speed the year of jubilee

The wide world o'er

When from their galling chains set free,

Th' oppress'd shall vilely bend the knee,

15 And wear the yoke of tyranny

Like brutes no more.

That year will come, and freedom's reign,

To man his plundered rights again

Restore. . .

FREDERICK DOUGLASS

The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery

SPEECH

March 26, 1860

Scottish Anti-Slavery Society | Glasgow, Scotland

BACKGROUND

Former slave and abolitionist Frederick Douglass delivered this speech before the Scottish Anti-Slavery Society responding to the question of whether the U.S. Constitution supported or opposed slavery.

GUIDING QUESTIONS

1. How does Douglass define the Constitution?
2. In which ways does Douglass disagree with other abolitionists, such as William Lloyd Garrison?
3. What evidence does Douglass cite from the founding that has formed his understanding?
4. What is Douglass' main argument against dissolving the Union over the issue of slavery?

Frederick Douglass, *Selected Speeches and Writings*, ed. Philip S. Foner (Chicago: Lawrence Hill, 1999), 188-206.

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I proceed to the discussion. And first a word about the question. Much will be gained at the outset if we fully and clearly understand the real question under discussion. Indeed, nothing is or can be understood. This are often confounded and treated as the same, for no better reason than that they resemble each other, even while they are in their nature and character totally distinct and even directly opposed to each other. This jumbling up things is a sort of dust-throwing which is often indulged in by small men who argue for victory rather than for truth.

Thus, for instance, the American Government and the American Constitution are spoken of in a manner which would naturally lead the hearer to believe that one is identical with the other; when the truth is, they are distinct in character as is a ship and a compass. The one may point right and the other steer wrong. A chart is one thing, the course of the vessel is another. The Constitution may be right, the Government is wrong. If the Government has been governed by mean, sordid, and wicked passions, it does not follow that the Constitution is mean, sordid, and wicked.

What, then, is the question? I will state it. But first let me state what is not the question. It is not whether slavery existed in the United States at the time of the adoption of the Constitution; it is not whether slaveholders took part in the framing of the Constitution; it is not whether those slaveholders, in their hearts, intended to secure certain advantages in that instrument for slavery; it is not whether the American Government has been wielded during seventy-two years in favour of the propagation and permanence of slavery; it is not whether a pro-slavery interpretation has been put upon the Constitution by the American Courts — all these points may be true or they may be false, they may be accepted or they may be rejected, without in any wise affecting the real question in debate.

The real and exact question between myself and the class of persons represented by the speech at the City Hall may be fairly stated thus: — 1st, Does the United States Constitution guarantee to any class or description of people in that country the right to enslave, or hold as property, any other class or description of people in that country? 2nd, Is the dissolution of the union between the slave and free States required by fidelity to the slaves, or by the

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just demands of conscience? Or, in other words, is the refusal to exercise the elective franchise, and to hold office in America, the surest, wisest, and best way to abolish slavery in America?

To these questions the Garrisonians say Yes. They hold the Constitution to be a slaveholding instrument, and will not cast a vote or hold office, and denounce all who vote or hold office, no matter how faithfully such persons labour to promote the abolition of slavery. I, on the other hand, deny that the Constitution guarantees the right to hold property in man, and believe that the way to abolish slavery in America is to vote such men into power as well use their powers for the abolition of slavery. This is the issue plainly stated, and you shall judge between us. Before we examine into the disposition, tendency, and character of the Constitution, I think we had better ascertain what the Constitution itself is. Before looking for what it means, let us see what it is. Here, too, there is much dust to be cleared away. What, then, is the Constitution? I will tell you. It is not even like the British Constitution, which is made up of enactments of Parliament, decisions of Courts, and the established usages of the Government. The American Constitution is a written instrument full and complete in itself. No Court in America, no Congress, no President, can add a single word thereto, or take a single word threthereto. It is a great national enactment done by the people, and can only be altered, amended, or added to by the people. I am careful to make this statement here; in America it would not be necessary. It would not be necessary here if my assailant had shown the same desire to be set before you the simple truth, which he manifested to make out a good case for himself and friends. Again, it should be borne in mind that the mere text, and only the text, and not any commentaries or creeds written by those who wished to give the text a meaning apart from its plain reading, was adopted as the Constitution of the United States. It should also be borne in mind that the intentions of those who framed the Constitution, be they good or bad, for slavery or against slavery, are so respected so far, and so far only, as we find those intentions plainly stated in the Constitution. It would be the wildest of absurdities, and lead to endless confusion and mischiefs, if, instead of looking to the written paper itself, for its meaning, it were attempted to make us search it out, in the secret motives, and dishonest intentions, of some of the men who

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- took part in writing it. It was what they said that was adopted by the people, not what they were ashamed or afraid to say, and really omitted to say. Bear in mind, also, and the fact is an important one, that the framers of the Constitution sat with doors closed, and that this was done purposely, that nothing but the result of their labours should be seen, and that
- 5 that result should be judged of by the people free from any of the bias shown in the debates. It should also be borne in mind, and the fact is still more important, that the debates in the convention that framed the Constitution, and by means of which a pro-slavery interpretation is now attempted to be forced upon that instrument, were not published till more than a quarter of a century after the presentation and the adoption of the Constitution.
- 10 These debates were purposely kept out of view, in order that the people should adopt, not the secret motives or unexpressed intentions of any body, but the simple text of the paper itself. Those debates form no part of the original agreement. I repeat, the paper itself, and only the paper itself, with its own plainly written purposes, is the Constitution. It must stand or fall, flourish or fade, on its own individual and self-declared character and objects.
- 15 Again, where would be the advantage of a written Constitution, if, instead of seeking its meaning in its words, we had to seek them in the secret intentions of individuals who may have had something to do with writing the paper? What will the people of America a hundred years hence care about the intentions of the scribes who wrote the Constitution? These men are already gone from us, and in the course of nature were expected to go from
- 20 us. They were for a generation, but the Constitution is for ages. Whatever we may owe to them, we certainly owe it to ourselves, and to mankind, and to God, to maintain the truth of our own language, and to allow no villainy, not even the villainy of holding men as slaves — which Wesley says is the sum of all villainies — to shelter itself under a fair-seeming and virtuous language. We owe it to ourselves to compel the devil to wear his own garments,
- 25 and to make wicked laws speak out their wicked intentions. Common sense, and common justice, and sound rules of interpretation all drive us to the words of the law for the meaning of the law. The practice of the Government is dwelt upon with much fervour and eloquence as conclusive as to the slaveholding character of the Constitution. This is really the strong

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point and the only strong point, made in the speech in the City Hall. But good as this argument is, it is not conclusive. A wise man has said that few people have been found better than their laws, but many have been found worse. To this last rule America is no exception. Her laws are one thing, her practice is another thing. We read that the Jews made void the law by their tradition, that Moses permitted men to put away their wives because of the hardness of their hearts, but that this was not so at the beginning. While good laws will always be found where good practice prevails, the reverse does not always hold true. Far from it. The very opposite is often the case. What then? Shall we condemn the righteous law because wicked men twist it to the support of wickedness? Is that the way to deal with good and evil? Shall we blot out all distinction between them, and hand over to slavery all that slavery may claim on the score of long practice? Such is the course commended to us in the City Hall speech. After all, the fact that men go out of the Constitution to prove it pro-slavery, whether that going out is to the practice of the Government, or to the secret intentions of the writers of the paper, the fact that they do go out is very significant. It is a powerful argument on my side. It is an admission that the thing for which they are looking is not to be found where only it ought to be found, and that is in the Constitution itself. If it is not there, it is nothing to the purpose, be it wheresoever else it may be. But I shall have no more to say on this point hereafter.

The very eloquent lecturer at the City Hall doubtless felt some embarrassment from the fact that he had literally to give the Constitution a pro-slavery interpretation; because upon its face it of itself conveys no such meaning, but a very opposite meaning. He thus sums up what he calls the slaveholding provisions of the Constitution. I quote his own words: — “Article 1, section 9, provides for the continuance of the African slave trade for the 20 years, after the adoption of the Constitution. Art. 4, section 9, provides for the recovery from the other States of fugitive slaves. Art. 1, section 2, gives the slave States a representation of the three-fifths of all the slave population; and Art. 1, section 8, requires the President to use the military, naval, ordnance, and militia resources of the entire country for the suppression of slave insurrection, in the same manner as he would employ them to repel invasion.” Now any man reading this statement, or hearing it made with such a show of exactness,

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would unquestionably suppose that he speaker or writer had given the plain written text of the Constitution itself. I can hardly believe that he intended to make any such impression. It would be a scandalous imputation to say he did. Any yet what are we to make of it? How can we regard it? How can he be screened from the charge of having perpetrated a deliberate and point-blank misrepresentation? That individual has seen fit to place himself before the public as my opponent, and yet I would gladly find some excuse for him. I do not wish to think as badly of him as this trick of his would naturally lead me to think. Why did he not read the Constitution? Why did he read that which was not the Constitution? He pretended to be giving chapter and verse, section and clause, paragraph and provision. The words of the Constitution were before him. Why then did he not give you the plain words of the Constitution? Oh, sir, I fear that the gentleman knows too well why he did not. It so happens that no such words as “African slave trade,” no such words as “slave insurrections,” are anywhere used in that instrument. These are the words of that orator, and not the words of the Constitution of the United States. Now you shall see a slight difference between my manner of treating this subject and what which my opponent has seen fit, for reasons satisfactory to himself, to pursue. What he withheld, that I will spread before you: what he suppressed, I will bring to light: and what he passed over in silence, I will proclaim: that you may have the whole case before you, and not be left to depend upon either his, or upon my inferences or testimony. Here then are several provisions of the Constitution to which reference has been made. I read them word for word just as they stand in the paper, called the United States Constitution, Art. I, sec. 2. “Representatives and direct taxes shall be apportioned among the several States which may be included in 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 years, and excluding Indians not taxed, three-fifths of all other persons; Art. I, sec. 9. The migration or importation of such persons as any of the States now existing shall think fit 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 tend dollars for each person; Art. 4, sec. 2. 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 service or

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labour; but shall be delivered up on claim of the party to whom such service or labour may be due; Art. I, sec. 8. To provide for calling for the militia to execute the laws of the Union, suppress insurrections, and repel invasions.” Here then, are those provisions of the Constitution, which the most extravagant defenders of slavery can claim to guarantee a right of property in man. These are the provisions which have been pressed into the service of the human fleshmongers of America. Let us look at them just as they stand, one by one. Let us grant, for the sake of the argument, that the first of these provisions, referring to the basis of representation and taxation, does refer to slaves. We are not compelled to make that admission, for it might fairly apply to aliens — persons living in the country, but not naturalized. But giving the provisions the very worse construction, what does it amount to? I answer — It is a downright disability laid upon the slaveholding States; one which deprives those States of two-fifths of their natural basis of representation. A black man in a free State is worth just two-fifths more than a black man in a slave State, as a basis of political power under the Constitution. Therefore, instead of encouraging slavery, the Constitution encourages freedom by giving an increase of “two-fifths” of political power to free over slave States. So much for the three-fifths clause; taking it at its worst, it still leans to freedom, not slavery; for, be it remembered that the Constitution nowhere forbids a coloured man to vote. I come to the next, that which it is said guaranteed the continuance of the African slave trade for twenty years. I will also take that for just what my opponent alleges it to have been, although the Constitution does not warrant any such conclusion. But, to be liberal, let us suppose it did, and what follows? Why, this — that this part of the Constitution, so far as the slave trade is concerned, became a dead letter more than 50 years ago, and now binds no man’s conscience for the continuance of any slave trade whatsoever. Mr. Thompson is just 52 years too late in dissolving the Union on account of this clause. He might as well dissolve the British Government, because Queen Elizabeth granted to Sir John Hawkins to import Africans into the West Indies 300 years ago! But there is still more to be said about this abolition of the slave trade. Men, at that time, both in England and in America, looked upon the slave trade as the life of slavery. The abolition of the slave trade was supposed to be the certain death of slavery. Cut off the stream, and the pond will dry up, was the common notion at the time.

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Wilberforce and Clarkson, clear-sighted as they were, took this view; and the American statesmen, in providing for the abolition of the slave trade, thought they were providing for the abolition of the slavery. This view is quite consistent with the history of the times. All regarded slavery as an expiring and doomed system, destined to speedily disappear from the country. But, again, it should be remembered that this very provision, if made to refer to the African slave trade at all, makes the Constitution anti-slavery rather than for slavery; for it says to the slave States, the price you will have to pay for coming into the American Union is, that the slave trade, which you would carry on indefinitely out of the Union, shall be put an end to in twenty years if you come into the Union. Secondly, if it does apply, it expired by its own limitation more than fifty years ago. Thirdly, it is anti-slavery, because it looked to the abolition of slavery rather than to its perpetuity. Fourthly, it showed that the intentions of the framers of the Constitution were good, not bad. I think this is quite enough for this point.

I go to the “slave insurrection” clause, though, in truth, there is no such clause. The one which is called so has nothing whatever to do with slaves or slaveholders any more than your laws for suppression of popular outbreaks has to do with making slaves of you and your children. It is only a law for suppression of riots or insurrections. But I will be generous here, as well as elsewhere, and grant that it applies to slave insurrections. Let us suppose that an anti-slavery man is President of the United States (and the day that shall see this the case is not distant) and this very power of suppressing slave insurrections would put an end to slavery. The right to put down an insurrection carries with it the right to determine the means by which it shall be put down. If it should turn out that slavery is a source of insurrection, that there is no security from insurrection while slavery lasts, why, the Constitution would be best obeyed by putting an end to slavery, and an anti-slavery Congress would do the very same thing. Thus, you see, the so-called slave-holding provisions of the American Constitution, which a little while ago looked so formidable, are, after all, no defence or guarantee for slavery whatever. But there is one other provision. This is called the “Fugitive Slave Provision.” It is called so by those who wish to make it subserve the interest of slavery in America, and the same by those who wish to uphold the views of a party in this country.

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It is put thus in the speech at the City Hall: — “Let us go back to 1787, and enter Liberty Hall, Philadelphia, where sat in convention the illustrious men who framed the Constitution — with George Washington in the chair. On the 27th of September, Mr. Butler and Mr. Pinckney, two delegates from the State of South Carolina, moved that the Constitution should require that fugitive slaves and servants should be delivered up like criminals, and after a discussion on the subject, the clause, as it stands in the Constitution, was adopted. After this, in the conventions held in the several States to ratify the Constitution, the same meaning was attached to the words. For example, Mr. Madison (afterwards President), when recommending the Constitution to his constituents, told them that the clause would secure them their property in slaves.” I must ask you to look well to this statement. Upon its face, it would seem a full and fair statement of the history of the transaction it professes to describe and yet I declare unto you, knowing as I do the facts in the case, my utter amazement at the downright untruth conveyed under the fair seeming words now quoted. The man who could make such a statement may have all the craftiness of a lawyer, but who can accord to him the candour of an honest debater? What could more completely destroy all confidence in his statements? Mark you, the orator had not allowed his audience to hear read the provision of the Constitution to which he referred. He merely characterized it as one to “deliver up fugitive slaves and servants like criminals,” and tells you that this was done “after discussion.” But he took good care not to tell you what was the nature of that discussion. He have would have spoiled the whole effect of his statement had he told you the whole truth. Now, what are the facts connected with this provision of the Constitution? You shall have them. It seems to take two men to tell the truth. It is quite true that Mr. Butler and Mr. Pinckney introduced a provision expressly with a view to the recapture of fugitive slaves: it is quite true also that there was some discussion on the subject — and just here the truth shall come out. These illustrious kidnappers were told promptly in that discussion that no such idea as property in man should be admitted into the Constitution. The speaker in question might have told you, and he would have told you but the simple truth, if he had told you that he proposition of Mr. Butler and Mr. Pinckney — which he leads you to infer was adopted by the convention that from the Constitution — was, in fact, promptly and indignantly rejected by that convention. He might have told you, had it

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suited his purpose to do so, that the words employed in the first draft of the fugitive slave clause were such as applied to the condition of slaves, and expressly declared that persons held to “servitude” should be given up; but that the word “servitude” was struck from the provision, for the very reason that it applied to slaves. He might have told you that the same

5 Mr. Madison declared that the word was struck out because the convention would not consent that the idea of property in men should be admitted into the Constitution. The fact that Mr. Madison can be cited on both sides of this question is another evidence of the folly and absurdity of making the secret intentions of the framers the criterion by which the Constitution is to be construed. But it may be asked — if this clause does not apply to slaves,
10 to whom does it apply?

I answer, that when adopted, it applies to a very large class of persons — namely, redemptioners — persons who had come to America from Holland, from Ireland, and other quarters of the globe — like the Coolies to the West Indies — and had, for a consideration duly paid, become bound to “serve and labour” for the parties to whom their service and labour was due. It applies to indentured apprentices and others who have become bound for
15 a consideration, under contract duly made, to serve and labour, to such persons this provision applies, and only to such persons. The plain reading of this provision shows that it applies, and that it can only properly and legally apply, to persons “bound to service.” Its object plainly is, to secure the fulfillment of contracts for “service and labour.” It applies to
20 indentured apprentices, and any other persons from whom service and labour may be due. The legal condition of the slave puts him beyond the operation of this provision. He is not described in it. He is a simple article of property. He does not owe and cannot owe service. He cannot even make a contract. It is impossible for him to do so. He can no more make such a contract than a horse or an ox can make one. This provision, then, only respects
25 persons who owe service, and they only can owe service who can receive an equivalent and make a bargain. The slave cannot do that, and is therefore exempted from the operation of this fugitive provision. In all matters where laws are taught to be made the means of oppression, cruelty, and wickedness, I am for strict construction. I will concede nothing. It must be shown that it is so nominated in the bond. The pound of flesh, but not one drop

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of blood. The very nature of law is opposed to all such wickedness, and makes it difficult to accomplish such objects under the forms of law. Law is not merely an arbitrary enactment with regard to justice, reason, or humanity. Blackstone defines it to be a rule prescribed by the supreme power of the State commanding what is right and forbidding what is wrong.

- 5 The speaker at the City Hall laid down some rules of legal interpretation. These rules send us to the history of the law for its meaning. I have no objection to such a course in ordinary cases of doubt. But where human liberty and justice are at stake, the case falls under an entirely different class of rules. There must be something more than history — something more than tradition. The Supreme Court of the United States lays down this rule, and it
- 10 meets the case exactly — “Where rights are infringed — where the fundamental principles of the law are overthrown — where the general system of the law is departed from, the legislative intention must be expressed with irresistible clearness.” The same court says that the language of the law must be construed strictly in favour of justice and liberty. Again, there is another rule of law. It is — Where a law is susceptible of two meanings, the one
- 15 making it accomplish an innocent purpose, and the other making it accomplish a wicked purpose, we must in all cases adopt that which makes it accomplish an innocent purpose. Again, the details of a law are to be interpreted in the light of the declared objects sought by the law. I set these rules down against those employed at the City Hall. To me they seem just and rational. I only ask you to look at the American Constitution in the light of them,
- 20 and you will see with me that no man is guaranteed a right of property in man, under the provisions of that instrument. If there are two ideas more distinct in their character and essence than another, those ideas are “persons” and “property,” “men” and “things.” Now, when it is proposed to transform persons into “property” and men into beasts of burden, I demand that the law that completes such a purpose shall be expressed with irresistible
- 25 clearness. The thing must not be left to inference, but must be done in plain English. I know how this view of the subject is treated by the class represented at the City Hall. They are in the habit of treating the Negro as an exception to general rules. When their own liberty is in question they will avail themselves of all rules of law which protect and defend their freedom; but when the black man’s rights are in question they concede everything, admit
- 30 everything for slavery, and put liberty to the proof. They reserve the common law usage,

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and presume the Negro a slave unless he can prove himself free. I, on the other hand, presume him free unless he is proved to be otherwise. Let us look at the objects for which the Constitution was framed and adopted, and see if slavery is one of them. Here are its own objects as set forth by itself: — “We, the people of these United States, in order to form a
5 more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.” The objects here set forth are six in number: union, defence, welfare, tranquility, justice, and liberty. These are all good objects, and slavery, so far from being among them, is a foe
10 of them all. But it has been said that Negroes are not included within the benefits sought under this declaration. This is said by the slaveholders in America — it is said by the City Hall orator — but it is not said by the Constitution itself. Its language is “we the people;” not we the white people, not even we the citizens, not we the privileged class, not we the high, not we the low, but we the people; not we the horses, sheep, and swine, and wheel-
15 barrows, but we the people, we the human inhabitants; and, if Negroes are people, they are included in the benefits for which the Constitution of America was ordained and established. But how dare any man who pretends to be a friend to the Negro thus gratuitously concede away what the Negro has a right to claim under the Constitution? Why should such friends invent new arguments to increase the hopelessness of his bondage? This, I
20 undertake to say, as the conclusion of the whole matter, that the constitutionality of slavery can be made out only by disregarding the plain and common-sense reading of the Constitution itself; by discrediting and casting away as worthless the most beneficent rules of legal interpretation; by ruling the Negro outside of these beneficent rules; by claiming that the Constitution does not mean what it says, and that it says what it does not mean; by disre-
25 garding the written Constitution, and interpreting it in the light of a secret understanding. It is in this mean, contemptible, and underhand method that the American Constitution is pressed into the service of slavery. They go everywhere else for proof that the Constitution declares that no person shall be deprived of life, liberty, or property without due process of law; it secures to every man the right of trial by jury, the privilege of the writ of habeas
30 corpus — the great writ that put an end to slavery and slave-hunting in England — and it

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secures to every State a republican form of government. Anyone of these provisions in the hands of abolition statesmen, and backed up by a right moral sentiment, would put an end to slavery in America. The Constitution forbids the passing of a bill of attainder: that is, a law entailing upon the child the disabilities and hardships imposed upon the parent. Every
5 slave law in America might be repealed on this very ground. The slave is made a slave because his mother is a slave. But to all this it is said that the practice of the American people is against my view. I admit it. They have given the Constitution a slaveholding interpretation. I admit it. They have committed innumerable wrongs against the Negro in the name of the Constitution. Yes, I admit it all; and I go with him who goes farthest in denouncing
10 these wrongs. But it does not follow that the Constitution is in favour of these wrongs because the slaveholders have given it that interpretation. To be consistent in his logic, the City Hall speaker must follow the example of some of his brothers in America — he must not only fling away the Constitution, but the Bible. The Bible must follow the Constitution, for that, too, has been interpreted for slavery by American divines. Nay, more, he must not
15 stop with the Constitution of America, but make war with the British Constitution, for, if I mistake not, the gentleman is opposed to the union of Church and State. In America he called himself a Republican. Yet he does not go for breaking down the British Constitution, although you have a Queen on the throne, and bishops in the House of Lords.

My argument against the dissolution of the American Union is this: It would place the slave
20 system more exclusively under the control of the slaveholding States, and withdraw it from the power in the Northern States which is opposed to slavery. Slavery is essentially barbarous in its character. It, above all things else, dreads the presence of an advanced civilization. It flourishes best where it meets no reproofing frowns, and hears no condemning voices. While in the Union it will meet with both. Its hope of life, in the last resort, is to get
25 out of the Union. I am, therefore, for drawing the bond of the Union more completely under the power of the Free States. What they most dread, that I most desire. I have much confidence in the instincts of the slaveholders. They see that the Constitution will afford slavery no protection when it shall cease to be administered by slaveholders. They see, moreover, that if there is once a will in the people of America to abolish slavery, this is no

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word, no syllable in the Constitution to forbid that result. They see that the Constitution has not saved slavery in Rhode Island, in Connecticut, in New York, or Pennsylvania; that the Free States have only added three to their original number. There were twelve Slave States at the beginning of the Government: there are fifteen now. They dissolution of the Union would not give the North a single advantage over slavery, but would take from it many. Within the Union we have a firm basis of opposition to slavery. It is opposed to all the great objects of the Constitution. The dissolution of the Union is not only an unwise but a cowardly measure — 15 millions running away from three hundred and fifty thousand slaveholders. Mr. Garrison and his friends tell us that while in the Union we are responsible for slavery. He and they sing out “No Union with slaveholders,” and refuse to vote. I admit our responsibility for slavery while in the Union but I deny that going out of the Union would free us from that responsibility. There now clearly is no freedom from responsibility for slavery to any American citizen short to the abolition of slavery. The American people have gone quite too far in this slaveholding business now to sum up their whole business of slavery by singing out the cant phrase, “No union with slaveholders.” To desert the family hearth may place the recreant husband out of the presence of his starving children, but this does not free him from responsibility. If a man were on board of a pirate ship, and in company with others had robbed and plundered, his whole duty would not be preformed simply by taking the longboat and singing out, “No union with pirates.” His duty would be to restore the stolen property. The American people in the Northern States have helped to enslave the black people. Their duty will not have been done till they give them back their plundered rights. Reference was made at the City Hall to my having once held other opinions, and very different opinions to those I have now expressed. An old speech of mine delivered fourteen years ago was read to show — I know not what. Perhaps it was to show that I am not infallible. If so, I have to say in defence, that I never pretended to be. Although I cannot accuse myself of being remarkably unstable, I do not pretend that I have never altered my opinion both in respect to men and things. Indeed, I have been very much modified both in feeling and opinion within the last fourteen years. When I escaped from slavery, and was introduced to the Garrisonians, I adopted very many of their opinions, and defended them just as long as I deemed them true. I was young, had read but

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little, and naturally took some things on trust. Subsequent experience and reading have led me to examine for myself. This had brought me to other conclusions. When I was a child, I thought and spoke as a child. But the question is not as to what were my opinions fourteen years ago, but what they are now. If I am right now, it really does not matter what I was
5 fourteen years ago. My position now is one of reform, not of revolution. I would act for the abolition of slavery through the Government — not over its ruins. If slaveholders have ruled the American Government for the last fifty years, let the anti-slavery men rule the nation for the next fifty years. If the South has made the Constitution bend to the purposes of slavery, let the North now make that instrument bend to the cause of freedom and jus-
10 tice. If 350,000 slaveholders have, by devoting their energies to that single end, been able to make slavery the vital and animating spirit of the American Confederacy for the last 72 years, now let the freemen of the North, who have the power in their own hands, and who can make the American Government just what they think fit, resolve to blot out for ever the foul and haggard crime, which is the blight and mildew, the curse and the disgrace of
15 the whole United States.

SEN. JOHN C. CALHOUN (D-SC)

On the Reception of Abolition Petitions

SPEECH EXCERPT

February 6, 1837
U.S. Senate | Washington, D.C.

BACKGROUND

John C. Calhoun delivered this speech in the U.S. Senate in response to petitions submitted by abolitionists demanding an end to slavery in the District of Columbia and the abolition of the slave trade across state lines.

GUIDING QUESTIONS

1. What does Calhoun argue to be the effect of enslavement in America on African Americans? Why?
2. In which ways does Calhoun take exception to northern criticism of the effects of slavery on European Americans?
3. What does Calhoun mean by a “positive good”? What evidence does he claim to support his assertion?
4. How does Calhoun argue that slaves are treated better than laborers in the north?
5. If slavery were to be abolished, what is Calhoun’s fear?
6. What do Calhoun’s tone and words suggest about the changing stance of southerners on the issue of slavery, especially with respect to northern criticism and policies against it?

John C. Calhoun, *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence (Indianapolis: Liberty Fund, 1992), 472-76.

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...Abolition and Union cannot co-exist. As the friend of the Union I openly proclaim it, and the sooner it is known the better. The former may now be controlled, but in a short time it will be beyond the power of man to arrest the course of events. We of the South will not, cannot, surrender our institutions. To maintain the existing relations between the two
5 races, inhabiting that section of the Union, is indispensable to the peace and happiness of both. It cannot be subverted without drenching the country in blood, and extirpating one or the other of the races. Be it good or bad, it has grown up with out society and institutions, and is so interwoven with them, that to destroy it would be to destroy us as a people. But let me not be understood as admitting, even by implication, that the existing relations be-
10 tween the two races in slaveholding States is an evil—far otherwise; I hold it to be a good, as it has thus far proved itself to be to both, and will continue to prove so if not disturbed by the fell spirit of abolition. I appeal to facts. Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition so civilized and so improved, not only physically, but morally and intellectually. It came among us in a low,
15 degraded, and savage condition, and in the course of a few generations it has grown up under the fostering care of our institutions, reviled as they have been to its present comparatively civilized condition. This, with the rapid increase of numbers, is conclusive proof of the general happiness of the race, in spite of all the exaggerated tales to the contrary. In the mean time, the white or European race has not degenerated. It has kept pace with its
20 brethren in other sections of the Union where slavery does not exist. It is odious to make comparison; but I appeal to all sides whether the South is not equal in virtue, intelligence, patriotism, courage, disinterestedness, and all the high qualities which adorn our nature. I ask whether we have not contributed our full share of talents and political wisdom in forming and sustaining this political fabric; and whether we have not constantly inclined most
25 strongly to the side of liberty, and been the first to see and first to resist the encroachments of power. In one thing only are we inferior—the arts of gain; we acknowledge that we are less wealthy than the Northern section of this Union, but I trace this mainly to the fiscal action of this Government, which has extracted much from and spent little among us. Had it been the reverse—if the exaction had been from the other section, and the expenditure
30 with us, this point of superiority would not be against us now, as it was not at the formation

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of this Government. But I take higher ground. I hold that in the present state of civilization, where two races of different origin, and distinguished by color, and other physical differences, as well as intellectual, are brought together, the relation now existing in the slaveholding States between the two, is, instead of an evil, a good—a positive good. I feel myself
5 called upon to speak freely upon the subject where the honor and interests of those I represent are involved. I hold then that there never has yet existed a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other. Broad and general as is this assertion, it is fully borne out by history. This is not the proper occasion, but if it were, it would not be difficult to trace the various devices by
10 which the wealth of all civilized communities has been so unequally divided, and to show by what means so small a share has been allotted to those by whose labor it was produced, and so large a share given to the non-producing classes. The devices are almost innumerable, from the brute force and gross superstition of ancient times, to the subtle and artful fiscal contrivances of modern. I might well challenge a comparison between them and the
15 more direct, simple, and patriarchal mode by which the labor of the African race is, among us, commanded by the European. I may say with truth, that in few countries so much is left to the share of the laborer, and so little exacted from him, or where there is more kind attention paid to him in sickness or infirmities of age. Compare his condition with the tenants of the poor houses in the more civilized portions of Europe—look at the sick, and the
20 old and infirm slave, on one hand, in the midst of his family and friends, under the kind superintending care of his master and mistress, and compare it with the forlorn and wretched condition of the pauper in the poor house. But I will not dwell on this aspect of the question; I turn to the political; and here I fearlessly assert that the existing relation between the two races in the South, against which these blind fanatics are waging war,
25 forms the most solid and durable foundation on which to rear free and stable political institutions. It is useless to disguise the fact. There is and always has been in an advanced stage of wealth and civilization, a conflict between labor and capital. The condition of society in the South exempts us from the disorders and dangers resulting from this conflict; and which explains why it is that the political condition of the slaveholding States has been
30 so much more stable and quiet than that of the North. The advantages of the former, in this

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respect, will become more and more manifest if left undisturbed by interference from without, as the country advances in wealth and numbers. We have, in fact, but just entered that condition of society where the strength and durability of our political institutions are to be tested; and I venture nothing in predicting that the experience of the next generation will

5 fully test how vastly more favorable our condition of society is to that of other sections for free and stable institutions, provided we are not disturbed by the interference of others, or shall have sufficient intelligence and spirit to resist promptly and successfully such interference. It rests with ourselves to meet and repel them. I look not for aid to this Government, or to the other States; not but there are kind feelings towards us on the part of the

10 great body of the nonslaveholding States; but as kind as their feelings may be, we may rest assured that no political party in those States will risk their ascendancy for our safety. If we do not defend ourselves none will defend us; if we yield we will be more and more pressed as we recede; and if we submit we will be trampled under foot. Be assured that emancipation itself would not satisfy these fanatics—that gained, the next step would be to raise the

15 negroes to a social and political equality with the whites; and that being effected, we would soon find the present condition of the two races reversed. They and their northern allies would be the masters, and we the slaves; the condition of the white race in the British West India Islands, bad as it is, would be happiness to ours. There the mother country is interested in sustaining the supremacy of the European race. It is true that the authority of the

20 former master is destroyed, but the African will there still be a slave, not to individuals but to the community,—forced to labor, not by the authority of the overseer, but by the bayonet of the soldiery and the rod of the civil magistrate. Surrounded as the slaveholding States are with such imminent perils, I rejoice to think that our means of defence are ample, if we shall prove to have the intelligence and spirit to see and apply them before it is too late. All

25 we want is concert, to lay aside all party differences, and unite with zeal and energy in repelling approaching dangers. Let there be concert of action, and we shall find ample means of security without resorting to secession or disunion. I speak with full knowledge and a thorough examination of the subject, and for one, see my way clearly. One thing alarms me—the eager pursuit of gain which overspreads the land, and which absorbs every faculty

30 of the mind and every feeling of the heart. Of all passions avarice is the most blind and

On the Reception of Abolition Petitions
John C. Calhoun

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compromising—the last to see and the first to yield to danger. I dare not hope that any thing I can say will arouse the South to a due sense of danger; I fear it is beyond the power of mortal voice to awaken it in time from the fatal security into which it has fallen.

SENATOR JOHN C. CALHOUN (D-SC)

On the Oregon Bill

SPEECH EXCERPT

June 27, 1848

U.S. Senate | Washington, D.C.

BACKGROUND

Senator John C. Calhoun gave this speech in response to the Oregon Bill, which sought to organize the new territory along anti-slavery principles.

GUIDING QUESTIONS

1. How does Calhoun portray the conflict between the North and the South?
2. How does Calhoun use the Constitution to justify his argument?
3. What theoretical proposition is the cause of the Union's destruction, according to Calhoun?
4. According to Calhoun, what is the relationship between the government and individual liberty?

John C. Calhoun, "On the Oregon Bill," 27 June 1848, in *The Works of John C. Calhoun*, Vol. 4, Ed. Richard Kenner Crallé (New York: D. Appleton & Co., 1888), 503–12.

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...The first question which offers itself for consideration is — Have the Northern States the power which they claim, to prevent the Southern people from emigrating freely, with their property, into territories belonging to the United States, and to monopolize them for their exclusive benefit?...

- 5 Now, I put the question solemnly to the Senators from the North: Can you rightly and justly exclude the South from territories of the United States, and monopolize them for yourselves, even if, in your opinion, you should have the power? It is this question I wish to press on your attention with all due solemnity and decorum. The North and the South stand in the relation of partners in a common Union, with equal dignity and equal rights.
- 10 We of the South have contributed our full share of funds, and shed our full share of blood for the acquisition of our territories. Can you, then, on any principle of equity and justice, deprive us of our full share in their benefit and advantage? Are you ready to affirm that a majority of the partners in a joint concern have the right to monopolize its benefits to the exclusion of the minority, even in cases where they have contributed their full share to the
- 15 concern?...

- I turn now to my friends of the South, and ask: What are you prepared to do? If neither the barriers of the constitution nor the high sense of right and justice should prove sufficient to protect you, are you prepared to sink down into a state of acknowledged inferiority; to be stripped of your dignity of equals among equals, and be deprived of your equality of
- 20 rights in this federal partnership of States? If so, you are woefully degenerated from your sires, and will well deserve to change condition with your slaves;—but if not, prepare to meet the issue. The time is at hand, if the question should not be speedily settled, when the South must rise up, and bravely defend herself, or sink down into base and acknowledged inferiority; and it is because I clearly perceive that this period is favorable for settling it, if
- 25 it is ever to be settled, that I am in favor of pressing the question now to a decision—not because I have any desire whatever to embarrass either party in reference to the Presidential election. At no other period could the two great parties into which the country is divided be made to see and feel so clearly and intensely the embarrassment and danger caused by the question. Indeed, they must be blind not to perceive that there is a power in action that

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must burst asunder the ties that bind them together, strong as they are, unless it should be speedily settled. Now is the time, if ever. Cast your eyes to the North, and mark what is going on there; reflect on the tendency of events for the last three years in reference to this the most vital of all questions, and you must see that no time should be lost.

- 5 I am thus brought to the question, How can the question be settled? It can, in my opinion, be finally and permanently adjusted but one way,—and that is on the high principles of justice and the constitution. Fear not to leave it to them. The less you do the better. If the North and South cannot stand together on their broad and solid foundation, there is none other on which they can. If the obligations of the constitution and justice be too feeble to
- 10 command the respect of the North, how can the South expect that she will regard the far more feeble obligations of an act of Congress? Nor should the North fear that, by leaving it where justice and the constitution leave it, she would be excluded from her full share of the territories. In my opinion, if it be left there, climate, soil, and other circumstances would fix the line between the slaveholding and non-slaveholding States in about 36° 30'. It may
- 15 zigzag a little, to accommodate itself to circumstances—sometimes passing to the north, and at others passing to the south of it; but that would matter little, and would be more satisfactory to all, and tend less to alienation between the two great sections, than a rigid, straight, artificial line, prescribed by an act of Congress.

- And here, let me say to Senators from the North;—you make a great mistake in supposing
- 20 that the portion which might fall to the south of whatever line might be drawn, if left to soil, and climate, and circumstances to determine, would be closed to the white labor of the North, because it could not mingle with slave labor without degradation. The fact is not so. There is no part of the world where agricultural, mechanical, and other descriptions of labor are more respected than in the South, with the exception of two descriptions of employ-
- 25 ment—that of menial and body servants. No Southern man—not the poorest or the lowest—will, under any circumstance, submit to perform either of them. He has too much pride for that, and I rejoice that he has. They are unsuited to the spirit of a freeman. But the man who would spurn them feels not the least degradation to work in the same field with his slave; or to be employed to work with them in the same field or in any mechanical

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operation; and, when so employed, they claim the right,—and are admitted, in the country portion of the South—of sitting at the table of their employers. Can as much, on the score of equality, be said of the North? With us the two great divisions of society are not the rich and poor, but white and black; and all the former, the poor as well as the rich, belong to the upper class, and are respected and treated as equals, if honest and industrious; and hence have a position and pride of character of which neither poverty nor misfortune can deprive them.

But I go further, and hold that justice and the constitution are the easiest and safest guard on which the question can be settled, regarded in reference to party. It may be settled on that ground simply by non-action—by leaving the territories free and open to the emigration of all the world, so long as they continue so,—and when they become States, to adopt whatever constitution they please, with the single restriction, to be republican, in order to their admission into the Union. If a party cannot safely take this broad and solid position and successfully maintain it, what other can it take and maintain? If it cannot maintain itself by an appeal to the great principles of justice, the constitution, and self-government, to what other, sufficiently strong to uphold them in public opinion, can they appeal? I greatly mistake the character of the people of this Union, if such an appeal would not prove successful, if either party should have the magnanimity to step forward, and boldly make it. It would, in my opinion, be received with shouts of approbation by the patriotic and intelligent in every quarter. There is a deep feeling pervading the country that the Union and our political institutions are in danger, which such a course would dispel, and spread joy over the land.

Now is the time to take the step, and bring about a result so devoutly to be wished. I have believed, from the beginning, that this was the only question sufficiently potent to dissolve the Union, and subvert our system of government; and that the sooner it was met and settled, the safer and better for all. I have never doubted but that, if permitted to progress beyond a certain point, its settlement would become impossible, and am under deep conviction that it is now rapidly approaching it,—and that if it is ever to be averted, it must be done speedily. In uttering these opinions I look to the whole. If I speak earnestly, it is to

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save and protect all. As deep as is the stake of the South in the Union and our political institutions, it is not deeper than that of the North. We shall be as well prepared and as capable of meeting whatever may come, as you.

Now, let me say, Senators, if our Union and system of government are doomed to perish,
5 and we to share the fate of so many great people who have gone before us, the historian, who, in some future day, may record the events ending in so calamitous a result, will devote his first chapter to the ordinance of 1787, lauded as it and its authors have been, as the first of that series which led to it. His next chapter will be devoted to the Missouri compromise, and the next to the present agitation. Whether there will be another beyond, I know not. It
10 will depend on what we may do.

If he should possess a philosophical turn of mind, and be disposed to look to more remote and recondite causes, he will trace it to a proposition which originated in a hypothetical truism, but which, as now expressed and now understood, is the most false and dangerous of all political errors. The proposition to which I allude, has become an axiom in the minds
15 of a vast many on both sides of the Atlantic, and is repeated daily from tongue to tongue, as an established and incontrovertible truth; it is,—that “all men are born free and equal.” I am not afraid to attack error, however deeply it may be intrenched, or however widely extended, whenever it becomes my duty to do so, as I believe it to be on this subject and occasion.

20 Taking the proposition literally (it is in that sense it is understood), there is not a word of truth in it. It begins with “all men are born,” which is utterly untrue. Men are not born. Infants are born. They grow to be men. And concludes with asserting that they are born “free and equal,” which is not less false. They are not born free. While infants they are incapable of freedom, being destitute alike of the capacity of thinking and acting, without
25 which there can be no freedom. Besides, they are necessarily born subject to their parents, and remain so among all people, savage and civilized, until the development of their intellect and physical capacity enables them to take care of themselves. They grow to all the freedom of which the condition in which they were born permits, by growing to be men.

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Nor is it less false that they are born “equal.” They are not so in any sense in which it can be regarded; and thus, as I have asserted, there is not a word of truth in the whole proposition, as expressed and generally understood.

5 If we trace it back, we shall find the proposition differently expressed in the Declaration of Independence. That asserts that “all men are created equal.” The form of expression, though less dangerous, is not less erroneous. All men are not created. According to the Bible, only two—a man and a woman—ever were—and of these one was pronounced subordinate to the other. All others have come into the world by being born, and in no sense, as I have shown, either free or equal. But this form of expression being less striking and
10 popular, has given way to the present, and under the authority of a document put forth on so great an occasion, and leading to such important consequences, has spread far and wide, and fixed itself deeply in the public mind. It was inserted in our Declaration of Independence without any necessity. It made no necessary part of our justification in separating from the parent country, and declaring ourselves independent. Breach of our chartered privileges, and lawless encroachment on our acknowledged and well-established rights by the
15 parent country, were the real causes,—and of themselves sufficient, without resorting to any other, to justify the step. Nor had it any weight in constructing the governments which were substituted in the place of the colonial. They were formed of the old materials and on practical and well-established principles, borrowed for the most part from our own experience and that of the country from which we sprang.
20

If the proposition be traced still further back, it will be found to have been adopted from certain writers in government who had attained much celebrity in the early settlement of these States, and with whose writings all the prominent actors in our revolution were familiar. Among these, Locke and Sydney were prominent. But they expressed it very differ-
25 ently. According to their expression, “all men in the state of nature were free and equal.” From this the others were derived; and it was this to which I referred when I called it a hypothetical truism;—to understand why, will require some explanation.

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Man, for the purpose of reasoning, may be regarded in three different states: in a state of individuality; that is, living by himself apart from the rest of his species. In the social; that is, living in society, associated with others of his species. And in the political; that is, living under government. We may reason as to what would be his rights and duties in either, without taking into consideration whether he could exist in it or not. It is certain, that in the first, the very supposition that he lived apart and separated from all others would make him free and equal. No one in such a state could have the right to command or control another. Every man would be his own master, and might do just as he pleased. But it is equally clear, that man cannot exist in such a state; that he is by nature social, and that society is necessary, not only to the proper development of all his faculties, moral and intellectual, but to the very existence of his race. Such being the case, the state is a purely hypothetical one; and when we say all men are free and equal in it, we announce a mere hypothetical truism; that is, a truism resting on a mere supposed state that cannot exist, and of course one of little or no practical value.

But to call it a state of nature was a great misnomer, and has led to dangerous errors; for that cannot justly be called a state of nature which is so opposed to the constitution of man as to be inconsistent with the existence of his race and the development of the high faculties, mental and moral, with which he is endowed by his Creator.

Nor is the social state of itself his natural state; for society can no more exist without government, in one form or another, than man without society. It is the political, then, which includes the social, that is his natural state. It is the one for which his Creator formed him,—into which he is impelled irresistibly,—and in which only his race can exist and all its faculties be fully developed.

Such being the case, it follows that any, the worst form of government, is better than anarchy; and that individual liberty, or freedom, must be subordinate to whatever power may be necessary to protect society against anarchy within or destruction from without; for the safety and well-being of society is as paramount to individual liberty, as the safety and well-being of the race is to that of individuals; and in the same proportion the power necessary

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for the safety of society is paramount to individual liberty. On the contrary, government has no right to control individual liberty beyond what is necessary to the safety and well-being of society. Such is the boundary which separates the power of government and the liberty of the citizen or subject in the political state, which, as I have shown, is the natural
5 state of man—the only one in which his race can exist, and the one in which he is born, lives, and dies.

It follows from this that all the quantum of power on the part of the government, and of liberty on that of individuals, instead of being equal in all cases, must necessarily be very unequal among different people, according to their different conditions. For just in proportion as a people are ignorant, stupid, debased, corrupt, exposed to violence within, and
10 danger from without, the power necessary for government to possess, in order to preserve society against anarchy and destruction, becomes greater and greater, and individual liberty less and less, until the lowest condition is reached,—when absolute and despotic power becomes necessary on the part of the government, and individual liberty extinct. So, on the
15 contrary, just as a people rise in the scale of intelligence, virtue, and patriotism, and the more perfectly they become acquainted with the nature of government, the ends for which it was ordered, and how it ought to be administered, and the less the tendency to violence and disorder within, and danger from abroad,—the power necessary for government becomes less and less, and individual liberty greater and greater. Instead, then, of all men
20 having the same right to liberty and equality, as is claimed by those who hold that they are all born free and equal, liberty is the noble and highest reward bestowed on mental and moral development, combined with favorable circumstances. Instead, then, of liberty and equality being born with men,—instead of all men and all classes and descriptions being equally entitled to them, they are high prizes to be won, and are in their most perfect state,
25 not only the highest reward that can be bestowed on our race, but the most difficult to be won,—and when won, the most difficult to be preserved.

They have been made vastly more so by the dangerous error I have attempted to expose,—that all men are born free and equal,—as if those high qualities belonged to man without effort to acquire them, and to all equally alike, regardless of their intellectual and moral

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condition. The attempt to carry into practice this, the most dangerous of all political errors, and to bestow on all,— without regard to their fitness either to acquire or maintain liberty,—that unbounded and individual liberty supposed to belong to man in the hypothetical and misnamed state of nature, has done more to retard the cause of liberty and civilization, and is doing more at present, than all other causes combined. While it is powerful to pull down governments, it is still more powerful to prevent their construction on proper principles. It is the leading cause among those which have placed Europe in its present anarchical condition, and which mainly stands in the way of reconstructing good governments in the place of those which have been overthrown,—threatening thereby the quarter of the globe most advanced in progress and civilization with hopeless anarchy,—to be followed by military despotism. Nor are we exempt from its disorganizing effects. We now begin to experience the danger of admitting so great an error to have a place in the declaration of our independence. For a long time it lay dormant; but in the process of time it began to germinate, and produce its poisonous fruits. It had strong hold on the mind of Mr. Jefferson, the author of that document, which caused him to take an utterly false view of the subordinate relation of the black to the white race in the South; and to hold, in consequence, that the latter, though utterly unqualified to possess liberty, were as fully entitled to both liberty and equality as the former; and that to deprive them of it was unjust and immoral. To this error, his proposition to exclude slavery from the territory northwest of the Ohio may be traced,—and to that of the ordinance of 1787,—and through it the deep and dangerous agitation which now threatens to engulf, and will certainly engulf, if not speedily settled, our political institutions, and involve the country in countless woes.

ILLINOIS STATE REP. ABRAHAM LINCOLN (WHIG)

The Perpetuation of Our Political Institutions

SPEECH

January 27, 1838

Young Men's Lyceum | Springfield, Illinois

BACKGROUND

Abraham Lincoln offered this address to the Young Men's Lyceum of Springfield early in his career as a Whig in the Illinois state legislature.

GUIDING QUESTIONS

1. What examples does Lincoln give of the increasing disregard for law in the U.S.?
2. Why does Lincoln see mob rule and vigilantism as problematic?
3. What does Lincoln see as the long-term effect of continually disregarding the law?
4. Why does Lincoln think that Americans should obey bad laws?
5. What is the consequence of the fading memories of the Revolution?

Abraham Lincoln, "Address before the Young Men's Lyceum of Springfield, Illinois," in *The Collected Works of Abraham Lincoln*, Vol. 1, ed. Roy P. Basler (New Brunswick, N.J.: Rutgers University Press, 1953), 108–15.

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As a subject for the remarks of the evening, the perpetuation of our political institutions, is selected.

In the great journal of things happening under the sun, we, the American People, find our account running, under date of the nineteenth century of the Christian era. We find ourselves in the peaceful possession, of the fairest portion of the earth, as regards extent of territory, fertility of soil, and salubrity of climate. We find ourselves under the government of a system of political institutions, conducing more essentially to the ends of civil and religious liberty, than any of which the history of former times tells us. We, when mounting the stage of existence, found ourselves the legal inheritors of these fundamental blessings. We toiled not in the acquirement or establishment of them — they are a legacy bequeathed us, by a once hardy, brave, and patriotic, but now lamented and departed race of ancestors. Their's was the task (and nobly they performed it) to possess themselves, and through themselves, us, of this goodly land; and to uprear upon its hills and its valleys, a political edifice of liberty and equal rights; 'tis ours only, to transmit these, the former, unprofaned by the foot of an invader; the latter, undecayed by the lapse of time, and untorn by [usurpation — to the latest generation that fate shall permit the world to know. This task of gratitude to our fathers, justice to] ourselves, duty to posterity, and love for our species in general, all imperatively require us faithfully to perform.

How, then, shall we perform it? At what point shall we expect the approach of danger? By what means shall we fortify against it? Shall we expect some transatlantic military giant, to step the Ocean, and crush us at a blow? Never! All the armies of Europe, Asia and Africa combined, with all the treasure of the earth (our own excepted) in their military chest; with a Buonaparte for a commander, could not by force, take a drink from the Ohio, or make a track on the Blue Ridge, in a trial of a thousand years.

At what point then is the approach of danger to be expected? I answer, if it ever reach us, it must spring up amongst us. It cannot come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen, we must live through all time, or die by suicide.

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I hope I am over wary; but if I am not, there is, even now, something of ill-omen amongst us. I mean the increasing disregard for law which pervades the country; the growing disposition to substitute the wild and furious passions, in lieu of the sober judgement of Courts; and the worse than savage mobs, for the executive ministers of justice. This disposition is awfully fearful in any community; and that it now exists in ours, though grating to our feelings to admit, it would be a violation of truth, and an insult to our intelligence, to deny. Accounts of outrages committed by mobs, form the every-day news of the times. They have pervaded the country, from New England to Louisiana; — they are neither peculiar to the eternal snows of the former, nor the burning suns of the latter; — they are not the creature of climate — neither are they confined to the slaveholding, or the non-slaveholding States. Alike, they spring up among the pleasure hunting masters of Southern slaves, and the order loving citizens of the land of steady habits. Whatever then, their cause may be, it is common to the whole country.

It would be tedious, as well as useless, to recount the horrors of all of them. Those happening in the State of Mississippi, and at St. Louis, are, perhaps, the most dangerous in example, and revolting to humanity. In the Mississippi case, they first commenced by hanging the regular gamblers: a set of men, certainly not following for a livelihood, a very useful, or very honest occupation; but one which, so far from being forbidden by the laws, was actually licensed by an act of the Legislature, passed but a single year before. Next, negroes, suspected of conspiring to raise an insurrection, were caught up and hanged in all parts of the State: then, white men, supposed to be leagued with the negroes; and finally, strangers, from neighboring States, going thither on business, were, in many instances, subjected to the same fate. Thus went on this process of hanging, from gamblers to negroes, from negroes to white citizens, and from these to strangers; till, dead men were seen literally dangling from the boughs of trees upon every road side; and in numbers almost sufficient, to rival the native Spanish moss of the country, as a drapery of the forest.

Turn, then, to that horror-striking scene at St. Louis. A single victim was only sacrificed there. His story is very short; and is, perhaps, the most highly tragic, of any thing of its length, that has ever been witnessed in real life. A mulatto man, by the name of McIntosh,

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was seized in the street, dragged to the suburbs of the city, chained to a tree, and actually burned to death; and all within a single hour from the time he had been a freeman, attending to his own business, and at peace with the world.

5 Such are the effects of mob law; and such are the scenes, becoming more and more frequent in this land so lately famed for love of law and order; and the stories of which, have even now grown too familiar, to attract any thing more, than an idle remark.

But you are, perhaps, ready to ask, "What has this to do with the perpetuation of our political institutions?" I answer, it has much to do with it. Its direct consequences are, comparatively speaking, but a small evil; and much of its danger consists, in the proneness of our
10 minds, to regard its direct, as its only consequences. Abstractly considered, the hanging of the gamblers at Vicksburg, was of but little consequence. They constitute a portion of population that is worse than useless in a[ny community; and their death, if no pernicious example be set by it, is never matter of reasonable regret with any one. If they were annually swept, from the stage of existence, by the plague or small pox, honest men would, perhaps,
15 be much profited, by the operation. Similar too, is the correct reasoning, in regard to the burning of the negro at St. Louis. He had forfeited his life, by the perpetration of an outrageous murder, upon one of the most worthy and respectable citizens of the city; and had he not died as he did, he must have died by the sentence of the law, in a very short time afterwards. As to him alone, it was as well the way it was, as it could otherwise have been.
20 But the example in either case, was fearful. When men take it in their heads to day, to hang gamblers, or burn murderers, they should recollect, that, in the confusion usually attending such transactions, they will be as likely to hang or burn some one, who is neither a gambler nor a murderer [as] one who is; and that, acting upon the [exam]ple they set, the mob of to-morrow, may, an[d] probably will, hang or burn some of them, [by th]e very same mistake. And not only so; the innocent, those who have ever set their faces against violations
25 of law in every shape, alike with the guilty, fall victims to the ravages of mob law; and thus it goes on, step by step, till all the walls erected for the defence of the persons and property of individuals, are trodden down, and disregarded. But all this even, is not the full extent of the evil. By such examples, by instances of the perpetrators of such acts going unpunished,

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the lawless in spirit, are encouraged to become lawless in practice; and having been used to no restraint, but dread of punishment, they thus become, absolutely unrestrained. Having ever regarded Government as their deadliest bane, they make a jubilee of the suspension of its operations; and pray for nothing so much, as its total annihilation. While, on the other

5 hand, good men, men who love tranquility, who desire to abide by the laws, and enjoy their benefits, who would gladly spill their blood in the defence of their country; seeing their property destroyed; their families insulted, and their lives endangered; their persons injured; and seeing nothing in prospect that forebodes a change for the better; become tired of, and disgusted with, a Government that offers them no protection; and are not much

10 averse to a change in which they imagine they have nothing to lose. Thus, then, by the operation of this mobocratic spirit, which all must admit, is now abroad in the land, the strongest bulwark of any Government, and particularly of those constituted like ours, may effectually be broken down and destroyed — I mean the attachment of the People. When-

15 ever this effect shall be produced among us; whenever the vicious portion of population shall be permitted to gather in bands of hundreds and thousands, and burn churches, ravage and rob provision stores, throw printing presses into rivers, shoot editors and hang and burn obnoxious persons at pleasure, and with impunity; depend on it, this Government cannot last. By such things, the feelings of the best citizens will become more or less alien-

20 ated from it; and thus it will be left without friends, or with too few, and those few too weak, to make their friendship effectual. At such a time and under such circumstances, men of sufficient talent and ambition will not be wanting to seize [the opportunity, strike the blow, and overturn that fair fabric], which for the last half century, has been the fondest hope, of the lovers of freedom, throughout the world.

I know the American People are much attached to their Government; — I know they would

25 suffer much for its sake; — I know they would endure evils long and patiently, before they would ever think of exchanging it for another. Yet, notwithstanding all this, if the laws be continually despised and disregarded, if their rights to be secure in their persons and property, are held by no better tenure than the caprice of a mob, the alienation of their affections from the Government is the natural consequence; and to that, sooner or later, it must come.

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Here then, is one point at which danger may be expected.

The question recurs "how shall we fortify against it?" The answer is simple. Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the Revolution, never to violate in the least particular, the laws of the country; and never to tolerate their violation by others. As the patriots of seventy-six did to the support of the Declaration of Independence, so to the support of the Constitution and Laws, let every American pledge his life, his property, and his sacred honor; — let every man remember that to violate the law, is to trample on the blood of his father, and to tear the character [charter?] of his own, and his children's liberty. Let reverence for the laws, be breathed by every American mother, to the lisping babe, that prattles on her lap — let it be taught in schools, in seminaries, and in colleges; — let it be written in Primmers, spelling books, and in Almanacs; — let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay, of all sexes and tongues, and colors and conditions, sacrifice unceasingly upon its altars.

While ever a state of feeling, such as this, shall universally, or even, very generally prevail throughout the nation, vain will be every effort, and fruitless every attempt, to subvert our national freedom.

When I so pressingly urge a strict observance of all the laws, let me not be understood as saying there are no bad laws, nor that grievances may not arise, for the redress of which, no legal provisions have been made. I mean to say no such thing. But I do mean to say, that, although bad laws, if they exist, should be repealed as soon as possible, still while they continue in force, for the sake of example, they should be religiously observed. So also in unprovided cases. If such arise, let proper legal provisions be made for them with the least possible delay; but, till then, let them if not too intolerable, be borne with.

There is no grievance that is a fit object of redress by mob law. In any case that arises, as for instance, the promulgation of abolitionism, one of two positions is necessarily true; that is, the thing is right within itself, and therefore deserves the protection of all law and all good

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citizens; or, it is wrong, and therefore proper to be prohibited by legal enactments; and in neither case, is the interposition of mob law, either necessary, justifiable, or excusable.

But, it may be asked, why suppose danger to our political institutions? Have we not preserved them for more than fifty years? And why may we not for fifty times as long?

- 5 We hope there is no sufficient reason. We hope all dangers may be overcome; but to conclude that no danger may ever arise, would itself be extremely dangerous. There are now, and will hereafter be, many causes, dangerous in their tendency, which have not existed heretofore; and which are not too insignificant to merit attention. That our government should have been maintained in its original form from its establishment until now, is not
- 10 much to be wondered at. It had many props to support it through that period, which now are decayed, and crumbled away. Through that period, it was felt by all, to be an undecided experiment; now, it is understood to be a successful one. Then, all that sought celebrity and fame, and distinction, expected to find them in the success of that experiment. Their all was staked upon it: — their destiny was inseparably linked with it. Their ambition aspired to
- 15 display before an admiring world, a practical demonstration of the truth of a proposition, which had hitherto been considered, at best no better, than problematical; namely, the capability of a people to govern themselves. If they succeeded, they were to be immortalized; their names were to be transferred to counties and cities, and rivers and mountains; and to be revered and sung, and toasted through all time. If they failed, they were to be called
- 20 knaves and fools, and fanatics for a fleeting hour; then to sink and be forgotten. They succeeded. The experiment is successful; and thousands have won their deathless names in making it so. But the game is caught; and I believe it is true, that with the catching, end the pleasures of the chase. This field of glory is harvested, and the crop is already appropriated. But new reapers will arise, and they, too, will seek a field. It is to deny, what the history of
- 25 the world tells us is true, to suppose that men of ambition and talents will not continue to spring up amongst us. And, when they do, they will as naturally seek the gratification of their ruling passion, as others have so done before them. The question then, is, can that gratification be found in supporting and maintaining an edifice that has been erected by others? Most certainly it cannot. Many great and good men sufficiently qualified for any

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task they should undertake, may ever be found, whose ambition would aspire to nothing beyond a seat in Congress, a gubernatorial or a presidential chair; but such belong not to the family of the lion, or the tribe of the eagle,[.] What! think you these places would satisfy an Alexander, a Caesar, or a Napoleon? Never! Towering genius disdains a beaten path. It seeks regions hitherto unexplored. It sees no distinction in adding story to story, upon the monuments of fame, erected to the memory of others. It denies that it is glory enough to serve under any chief. It scorns to tread in the footsteps of any predecessor, however illustrious. It thirsts and burns for distinction; and, if possible, it will have it, whether at the expense of emancipating slaves, or enslaving freemen. Is it unreasonable then to expect, that some man possessed of the loftiest genius, coupled with ambition sufficient to push it to its utmost stretch, will at some time, spring up among us? And when such a one does, it will require the people to be united with each other, attached to the government and laws, and generally intelligent, to successfully frustrate his designs.

Distinction will be his paramount object; and although he would as willingly, perhaps more so, acquire it by doing good as harm; yet, that opportunity being past, and nothing left to be done in the way of building up, he would set boldly to the task of pulling down.

Here then, is a probable case, highly dangerous, and such a one as could not have well existed heretofore.

Another reason which once was; but which, to the same extent, is now no more, has done much in maintaining our institutions thus far. I mean the powerful influence which the interesting scenes of the revolution had upon the passions of the people as distinguished from their judgment. By this influence, the jealousy, envy, and avarice, incident to our nature, and so common to a state of peace, prosperity, and conscious strength, were, for the time, in a great measure smothered and rendered inactive; while the deep rooted principles of hate, and the powerful motive of revenge, instead of being turned against each other, were directed exclusively against the British nation. And thus, from the force of circumstances, the basest principles of our nature, were either made to lie dormant, or to become

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the active agents in the advancement of the noblest of cause[s?] — that of establishing and maintaining civil and religious liberty.

But this state of feeling must fade, is fading, has faded, with the circumstances that produced it.

5 I do not mean to say, that the scenes of the revolution are now or ever will be entirely forgotten; but that like every thing else, they must fade upon the memory of the world, and grow more and more dim by the lapse of time. In history, we hope, they will be read of, and recounted, so long as the bible shall be read; — but even granting that they will, their influence cannot be what it heretofore has been. Even then, they cannot be so universally known,
10 nor so vividly felt, as they were by the generation just gone to rest. At the close of that struggle, nearly every adult male had been a participator in some of its scenes. The consequence was, that of those scenes, in the form of a husband, a father, a son or a brother, a living history was to be found in every family — a history bearing the indubitable testimonies of its own authenticity, in the limbs mangled, in the scars of wounds received, in the
15 midst of the very scenes related — a history, too, that could be read and understood alike by all, the wise and the ignorant, the learned and the unlearned. But those histories are gone. They can be read no more forever. They were a fortress of strength; but, what invading foe-men could never do, the silent artillery of time has done; the levelling of its walls. They are gone. They were a forest of giant oaks; but the all-resistless hurricane has swept
20 over them, and left only, here and there, a lonely trunk, despoiled of its verdure, shorn of its foliage; unshading and unshaded, to murmur in a few more gentle breezes, and to combat with its mutilated limbs, a few more ruder storms, then to sink, and be no more.

They were the pillars of the temple of liberty; and now, that they have crumbled away, that temple must fall, unless we, their descendants, supply their places with other pillars, hewn
25 from the solid quarry of sober reason. Passion has helped us; but can do so no more. It will in future be our enemy. Reason, cold, calculating, unimpassioned reason, must furnish all the materials for our future support and defence. Let those [materials] be moulded into general intelligence, [sound] morality and, in particular, a reverence for the constitution

The Perpetuation of Our Political Institutions
Abraham Lincoln

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and laws; and, that we improved to the last; that we remained free to the last; that we revered his name to the last; [tha]t, during his long sleep, we permitted no hostile foot to pass over or desecrate [his] resting place; shall be that which to le[arn the last] trump shall awaken our Wash[ington].

- 5 Upon these] let the proud fabric of freedom r[est, as the] rock of its basis; and as truly as has been said of the only greater institution, "the gates of hell shall not prevail against it."

ABRAHAM LINCOLN

Speech at Peoria

SPEECH EXCERPT

October 16, 1854

Lawn of the Peoria County Courthouse | Peoria, Illinois

On the Kansas-Nebraska Act

BACKGROUND

Abraham Lincoln responded to the passage of the Kansas-Nebraska Act and its principal proponent, Stephen A. Douglas, with this address at Peoria.

GUIDING QUESTIONS

1. Is Lincoln in favor or against self-governance?
2. In what way can the right of self-governance be abused according to Lincoln?
3. What principles does Lincoln take to be more essential than the right to self-governance?
4. What are the results of the violation of the Missouri Compromise both in the north and in the south?
5. How does Lincoln think the founders viewed slavery?

Abraham Lincoln, "Speech at Peoria, Illinois," 16 October 1854, in *Collected Works of Abraham Lincoln*, Vol. 2, ed. Roy P. Basler (New Brunswick, N.J.: Rutgers University Press, 1953), 248–83.

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...The repeal of the Missouri Compromise, and the propriety of its restoration, constitute the subject of what I am about to say....

I trust I understand, and truly estimate the right of self-government. My faith in the proposition that each man should do precisely as he pleases with all which is exclusively his own, lies at the foundation of the sense of justice there is in me. I extend the principles to communities of men, as well as to individuals. I so extend it, because it is politically wise, as well as naturally just; politically wise, in saving us from broils about matters which do not concern us. Here, or at Washington, I would not trouble myself with the oyster laws of Virginia, or the cranberry laws of Indiana.

The doctrine of self-government is right—absolutely and eternally right—but it has no just application, as here attempted. Or perhaps I should rather say that whether it has such just application depends upon whether a negro is *not* or *is* a man. If he is *not* a man, why in that case, he who *is* a man may, as a matter of self-government, do just as he pleases with him. But if the negro is a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern *himself*? When the white man governs himself that is self-government; but when he governs himself, and also governs *another* man, that is more than self-government—that is despotism. If the negro is a man, why then my ancient faith teaches me that “all men are created equal;” and that there can be no moral right in connection with one man’s making a slave of another....

What I do say is, that no man is good enough to govern another man, without that other’s consent. I say this is the leading principle—the sheet anchor of American republicanism. Our Declaration of Independence says:

“We hold these truths to be self evident: that all men 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 among men, deriving their just powers from the consent of the governed.”

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I have quoted so much at this time merely to show that according to our ancient faith, the just powers of governments are derived from the consent of the governed. Now the relation of masters and slaves is, *pro tanto*, a total violation of this principle. The master not only governs the slave without his consent; but he governs him by a set of rules altogether different from those which he prescribes for himself. Allow all the governed an equal voice in the government, and that, and that only is self-government....

This same generation of men, and mostly the same individuals of the generation, who declared this principle—who declared independence—who fought the war of the revolution through—who afterwards made the constitution under which we still live—these same men passed the ordinance of '87, declaring that slavery should never go to the north-west territory. I have no doubt Judge Douglas thinks they were very inconsistent in this. It is a question of discrimination between them and him. But there is not an inch of ground left for his claiming that their opinions—their example—their authority—are on his side in this controversy....

I have done with this mighty argument, of self-government. Go, sacred thing! Go in peace....

The Missouri Compromise ought to be restored. For the sake of the Union, it ought to be restored. We ought to elect a House of Representatives which will vote its restoration. If by any means, we omit to do this, what follows? Slavery may or may not be established in Nebraska. But whether it be or not, we shall have repudiated—discarded from the councils of the Nation—the spirit of compromise; for who after this will ever trust in a national compromise? The spirit of mutual concession—that spirit which first gave us the constitution, and which has thrice saved the Union—we shall have strangled and cast from us forever. And what shall we have in lieu of it? The South flushed with triumph and tempted to excesses; the North, betrayed, as they believe, brooding on wrong and burning for revenge. One side will provoke; the other resent. The one will taunt, the other defy; one agrees, the

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other retaliates. Already a few in the North, defy all constitutional restraints, resist the execution of the fugitive slave law, and even menace the institution of slavery in the States where it exists.

5 Already a few in the South, claim the constitutional right to take to and hold slaves in the free states—demand the revival of the slave trade; and demand a treaty with Great Britain by which fugitive slaves may be reclaimed from Canada. As yet they are but few on either side. It is a grave question for the lovers of the Union, whether the final destruction of the Missouri Compromise, and with it the spirit of all compromise will or will not embolden and embitter each of these, and fatally increase the numbers of both....

10 I particularly object to the new position which the avowed principle of this Nebraska law gives to slavery in the body politic. I object to it because it assumes that there can be moral right in the enslaving of one man by another. I object to it as a dangerous dalliance for a few people—a sad evidence that, feeling prosperity we forget right—that liberty, as a principle, we have ceased to revere. I object to it because the fathers of the republic eschewed, and rejected it. The argument of “Necessity” was the only argument they ever admitted in
15 favor of slavery; and so far, and so far only as it carried them, did they ever go. They found the institution existing among us, which they could not help; and they cast blame upon the British King for having permitted its introduction. Before the constitution, they prohibited its introduction into the north-western Territory—the only country we owned, then free
20 from it. At the framing and adoption of the constitution, they forbore to so much as mention the word “slave” or “slavery” in the whole instrument. In the provision for the recovery of fugitives, the slave is spoken of as a “person held to service or labor.” In that prohibiting the abolition of the African slave trade for twenty years, that trade is spoken of as “The migration or importation of such persons as any of the States now existing, shall think
25 proper to admit,” etc. These are the only provisions alluding to slavery. Thus, the thing is hid away, in the constitution, just as an afflicted man hides away a wen or a cancer, which he dares not cut out at once, lest he bleed to death; with the promise, nevertheless, that the cutting may begin at the end of a given time. Less than this our fathers could not do; and now they would not do. Necessity drove them so far, and farther, they would not go. But

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this is not all. The earliest Congress, under the constitution, took the same view of slavery. They hedged and hemmed it in to the narrowest limits of necessity.

In 1794, they prohibited an out-going slave-trade—that is, the taking of slaves from the United States to sell.

- 5 In 1798, they prohibited the bringing of slaves from Africa, into the Mississippi Territory—this territory then comprising what are now the States of Mississippi and Alabama. This was ten years before they had the authority to do the same thing as to the States existing at the adoption of the constitution.

- 10 In 1800 they prohibited American citizens from trading in slaves between foreign countries—as, for instance, from Africa to Brazil.

In 1803 they passed a law in aid of one or two State laws, in restraint of the internal slave trade.

- 15 In 1807, in apparent hot haste, they passed the law, nearly a year in advance, to take effect the first day of 1808—the very first day the constitution would permit—prohibiting the African slave trade by heavy pecuniary and corporal penalties.

In 1820, finding these provisions ineffectual, they declared the trade piracy, and annexed to it, the extreme penalty of death. While all this was passing in the general government, five or six of the original slave States had adopted systems of gradual emancipation; and by which the institution was rapidly becoming extinct within these limits.

- 20 Thus we see, the plain unmistakable spirit of that age, towards slavery, was hostility to the principle, and toleration, only by necessity....

Our republican robe is soiled, and trailed in the dust. Let us repurify it. Let us turn and wash it white, in the spirit, if not the blood, of the Revolution. Let us turn slavery from its claims of “moral right,” back upon its existing legal rights, and its arguments of “necessity.”

- 25 Let us return it to the position our fathers gave it; and there let it rest in peace. Let us re-

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adopt the Declaration of Independence, and with it, the practices, and policy, which harmonize with it. Let north and south—let all Americans—let all lovers of liberty everywhere—join in the great and good work. If we do this, we shall not only have saved the Union; but we shall have so saved it, as to make, and to keep it, forever worthy of the saving.

- 5 We shall have so saved it, that the succeeding millions of free happy people, the world over, shall rise up, and call us blessed, to the latest generations....

CHIEF JUSTICE ROGER TANEY

Dred Scott v. Sandford

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

March 6, 1857

U.S. Supreme Court | Washington, D.C.

BACKGROUND

Dred Scott was a slave who sued for his freedom after being taken by his owner into territory in which slavery was illegal. The Supreme Court rendered this decision on his case while also using the occasion to address other legalities concerning slavery.

GUIDING QUESTIONS

1. According to Taney's account, what was the status of African Americans at the time of the founding? Does he think they were included in the term "people of the United States"?
2. Which two clauses of the Constitution does Taney think declare African Americans to be a separate class of persons? What is his argument for his interpretation?
3. For what specific reason does Taney declare the Missouri Compromise unconstitutional?

Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857).

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Mr. Chief Justice Taney delivered the opinion of the court:...

...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 these 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 law-making 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.

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In discussing this question, we must not confound the rights of citizenship which a state may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and
5 privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of a citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States
10 beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States,
15 nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them....

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a state should be entitled, embraced
20 the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent. Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and
25 raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the

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meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts....

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
5 the Declaration of Independence....

...[I]t is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this Declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly
10 and flagrantly inconsistent with the principles they asserted....

But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until
15 the year 1808, if it thinks proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within
20 their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the Constitution. And by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified, as long as the government they then formed should endure. And these two provisions show,
25 conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen....

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...]The Missouri Compromise] declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of that 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
5 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 one who is held as a slave under the laws of any one of the States.

10 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
15 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....

20 It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument.

25 The powers of the government, and the rights of the citizen under it, are positive and practical regulations plainly written down. The people of the United States have delegated to it certain enumerated powers, and forbidden it to exercise others. It has no power over the person or property of a citizen but what the citizens of the United States have granted.

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And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of the government, or take from the citizens the rights they have reserved. And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the government. ...

[T]he right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every state that might desire it, for twenty years. And the government in express terms pledged to protect it in all future time if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood....The only power conferred is the power coupled with the duty, of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident....

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it.

Its judgment for the defendant must, consequently, be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction.

ABRAHAM LINCOLN

On the *Dred Scott* Decision

SPEECH EXCERPT

June 26, 1857
Springfield, Illinois

BACKGROUND

Abraham Lincoln offered this speech in response to Senator Stephen Douglas's defense of the *Dred Scott* decision and his continued promotion of the Kansas-Nebraska Act.

GUIDING QUESTIONS

1. Why does Lincoln argue that African Americans in the United States are worse off in his time than during the time of the founding?
2. How does the *Dred Scott* ruling undermine the principles of the founding in Lincoln's opinion?
3. What is Lincoln's position towards African Americans?
4. What does Lincoln find in common between the *Dred Scott* ruling and Stephen Douglas' arguments?

Abraham Lincoln, "Speech on *Dred Scott*," 26 June 1857, in *The Collected Works of Abraham Lincoln*, Vol. 2, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 403-07.

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...I have said, in substance, that the *Dred Scott* decision was, in part; based on assumed historical facts which were not really true; and I ought not to leave the subject without giving some reasons for saying this; I therefore give an instance or two, which I think fully sustain me. Chief Justice Taney, in delivering the opinion of the majority of the Court,
5 insists at great length that negroes were no part of the people who made, or for whom was made, the Declaration of Independence, or the Constitution of the United States.

On the contrary, Judge Curtis, in his dissenting opinion, shows that in five of the then thirteen states, to wit, New Hampshire, Massachusetts, New York, New Jersey and North Carolina, free negroes were voters, and, in proportion to their numbers, had the same part in
10 making the Constitution that the white people had. He shows this with so much particularity as to leave no doubt of its truth; and, as a sort of conclusion on that point, holds the following language:

"The Constitution was ordained and established by the people of the United States, through the action, in each State, of those persons who were qualified by its laws
15 to act thereon in behalf of themselves and all other citizens of the State. In some of the States, as we have seen, colored persons were among those qualified by law to act on the 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,
20 did act, by their suffrages, upon the question of its adoption."

Again, Chief Justice Taney says: "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." And again, after quoting from the
25 Declaration, he says: "The general words above quoted would seem to include the whole human family, and if they were used in a similar instrument at this day, would be so understood."

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In these the Chief Justice does not directly assert, but plainly assumes, as a fact, that the public estimate of the black man is more favorable *now* than it was in the days of the Revolution. This assumption is a mistake. In some trifling particulars, the condition of that race has been ameliorated; but, as a whole, in this country, the change between then and
5 now is decidedly the other way; and their ultimate destiny has never appeared so hopeless as in the last three or four years. In two of the five States—New Jersey and North Carolina—that then gave the free negro the right of voting, the right has since been taken away; and in a third—New York—it has been greatly abridged; while it has not been extended, so far as I know, to a single additional State, though the number of the States has more than dou-
10 bled. In those days, as I understand, masters could, at their own pleasure, emancipate their slaves; but since then, such legal restraints have been made upon emancipation, as to amount almost to prohibition. In those days, Legislatures held the unquestioned power to abolish slavery in their respective States; but now it is becoming quite fashionable for State Constitutions to withhold that power from the Legislatures. In those days, by common
15 consent, the spread of the black man's bondage to new countries was prohibited; but now, Congress decides that it *will* not continue the prohibition, and the Supreme Court decides that it *could* not if it would. In those days, our Declaration of Independence was held sacred by all, and thought to include all; but now, to aid in making the bondage of the negro uni-
20 versal and eternal, it is assailed, and sneered at, and construed, and hawked at, and torn, till, if its framers could rise from their graves, they could not at all recognize it. All the powers of earth seem rapidly combining against him. Mammon is after him; ambition fol-
lows, and philosophy follows, and the Theology of the day is fast joining the cry. They have him in his prison house; they have searched his person, and left no prying instrument with him. One after another they have closed the heavy iron doors upon him, and now they have
25 him, as it were, bolted in with a lock of a hundred keys, which can never be unlocked without the concurrence of every key; the keys in the hands of a hundred different men, and they scattered to a hundred different and distant places; and they stand musing as to what invention, in all the dominions of mind and matter, can be produced to make the impossibility of his escape more complete than it is.

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It is grossly incorrect to say or assume, that the public estimate of the negro is more favorable now than it was at the origin of the government.

Three years and a half ago, Judge Douglas brought forward his famous Nebraska bill. The country was at once in a blaze. He scorned all opposition, and carried it through Congress.

5 Since then he has seen himself superseded in a Presidential nomination, by one indorsing the general doctrine of his measure, but at the same time standing clear of the odium of its untimely agitation, and its gross breach of national faith; and he has seen that successful rival Constitutionally elected, not by the strength of friends, but by the division of adversaries, being in a popular minority of nearly four hundred thousand votes. He has seen his
10 chief aids in his own State, Shields and Richardson, politically speaking, successively tried, convicted, and executed, for an offense not their own, but his. And now he sees his own case, standing next on the docket for trial.

There is a natural disgust in the minds of nearly all white people, to the idea of an indiscriminate amalgamation of the white and black races; and Judge Douglas evidently is basing his chief hope, upon the chances of being able to appropriate the benefit of this disgust
15 to himself. If he can, by much drumming and repeating, fasten the odium of that idea upon his adversaries, he thinks he can struggle through the storm. He therefore clings to this hope, as a drowning man to the last plank. He makes an occasion for lugging it in from the opposition to the *Dred Scott* decision. He finds the Republicans insisting that the Declaration of Independence includes ALL men, black as well as white; and forthwith he boldly
20 denies that it includes negroes at all, and proceeds to argue gravely that all who contend it does, do so only because they want to vote, and eat, and sleep, and marry with negroes! He will have it that they cannot be consistent else. Now I protest against that counterfeit logic which concludes that, because I do not want a black woman for a *slave* I must necessarily
25 want her for a *wife*. I need not have her for either, I can just leave her alone. In some respects she certainly is not my equal; but in her natural right to eat the bread she earns with her own hands without asking leave of any one else, she is my equal, and the equal of all others.

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Chief Justice Taney, in his opinion in the *Dred Scott* case, admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes, by the fact that they did not at once, actually place them on an equality with the whites. Now this grave
5 argument comes to just nothing at all, by the other fact, that they did not at once, *or ever afterwards*, actually place all white people on an equality with one or another. And this is the staple argument of both the Chief Justice and the Senator, for doing this obvious violence to the plain unmistakable language of the Declaration. I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men
10 equal in *all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal—equal in "certain inalienable rights, among which are life, liberty, and the pursuit of happiness." This they said, and this meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor
15 yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approxi-
20 mated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. The assertion that "all men are created equal" was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, not for that, but for future use. Its authors meant it to be, thank God, it is now proving itself, a stumbling block to those who in after times might
25 seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should re-appear in this fair land and commence their vocation they should find left for them at least one hard nut to crack.

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I have now briefly expressed my view of the *meaning* and *objects* of that part of the Declaration of Independence which declares that "all men are created equal."

Now let us hear Judge Douglas' view of the same subject, as I find it in the printed report of his late speech. Here it is:

5 "No man can vindicate the character, motives and conduct of the signers of the Declaration of Independence, except upon the hypothesis that they referred to the white race alone, and not to the African, when they declared all men to have been created equal—that they were speaking of British subjects on this continent being equal to British subjects born and residing in Great Britain—that they were entitled
10 to the same inalienable rights, and among them were enumerated life, liberty and the pursuit of happiness. The Declaration was adopted for the purpose of justifying the colonists in the eyes of the civilized world in withdrawing their allegiance from the British crown, and dissolving their connection with the mother country."

My good friends, read that carefully over some leisure hour, and ponder well upon it—see
15 what a mere wreck—mangled ruin—it makes of our once glorious Declaration.

"They were speaking of British subjects on this continent being equal to British subjects born and residing in Great Britain!" Why, according to this, not only negroes but white people outside of Great Britain and America are not spoken of in that instrument. The English, Irish and Scotch, along with white Americans, were included to be sure, but the
20 French, Germans and other white people of the world are all gone to pot along with the Judge's inferior races.

I had thought the Declaration promised something better than the condition of British subjects; but no, it only meant that we should be *equal* to them in their own oppressed and *unequal* condition. According to that, it gave no promise that having kicked off the
25 King and Lords of Great Britain, we should not at once be saddled with a King and Lords of our own.

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I had thought the Declaration contemplated the progressive improvement in the condition of all men everywhere; but no, it merely "was adopted for the purpose of justifying the colonists in the eyes of the civilized world in withdrawing their allegiance from the British crown, and dissolving their connection with the mother country." Why, that object having
5 been effected some eighty years ago, the Declaration is of no practical use now—mere rubbish—old wadding left to rot on the battle-field after the victory is won.

I understand you are preparing to celebrate the "Fourth," tomorrow week. What for? The doings of that day had no reference to the present; and quite half of you are not even descendants of those who were referred to at that day. But I suppose you will celebrate; and
10 will even go so far as to read the Declaration. Suppose after you read it once in the old fashioned way, you read it once more with Judge Douglas' version. It will then run thus: "We hold these truths to be self-evident that all British subjects who were on this continent eighty-one years ago, were created equal to all British subjects born and *then* residing in Great Britain."

15 And now I appeal to all—to Democrats as well as others,—are you really willing that the Declaration shall be thus frittered away?—thus left no more at most, than an interesting memorial of the dead past? thus shorn of its vitality, and practical value; and left without the *germ* or even the *suggestion* of the individual rights of man in it?...

ABRAHAM LINCOLN (R-IL)

To the Illinois Republican Party Convention

SPEECH

June 16, 1858

House of Representatives Chamber at the Illinois State Capitol | Springfield, Illinois

A House Divided

BACKGROUND

Abraham Lincoln delivered this speech upon his nomination by the Illinois Republican Party to be its candidate for U.S. Senate in Illinois.

GUIDING QUESTIONS

1. To what, in particular, is Lincoln referring when he quotes the Gospel of Matthew, "A house divided against itself cannot stand"?
2. What does Lincoln find problematic about the politics surrounding the *Dred Scott v. Sandford* case?
3. What was "squatter sovereignty," and what does Lincoln think happened to it?
4. What are the three "working points" of "machinery" resulting from *Dred Scott* and Stephen Douglas's policy, and why does Lincoln think they are constitutionally problematic?

Abraham Lincoln, "A House Divided": Speech at Springfield, Illinois, 16 June 1858, in *The Collected Works of Abraham Lincoln*, Vol. 2, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 461–66.

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Mr. President and Gentlemen of the Convention:

If we could first know *where* we are, and *whither* we are tending, we could then better judge *what* to do, and *how* to do it.

We are now far into the *fifth* year, since a policy was initiated, with the *avowed* object, and
5 *confident* promise, of putting an end to slavery agitation.

Under the operation of that policy, that agitation has not only, *not ceased*, but has *constantly augmented*.

In *my* opinion, it *will* not cease, until a *crisis* shall have been reached, and passed.

"A house divided against itself cannot stand."

10 I believe this government cannot endure, permanently half *slave* and half *free*.

I do not expect the Union to be *dissolved*—I do not expect the house to *fall*— but I *do* expect it will cease to be divided.

It will become *all* one thing, or *all* the other.

15 Either the *opponents* of slavery, will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or its *advocates* will push it forward, till it shall become alike lawful in *all* the States, *old* as well as *new*—*North* as well as *South*.

Have we no *tendency* to the latter condition?

20 Let any one who doubts, carefully contemplate that now almost complete legal combination—piece of *machinery* so to speak—compounded of the Nebraska doctrine, and the Dred Scott decision. Let him consider not only *what work* the machinery is adapted to do, and *how well* adapted; but also, let him study the *history* of its construction, and trace, if he can, or rather *fail*, if he can, to trace the evidences of design, and concert of action, among its chief bosses, from the beginning.

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But, so far, *Congress* only, had acted; and an *endorsement* by the people, *real* or apparent, was indispensable, to *save* the point already gained, and give chance for more.

The new year of 1854 found slavery excluded from more than half the States by State Constitutions, and from most of the national territory by Congressional prohibition.

- 5 Four days later, commenced the struggle, which ended in repealing that Congressional prohibition.

This opened all the national territory to slavery; and was the first point gained.

- 10 This necessity had not been overlooked; but had been provided for, as well as might be, in the notable argument of "*squatter sovereignty*," otherwise called "*sacred right of self government*," which latter phrase, though expressive of the only rightful basis of any government, was so perverted in this attempted use of it as to amount to just this: That if any *one* man, choose to enslave *another*, no *third* man shall be allowed to object.

- 15 That argument was incorporated into the Nebraska Bill itself, in the language which follows: "*It being the true intent and meaning of this act not to legislate slavery into any Territory or state, not to exclude it therefrom; but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.*"

Then opened the roar of loose declamation in favor of "Squatter Sovereignty" and "Sacred right of self government."

- 20 "But," said opposition members, "let us be more *specific*—let us *amend* the bill so as to expressly declare that the people of the territory *may* exclude slavery." "Not we," said the friends of the measure; and down they voted the amendment.

- 25 While the Nebraska bill was passing through congress, a *law case*, involving the question of a negro's freedom, by reason of his owner having voluntarily taken him first into a free state and then a territory covered by the congressional prohibition, and held him as a slave,

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for a long time in each, was passing through the U. S. Circuit Court for the District of Missouri; and both Nebraska bill and law suit were brought to a decision in the same month of May, 1854. The negro's name was "Dred Scott," which name now designates the decision finally made in the case.

- 5 *Before the then* next Presidential election, the law case came to, and was argued *in* the Supreme Court of the United States; but the *decision* of it was deferred until *after* the election. Still, *before* the election, Senator Trumbull, on the floor of the Senate, requests the leading advocate of the Nebraska Bill to state *his opinion* whether the people of a territory can constitutionally exclude slavery from their limits; and the latter answers, "That is a question for
10 the Supreme Court."

The election came. Mr. Buchanan was elected, and the *endorsement*, such as it was, secured. That was the *second* point gained. The endorsement, however, fell short of a clear popular majority by nearly four hundred thousand votes, and so, perhaps, was not overwhelmingly reliable and satisfactory.

- 15 The *outgoing* President, in his last annual message, as impressively as possible *echoed back* upon the people the *weight* and *authority* of the endorsement.

The Supreme Court met again; *did not* announce their decision, but ordered a re-argument.

- 20 The Presidential inauguration came, and still no decision of the court; but the *incoming* President, in his inaugural address, fervently exhorted the people to abide by the forthcoming decision, *whatever it might be*.

Then, in a few days, came the decision.

The reputed author of the Nebraska bill finds an early occasion to make a speech at this capitol endorsing the Dred Scott Decision, and vehemently denouncing all opposition to it.

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The new President, too, seizes the early occasion of the Silliman letter to *endorse* and strongly *construe* that decision, and to express his *astonishment* that any different view had ever been entertained.

At length a squabble springs up between the President and the author of the Nebraska bill,
5 on the *mere* question of *fact*, whether the Lecompton constitution was or was not, in any just sense, made by the people of Kansas; and in that squabble the latter declares that all he wants is a fair vote for the people, and that he *cares* not whether slavery be voted *down* or voted *up*. I do not understand his declaration that he cares not whether slavery be voted down or voted up, to be intended by him other than as an *apt definition* of the *policy* he
10 would impress upon the public mind—the *principle* for which he declares he has suffered much, and is ready to suffer to the end.

And well may he cling to that principle. If he has any parental feeling, well may he cling to it. That principle, is the only *shred* left of his original Nebraska doctrine. Under the Dred Scott decision, "squatter sovereignty" squatted out of existence, tumbled down like tempo-
15 rary scaffolding—like the mold at the foundry served through one blast and fell back into loose sand—helped to carry an election, and then was kicked to the winds. His late *joint* struggle with the Republicans, against the Lecompton Constitution, involves nothing of the original Nebraska doctrine. That struggle was made on a point, the right of a people to make their own constitution, upon which he and the Republicans have never differed.

20 The several points of the Dred Scott decision, in connection with Senator Douglas' "care not" policy, constitute the piece of machinery, in its *present* state of advancement. This was the third point gained.

The *working* points of that machinery are:

First, that no negro slave, imported as such from Africa, and no descendant of such slave
25 can ever be a *citizen* of any State, in the sense of that term as used in the Constitution of the United States.

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This point is made in order to deprive the negro, in every possible event, of the benefit of this provision of the United States Constitution, which declares that—

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

- 5 Secondly, that "subject to the Constitution of the United States," neither *Congress* nor a *Territorial Legislature* can exclude slavery from any United States territory.

This point is made in order that individual men may *fill up* the territories with slaves, without danger of losing them as property, and thus to enhance the chances of *permanency* to the institution through all the future.

- 10 Thirdly, that whether the holding a negro in actual slavery in a free State, makes him free, as against the holder, the United States courts will not decide, but will leave to be decided by the courts of any slave State the negro may be forced into by the master.

This point is made, not to be pressed *immediately*; but, if acquiesced in for a while, and apparently *endorsed* by the people at an election, *then* to sustain the logical conclusion that

- 15 what Dred Scott's master might lawfully do with Dred Scott, in the free State of Illinois, every other master may lawfully do with any other *one*, or one *thousand* slaves, in Illinois, or in any other free State.

Auxiliary to all this, and working hand in hand with it, the Nebraska doctrine, or what is left of it, is to *educate* and *mold* public opinion, at least *Northern* public opinion, not to *care*

20 whether slavery is voted *down* or voted *up*.

This shows exactly where we now are; and *partially* also, whither we are tending.

It will throw additional light on the latter, to go back, and run the mind over the string of historical facts already stated. Several things will *now* appear less *dark* and *mysterious* than they did *when* they were transpiring. The people were to be left "perfectly free" "subject only

25 to the Constitution." What the *Constitution* had to do with it, outsiders could not *then* see.

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Plainly enough *now*, it was an exactly fitted *niche*, for the Dred Scott decision to afterwards come in, and declare the *perfect freedom* of the people, to be just no freedom at all.

Why was the amendment, expressly declaring the right of the people to exclude slavery, voted down? Plainly enough *now*, the adoption of it, would have spoiled the niche for the
5 Dred Scott decision.

Why was the Court decision held up? Why, even a Senator's individual opinion withheld, till *after* the Presidential election? Plainly enough *now*, the speaking out *then* would have damaged the "*perfectly free*" argument upon which the election was to be carried.

Why the *outgoing* President's felicitation on the endorsement? Why the delay of a reargu-
10 ment? Why the incoming President's *advance* exhortation in favor of the decision?

These things *look* like the cautious *patting* and *petting* of a spirited horse, preparatory to mounting him, when it is dreaded that he may give the rider a fall.

And why the hasty after endorsements of the decision by the President and others?

We can not absolutely *know* that all these exact adaptations are the result of preconcert.
15 But when we see a lot of framed timbers, different portions of which we know have been gotten out at different times and places and by different workmen—Stephen, Franklin, Roger and James, for instance—and when we see these timbers joined together, and see they exactly make the frame of a house or a mill, all the tenons and mortices exactly fitting, and all the lengths and proportions of the different pieces exactly adapted to their respective
20 places, and not a piece too many or too few—not omitting even scaffolding—or, if a single piece be lacking, we can see the place in the frame exactly fitted and prepared to yet bring such piece in—in *such* a case, we find it impossible to not *believe* that Stephen and Franklin and Roger and James all understood one another from the beginning, and all worked upon a common *plan* or *draft* drawn up before the first lick was struck....

SEN. STEPHEN DOUGLAS (D-IL)

Speech at Chicago

SPEECH EXCERPT

July 9, 1858
Chicago, Illinois

BACKGROUND

Democratic Illinois Senator Stephen Douglas traveled extensively to promote the concept of popular sovereignty while also defending the Kansas-Nebraska Act and the *Dred Scott* decision, offering these remarks while in Chicago.

GUIDING QUESTIONS

1. What is the principle of popular sovereignty, according to Douglas?
2. On what grounds does Douglas defend the Kansas-Nebraska Act?
3. What is his criticism of the Lecompton Constitution?
4. On what grounds does he defend the *Dred Scott* decision?
5. Why does he think that Lincoln is wrong to believe that "uniformity is either desirable or possible"?
6. For what reasons does Douglas oppose African American equality?

Stephen Douglas, "Speech of Senator Douglas, On the Occasion of his Public Reception at Chicago," 9 July 1858, in *Political Debates between Abraham Lincoln and Stephen A. Douglas* (New York: G. P. Putnam's Sons, 1912), 16–23, 30–35.

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...Fellow-citizens, while I devoted my best energies—all my energies, mental and physical—to the vindication of the great principle, and whilst the result has been such as will enable the people of Kansas to come into the Union with such a constitution as they desire, yet the credit of this great moral victory is to be divided among a large number of men of various and different political creeds. I was rejoiced when I found in this great contest the Republican party coming up manfully and sustaining the principle that the people of each Territory, when coming into the Union, have the right to decide for themselves whether slavery shall or shall not exist within their limits. I have seen the time when that principle was controverted. I have seen the time when all parties did not recognize the right of a people to have slavery or freedom, to tolerate or prohibit slavery as they deemed best, but claimed that power for the Congress of the United States, regardless of the wishes of the people to be affected by it; and when I found upon the Crittenden-Montgomery bill the Republicans and Americans of the North, and I may say, too, some glorious Americans and old-line Whigs from the South, like Crittenden and his patriotic associates, joined with a portion of the Democracy to carry out and vindicate the right of the people to decide whether slavery should or should not exist within the limits of Kansas, I was rejoiced within my secret soul, for I saw an indication that the American people, when they came to understand the principle, would give it their cordial support....

I regard the great principle of popular sovereignty as having been vindicated and made triumphant in this land as a permanent rule of public policy in the organization of Territories and the admission of new States. Illinois took her position upon this principle many years ago. You all recollect that in 1850, after the passage of the Compromise measures of that year, when I returned to my home there was great dissatisfaction expressed at my course in supporting those measures. I appeared before the people of Chicago at a mass meeting, and vindicated each and every one of those measures; and by reference to my speech on that occasion, which was printed and circulated broadcast throughout the State at the time, you will find that I then and there said that those measures were all founded upon the great principle that every people ought to possess the right to form and regulate their own domestic institutions in their own way, and that, that right being possessed by

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the people of the States, I saw no reason why the same principle should not be extended to all of the Territories of the United States. A general election was held in this State a few months afterwards, for members of the Legislature, pending which all these questions were thoroughly canvassed and discussed, and the nominees of the different parties instructed
5 in regard to the wishes of their constituents upon them. When that election was over, and the Legislature assembled, they proceeded to consider the merits of those Compromise measures, and the principles upon which they were predicated. And what was the result of their action? They passed resolutions, first repealing the Wilmot Proviso instructions, and in lieu thereof adopted another resolution, in which they declared the great principle which
10 asserts the right of the people to make their own form of government and establish their own institutions. That resolution is as follows:

Resolved, That our liberty and independence are based upon the right of the people to form for themselves such a government as they may choose; that this great principle, the birth-right of freemen, the gift of Heaven, secured to us by the blood of our ancestors, ought to
15 be secured to future generations, and no limitation ought to be applied to this power in the organization of any Territory of the United States, of either Territorial Government or State Constitution, provided the Government so established shall be republican, and in conformity with the Constitution of the United States.

That resolution, declaring the great principle of self-government as applicable to the Territories and new States, passed the House of Representatives of this State by a vote of sixty-
20 one in the affirmative, to only four in the negative. Thus you find that an expression of public opinion—enlightened, educated, intelligent public opinion—on this question, by the representatives of Illinois in 1851, approaches nearer to unanimity than has ever been obtained on any controverted question. That resolution was entered on the journal of the
25 Legislature of the State of Illinois, and it has remained there from that day to this, a standing instruction to her Senators, and a request to her Representatives, in Congress to carry out that principle in all future cases. Illinois, therefore, stands pre-eminent as the State which stepped forward early and established a platform applicable to this slavery question, concurred in alike by Whigs and Democrats, in which it was declared to be the wish of our

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people that thereafter the people of the Territories should be left perfectly free to form and regulate their domestic institutions in their own way, and that no limitation should be placed upon that right in any form.

Hence what was my duty in 1854, when it became necessary to bring forward a bill for the organization of the Territories of Kansas and Nebraska? Was it not my duty, in obedience to the Illinois platform, to your standing instructions to your Senators, adopted with almost entire unanimity, to incorporate in that bill the great principle of self-government, declaring that it was "the true intent and meaning of the Act not to legislate slavery into any State or Territory, or to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States?" I did incorporate that principle in the Kansas-Nebraska Bill, and perhaps I did as much as any living man in the enactment of that bill, thus establishing the doctrine in the public policy of the country. I then defended that principle against assaults from one section of the Union. During this last winter it became my duty to vindicate it against assaults from the other section of the Union. I vindicated it boldly and fearlessly, as the people of Chicago can bear witness, when it was assailed by Free-soilers; and during this winter I vindicated and defended it as boldly and fearlessly when it was attempted to be violated by the almost united South. I pledged myself to you on every stump in Illinois in 1854, I pledged myself to the people of other States north and south, wherever I spoke; and in the United States Senate and elsewhere, in every form in which I could reach the public mind or the public ear, I gave the pledge that I, so far as the power should be in my hands, would vindicate the principle of the right of the people to form their own institutions, to establish free States or slave States as they chose, and that that principle should never be violated either by fraud, by violence, by circumvention, or by any other means, if it was in my power to prevent it. I now submit to you, my fellow-citizens, whether I have not redeemed that pledge in good faith. Yes, my friends, I have redeemed it in good faith; and it is a matter of heartfelt gratification to me to see these assembled thousands here tonight bearing their testimony to the fidelity with which I have advocated that principle, and redeemed my pledges in connection with it.

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I will be entirely frank with you. My object was to secure the right of the people of each State and of each Territory, north or south, to decide the question for themselves, to have slavery or not, just as they chose; and my opposition to the Lecompton Constitution was not predicated upon the ground that it was a pro-slavery constitution, nor would my action
5 have been different had it been a Free-soil constitution. My speech against the Lecompton fraud was made on the 9th of December, while the vote on the slavery clause in that constitution was not taken until the 21st of the same month, nearly two weeks after. I made my speech against the Lecompton monstrosity solely on the ground that it was a violation of the fundamental principles of free government; on the ground that it was not the act and
10 deed of the people of Kansas; that it did not embody their will; that they were averse to it; and hence I denied the right of Congress to force it upon them, either as a free State or a slave State. I deny the right of Congress to force a slaveholding State upon an unwilling people. I deny their right to force a free State upon an unwilling people. I deny their right to force a good thing upon a people who are unwilling to receive it. The great principle is
15 the right of every community to judge and decide for itself whether a thing is right or wrong, whether it would be good or evil for them to adopt it; and the right of free action, the right of free thought, the right of free judgment, upon the question is dearer to every true American than any other under a free government. My objection to the Lecompton contrivance was that it undertook to put a constitution on the people of Kansas against
20 their will, in opposition to their wishes, and thus violated the great principle upon which all our institutions rest. It is no answer to this argument to say that slavery is an evil, and hence should not be tolerated. You must allow the people to decide for themselves whether it is a good or an evil. You allow them to decide for themselves whether they desire a Maine liquor law or not; you allow them to decide for themselves what kind of common schools
25 they will have, what system of banking they will adopt, or whether they will adopt any at all; you allow them to decide for themselves the relations between husband and wife, parent and child, guardian and ward,—in fact, you allow them to decide for themselves all other questions: and why not upon this question? Whenever you put a limitation upon the right of any people to decide what laws they want, you have destroyed the fundamental principle
30 of self-government....

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But I am equally free to say that the reason assigned by Mr. Lincoln for resisting the decision of the Supreme Court in the Dred Scott case does not in itself meet my approbation. He objects to it because that decision declared that a negro descended from African parents, who were brought here and sold as slaves, is not and cannot be a citizen of the United States.

- 5 He says it is wrong because it deprives the negro of the benefits of that clause of the Constitution which says that citizens of one State shall enjoy all the privileges and immunities of citizens of the several States; in other words, he thinks it wrong because it deprives the negro of the privileges, immunities, and rights of citizenship, which pertain, according to that decision, only to the white man. I am free to say to you that in my opinion this government of ours is founded on the white basis. It was made by the white man, for the benefit of the white man, to be administered by white men, in such manner as they should determine. It is also true that a negro, an Indian, or any other man of inferior race to a white man should be permitted to enjoy, and humanity requires that he should have, all the rights, privileges, and immunities which he is capable of exercising consistent with the safety of society. I would give him every right and every privilege which his capacity would enable him to enjoy, consistent with the good of the society in which he lived. But you ask me, What are these rights and these privileges? My answer is, that each State must decide for itself the nature and extent of these rights. Illinois has decided for herself. We have decided that the negro shall not be a slave, and we have at the same time decided that he shall not vote, or serve on juries, or enjoy political privileges. I am content with that system of policy which we have adopted for ourselves. I deny the right of any other State to complain of our policy in that respect, or to interfere with it, or to attempt to change it. On the other hand, the State of Maine has decided that in that State a negro man may vote on an equality with the white man. The sovereign power of Maine had the right to prescribe that rule for herself. Illinois has no right to complain of Maine for conferring the right of negro suffrage, nor has Maine any right to interfere with or complain of Illinois because she has denied negro suffrage.

The State of New York has decided by her constitution that a negro may vote, provided that he own \$250 worth of property, but not otherwise. The rich negro can vote, but the

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poor one cannot. Although that distinction does not commend itself to my judgment, yet I assert that the sovereign power of New York had a right to prescribe that form of the elective franchise. Kentucky, Virginia, and other States have provided that negroes, or a certain class of them in those States, shall be slaves, having neither civil nor political rights.

- 5 Without endorsing the wisdom of that decision, I assert that Virginia has the same power, by virtue of her sovereignty, to protect slavery within her limits as Illinois has to banish it forever from our own borders. I assert the right of each State to decide for itself on all these questions, and I do not subscribe to the doctrine of my friend Mr. Lincoln, that uniformity is either desirable or possible. I do not acknowledge that the States must all be free or must
10 all be slave.

- I do not acknowledge that the negro must have civil and political rights everywhere or nowhere. I do not acknowledge that the Chinese must have the same rights in California that we would confer upon him here. I do not acknowledge that the coolie imported into this country must necessarily be put upon an equality with the white race. I do not acknowledge
15 any of these doctrines of uniformity in the local and domestic regulations in the different States.

- Thus you see, my fellow-citizens, that the issues between Mr. Lincoln and myself, as respective candidates for the United States Senate, as made up, are direct, unequivocal, and irreconcilable. He goes for uniformity in our domestic institutions, for a war of sections,
20 until one or the other shall be subdued. I go for the great principle of the Kansas-Nebraska Bill,—the right of the people to decide for themselves.

- On the other point, Mr. Lincoln goes for a warfare upon the Supreme Court of the United States because of their judicial decision in the Dred Scott case. I yield obedience to the decisions in that court,—to the final determination of the highest judicial tribunal known to
25 our Constitution. He objects to the Dred Scott decision because it does not put the negro in the possession of the rights of citizenship on an equality with the white man. I am opposed to negro equality. I repeat that this nation is a white people,—a people composed of European descendants, a people that have established this government for themselves and

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their posterity,—and I am in favor of preserving, not only the purity of the blood, but the purity of the government from any mixture or amalgamation with inferior races. I have seen the effects of this mixture of superior and inferior races, this amalgamation of white men and Indians and negroes; we have seen it in Mexico, in Central America, in South America, and in all the Spanish-American States; and its result has been degeneration, demoralization, and degradation below the capacity for self-government.

I am opposed to taking any step that recognizes the negro man or the Indian as the equal of the white man. I am opposed to giving him a voice in the administration of the government. I would extend to the negro and the Indian and to all dependent races every right, every privilege, and every immunity consistent with the safety and welfare of the white races; but equality they never should have, either political or social, or in any other respect whatever.

My friends, you see that the issues are distinctly drawn. I stand by the same platform that I have so often proclaimed to you and to the people of Illinois heretofore. I stand by the Democratic organization, yield obedience to its usages, and support its regular nominations. I endorse and approve the Cincinnati platform, and I adhere to and intend to carry out, as part of that platform, the great principle of self-government, which recognizes the right of the people in each State and Territory to decide for themselves their domestic institutions. In other words, if the Lecompton issue shall arise again, you have only to turn back and see where you have found me during the last six months, and then rest assured that you will find me in the same position, battling for the same principle, and vindicating it from assault from whatever quarter it may come, so long as I have the power to do it....

ABRAHAM LINCOLN (R) & SENATOR STEPHEN DOUGLAS (D)**Seventh Debate in the 1858 Election Campaign****DEBATE EXCERPTS**

October 15, 1858

Outside Alton City Hall | Alton, Illinois

BACKGROUND

Incumbent senator from Illinois, Democrat Stephen Douglas, debated Abraham Lincoln, the Republican candidate, for the seventh and final time in the 1858 election campaign. The candidates were not directly running for U.S. Senate, as senators were still appointed by the state legislature at the time, but their arguments were meant to bolster votes for their respective parties in the state legislature, which would then appoint one of them as U.S. Senator.

GUIDING QUESTIONS

1. What are the three positions at issue in the debate?
2. What does Douglas think would have been the result had Lincoln delivered a version of his "A House Divided" speech at the Constitutional Convention?
3. How does Douglas interpret the meaning of "equality" in the Declaration of Independence?
4. In what sense does Douglas want each state to "mind its own business"?
5. Why does Lincoln think that history is on his side with respect to the meaning of "equality" in the Declaration of Independence?
6. According to Lincoln, how should one interpret the language of the Constitution with regard to slavery? What is the view of the founders on slavery, according to Lincoln?
7. What is the primary dividing line between Republicans and Democrats at this time, according to Lincoln?
8. In Lincoln's view, why is the existence of the Union threatened?
9. On what grounds does Lincoln base the struggle between him and Douglas as the struggle between right and wrong?

Abraham Lincoln and Stephen Douglas, "Seventh and Last Debate with Stephen A. Douglas at Alton, Illinois," 15 October 1858, in *The Collected Works of Abraham Lincoln*, Vol. 3, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 285-87, 296-97, 301-02, 304, 307-08, 312-16, 318-20, 322-23.

Senator Stephen Douglas's Speech

...The issue thus being made up between Mr. Lincoln and myself on three points, we went before the people of the State. During the following seven weeks, between the Chicago speeches and our first meeting at Ottawa, he and I addressed large assemblages of the people in many of the central counties. In my speeches I confined myself closely to those three positions which he had taken controverting his proposition that this Union could not exist as our fathers made it, divided into free and slave States, controverting his proposition of a crusade against the Supreme Court because of the Dred Scott decision, and controverting his proposition that the Declaration of Independence included and meant the negroes as well as the white men, when it declared all men to be created equal. I supposed at that time that these propositions constituted a distinct issue between us, and that the opposite positions we had taken upon them we would be willing to be held to in every part of the State. I never intended to waver one hair's breadth from that issue either in the north or the south, or wherever I should address the people of Illinois. I hold that when the time arrives that I cannot proclaim my political creed in the same terms not only in the northern but the southern part of Illinois, not only in the northern but the southern States, and wherever the American flag waves over American soil, that then there must be something wrong in that creed. So long as we live under a common constitution, so long as we live in a confederacy of sovereign and equal States, joined together as one for certain purposes, that any political creed is radically wrong which cannot be proclaimed in every State, and every section of that Union alike. I took up Mr. Lincoln's three propositions in my several speeches, analyzed them, and pointed out what I believed to be the radical errors contained in them. First, in regard to his doctrine that this government was in violation of the law of God which says, that a house divided against itself cannot stand, I repudiated it as a slander upon the immortal framers of our constitution. I then said, have often repeated, and now again assert, that in my opinion this government can endure forever, divided into free and slave States as our fathers made it,—each State having the right to prohibit, abolish or sustain slavery just as it pleases. This government was made upon the great basis of the sovereignty of the States, the right of each State to regulate its own domestic institutions to suit itself, and that right was conferred with understanding and expectation that inasmuch as each

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locality had separate interests, each locality must have different and distinct local and domestic institutions, corresponding to its wants and interests. Our fathers knew when they made the government, that the laws and institutions which were well adapted to the green mountains of Vermont, were unsuited to the rice plantations of South Carolina. They knew then, as well as we know now, that the laws and institutions which would be well adapted to the beautiful prairies of Illinois would not be suited to the mining regions of California. They knew that in a Republic as broad as this, having such a variety of soil, climate and interest, there must necessarily be a corresponding variety of local laws—the policy and institutions of each State adapted to its condition and wants. For this reason this Union was established on the right of each State to do as it pleased on the question of slavery, and every other question; and the various States were not allowed to complain of, much less interfere, with the policy of their neighbors.

Suppose the doctrine advocated by Mr. Lincoln and the abolitionists of this day had prevailed when the Constitution was made, what would have been the result? Imagine for a moment that Mr. Lincoln had been a member of the convention that framed the Constitution of the United States, and that when its members were about to sign that wonderful document, he had arisen in that convention as he did at Springfield this summer, and addressing himself to the President, had said, "a house divided against itself cannot stand; this government divided into free and slave States cannot endure, they must all be free or all be slave, they must all be one thing or all the other, otherwise, it is a violation of the law of God, and cannot continue to exist;"—suppose Mr. Lincoln had convinced that body of sages, that that doctrine was sound, what would have been the result? Remember that the Union was then composed of thirteen States, twelve of which were slaveholding and one free. Do you think that the one free State would have outvoted the twelve slaveholding States, and thus have secured the abolition of slavery? On the other hand, would not the twelve slaveholding States have outvoted the one free State, and thus have fastened slavery, by a Constitutional provision, on every foot of the American Republic forever? You see that if this abolition doctrine of Mr. Lincoln had prevailed when the government was made, it would have established slavery as a permanent institution, in all the States whether they wanted it or not, and the question for us to determine in Illinois now as one of the free

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States is, whether or not we are willing, having become the majority section, to enforce a doctrine on the minority, which we would have resisted with our heart's blood had it been attempted on us when we were in a minority. How has the South lost her power as the majority section in this Union, and how have the free States gained it, except under the operation of that principle which declares the right of the people of each State and each territory to form and regulate their domestic institutions in their own way. It was under that principle that slavery was abolished in New Hampshire, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania; it was under that principle that one half of the slaveholding States became free; it was under that principle that the number of free States increased until from being one out of twelve States, we have grown to be the majority of States of the whole Union, with the power to control the House of Representatives and Senate, and the power, consequently, to elect a President by Northern votes without the aid of a Southern State. Having obtained this power under the operation of that great principle, are you now prepared to abandon the principle and declare that merely because we have the power you will wage a war against the Southern States and their institutions until you force them to abolish slavery everywhere....

But the Abolition party really think that under the Declaration of Independence the negro is equal to the white man, and that negro equality is an inalienable right conferred by the Almighty, and hence, that all human laws in violation of it are null and void. With such men it is no use for me to argue. I hold that the signers of the Declaration of Independence had no reference to negroes at all when they declared all men to be created equal. They did not mean negro, nor the savage Indians, nor the Feejee Islanders, nor any other barbarous race. They were speaking of white men. They alluded to men of European birth and European descent—to white men, and to none others, when they declared that doctrine. I hold that this Government was established on the white basis. It was established by white men for the benefit of white men and their posterity forever, and should be administered by white men, and none others. But it does not follow, by any means, that merely because the negro is not a citizen, and merely because he is not our equal, that, therefore, he should be a slave. On the contrary, it does follow, that we ought to extend to the negro race, and to all other dependent races all the rights, all the privileges, and all the immunities which they

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can exercise consistently with the safety of society. Humanity requires that we should give them all these privileges; Christianity commands that we should extend those privileges to them. The question then arises what are those privileges, and what is the nature and extent of them. My answer is that that is a question which each State must answer for itself. We in

5 Illinois have decided it for ourselves. We tried slavery, kept it up for twelve years, and finding that it was not profitable we abolished it for that reason, and became a free State. We adopted in its stead the policy that a negro in this State shall not be a slave and shall not be a citizen. We have a right to adopt that policy. For my part I think it is a wise and sound policy for us. You in Missouri must judge for yourselves whether it is a wise policy for you.

10 If you choose to follow our example, very good; if you reject it, still well, it is your business, not ours. So with Kentucky. Let Kentucky adopt a policy to suit herself. If we do not like it we will keep away from it, and if she does not like ours let her stay at home, mind her own business and let us alone. If the people of all the States will act on that great principle, and each State mind its own business, attend to its own affairs, take care of its own negroes and

15 not meddle with its neighbors, then there will be peace between the North and the South, the East and the West, throughout the whole Union. Why can we not thus have peace? Why should we thus allow a sectional party to agitate this country, to array the North against the South, and convert us into enemies instead of friends, merely that a few ambitious men may ride into power on a sectional hobby? How long is it since these ambitious

20 Northern men wished for a sectional organization? Did any one of them dream of a sectional party as long as the North was the weaker section and the South the stronger? Then all were opposed to sectional parties; but the moment the North obtained the majority in the House and Senate by the admission of California, and could elect a President without the aid of Southern votes, that moment ambitious Northern men formed a scheme to excite

25 the North against the South, and make the people be governed in their votes by geographical lines, thinking that the North, being the stronger section, would outvote the South, and consequently they, the leaders, would ride into office on a sectional hobby. I am told that my hour is out. It was very short.

Abraham Lincoln's Reply

...At Galesburg the other day, I said in answer to Judge Douglas, that three years ago there never had been a man, so far as I knew or believed, in the whole world, who had said that the Declaration of Independence did not include negroes in the term "all men." I reassert it

5 today. I assert that Judge Douglas and all his friends may search the whole records of the country, and it will be a matter of great astonishment to me if they shall be able to find that one human being three years ago had ever uttered the astounding sentiment that the term "all men" in the Declaration did not include the negro. Do not let me be misunderstood. I know that more than three years ago there were men who, finding this assertion constantly

10 in the way of their schemes to bring about the ascendancy and perpetuation of slavery, *denied the truth of it*. I know that Mr. Calhoun and all the politicians of his school denied the truth of the Declaration. I know that it ran along in the mouths of some Southern men for a period of years, ending at last in that shameful though rather forcible declaration of Pettit of Indiana, upon the floor of the United States Senate, that the Declaration of Inde-

15 pendence was in that respect "a self-evident lie," rather than a self-evident truth. But I say, with a perfect knowledge of all this hawking at the Declaration without directly attacking it, that three years ago there never had lived a man who had ventured to assail it in the sneaking way of pretending to believe it and then asserting it did not include the negro. I believe the first man who ever said it was Chief Justice Taney in the Dred Scott case, and

20 the next to him was our friend Stephen A. Douglas. And now it has become the catch-word of the entire party. I would like to call upon his friends everywhere to consider how they have come in so short a time to view this matter in a way so entirely different from their former belief? to ask whether they are not being borne along by an irresistible current—whither, they know not?...

25 And when this new principle—this new proposition that no human being ever thought of three years ago,—is brought forward, *I combat it* as having an evil tendency, if not an evil design; I combat it as having a tendency to dehumanize the negro—to take away from him

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the right of ever striving to be a man. I combat it as being one of the thousand things constantly done in these days to prepare the public mind to make property, and nothing but property of the *negro in all the States of this Union....*

Again; the institution of slavery is only mentioned in the Constitution of the United States
5 two or three times, and in neither of these cases does the word "slavery" or "negro race" occur; but covert language is used each time, and for a purpose full of significance. What is the language in regard to the prohibition of the African slave trade? It runs in about this way: "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 thou-
10 sand eight hundred and eight."

The next allusion in the Constitution to the question of slavery and the black race, is on the subject of the basis of representation, and there the language used is, "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
15 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."

It says "persons," not slaves, not negroes; but this "three-fifths" can be applied to no other class among us than the negroes.

Lastly, in the provision for the reclamation of fugitive slaves it is said: "No person held to
20 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." There again there is no mention of the word "negro" or of slavery. In all three of these places, being the only allusions to slavery in the instrument, covert language is used. Language is
25 used not suggesting that slavery existed or that the black race were among us. And I understand the contemporaneous history of those times to be that covert language was used with a purpose, and that purpose was that in our Constitution, which it was hoped and is still hoped will endure forever—when it should be read by intelligent and patriotic men, after

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the institution of slavery had passed from among us—there should be nothing on the face of the great charter of liberty suggesting that such a thing as negro slavery had ever existed among us. This is part of the evidence that the fathers of the Government expected and intended the institution of slavery to come to an end. They expected and intended that it should be in the course of ultimate extinction. And when I say that I desire to see the further spread of it arrested I only say I desire to see that done which the fathers have first done. When I say I desire to see it placed where the public mind will rest in the belief that it is in the course of ultimate extinction, I only say I desire to see it placed where they placed it. It is not true that our fathers, as Judge Douglas assumes, made this government part slave and part free. Understand the sense in which he puts it. He assumes that slavery is a rightful thing within itself,—was introduced by the framers of the Constitution. The exact truth is, that they found the institution existing among us, and they left it as they found it. But in making the government they left this institution with many clear marks of disapprobation upon it. They found slavery among them and they left it among them because of the difficulty— the absolute impossibility of its immediate removal. And when Judge Douglas asks me why we cannot let it remain part slave and part free as the fathers of the government made, he asks a question based upon an assumption which is itself a falsehood; and I turn upon him and ask him the question, when the policy that the fathers of the government had adopted in relation to this element among us was the best policy in the world—the only wise policy—the only policy that we can ever safely continue upon—that will ever give us peace unless this dangerous element masters us all and becomes a national institution—I *turn upon him and ask him why he could not let it alone?* I turn and ask him why he was driven to the necessity of introducing a *new policy* in regard to it? He has himself said he introduced a new policy. He said so in his speech on the 22nd of March of the present year, 1858. I ask him why he could not let it remain where our fathers placed it? I ask too of Judge Douglas and his friends why we shall not again place this institution upon the basis on which the fathers left it? I ask you when he infers that I am in favor of setting the free and slave States at war, when the institution was placed in that attitude by those who made the constitution, *did they make any war?* If we had no war out of it when thus placed, wherein is the ground of belief that we shall have war out of it if we return to that policy? Have we

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had any peace upon this matter springing from any other basis? I maintain that we have not. I have proposed nothing more than a return to the policy of the fathers....

I have stated upon former occasions, and I may as well state again, what I understand to be the real issue in this controversy between Judge Douglas and myself. On the point of my
5 wanting to make war between the free and the slave States, there has been no issue between us. So, too, when he assumes that I am in favor of introducing a perfect social and political equality between the white and black races. These are false issues, upon which Judge Douglas has tried to force the controversy. There is no foundation in truth for the charge that I maintain either of these propositions. The real issue in this controversy—the one pressing
10 upon every mind—is the sentiment on the part of one class that looks upon the institution of slavery *as a wrong*, and of another class that *does not* look upon it as a wrong. The sentiment that contemplates the institution of slavery in this country as a wrong is the sentiment of the Republican party. It is the sentiment around which all their actions—all their arguments circle—from which all their propositions radiate. They look upon it as being a moral,
15 social and political wrong; and while they contemplate it as such, they nevertheless have due regard for its actual existence among us, and the difficulties of getting rid of it in any satisfactory way and to all the constitutional obligations thrown about it. Yet having a due regard for these, they desire a policy in regard to it that looks to its not creating any more danger. They insist that it should as far as may be, *be treated* as a wrong, and one of the
20 methods of treating it as a wrong is to *make provision that it shall grow no larger*. They also desire a policy that looks to a peaceful end of slavery at sometime, as being wrong. These are the views they entertain in regard to it as I understand them; and all their sentiments—all their arguments and propositions are brought within this range. I have said and I repeat it here, that if there be a man amongst us who does not think that the institution of slavery
25 is wrong in any one of the aspects of which I have spoken, he is misplaced and ought not to be with us. And if there be a man amongst us who is so impatient of it as a wrong as to disregard its actual presence among us and the difficulty of getting rid of it suddenly in a satisfactory way, and to disregard the constitutional obligations thrown about it, that man is misplaced if he is on our platform. We disclaim sympathy with him in practical action.
30 He is not placed properly with us.

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On this subject of treating it as a wrong, and limiting its spread, let me say a word. Has any thing ever threatened the existence of this Union save and except this very institution of Slavery? What is it that we hold most dear amongst us? Our own liberty and prosperity. What has ever threatened our liberty and prosperity save and except this institution of Slavery? If this is true, how do you propose to improve the condition of things by enlarging Slavery—by spreading it out and making it bigger? You may have a wen or a cancer upon your person and not be able to cut it out lest you bleed to death; but surely it is no way to cure it, to engraft it and spread it over your whole body. That is no proper way of treating what you regard a wrong. You see this peaceful way of dealing with it as a wrong—restrict-
10 ing the spread of it, and not allowing it to go into new countries where it has not already existed. That is the peaceful way, the old-fashioned way, the way in which the fathers themselves set us the example.

On the other hand, I have said there is a sentiment which treats it as *not* being wrong. That is the Democratic sentiment of this day. I do not mean to say that every man who stands
15 within that range positively asserts that it is right. That class will include all who positively assert that it is right, and all who like Judge Douglas treat it as indifferent and do not say it is either right or wrong. These two classes of men fall within the general class of those who do not look upon it as a wrong. And if there be among you anybody who supposes that he as a Democrat, can consider himself "as much opposed to slavery as anybody," I would like
20 to reason with him. You never treat it as a wrong. What other thing that you consider as a wrong, do you deal with as you deal with that? Perhaps you *say* it is wrong, *but your leader never does, and you quarrel with anybody who says it is wrong*. Although you pretend to say so yourself you can find no fit place to deal with it as a wrong. You must not say anything about it in the free States, *because it is not here*. You must not say anything about it in the
25 slave States, *because it is there*. You must not say anything about it in the pulpit, because that is religion and has nothing to do with it. You must not say anything about it in politics, *because that will disturb the security of "my place."* There is no place to talk about it as being a wrong, although you say yourself it *is* a wrong. But finally you will screw yourself up to the belief that if the people of the slave States should adopt a system of gradual emancipa-
30 tion on the slavery question, you would be in favor of it. You would be in favor of it. You

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say that is getting it in the right place, and you would be glad to see it succeed. But you are deceiving yourself. You all know that Frank Blair and Gratz Brown, down there in St. Louis, undertook to introduce that system in Missouri. They fought as valiantly as they could for the system of gradual emancipation which you pretend you would be glad to see succeed.

5 Now I will bring you to the test. After a hard fight they were beaten, and when the news came over here you threw up your hats and *hurrahed for Democracy*. More than that, take all the argument made in favor of the system you have proposed, and it carefully excludes the idea that there is anything wrong in the institution of slavery. The arguments to sustain that policy carefully excluded it. Even here today you heard Judge Douglas quarrel with me

10 because I uttered a wish that it might sometime come to an end. Although Henry Clay could say he wished every slave in the United States was in the country of his ancestors, I am denounced by those pretending to respect Henry Clay for uttering a wish that it might sometime, in some peaceful way, come to an end. The Democratic policy in regard to that institution will not tolerate the merest breath, the slightest hint, of the least degree of wrong

15 about it. Try it by some of Judge Douglas' arguments. He says he "don't care whether it is voted up or voted down" in the Territories. I do not care myself in dealing with that expression, whether it is intended to be expressive of his individual sentiments on the subject, or only of the national policy he desires to have established. It is alike valuable for my purpose. Any man can say that who does not see anything wrong in slavery, but no man can logically

20 say it who does see a wrong in it; because no man can logically say he don't care whether a wrong is voted up or voted down. He may say he don't care whether an indifferent thing is voted up or down, but he must logically have a choice between a right thing and a wrong thing. He contends that whatever community wants slaves has a right to have them. So they have if it is not a wrong. But if it is a wrong, he cannot say people have a right to do wrong.

25 He says that upon the score of equality, slaves should be allowed to go in a new Territory, like other property. This is strictly logical if there is no difference between it and other property. If it and other property are equal, his argument is entirely logical. But if you insist that one is wrong and the other right, there is no use to institute a comparison between right and wrong. You may turn over everything in the Democratic policy from beginning

30 to end, whether in the shape it takes on the statute book, in the shape it takes in the Dred

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Scott decision, in the shape it takes in conversation or the shape it takes in short maxim-like arguments—it everywhere carefully excludes the idea that there is anything wrong in it.

That is the real issue. That is the issue that will continue in this country when these poor
5 tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles—right and wrong—throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, "You work and
10 toil and earn bread, and I'll eat it." No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle. I was glad to express my gratitude at Quincy, and I re-express it here to Judge Douglas—that *he looks to no end of the institution of slavery*. That will help the
15 people to see where the struggle really is. It will hereafter place with us all men who really do wish the wrong may have an end. And whenever we can get rid of the fog which obscures the real question—when we can get Judge Douglas and his friends to avow a policy looking to its perpetuation—we can get out from among them that class of men and bring them to the side of those who treat it as a wrong. Then there will soon be an end of it, and that end
20 will be its "ultimate extinction." Whenever the issue can be distinctly made, and all extraneous matter thrown out so that men can fairly see the real difference between the parties, this controversy will soon be settled, and it will be done peaceably too. There will be no war, no violence. It will be placed again where the wisest and best men of the world, placed it. Brooks of South Carolina once declared that when this Constitution was framed, its
25 framers did not look to the institution existing until this day. When he said this, I think he stated a fact that is fully borne out by the history of the times. But he also said they were better and wiser men than the men of these days; yet the men of these days had experience which they had not, and by the invention of the cotton gin it became a necessity in this country that slavery should be perpetual. I now say that willingly or unwillingly, purposely
30 or without purpose, Judge Douglas has been the most prominent instrument in changing

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the position of the institution of slavery which the fathers of the government expected to come to an end ere this—and *putting it upon Brooks' cotton gin basis*,—placing it where he openly confesses he has no desire there shall ever be an end of it....

Senator Stephen Douglas's Reply

5 Mr. Lincoln has concluded his remarks by saying that there is not such an Abolitionist as I am in all America. If he could make the Abolitionists of Illinois believe that, he would not have much show for the Senate. Let him make the Abolitionists believe the truth of that statement and his political back is broken.

His first criticism upon me is the expression of his hope that the war of the administration
10 will be prosecuted against me and the Democratic party of his State with vigor. He wants that war prosecuted with vigor; I have no doubt of it. His hopes of success, and the hopes of his party depend solely upon it. They have no chance of destroying the Democracy of this State except by the aid of federal patronage. He has all the federal office-holders here as his allies, running separate tickets against the Democracy to divide the party although
15 the leaders all intend to vote directly the Abolition ticket, and only leave the green-horns to vote this separate ticket who refuse to go into the Abolition camp. There is something really refreshing in the thought that Mr. Lincoln is in favor of prosecuting one war vigorously. It is the first war I ever knew him to be in favor of prosecuting. It is the first war that I ever knew him to believe to be just or constitutional. When the Mexican war [was] being
20 waged, and the American army was surrounded by the enemy in Mexico, he thought that war was unconstitutional, unnecessary and unjust. He thought it was not commenced on the right *spot*.

When I made an incidental allusion of that kind in the joint discussion over at Charleston some weeks ago, Lincoln, in replying, said that I, Douglas, had charged him with voting
25 against supplies for the Mexican war, and then he reared up, full length, and swore that he never voted against the supplies—that it was a slander—and caught hold of Ficklin, who sat on the stand, and said, "Here, Ficklin, tell the people that it is a lie." Well, Ficklin, who had served in Congress with him, stood up and told them all that he recollected about it. It

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was that when George Ashmun, of Massachusetts, brought forward a resolution declaring the war unconstitutional, unnecessary, and unjust, that Lincoln had voted for it. "Yes," said Lincoln, "I did." Thus he confessed that he voted that the war was wrong, that our country was in the wrong, and consequently that the Mexicans were in the right; but charged that I
5 had slandered him by saying that he voted against the supplies. I never charged him with voting against the supplies in my life, because I knew that he was not in Congress when they were voted. The war was commenced on the 13th day of May, 1846, and on that day we appropriated in Congress ten millions of dollars and fifty thousand men to prosecute it. During the same session we voted more men and more money, and at the next session we
10 voted more men and more money, so that by the time Mr. Lincoln entered Congress we had enough men and enough money to carry on the war, and had no occasion to vote any more. When he got into the House, being opposed to the war, and not being able to stop the supplies, because they had all gone forward, all he could do was to follow the lead of Corwin, and prove that the war was not begun on the right spot, and that it was unconsti-
15 tutional, unnecessary, and wrong. Remember, too, that this he did after the war had been begun. It is one thing to be opposed to the declaration of a war, another and very different thing to take sides with the enemy against your own country after the war has been commenced. Our army was in Mexico at the time, many battles had been fought; our citizens, who were defending the honor of their country's flag, were surrounded by the daggers, the
20 guns and the poison of the enemy. Then it was that Corwin made his speech in which he declared that the American soldiers ought to be welcomed by the Mexicans with bloody hands and hospitable graves; then it was that Ashmun and Lincoln voted in the House of Representatives that the war was unconstitutional and unjust; and Ashmun's resolution, Corwin's speech, and Lincoln's vote were sent to Mexico and read at the head of the Mexi-
25 can army, to prove to them that there was a Mexican party in the Congress of the United States who were doing all in their power to aid them. That a man who takes sides with the common enemy against his own country in time of war should rejoice in a war being made on me now, is very natural. And in my opinion, no other kind of a man would rejoice in it....

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Mr. Lincoln tries to avoid the main issue by attacking the truth of my proposition, that our fathers made this government divided into free and slave States, recognizing the right of each to decide all its local questions for itself. Did they not thus make it? It is true that they did not establish slavery in any of the States, or abolish it in any of them; but finding thirteen States twelve of which were slave and one free, they agreed to form a government uniting them together, as they stood divided into free and slave States, and to guarantee forever to each State the right to do as it pleased on the slavery question. Having thus made the government, and conferred this right upon each State forever, I assert that this government can exist as they made it, divided into free and slave States, if any one State chooses to retain slavery. He says that he looks forward to a time when slavery shall be abolished everywhere. I look forward to a time when each State shall be allowed to do as it pleases. If it chooses to keep slavery forever, it is not my business, but its own; if it chooses to abolish slavery, it is its own business—not mine. I care more for the great principle of self-government, the right of the people to rule, than I do for all the negroes in Christendom. I would not endanger the perpetuity of this Union. I would not blot out the great inalienable rights of the white men for all the negroes that ever existed. Hence, I say, let us maintain this government on the principles that our fathers made it, recognizing the right of each State to keep slavery as long as its people determine, or to abolish it when they please. But Mr. Lincoln says that when our fathers made this government they did not look forward to the state of things now existing; and therefore he thinks the doctrine was wrong; and he quotes Brooks, of South Carolina, to prove that our fathers then thought that probably slavery would be abolished, by each State acting for itself before this time. Suppose they did; suppose they did not foresee what has occurred,—does that change the principles of our government? They did not probably foresee the telegraph that transmits intelligence by lighting, nor did they foresee the railroads that now form the bonds of union between the different States, or the thousand mechanical inventions that have elevated mankind. But do these things change the principles of the government? Our fathers, I say, made this government on the principle of the right of each State to do as it pleases in its own domestic affairs, subject to the constitution, and allowed the people of each to apply to every new

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change of circumstance such remedy as they may see fit to improve their condition. This right they have for all time to come....

ABRAHAM LINCOLN (R-IL)

At Cooper Institute

SPEECH EXCERPT

February 27, 1860

Cooper Union | New York City, New York

BACKGROUND

Sponsored by the Young Men's Central Republican Union, Abraham Lincoln gave this speech reflecting on the *Dred Scott* decision in the months leading up to the Republican convention.

GUIDING QUESTIONS

1. What problems does Lincoln identify with the Supreme Court's reasoning in *Dred Scott*?
2. What is his primary criticism of the strategy of the southern people?
3. What does he think should be the Republican strategy with respect to the territories?
4. What does Lincoln see as the future for slavery in the United States?

Abraham Lincoln, "Address at Cooper Institute, New York City," 27 February 1860, in *The Collected Works of Abraham Lincoln*, Vol. 3, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 535, 543-50.

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...But enough! *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*
5 *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.

10 And now, if they would listen—as I suppose they will not—I would address a few words to the Southern people....

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
15 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
20 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
25 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

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with anything else—"expressly," that is, in words meaning just that, without the aid of any inference, and susceptible of no other meaning.

If they had only pledged their judicial opinion that such right is affirmed in the instrument by implication, it would be open to others to show that neither the word "slave" nor "slavery" is to be found in the Constitution, nor the word "property" even, in any connection with language alluding to the things slave, or slavery, and that wherever in that instrument the slave is alluded to, he is called a "person;"—and wherever his master's legal right in relation to him is alluded to, it is spoken of as "service or labor which may be due,"—as a debt payable in service or labor. Also, it would be open to show, by contemporaneous history, that this mode of alluding to slaves and slavery, instead of speaking of them, was employed on purpose to exclude from the Constitution the idea that there could be property in man.

To show all this, is easy and certain.

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?

And then it is to be remembered that "our fathers, who framed the Government under which we live"—the men who made the Constitution—decided this same Constitutional question in our favor, long ago—decided it without division among themselves, when making the decision; without division among themselves about the meaning of it after it was made, and, so far as any evidence is left, without basing it upon any mistaken statement of facts.

Under all these circumstances, do you really feel yourselves justified to break up this Government, unless such a court decision as yours is, shall be at once submitted to as a conclusive and final rule of political action? But you will not abide the election of a Republican President! In that supposed event, you say, you will destroy the Union; and then, you say, the great crime of having destroyed it will be upon us! That is cool. A highwayman holds a

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pistol to my ear, and mutters through his teeth, "Stand and deliver, or I shall kill you, and then you will be a murderer!"

To be sure, what the robber demanded of me—my money—was my own; and I had a clear right to keep it; but it was no more my own than my vote is my own; and the threat of death
5 to me, to extort my money, and the threat of destruction to the Union, to extort my vote, can scarcely be distinguished in principle.

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.*

10 *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
15 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.

20 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
25 them. Alike unavailing to convince them, is the fact that they have never detected a man of us in any attempt to disturb them.

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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's new sedition law must be enacted
5 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.

10 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
15 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
20 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
25 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,

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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—contrivances such as groping for some middle ground between the right and the wrong, vain as the search for a man who should be neither a living man nor a dead man—such as a policy of "don't care" on a question about which all true men do care—such as Union appeals beseeching true Union men to yield to Disunionists, reversing the divine rule, and calling, not the sinners, but the righteous to repentance—such as invocations to Washington, imploring men to unsay what Washington said, and undo what Washington did.

Neither let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves. Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it.

CONFEDERATE VICE-PRESIDENT ALEXANDER STEPHENS

Cornerstone Speech

SPEECH EXCERPTS

March 21, 1861

Athenaeum | Savannah, Georgia

BACKGROUND

Three weeks after Abraham Lincoln's inauguration, the new vice president of the Confederate States of America was invited to address the people of Savannah and the Confederacy on the state of public affairs.

GUIDING QUESTIONS

1. According to Stephens, what does the "new constitution" of the Confederacy preserve from the "old constitution"?
2. What key improvement does he say have been made as a result of the "new constitution"?
3. Upon what principle does he say the "corner-stone" of the new government rests, and why did the "old constitution" reject it?
4. In what sense does Stephens assert that the principle of equality is preserved in the "new constitution"?

Alexander Stephens, "Sketch of the Corner-Stone Speech," 21 March 1861, in *Public and Private: With Letters and Speeches, Before, During, and Since the War*, ed. Henry Cleveland (Philadelphia: National Publishing Co., 1866), 717–23, 726, 728–29.

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...[W]e are passing through one of the greatest revolutions in the annals of the world. Seven States have within the last three months thrown off an old government and formed a new. This revolution has been signally marked, up to this time, by the fact of its having been accomplished without the loss of a single drop of blood.

5 This new constitution, or form of government, constitutes the subject to which your attention will be partly invited. In reference to it, I make this first general remark. It amply secures all our ancient rights, franchises, and liberties. All the great principles of Magna Charta are retained in it. No citizen is deprived of life, liberty, or property, but by the judgment of his peers under the laws of the land. The great principle of religious liberty, which
10 was the honor and pride of the old constitution, is still maintained and secured. All the essentials of the old constitution, which have endeared it to the hearts of the American people, have been preserved and perpetuated. Some changes have been made.... Some of these I should have preferred not to have seen made; but these, perhaps, meet the cordial approbation of a majority of this audience, if not an overwhelming majority of the people
15 of the Confederacy. Of them, therefore, I will not speak. But other important changes do meet my cordial approbation. They form great improvements upon the old constitution. So, taking the whole new constitution, I have no hesitancy in giving it as my judgment that it is decidedly better than the old.

Allow me briefly to allude to some of these improvements. The question of building up
20 class interests, or fostering one branch of industry to the prejudice of another under the exercise of the revenue power, which gave us so much trouble under the old constitution, is put at rest forever under the new. We allow the imposition of no duty with a view of giving advantage to one class of persons, in any trade or business, over those of another. All, under our system, stand upon the same broad principles of perfect equality. Honest
25 labor and enterprise are left free and unrestricted in whatever pursuit they may be engaged.... This old thorn of the tariff, which was the cause of so much irritation in the old body politic, is removed forever from the new.

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Again, the subject of internal improvements, under the power of Congress to regulate commerce, is put at rest under our system. The power claimed by construction under the old constitution, was at least a doubtful one— it rested solely upon construction. We of the South, generally apart from considerations of constitutional principles, opposed its exercise
5 upon grounds of its inexpediency and injustice. Notwithstanding this opposition, millions of money, from the common treasury had been drawn for such purposes. Our opposition sprang from no hostility to commerce, or all necessary aids for facilitating it. With us it was simply a question, upon *whom* the burden should fall. In Georgia, for instance, we have done as much for the cause of internal improvements as any other portion of the country
10 according to population and means.... All this was done to open an outlet for our products of the interior, and those to the west of us, to reach the marts of the world. No State was in greater need of such facilities than Georgia, but we did not ask that these works should be made by appropriations out of the common treasury. The cost of the grading, the superstructure, and equipments of our roads, was borne by those who entered on the enterprise.... What justice was there in taking this money, which our people paid into the common treasury on the importation of our iron, and applying it to the improvement of rivers
15 and harbors elsewhere?

The true principle is to subject the commerce of every locality, to whatever burdens may be necessary to facilitate it. If Charleston harbor needs improvement, let the commerce of
20 Charleston bear the burden. If the mouth of the Savannah river has to be cleared out, let the seagoing navigation which is benefitted by it, bear the burden. So with the mouths of the Alabama and Mississippi river. Just as the products of the interior, our cotton, wheat, corn, and other articles, have to bear the necessary rates of freight over our railroads to reach the seas. This is again the broad principle of perfect equality and justice. And it is
25 especially set forth and established in our new constitution...

But not to be tedious in enumerating the numerous changes for the better, allow me to allude to one other—though last, not least. The new constitution has put at rest, *forever*, all the agitating questions relating to our peculiar institution—African slavery as it exists

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amongst us—the proper *status* of the negro in our form of civilization. This was the immediate cause of the late rupture and present revolution. Jefferson in his forecast, had anticipated this, as the "rock upon which the old Union would split." He was right. What was conjecture with him, is now a realized fact. But whether he fully comprehended the great truth upon which that rock *stood* and *stands*, may be doubted. The prevailing ideas entertained by him and most of the leading statesmen at the time of the formation of the old constitution, were that the enslavement of the African was in violation of the laws of nature; that it was wrong in *principle*, socially, morally, and politically. It was an evil they knew not well how to deal with, but the general opinion of the men of that day was that, somehow or other in the order of Providence, the institution would be evanescent and pass away. This idea, though not incorporated in the constitution, was the prevailing idea at that time. The constitution, it is true, secured every essential guarantee to the institution while it should last, and hence no argument can be justly urged against the constitutional guarantees thus secured, because of the common sentiment of the day. Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. It was a sandy foundation, and the government built upon it fell when the "storm came and the wind blew."

Our new government is founded upon exactly the opposite idea; its foundations are laid, its corner-stone rests upon the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.

This, our new government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth. This truth has been slow in the process of its development, like all other truths in the various departments of science. It has been so even amongst us. Many who hear me, perhaps, can recollect well, that this truth was not generally admitted, even within their day. The errors of the past generation still clung to many as late as twenty years ago. Those at the North, who still cling to these errors, with a zeal above knowledge, we justly denominate fanatics. All fanaticism springs from an aberration of the mind—from a defect in reasoning. It is a species of insanity. One of the most striking characteristics of insanity, in many instances, is forming correct conclusions from fancied

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or erroneous premises; so with the anti-slavery fanatics; their conclusions are right if their premises were. They assume that the negro is equal, and hence conclude that he is entitled to equal privileges and rights with the white man. If their premises were correct, their conclusions would be logical and just—but their premise being wrong, their whole argument fails. I recollect once of having heard a gentleman from one of the northern States, of great power and ability, announce in the House of Representatives, with imposing effect, that we of the South would be compelled, ultimately, to yield upon this subject of slavery, that it was as impossible to war successfully against a principle in politics, as it was in physics or mechanics. That the principle would ultimately prevail. That we, in maintaining slavery as it exists with us, were warring against a principle, a principle founded in nature, the principle of the equality of men. The reply I made to him was, that upon his own grounds, we should, ultimately, succeed, and that he and his associates, in this crusade against our institutions, would ultimately fail. The truth announced, that it was as impossible to war successfully against a principle in politics as it was in physics and mechanics, I admitted; but told him that it was he, and those acting with him, who were warring against a principle. They were attempting to make things equal which the Creator had made unequal.

In the conflict thus far, success has been on our side, complete throughout the length and breadth of the Confederate States. It is upon this, as I have stated, our social fabric is firmly planted; and I cannot permit myself to doubt the ultimate success of a full recognition of this principle throughout the civilized and enlightened world.

As I have stated, the truth of this principle may be slow in development, as all truths are and ever have been, in the various branches of science. It was so with the principles announced by Galileo—it was so with Adam Smith and his principles of political economy. It was so with Harvey, and his theory of the circulation of the blood. It is stated that not a single one of the medical profession, living at the time of the announcement of the truths made by him, admitted them. Now, they are universally acknowledged. May we not, therefore, look with confidence to the ultimate universal acknowledgment of the truths upon which our system rests? It is the first government ever instituted upon the principles in strict conformity to nature, and the ordination of Providence, in furnishing the materials

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of human society. Many governments have been founded upon the principle of the subordination and serfdom of certain classes of the same race; such were and are in violation of the laws of nature. Our system commits no such violation of nature's laws. With us, all of the white race, however high or low, rich or poor, are equal in the eye of the law. Not so
5 with the negro. Subordination is his place. He, by nature, or by the curse against Canaan, is fitted for that condition which he occupies in our system. The architect in the construction of buildings, lays the foundation with the proper material—the granite; then comes the brick or the marble. The substratum of our society is made of the material fitted by nature for it, and by experience we know, that it is best, not only for the superior, but for
10 the inferior race, that it should be so. It is, indeed, in conformity with the ordinance of the Creator. It is not for us to inquire into the wisdom of his ordinances, or to question them. For his own purposes, he has made one race to differ from another, as he has made "one star to differ from another star in glory."

The great objects of humanity are best attained when there is conformity to his laws and
15 decrees, in the formation of governments as well as in all things else. Our confederacy is founded upon principles in strict conformity with these laws. This stone which was rejected by the first builders "is become the chief of the corner"—the real "corner-stone"—in our new edifice.

I have been asked, what of the future? It has been apprehended by some that we would have
20 arrayed against us the civilized world. I care not who or how many they may be against us, when we stand upon the eternal principles of truth, *if we are true to ourselves and the principles for which we contend*, we are obliged to, and must triumph.

Thousands of people who begin to understand these truths are not yet completely out of the shell; they do not see them in their length and breadth. We hear much of the civilization
25 and christianization of the barbarous tribes of Africa. In my judgment, those ends will never be attained, but by first teaching them the lesson taught to Adam, that "in the sweat of his brow he should eat his bread," and teaching them to work, and feed, and clothe themselves....

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...Looking to the distant future, and, perhaps, not very far distant either, it is not beyond the range of possibility, and even probability, that all the great States of the north-west will gravitate this way, as well as Tennessee, Kentucky, Missouri, Arkansas, etc. Should they do so, our doors are wide enough to receive them, but not until they are ready to assimilate with us in principle.

The process of disintegration in the old Union may be expected to go on with almost absolute certainty if we pursue the right course. We are now the nucleus of a growing power which, if we are true to ourselves, our destiny, and high mission, will become the controlling power on this continent. To what extent accessions will go on in the process of time, or where it will end, the future will determine... Such are some of the glimpses of the future as I catch them....

In olden times the olive branch was considered the emblem of peace; we will send to the nations of the earth another and far more potential emblem of the same, the cotton plant. The present duties were levied with a view of meeting the present necessities and exigencies, in preparation for war, if need be; but if we have peace, and he hoped we might, and trade should resume its proper course, a duty of ten per cent. upon foreign importations it was thought might be sufficient to meet the expenditures of the government. If some articles should be left on the free list, as they now are, such as breadstuffs, etc., then, of course, duties upon others would have to be higher—but in no event to an extent to embarrass trade and commerce. He concluded in an earnest appeal for union and harmony, on part of all the people in support of the common cause, in which we were all enlisted, and upon the issues of which such great consequences depend.

If, said he, we are true to ourselves, true to our cause, true to our destiny, true to our high mission, in presenting to the world the highest type of civilization ever exhibited by man—there will be found in our lexicon no such word as fail.

Mr. Stephens took his seat, amid a burst of enthusiasm and applause, such as the Athenaeum has never had displayed within its walls, within "the recollection of the oldest inhabitant."

PRESIDENT ABRAHAM LINCOLN (R)

First Inaugural Address

SPEECH

March 4, 1861
U.S. Capitol | Washington, D.C.

BACKGROUND

Abraham Lincoln delivered this speech at his inauguration amidst declarations of secession by southern states.

GUIDING QUESTIONS

1. How does Lincoln try to assuage the fears of Southerners?
2. Why does Lincoln believe that the Union is perpetual?
3. What is Lincoln's understanding of the purpose of the executive power now confided in him?
4. On constitutional questions, what role does the Supreme Court have with respect to the other branches, in Lincoln's understanding?
5. What is "the only substantial dispute," and what are its possible resolutions as Lincoln sees them?

Abraham Lincoln, "First Inaugural Address—Final Text," 4 March 1861, in *The Collected Works of Abraham Lincoln*, Vol. 4, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 262–71.

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Fellow citizens of the United States:

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
5 United States, to be taken by the President "before he enters on the execution of his office."

I do not consider it necessary, at present for me to discuss those matters of administration about which there is no special anxiety, or excitement.

10 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
15 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
20 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 judg-
25 ment 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 under what pretext, as among the gravest of crimes."

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I now reiterate these sentiments: and in doing so, I only press upon the public attention the most conclusive evidence of which the case is susceptible, that the property, peace and security of no section are to be in anywise endangered by the now incoming Administration. I add too, that all the protection which, consistently with the Constitution and the laws, can
5 be given, will be cheerfully given to all the States when lawfully demanded, for whatever cause—as cheerfully to one section, as to another.

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:

10 "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."

15 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 law-giver 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
20 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
25 surrendered, it can be of but little consequence to him, or to others, by which authority it is done. And should any one, 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,
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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?"

5 I take the official oath today, 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
10 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
15 through many perils; and, generally, with great success. Yet, with all this scope for 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.

20 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 de-
25 stroy 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
30 it not require all to lawfully rescind it?

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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
5 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.*"

10 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
15 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;
20 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. Doing this I deem to be only a simple duty on my part; and I shall perform it, so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or, in some authoritative manner, direct the contrary. I trust this will not be regarded as a menace, but
25 only as the declared purpose of the Union that it *will* constitutionally defend, and maintain itself.

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,
30 occupy, and possess the property, and places belonging to the government, and to collect

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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 so universal, as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to
5 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 with all, that I deem it better to forego, for the time, the uses of such offices.

10 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
15 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 or deny; but if there be such,
20 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
25 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.

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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.

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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.

5 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
10 case, still the evil effect following it, being limited to that particular case, with the chance that it may be over-ruled, 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
15 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.

20

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
25 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, cannot 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
30 surrendered, would not be surrendered at all, by the other.

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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 can not 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.

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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.

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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 also if 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
5 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 jus-
10 tice, 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, 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
15 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
20 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
25 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
30 competent to adjust, in the best way, all our present difficulty.

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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."

5

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 battle-field, 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.

10

PRESIDENT ABRAHAM LINCOLN (R)

Message to Congress in Special Session

SPEECH

July 4, 1861

Congress | Washington, D.C.

BACKGROUND

President Abraham Lincoln delivered this speech to Congress after the first three months of the Civil War.

GUIDING QUESTIONS

1. As Lincoln summarizes, what was the policy his administration adopted at the outset of his presidency?
2. According to Lincoln's account, why was Fort Sumter attacked, and why did it fall?
3. In the aftermath of the Battle of Fort Sumter, what does Lincoln believe the conflict puts at stake?
4. What is the policy of "armed neutrality," and what does Lincoln think will be its consequences?
5. How does Lincoln justify authorizing the Commanding General to suspend the privilege of the writ of habeas corpus?
6. What is the "ingenious sophism" to which Lincoln refers, and why does Lincoln think that it is inconsistent with the Constitution?
7. What gives Lincoln confidence in the people of the Union, and what does he say is the "patriotic instinct of the plain people"?

Abraham Lincoln, "Message to Congress in Special Session," 4 July 1861, in *The Collected Works of Abraham Lincoln*, Vol. 4, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 421-41.

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Fellow-citizens of the Senate and House of Representatives:

Having been convened on an extraordinary occasion, as authorized by the Constitution, your attention is not called to any ordinary subject of legislation.

At the beginning of the present Presidential term, four months ago, the functions of the Federal Government were found to be generally suspended within the several States of South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida, excepting only those of the Post Office Department.

Within these States, all the Forts, Arsenal, Dock-yards, Custom-houses, and the like, including the movable and stationary property in, and about them, had been seized, and were held in open hostility to this Government, excepting only Forts Pickens, Taylor, and Jefferson, on, and near the Florida coast, and Fort Sumter, in Charleston harbor, South Carolina. The Forts thus seized had been put in improved condition; new ones had been built; and armed forces had been organized, and were organizing, all avowedly with the same hostile purpose.

The Forts remaining in the possession of the Federal government, in, and near, these States, were either besieged or menaced by warlike preparations; and especially Fort Sumter was nearly surrounded by well-protected hostile batteries, with guns equal in quality to the best of its own, and outnumbering the latter as perhaps ten to one. A disproportionate share, of the Federal muskets and rifles, had somehow found their way into these States, and had been seized, to be used against the government. Accumulations of the public revenue, lying within them, had been seized for the same object. The Navy was scattered in distant seas; leaving but a very small part of it within the immediate reach of the government. Officers of the Federal Army and Navy, had resigned in great numbers; and, of those resigning, a large proportion had taken up arms against the government. Simultaneously, and in connection, with all this, the purpose to sever the Federal Union, was openly avowed. In accordance with this purpose, an ordinance had been adopted in each of these States, declaring the States, respectively, to be separated from the National Union. A formula for insti-

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tuting a combined government of these states had been promulgated; and this illegal organization, in the character of confederate States was already invoking recognition, aid, and intervention, from Foreign Powers.

5 Finding this condition of things, and believing it to be an imperative duty upon the incoming Executive, to prevent, if possible, the consummation of such attempt to destroy the Federal Union, a choice of means to that end became indispensable. This choice was made; and was declared in the Inaugural address. The policy chosen looked to the exhaustion of all peaceful measures, before a resort to any stronger ones. It sought only to hold the public places and property, not already wrested from the Government, and to collect the revenue; 10 relying for the rest, on time, discussion, and the ballot-box. It promised a continuance of the mails, at government expense, to the very people who were resisting the government; and it gave repeated pledges against any disturbance to any of the people, or any of their rights. Of all that which a president might constitutionally, and justifiably, do in such a case, everything was foreborne, without which, it was believed possible to keep the government 15 on foot.

On the 5th of March, (the present incumbent's first full day in office) a letter of Major Anderson, commanding at Fort Sumter, written on the 28th of February, and received at the War Department on the 4th of March, was, by that Department, placed in his hands. This letter expressed the professional opinion of the writer, that re-inforcements could not be 20 thrown into that Fort within the time for his relief, rendered necessary by the limited supply of provisions, and with a view of holding possession of the same, with a force of less than twenty thousand good, and well-disciplined men. This opinion was concurred in by all the officers of his command; and their *memoranda* on the subject, were made enclosures of Major Anderson's letter. The whole was immediately laid before Lieutenant General Scott, 25 who at once concurred with Major Anderson in opinion. On reflection, however, he took full time, consulting with other officers, both of the Army and the Navy; and, at the end of four days, came reluctantly, but decidedly, to the same conclusion as before. He also stated at the same time that no such sufficient force was then at the control of the Government, or could be raised, and brought to the ground, within the time when the provisions in the

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Fort would be exhausted. In a purely military point of view, this reduced the duty of the administration, in the case, to the mere matter of getting the garrison safely out of the Fort.

It was believed, however, that to so abandon that position, under the circumstances, would be utterly ruinous; that the *necessity* under which it was to be done, would not be fully understood—that, by many, it would be construed as a part of a *voluntary* policy—that, at home, it would discourage the friends of the Union, embolden its adversaries, and go far to insure to the latter, a recognition abroad—that, in fact, it would be our national destruction consummated. This could not be allowed. Starvation was not yet upon the garrison; and ere it would be reached, *Fort Pickens* might be reinforced. This last, would be a clear indication of *policy*, and would better enable the country to accept the evacuation of Fort Sumter, as a military *necessity*. An order was at once directed to be sent for the landing of the troops from the Steamship Brooklyn, into Fort Pickens. This order could not go by land, but must take the longer, and slower route by sea. The first return news from the order was received just one week before the fall of Fort Sumter. The news itself was, that the officer commanding the Sabine, to which vessel the troops had been transferred from the Brooklyn, acting upon some *quasi* armistice of the late administration, (and of the existence of which, the present administration, up to the time the order was despatched, had only too vague and uncertain rumors, to fix attention) had refused to land the troops. To now reinforce Fort Pickens, before a crisis would be reached at Fort Sumter was impossible—rendered so by the near exhaustion of provisions in the latter-named Fort. In precaution against such a conjuncture, the government had, a few days before, commenced preparing an expedition, as well adapted as might be, to relieve Fort Sumter, which expedition was intended to be ultimately used, or not, according to circumstances. The strongest anticipated case, for using it, was now presented; and it was resolved to send it forward. As had been intended, in this contingency, it was also resolved to notify the Governor of South Carolina, that he might expect an attempt would be made to provision the Fort; and that, if the attempt should not be resisted, there would be no effort to throw in men, arms, or ammunition, without further notice, or in case of an attack upon the Fort. This notice was

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accordingly given; whereupon the Fort was attacked, and bombarded to its fall, without even awaiting the arrival of the provisioning expedition.

It is thus seen that the assault upon, and reduction of, Fort Sumter, was, in no sense, a matter of self-defense on the part of the assailants. They well knew that the garrison in the Fort could, by no possibility, commit aggression upon them. They knew—they were expressly notified—that the giving of bread to the few brave and hungry men of the garrison, was all which would on that occasion be attempted, unless themselves, by resisting so much, should provoke more. They knew that this Government desired to keep the garrison in the Fort, not to assail them, but merely to maintain visible possession, and thus to preserve the Union from actual, and immediate dissolution—trusting, as herein-before stated, to time, discussion, and the ballot-box, for final adjustment; and they assailed, and reduced the Fort, for precisely the reverse object—to drive out the visible authority of the Federal Union, and thus force it to immediate dissolution.

That this was their object, the Executive well understood; and having said to them in the inaugural address, "You can have no conflict without being yourselves the aggressors," he took pains, not only to keep this declaration good, but also to keep the case so free from the power of ingenious sophistry, as that the world should not be able to misunderstand it. By the affair at Fort Sumter, with its surrounding circumstances, that point was reached. Then, and thereby, the assailants of the Government, began the conflict of arms, without a gun in sight, or in expectancy, to return their fire, save only the few in the Fort, sent to that harbor, years before, for their own protection, and still ready to give that protection, in whatever was lawful. In this act, discarding all else, they have forced upon the country, the distinct issue: "Immediate dissolution, or blood."

And this issue embraces more than the fate of these United States. It presents to the whole family of man, the question, whether a constitutional republic, or a democracy—a government of the people, by the same people—can, or cannot, maintain its territorial integrity, against its own domestic foes. It presents the question, whether discontented individuals, too few in numbers to control administration, according to organic law, in any case, can

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always, upon the pretences made in this case, or on any other pretences, or arbitrarily, without any pretence, break up their Government, and thus practically put an end to free government upon the earth. It forces us to ask: "Is there, in all republics, this inherent, and fatal weakness?" "Must a government, of necessity, be too *strong* for the liberties of its own people, or too *weak* to maintain its own existence?"

So viewing the issue, no choice was left but to call out the war power of the Government; and so to resist force, employed for its destruction, by force, for its preservation.

The call was made; and the response of the country was most gratifying; surpassing, in unanimity and spirit, the most sanguine expectation. Yet none of the States commonly called Slave-states, except Delaware, gave a Regiment through regular State organization. A few regiments have been organized within some others of those states, by individual enterprise, and received into the government service. Of course the seceded States, so called, (and to which Texas had been joined about the time of the inauguration), gave no troops to the cause of the Union. The border States, so called, were not uniform in their actions; some of them being almost *for* the Union, while in others—as Virginia, North Carolina, Tennessee, and Arkansas—the Union sentiment was nearly repressed, and silenced. The course taken in Virginia was the most remarkable—perhaps the most important. A convention, elected by the people of that State, to consider this very question of disrupting the Federal Union, was in session at the capital of Virginia when Fort Sumter fell. To this body the people had chosen a large majority of *professed* Union men. Almost immediately after the fall of Sumter, many members of that majority went over to the original disunion minority, and, with them, adopted an ordinance for withdrawing the State from the Union. Whether this change was wrought by their great approval of the assault upon Sumter, or their great resentment at the government's resistance to that assault, is not definitely known. Although they submitted the ordinance, for ratification, to a vote of the people, to be taken on a day then somewhat more than a month distant, the convention, and the Legislature, (which was also in session at the same time and place) with leading men of the State, not members of either, immediately commenced acting, as if the State were already out of the Union. They pushed military preparations vigorously forward all over the state.

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They seized the United States Armory at Harper's Ferry, and the Navy-yard at Gosport, near Norfolk. They received—perhaps invited— into their state, large bodies of troops, with their warlike appointments, from the so-called seceded States. They formally entered into a treaty of temporary alliance, and co-operation with the so-called "Confederate States," and sent members to their Congress at Montgomery. And, finally, they permitted the insurrectionary government to be transferred to their capital at Richmond.

The people of Virginia have thus allowed this giant insurrection to make its nest within her borders; and this government has no choice left but to deal with it, *where* it finds it. And it has the less regret, as the loyal citizens have, in due form, claimed its protection. Those loyal citizens, this government is bound to recognize, and protect, as being Virginia.

In the border States, so called—in fact, the middle states—there are those who favor a policy which they call "armed neutrality"—that is, an arming of those states to prevent the Union forces passing one way, or the disunion, the other, over their soil. This would be disunion completed. Figuratively speaking, it would be the building of an impassable wall along the line of separation. And yet, not quite an impassable one; for, under the guise of neutrality, it would tie the hands of the Union men, and freely pass supplies from among them, to the insurrectionists, which it could not do as an open enemy. At a stroke, it would take all the trouble off the hands of secession, except only what proceeds from the external blockade. It would do for the disunionists that which, of all things, they most desire—feed them well, and give them disunion without a struggle of their own. It recognizes no fidelity to the Constitution, no obligation to maintain the Union; and while very many who have favored it are, doubtless, loyal citizens, it is, nevertheless, treason in effect.

Recurring to the action of the government, it may be stated that, at first, a call was made for seventy-five thousand militia; and rapidly following this, a proclamation was issued for closing the ports of the insurrectionary districts by proceedings in the nature of Blockade. So far all was believed to be strictly legal. At this point the insurrectionists announced their purpose to enter upon the practice of privateering.

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Other calls were made for volunteers, to serve three years, unless sooner discharged; and also for large additions to the regular Army and Navy. These measures, whether strictly legal or not, were ventured upon, under what appeared to be a popular demand, and a public necessity; trusting, then as now, that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress.

Soon after the first call for militia, it was considered a duty to authorize the Commanding General, in proper cases, according to his discretion, to suspend the privilege of the writ of habeas corpus; or, in other words, to arrest, and detain, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety.

This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what has been done under it, are questioned; and the attention of the country has been called to the proposition that one who is sworn to "take care that the laws be faithfully executed," should not himself violate them. Of course some consideration was given to the questions of power, and propriety, before this matter was acted upon. The whole of the laws which were required to be faithfully executed, were being resisted, and failing of execution, in nearly one-third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear, that by the use of the means necessary to their execution, some single law, made in such extreme tenderness of the citizen's liberty, that practically, it relieves more of the guilty, than of the innocent, should, to a very limited extent, be violated? To state the question more directly, are all the laws, *but one*, to go unexecuted, and the government itself go to pieces, lest that one be violated? Even in such a case, would not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law, would tend to preserve it? But it was not believed that this question was presented. It was not believed that any law was violated. 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 equivalent to a provision—is a provision—that such privilege may be suspended when, in cases of rebellion, or invasion, the public safety *does* require it. It was decided that we have a case of rebellion, and that the public safety does require the qualified suspension of

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the privilege of the writ which was authorized to be made. Now it is insisted that Congress, and not the Executive, is vested with this power. But the Constitution itself, is silent as to which, or who, is to exercise the power; and as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended, that in every case, the danger should run its course, until Congress could be called together; the very assembling of which might be prevented, as was intended in this case, by the rebellion.

No more extended argument is now offered; as an opinion, at some length, will probably be presented by the Attorney General. Whether there shall be any legislation upon the subject, and if any, what, is submitted entirely to the better judgment of Congress.

The forbearance of this government had been so extraordinary, and so long continued, as to lead some foreign nations to shape their action as if they supposed the early destruction of our national Union was probable. While this, on discovery, gave the Executive some concern, he is now happy to say that the sovereignty, and rights of the United States, are now everywhere practically respected by foreign powers; and a general sympathy with the country is manifested throughout the world.

The reports of the Secretaries of the Treasury, War, and the Navy, will give the information in detail deemed necessary, and convenient for your deliberation, and action; while the Executive, and all the Departments, will stand ready to supply omissions, or to communicate new facts, considered important for you to know.

It is now recommended that you give the legal means for making this contest a short, and a decisive one; that you place at the control of the government, for the work, at least four hundred thousand men, and four hundred millions of dollars. That number of men is about one tenth of those of proper ages within the regions where, apparently, *all* are willing to engage; and the sum is less than a twenty-third part of the money value owned by the men who seem ready to devote the whole. A debt of six hundred millions of dollars now, is a less sum per head, than was the debt of our revolution, when we came out of that struggle; and the money value in the country, now bears even a greater proportion to what it was *then*,

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than does the population. Surely each man has as strong a motive *now*, to *preserve* our liberties, as each had *then*, to *establish* them.

A right result, at this time, will be worth more to the world, than ten times the men, and ten times the money. The evidence reaching us from the country, leaves no doubt, that the material for the work is abundant; and that it needs only the hand of legislation to give it legal sanction, and the hand of the Executive to give it practical shape and efficiency. One of the greatest perplexities of the government, is to avoid receiving troops faster than it can provide for them. In a word, the people will save their government, if the government itself, will do its part, only indifferently well.

It might seem, at first thought, to be of little difference whether the present movement at the South be called "secession" or "rebellion." The movers, however, well understand the difference. At the beginning, they knew they could never raise their treason to any respectable magnitude, by any name which implies *violation* of law. They knew their people possessed as much of moral sense, as much of devotion to law and order, and as much pride in, and reverence for, the history, and government, of their common country, as any other civilized, and patriotic people. They knew they could make no advancement directly in the teeth of these strong and noble sentiments. Accordingly they commenced by an insidious debauching of the public mind. They invented an ingenious sophism, which, if conceded, was followed by perfectly logical steps, through all the incidents, to the complete destruction of the Union. The sophism itself is, that any state of the Union may, *consistently* with the national Constitution, and therefore *lawfully*, and *peacefully*, withdraw from the Union, without the consent of the Union, or of any other state. The little disguise that the supposed right is to be exercised only for just cause, themselves to be the sole judge of its justice, is too thin to merit any notice.

With rebellion thus sugar-coated, they have been drugging the public mind of their section for more than thirty years; and, until at length, they have brought many good men to a willingness to take up arms against the government the day *after* some assemblage of men

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have enacted the farcical pretence of taking their State out of the Union, who could have been brought to no such thing the day *before*.

This sophism derives much—perhaps the whole—of its currency, from the assumption, that there is some omnipotent, and sacred supremacy, pertaining to a *State*—to each State
5 of our Federal Union. Our States have neither more, nor less power, than that reserved to them, in the Union, by the Constitution—no one of them ever having been a State *out* of the Union. The original ones passed into the Union even *before* they cast off their British colonial dependence; and the new ones each came into the Union directly from a condition of dependence, excepting Texas. And even Texas, in its temporary independence, was never
10 designated a State. The new ones only took the designation of States, on coming into the Union, while that name was first adopted for the old ones, in, and by, the Declaration of Independence. Therein the "United Colonies" were declared to be "Free and Independent States"; but, even then, the object plainly was not to declare their independence of *one another*, or of the *Union*; but directly the contrary, as their mutual pledge, and their mutual
15 action, before, at the time, and afterwards, abundantly show. The express plighting of faith, by each and all of the original thirteen, in the Articles of Confederation, two years later, that the Union shall be perpetual, is most conclusive. Having never been States, either in substance, or in name, *outside* of the Union, whence this magical omnipotence of "State rights," asserting a claim of power to lawfully destroy the Union itself? Much is said about
20 the "sovereignty" of the States; but the word, even, is not in the national Constitution; nor, as is believed, in any of the State constitutions. What is a "sovereignty," in the political sense of the term? Would it be far wrong to define it "A political community, without a political superior"? Tested by this, no one of our States, except Texas, ever was a sovereignty. And even Texas gave up the character on coming into the Union; by which act, she acknowl-
25 edged the Constitution of the United States, and the laws and treaties of the United States made in pursuance of the Constitution, to be, for her, the supreme law of the land. The States have their *status* in the Union, and they have no other *legal status*. If they break from this, they can only do so against law, and by revolution. The Union, and not themselves separately, procured their independence, and their liberty. By conquest, or purchase, the

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Union gave each of them, whatever of independence, and liberty, it has. The Union is older than any of the States; and, in fact, it created them as States. Originally, some dependent colonies made the Union; and, in turn, the Union threw off their old dependence, for them, and made them States, such as they are. Not one of them ever had a State constitution,
5 independent of the Union. Of course, it is not forgotten that all the new States framed their constitutions, before they entered the Union; nevertheless, dependent upon, and preparatory to, coming into the Union.

Unquestionably the States have the powers, and rights, reserved to them in, and by the National Constitution; but among these, surely, are not included all conceivable powers,
10 however mischievous, or destructive; but, at most, such only, as were known in the world, at the time, as governmental powers; and certainly, a power to destroy the government itself, had never been known as a governmental—as a merely administrative power. This relative matter of National power, and State rights, as a principle, is no other than the principle of *generality*, and *locality*. Whatever concerns the whole, should be confided to the
15 whole—to the general government; while, whatever concerns *only* the State, should be left exclusively, to the State. This is all there is of original principle about it. Whether the National Constitution, in defining boundaries between the two, has applied the principle with exact accuracy, is not to be questioned. We are all bound by that defining, without question.

What is now combatted, is the position that secession is *consistent* with the Constitution—
20 is *lawful*, and *peaceful*. It is not contended that there is any express law for it; and nothing should ever be implied as law, which leads to unjust, or absurd consequences. The nation purchased, with money, the countries out of which several of these States were formed. Is it just that they shall go off without leave, and without refunding? The nation paid very large sums, (in the aggregate, I believe, nearly a hundred millions) to relieve Florida of the
25 aboriginal tribes. Is it just that she shall now be off without consent, or without making any return? The nation is now in debt for money applied to the benefit of these so-called seceding States, in common with the rest. Is it just, either that creditors shall go unpaid, or the remaining States pay the whole? A part of the present national debt was contracted to pay the old debts of Texas. Is it just that she shall leave, and pay no part of this herself?

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Again, if one State may secede, so may another; and when all shall have seceded, none is left to pay the debts. Is this quite just to creditors? Did we notify them of this sage view of ours, when we borrowed their money? If we now recognize this doctrine, by allowing the seceders to go in peace, it is difficult to see what we can do, if others choose to go, or to
5 extort terms upon which they will promise to remain.

The seceders insist that our Constitution admits of secession. They have assumed to make a National Constitution of their own, in which, of necessity, they have either *discarded*, or *retained*, the right of secession, as they insist, it exists in ours. If they have discarded it, they thereby admit that, on principle, it ought not to be in ours. If they have retained, it by their
10 own construction of ours they show that to be consistent they must secede from one another, whenever they shall find it the easiest way of settling their debts, or effecting any other selfish, or unjust object. The principle itself is one of disintegration, and upon which no government can possibly endure.

If all the States, save one, should assert the power to *drive* that one out of the Union, it is
15 presumed the whole class of seceder politicians would at once deny the power, and denounce the act as the greatest outrage upon State rights. But suppose that precisely the same act, instead of being called "driving the one out," should be called "the seceding of the others from that one," it would be exactly what the seceders claim to do; unless, indeed, they make the point, that the one, because it is a minority, may rightfully do, what the others, because
20 they are a majority, may not rightfully do. These politicians are subtle, and profound, on the rights of minorities. They are not partial to that power which made the Constitution, and speaks from the preamble, calling itself "We, the People."

It may well be questioned whether there is, today, a majority of the legally qualified voters of any State, except perhaps South Carolina, in favor of disunion. There is much reason to
25 believe that the Union men are the majority in many, if not in every other one, of the so-called seceded States. The contrary has not been demonstrated in any one of them. It is ventured to affirm this, even of Virginia and Tennessee; for the result of an election, held in military camps, where the bayonets are all on one side of the question voted upon, can

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scarcely be considered as demonstrating popular sentiment. At such an election, all that large class who are, at once, *for* the Union, and *against* coercion, would be coerced to vote against the Union.

5 It may be affirmed, without extravagance, that the free institutions we enjoy, have developed the powers, and improved the condition, of our whole people, beyond any example in the world. Of this we now have a striking, and an impressive illustration. So large an army as the government has now on foot, was never before known, without a soldier in it, but who had taken his place there, of his own free choice. But more than this: there are many single Regiments whose members, one and another, possess full practical knowledge
10 of all the arts, sciences, professions, and whatever else, whether useful or elegant, is known in the world; and there is scarcely one, from which there could not be selected, a President, a Cabinet, a Congress, and perhaps a Court, abundantly competent to administer the government itself. Nor do I say this is not true, also, in the army of our late friends, now adversaries, in this contest; but if it is, so much better the reason why the government, which
15 has conferred such benefits on both them and us, should not be broken up. Whoever, in any section, proposes to abandon such a government, would do well to consider, in deference to what principle it is, that he does it—what better he is likely to get in its stead—whether the substitute will give, or be intended to give, so much of good to the people. There are some foreshadowings on this subject. Our adversaries have adopted some
20 Declarations of Independence, in which, unlike the good old one, penned by Jefferson, they omit the words "all men are created equal." Why? They have adopted a temporary national constitution, in the preamble of which, unlike our good old one, signed by Washington, they omit "We, the People," and substitute "We, the deputies of the sovereign and independent States." Why? Why this deliberate pressing out of view, the rights of men, and the
25 authority of the people?

This is essentially a People's contest. On the side of the Union, it is a struggle for maintaining in the world, that form, and substance of government, whose leading object is, to elevate the condition of men—to lift artificial weights from all shoulders—to clear the paths of laudable pursuit for all—to afford all, an unfettered start, and a fair chance, in the race of

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life. Yielding to partial, and temporary departures, from necessity, this is the leading object of the government for whose existence we contend.

I am most happy to believe that the plain people understand, and appreciate this. It is worthy of note, that while in this, the government's hour of trial, large numbers of those in the
5 Army and Navy, who have been favored with the offices, have resigned, and proved false to the hand which had pampered them, not one common soldier, or common sailor is known to have deserted his flag.

Great honor is due to those officers who remain true, despite the example of their treacherous associates; but the greatest honor, and most important fact of all, is the unanimous
10 firmness of the common soldiers, and common sailors. To the last man, so far as known, they have successfully resisted the traitorous efforts of those, whose commands, but an hour before, they obeyed as absolute law. This is the patriotic instinct of the plain people. They understand, without an argument, that destroying the government, which was made by Washington, means no good to them.

Our popular government has often been called an experiment. Two points in it, our people have already settled—the successful *establishing*, and the successful *administering* of it. One still remains—its successful *maintenance* against a formidable internal attempt to overthrow it. It is now for them to demonstrate to the world, that those who can fairly carry an election, can also suppress a rebellion—that ballots are the rightful, and peaceful, successors
20 of bullets; and that when ballots have fairly, and constitutionally, decided, there can be no successful appeal, back to bullets; that there can be no successful appeal, except to ballots themselves, at succeeding elections. Such will be a great lesson of peace; teaching men that what they cannot take by an election, neither can they take it by a war—teaching all, the folly of being the beginners of a war.

Lest there be some uneasiness in the minds of candid men, as to what is to be the course of the government, towards the Southern States, *after* the rebellion shall have been suppressed, the Executive deems it proper to say, it will be his purpose then, as ever, to be

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guided by the Constitution, and the laws; and that he probably will have no different understanding of the powers, and duties of the Federal government, relatively to the rights of the States, and the people, under the Constitution, than that expressed in the inaugural address.

- 5 He desires to preserve the government, that it may be administered for all, as it was administered by the men who made it. Loyal citizens everywhere, have the right to claim this of their government; and the government has no right to withhold, or neglect it. It is not perceived that, in giving it, there is any coercion, any conquest, or any subjugation, in any just sense of those terms.
- 10 The Constitution provides, and all the States have accepted the provision, that "The United States shall guarantee to every State in this Union a republican form of government." But, if a State may lawfully go out of the Union, having done so, it may also discard the republican form of government; so that to prevent its going out, is an indispensable *means*, to the *end*, of maintaining the guaranty mentioned; and when an end is lawful and obligatory,
- 15 the indispensable means to it, are also lawful, and obligatory.

- It was with the deepest regret that the Executive found the duty of employing the war-power, in defense of the government, forced upon him. He could but perform this duty, or surrender the existence of the government. No compromise, by public servants, could, in this case, be a cure; not that compromises are not often proper, but that no popular government can long survive a marked precedent, that those who carry an election, can only
- 20 save the government from immediate destruction, by giving up the main point, upon which the people gave the election. The people themselves, and not their servants, can safely reverse their own deliberate decisions. As a private citizen, the Executive could not have consented that these institutions shall perish; much less could he, in betrayal of so vast, and so
- 25 sacred a trust, as these free people had confided to him. He felt that he had no moral right to shrink; nor even to count the chances of his own life, in what might follow. In full view of his great responsibility, he has, so far, done what he has deemed his duty. You will now, according to your own judgment, perform yours. He sincerely hopes that your views, and

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your action, may so accord with his, as to assure all faithful citizens, who have been disturbed in their rights, of a certain, and speedy restoration to them, under the Constitution, and the laws.

And having thus chosen our course, without guile, and with pure purpose, let us renew our
5 trust in God, and go forward without fear, and with manly hearts.

PRESIDENT ABRAHAM LINCOLN (R-IL)

A Proclamation

AN ORDER

January 1, 1863
Executive Mansion | Washington, D.C.

Emancipation Proclamation

BACKGROUND

On September 22, 1862 after the Union victory in the Battle of Antietam, Abraham Lincoln announced this order concerning property in slaves in the rebelling states, which took effect January 1, 1863.

GUIDING QUESTIONS

1. Whom did the proclamation free?
2. In which places did this order apply?
3. By what authority did Lincoln issue this order?
4. What military purpose did the order serve?
5. What did Lincoln implore of slaves freed by the order?

Abraham Lincoln, "Emancipation Proclamation," 1 January 1863, in *The Collected Works of Abraham Lincoln*, Vol. 6, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 28–30.

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By the President of the United States of America: A Proclamation.

Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be, in good faith, represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

Now, therefore I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days, from the day first above mentioned, order and designate as the States and parts of States wherein

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the people thereof respectively, are this day in rebellion against the United States, the following, to wit:

Arkansas, Texas, Louisiana, (except the Parishes of St. Bernard, Plaquemines, Jefferson, St. Johns, St. Charles, St. James, Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New Orleans) Mississippi, Alabama, Florida, Georgia, South-Carolina, North-Carolina, and Virginia, (except the forty-eight counties designated as West Virginia, and also the counties of Berkley, Accomac, Northampton, Elizabeth-City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth); and which excepted parts are, for the present, left precisely as if this proclamation were not issued.

And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defense; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

The Emancipation Proclamation
Abraham Lincoln

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In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

5 Done at the City of Washington, this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States of America the eighty-seventh.

By the President:

10 Abraham Lincoln

William H. Seward, *Secretary of State*.

PRESIDENT ABRAHAM LINCOLN (R)

On the Consecration of the Soldiers' National Cemetery

SPEECH

November 19, 1863

Soldiers' National Cemetery | Gettysburg, Pennsylvania

Gettysburg Address

BACKGROUND

Abraham Lincoln delivered these remarks at the dedication of the Union cemetery for those soldiers killed in the Battle of Gettysburg in the summer of 1863.

GUIDING QUESTIONS

1. For Lincoln, what is the central idea of the American Founding?
2. For what cause did the soldiers buried in Gettysburg give their lives?
3. What were they fighting to defend?
4. To what cause does Lincoln wish for listeners to dedicate themselves?

Abraham Lincoln, "Gettysburg Address," 19 November 1863, in *The Collected Works of Abraham Lincoln*, Vol. 7, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 23.

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Four score and seven years ago our fathers brought forth, on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived, and so dedicated, can long endure. We are met on a great battle-field of that war.

- 5 We have come to dedicate a portion of that field, as a final resting-place for those who here gave their lives, that that nation might live. It is altogether fitting and proper that we should do this.

- 10 But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—
- 15 that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.

PRESIDENT ABRAHAM LINCOLN (R)

Second Inaugural Address

SPEECH

March 4, 1865
U.S. Capitol | Washington, D.C.

BACKGROUND

Having been reelected and with the end of the Civil War in sight, Abraham Lincoln delivered this speech at his inauguration to a second term as president.

GUIDING QUESTIONS

1. According to Lincoln, who caused the Civil War?
2. What role in the war does Lincoln ascribe to God?
3. How does Lincoln think the North should treat the South when the war ends?

Abraham Lincoln, "Second Inaugural Address," 4 March 1865, in *The Collected Works of Abraham Lincoln*, Vol. 8, ed. Roy P. Basler (New Brunswick, NJ: Rutgers University Press, 1953), 332–33.

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Fellow Countrymen:

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 the great contest which still absorbs the attention, and engrosses the energies of the nation, 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

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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

5 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
10 mighty scourge of war may speedily pass away. Yet, if God wills that it continue, until all the wealth piled by the bond-man'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."

15 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 a lasting peace, among ourselves, and with all nations.

UNITED STATES CONGRESS

Civil Rights Act

LAW

April 9, 1866
United States of America

BACKGROUND

Congress passed this Civil Rights Act of 1866 on the first anniversary of the end to the Civil War.

ANNOTATIONS**NOTES & QUESTIONS**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition

5 of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is en-

10 joyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Sec. 2. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of

15 any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time

Civil Rights Act of 1866, Pub. L. No. 39-26, 14 Stat. 27-30 (1866).

been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both . . .

Sec. 3. And be it further enacted, That the district courts of the United States . . . shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act. . .

Sec. 4. And be it further enacted, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States . . . and every other officer who may be specially empowered by the President of the United States, shall be . . . specially authorized and required, at the expense of the United States, to institute proceedings against . . . every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed . . . for trial before such court of the United States or territorial court as by this act has cognizance of the offence. . .

Sec. 6. And be it further enacted, That any person who shall knowingly and willfully obstruct, hinder, or prevent any officer . . . charged with the execution of any warrant . . . or shall rescue or attempt to rescue such person from the custody of the officer . . . or shall aid, abet, or assist any person so arrested . . . to escape from the custody of the officer . . . or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued . . . so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall . . . be subject to a fine . . . and imprisonment not exceeding six months. . .

...

5 Sec. 8. And be it further enacted, That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this act . . . it shall be lawful for him . . . to direct the judge, marshal, and district attorney . . . to attend at such place . . . for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

10 Sec. 9. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

15 Sec. 10. And be it further enacted, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

U.S. CONGRESS AND STATES

Thirteenth Amendment to the Constitution

AMENDMENT

December 18, 1865
United States of America

BACKGROUND

The U.S. Congress passed and three-quarters of states ratified the Thirteen Amendment to the U.S. Constitution by December 6, 1865, and the amendment was acknowledged as effective by Secretary of State William Seward on December 18, 1865.

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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.

U.S. Const. amend. XIII.

U.S. CONGRESS AND STATES**Fourteenth Amendment to the Constitution**

AMENDMENT

July 28, 1868
United States of America

BACKGROUND

The U.S. Congress passed and three-quarters of states ratified the Fourteenth Amendment to the U.S. Constitution by July 21, 1868, and the amendment was acknowledged as effective by Secretary of State William Seward on July 28, 1868.

ANNOTATIONS**NOTES & QUESTIONS**

5 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.

10 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

U.S. Const. amend. XIV.

such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

5 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.

10

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.

15

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. CONGRESS AND STATES

Fifteenth Amendment to the Constitution

AMENDMENT

March 30, 1870
United States of America

BACKGROUND

The U.S. Congress passed and three-quarters of states ratified the Fifteenth Amendment to the U.S. Constitution by February 3, 1870, and the amendment was acknowledged as effective by Secretary of State Hamilton Fish on March 30, 1870.

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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 power to enforce this article by appropriate legislation.

U.S. Const. amend. XV.

BOOKER T. WASHINGTON

To the Cotton States and International Exposition

SPEECH

September 18, 1895

Atlanta, Georgia

The Atlanta Exposition Address

BACKGROUND

Former slave and Tuskegee Institute founder Booker T. Washington delivered this address to attendees at the Cotton States and International Exposition in Atlanta, Georgia.

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Mr. President and Gentlemen of the Board of Directors and Citizens:

One-third of the population of the South is of the Negro race. No enterprise seeking the material, civil, or moral welfare of this section can disregard this element of our population and reach the highest success. I but convey to you, Mr. President and Directors, the sentiment of the masses of my race when I say that in no way have the value and manhood of the American Negro been more fittingly and generously recognized than by the managers of this magnificent Exposition at every stage of its progress. It is a recognition that will do more to cement the friendship of the two races than any occurrence since the dawn of our freedom.

Not only this, but the opportunity here afforded will awaken among us a new era of industrial progress. Ignorant and inexperienced, it is not strange that in the first years of our new life we began at the top instead of at the bottom; that a seat in Congress or the state legislature was more sought than real estate or industrial skill; that the political convention of stump speaking had more attraction than starting a dairy farm or truck garden.

Booker T. Washington, Chapter 14 in *Up from Slavery: An Autobiography* (New York: Doubleday, 1901).

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A ship lost at sea for many days suddenly sighted a friendly vessel. From the mast of the unfortunate vessel was seen a signal, "Water, water; we die of thirst!" The answer from the friendly vessel at once came back, "Cast down your bucket where you are." A second time the signal, "Water, water; send us water!" ran up from the distressed vessel, and was answered, "Cast down your bucket where you are." And a third and fourth signal for water was answered, "Cast down your bucket where you are." The captain of the distressed vessel, at last heeding the injunction, cast down his bucket, and it came up full of fresh, sparkling water from the mouth of the Amazon River. To those of my race who depend on bettering their condition in a foreign land or who underestimate the importance of cultivating friendly relations with the Southern white man, who is their next-door neighbour, I would say: "Cast down your bucket where you are"—cast it down in making friends in every manly way of the people of all races by whom we are surrounded.

Cast it down in agriculture, mechanics, in commerce, in domestic service, and in the professions. And in this connection it is well to bear in mind that whatever other sins the South may be called to bear, when it comes to business, pure and simple, it is in the South that the Negro is given a man's chance in the commercial world, and in nothing is this Exposition more eloquent than in emphasizing this chance. Our greatest danger is that in the great leap from slavery to freedom we may overlook the fact that the masses of us are to live by the productions of our hands, and fail to keep in mind that we shall prosper in proportion as we learn to dignify and glorify common labour and put brains and skill into the common occupations of life; shall prosper in proportion as we learn to draw the line between the superficial and the substantial, the ornamental gewgaws of life and the useful. No race can prosper till it learns that there is as much dignity in tilling a field as in writing a poem. It is at the bottom of life we must begin, and not at the top. Nor should we permit our grievances to overshadow our opportunities.

To those of the white race who look to the incoming of those of foreign birth and strange tongue and habits for the prosperity of the South, were I permitted I would repeat what I say to my own race, "Cast down your bucket where you are." Cast it down among the eight millions of Negroes whose habits you know, whose fidelity and love you have tested in days

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when to have proved treacherous meant the ruin of your firesides. Cast down your bucket among these people who have, without strikes and labour wars, tilled your fields, cleared your forests, builded your railroads and cities, and brought forth treasures from the bowels of the earth, and helped make possible this magnificent representation of the progress of the South. Casting down your bucket among my people, helping and encouraging them as you are doing on these grounds, and to education of head, hand, and heart, you will find that they will buy your surplus land, make blossom the waste places in your fields, and run your factories. While doing this, you can be sure in the future, as in the past, that you and your families will be surrounded by the most patient, faithful, law-abiding, and unresentful people that the world has seen. As we have proved our loyalty to you in the past, in nursing your children, watching by the sick-bed of your mothers and fathers, and often following them with tear-dimmed eyes to their graves, so in the future, in our humble way, we shall stand by you with a devotion that no foreigner can approach, ready to lay down our lives, if need be, in defence of yours, interlacing our industrial, commercial, civil, and religious life with yours in a way that shall make the interests of both races one. In all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress.

There is no defence or security for any of us except in the highest intelligence and development of all. If anywhere there are efforts tending to curtail the fullest growth of the Negro, let these efforts be turned into stimulating, encouraging, and making him the most useful and intelligent citizen. Effort or means so invested will pay a thousand per cent. interest. These efforts will be twice blessed—"blessing him that gives and him that takes."

There is no escape through law of man or God from the inevitable:—

The laws of changeless justice bind

Oppressor with oppressed;

And close as sin and suffering joined

We march to fate abreast.

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Nearly sixteen millions of hands will aid you in pulling the load upward, or they will pull against you the load downward. We shall constitute one-third and more of the ignorance and crime of the South, or one-third its intelligence and progress; we shall contribute one-third to the business and industrial prosperity of the South, or we shall prove a veritable
5 body of death, stagnating, depressing, retarding every effort to advance the body politic.

Gentlemen of the Exposition, as we present to you our humble effort at an exhibition of our progress, you must not expect overmuch. Starting thirty years ago with ownership here and there in a few quilts and pumpkins and chickens (gathered from miscellaneous sources), remember the path that has led from these to the inventions and production of
10 agricultural implements, buggies, steam-engines, newspapers, books, statuary, carving, paintings, the management of drug-stores and banks, has not been trodden without contact with thorns and thistles. While we take pride in what we exhibit as a result of our independent efforts, we do not for a moment forget that our part in this exhibition would fall far short of your expectations but for the constant help that has come to our educational
15 life, not only from the Southern states, but especially from Northern philanthropists, who have made their gifts a constant stream of blessing and encouragement.

The wisest among my race understand that the agitation of questions of social equality is the extremest folly, and that progress in the enjoyment of all the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing. No
20 race that has anything to contribute to the markets of the world is long in any degree ostracized. It is important and right that all privileges of the law be ours, but it is vastly more important that we be prepared for the exercises of these privileges. The opportunity to earn a dollar in a factory just now is worth infinitely more than the opportunity to spend a dollar in an opera-house.

25 In conclusion, may I repeat that nothing in thirty years has given us more hope and encouragement, and drawn us so near to you of the white race, as this opportunity offered by the Exposition; and here bending, as it were, over the altar that represents the results of the struggles of your race and mine, both starting practically empty-handed three decades ago,

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I pledge that in your effort to work out the great and intricate problem which God has laid at the doors of the South, you shall have at all times the patient, sympathetic help of my race; only let this be constantly in mind, that, while from representations in these buildings of the product of field, of forest, of mine, of factory, letters, and art, much good will come, yet far above and beyond material benefits will be that higher good, that, let us pray God, will come, in a blotting out of sectional differences and racial animosities and suspicions, in a determination to administer absolute justice, in a willing obedience among all classes to the mandates of law. This, this, coupled with our material prosperity, will bring into our beloved South a new heaven and a new earth

W.E.B. DuBois

“The Talented Tenth”

ESSAY EXCERPTS

September 1903
The Negro Problem

BACKGROUND

Atlanta University professor W.E.B. DuBois published this essay in the book *The Negro Problem* alongside contributions from other African American leaders, including Booker T. Washington, who edited the book.

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The Negro race, like all races, is going to be saved by its exceptional men. The problem of education, then, among Negroes must first of all deal with the Talented Tenth; it is the problem of developing the Best of this race that they may guide the Mass away from the contamination and death of the Worst, in their own and other races. Now the training of

5 men is a difficult and intricate task. Its technique is a matter for educational experts, but its object is for the vision of seers. If we make money the object of man-training, we shall develop money-makers but not necessarily men; if we make technical skill the object of education, we may possess artisans but not, in nature, men. Men we shall have only as we make manhood the object of the work of the schools—intelligence, broad sympathy,

10 knowledge of the world that was and is, and of the relation of men to it—this is the curriculum of that Higher Education which must underlie true life. On this foundation we may build bread winning, skill of hand and quickness of brain, with never a fear lest the child and man mistake the means of living for the object of life....

Can the masses of the Negro people be in any possible way more quickly raised than by the

15 effort and example of this aristocracy of talent and character? Was there ever a nation on

W.E.B. DuBois, "The Talented Tenth" in *The Negro Problem: A Series of Articles by Representative American Negroes of To-Day* (New York: James Pott & Co., 1903), 31-75.

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God’s fair earth civilized from the bottom upward? Never; it is, ever was and ever will be from the top downward that culture filters. The Talented Tenth rises and pulls all that are-worth the saving up to their vantage ground. This is the history of human progress; and the two historic mistakes which have hindered that progress were the thinking first that no more could ever rise save the few already risen; or second, that it would better the uprisen to pull the risen down.

How then shall the leaders of a struggling people be trained and the hands of the risen few strengthened? There can be but one answer: The best and most capable of their youth must be schooled in the colleges and universities of the land. We will not quarrel as to just what the university of the Negro should teach or how it should teach it—I willingly admit that each soul and each race-soul needs its own peculiar curriculum. But this is true: A university is a human invention for the transmission of knowledge and culture from generation to generation, through the training of quick minds and pure hearts, and for this work no other human invention will suffice, not even trade and industrial schools.

All men cannot go to college but some men must; every isolated group or nation must have its yeast, must have for the talented few centers of training where men are not so mystified and befuddled by the hard and necessary toil of earning a living, as to have no aims higher than their bellies, and no God greater than Gold. This is true training, and thus in the beginning were the favored sons of the freedmen trained. Out of the colleges of the North came, after the blood of war, Ware, Cravath, Chase, Andrews, Bumstead and Spence to build the foundations of knowledge and civilization in the black South. Where ought they to have begun to build? At the bottom, of course, quibbles the mole with his eyes in the earth. Aye! truly at the bottom, at the very bottom; at the bottom of knowledge, down in the very depths of knowledge there where the roots of justice strike into the lowest soil of Truth. And so they did begin; they founded colleges, and up from the colleges shot normal schools, and out from the normal schools went teachers, and around the normal teachers clustered other teachers to teach the public schools; the college trained in Greek and Latin and mathematics, 2,000 men; and these men trained full 50,000 others in morals and manners, and they in turn taught thrift and the alphabet to nine millions of men, who to-day

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hold \$300,000,000 of property. It was a miracle – the most wonderful peace-battle of the 19th century, and yet to-day men smile at it, and in fine superiority tell us that it was all a strange mistake; that a proper way to found a system of education is first to gather the children and buy them spelling books and hoes; afterward men may look about for teachers, if haply they may find them; or again they would teach men Work, but as for Life—why, what has Work to do with Life, they ask vacantly....

The problem of training the Negro is to-day immensely complicated by the fact that the whole question of the efficiency and appropriateness of our present systems of education, for any kind of child, is a matter of active debate, in which final settlement seems still afar off. Consequently it often happens that persons arguing for or against certain systems of education for Negroes, have these controversies in mind and miss the real question at issue. The main question, so far as the Southern Negro is concerned, is: What under the present circumstance, must a system of education do in order to raise the Negro as quickly as possible in the scale of civilization? The answer to this question seems to me clear: It must strengthen the Negro’s character, increase his knowledge and teach him to earn a living. Now it goes without saying that it is hard to do all these things simultaneously or suddenly and that at the same time it will not do to give all the attention to one and neglect the others; we could give black boys trades, but that alone will not civilize a race of ex-slaves; we might simply increase their knowledge of the world, but this would not necessarily make them wish to use this knowledge honestly; we might seek to strengthen character and purpose, but to what end if this people have nothing to eat or to wear? A system of education is not one thing, nor does it have a single definite object, nor is it a mere matter of schools. Education is that whole system of human training within and without the school house walls, which molds and develops men. If then we start out to train an ignorant and unskilled people with a heritage of bad habits, our system of training must set before itself two great aims—the one dealing with knowledge and character, the other part seeking to give the child the technical knowledge necessary for him to earn a living under the present circumstances. These objects are accomplished in part by the opening of the common schools on the one, and of the industrial schools on the other. But only in part, for there must also be trained

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those who are to teach these schools—men and women of knowledge and culture and technical skill who understand modern civilization, and have the training and aptitude to impart it to the children under them. There must be teachers, and teachers of teachers, and to attempt to establish any sort of a system of common and industrial school training, without

5 first (and I say first advisedly) without first providing for the higher training of the very best teachers, is simply throwing your money to the winds. School houses do not teach themselves – piles of brick and mortar and machinery do not send out men. It is the trained, living human soul, cultivated and strengthened by long study and thought, that breathes the real breath of life into boys and girls and makes them human, whether they be black or

10 white, Greek, Russian or American. Nothing, in these latter days, has so dampened the faith of thinking Negroes in recent educational movements, as the fact that such movements have been accompanied by ridicule and denouncement and decrying of those very institutions of higher training which made the Negro public school possible, and make Negro industrial schools thinkable. It was: Fisk, Atlanta, Howard and Straight, those colleges born

15 of the faith and sacrifice of the abolitionists, that placed in the black schools of the South the 30,000 teachers and more, which some, who depreciate the work of these higher schools, are using to teach their own new experiments. If Hampton, Tuskegee and the hundred other industrial schools prove in the future to be as successful as they deserve to be, then their success in training black artisans for the South, will be due primarily to the white

20 colleges of the North and the black colleges of the South, which trained the teachers who to-day conduct these institutions. There was a time when the American people believed pretty devoutly that a log of wood with a boy at one end and Mark Hopkins at the other, represented the highest ideal of human training. But in these eager days it would seem that we have changed all that and think it necessary to add a couple of saw-mills and a hammer

25 to this outfit, and, at a pinch, to dispense with the services of Mark Hopkins.

I would not deny, or for a moment seem to deny, the paramount necessity of teaching the Negro to work, and to work steadily and skillfully; or seem to depreciate in the slightest degree the important part industrial schools must play in the accomplishment of these ends, but I do say, and insist upon it, that it is industrialism drunk with its vision of success,

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to imagine that its own work can be accomplished without providing for the training of broadly cultured men and women to teach its own teachers, and to teach the teachers of the public schools.

- 5 But I have already said that human education is not simply a matter of schools; it is much more a matter of family and group life – the training of one's home, of one's daily companions, of one's social class. Now the black boy of the South moves in a black world – a world with its own leaders, its own thoughts, its own ideals. In this world he gets by far the larger part of his life training, and through the eyes of this dark world he peers into the veiled world beyond. Who guides and determines the education which he receives in his world?
- 10 His teachers here are the group-leaders of the Negro people—the physicians and clergymen, the trained fathers and mothers, the influential and forceful men about him of all kinds; here it is, if at all, that the culture of the surrounding world trickles through and is handed on by the graduates of the higher schools. Can such culture training of group leaders be neglected? Can we afford to ignore it? Do you think that if the leaders of thought
- 15 among Negroes are not trained and educated thinkers, that they will have no leaders? On the contrary a hundred half-trained demagogues will still hold the places they so largely occupy now, and hundreds of vociferous busy-bodies will multiply. You have no choice; either you must help furnish this race from within its own ranks with thoughtful men of trained leadership, or you must suffer the evil consequences of a headless misguided rabble.
- 20 I am an earnest advocate of manual training and trade teaching for black boys, and for white boys, too. I believe that next to the founding of Negro colleges the most valuable addition to Negro education since the war, has been industrial training for black boys. Nevertheless, I insist that the object of all true education is not to make men carpenters, it is to make carpenters men; there are two means of making the carpenter a man, each equally
- 25 important: the first is to give the group and community in which he works, liberally trained teachers and leaders to teach him and his family what life means; the second is to give him sufficient intelligence and technical skill to make him an efficient workman; the first object demands the Negro college and college-bred men—not a quantity of such colleges, but a few of excellent quality; not too many college-bred men, but enough to leaven the lump, to

“The Talented Tenth”
W.E.B. DuBois

ANNOTATIONS

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inspire the masses, to raise the Talented Tenth to leadership; the second object demands a good system of common schools, well-taught, conveniently located and properly equipped....

5 Men of America, the problem is plain before you. Here is a race transplanted through the criminal foolishness of your fathers. Whether you like it or not the millions are here, and here they will remain. If you do not lift them up, they will pull you down. Education and work are the levers to uplift a people. Work alone will not do it unless inspired by the right ideals and guided by intelligence. Education must not simply teach work—it must teach Life. The Talented Tenth of the Negro race must be made leaders of thought and missionaries
10 of culture among their people. No others can do this work and Negro colleges must train men for it. The Negro race, like all other races, is going to be saved by its exceptional men.

UNIT 5

Progressivism and the State

45-50-minute classes | 13-17 classes

UNIT PREVIEW**Structure**

LESSON 1	Criticism of the Declaration of Independence	3-4 classes	p. 7
LESSON 2	Politics, Leadership, and the Administrative State	3-4 classes	p. 11
LESSON 3	The New Deal and the Great Society	3-4 classes	p. 17
LESSON 4	Constitutionalist Responses to Progressivism	2-3 classes	p. 20
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 23
APPENDIX B	Primary Sources		p. 35

Why Teach Progressivism and the State

In many respects, the United States government today looks the same as that which our forefathers drafted. Many of its principles and structures have endured, to the benefit of all mankind. But in many other ways American government, at least in how it works, has significantly departed from the American founding. It was the Progressives who began the greatest deviations from the original Constitution, fundamentally reshaping how American government functions. These changes in governing have been a challenge to the constitutional order, but before such changes were wrought in government, Progressivism challenged the very principles on which that Constitutional order was based. Progressivism was a rejection of the principles of the Declaration of Independence as well as the form of the Constitution. Young American citizens must understand why and how the government of the country they now live in was changed from what their country's Founders originally intended.

What Teachers Should Consider

From *The 1776 Report*, Pages 34-36

In the decades that followed the Civil War, in response to the industrial revolution and the expansion of urban society, many American elites adopted a series of ideas to address these changes called Progressivism. Although not all of one piece, and not without its practical merits, the political thought of Progressivism held that the times had moved far beyond the founding era, and that contemporary society was too complex any longer to be governed by principles formulated in the 18th century. To use a contemporary analogy, Progressives believed that America's original "software"—the founding documents—were no longer capable of operating America's vastly more complex "hardware": the advanced industrial society that had emerged since the founding.

More significantly, the Progressives held that truths were not permanent but only relative to their time. They rejected the self-evident truth of the Declaration that all men are created equal and are endowed equally, either by nature or by God, with unchanging rights. As one prominent Progressive historian wrote in 1922, "To ask whether the natural rights philosophy of the Declaration of Independence is true or false, is essentially a meaningless question." Instead, Progressives believed there were only group rights that are constantly redefined and change with the times. Indeed, society has the power and obligation not only to define and grant new rights, but also to take old rights away as the country develops.

Based on this false understanding of rights, the Progressives designed a new system of government. Instead of securing fundamental rights grounded in nature, government—operating under a new theory of the "living" Constitution—should constantly evolve to secure evolving rights.

In order to keep up with these changes, government would be run more and more by credentialed managers, who would direct society through rules and regulations that mold to the currents of the time. Before he became President of the United States, Woodrow Wilson laid out this new system whereby "the functions of government are in a very real sense independent of legislation, and even constitutions," meaning that this new view of government would operate independent of the people.

Far from creating an omniscient body of civil servants led only by "pragmatism" or "science," though, progressives instead created what amounts to a fourth branch of government called at times the bureaucracy or the administrative state. This shadow government never faces elections and today operates largely without checks and balances. The founders always opposed government unaccountable to the people and without constitutional restraint, yet it continues to grow around us.

How Teachers Can Learn More

TEXTS

<i>The 1776 Report</i> , The President's Advisory 1776 Commission	Pages 34–36
<i>The U.S. Constitution: A Reader</i> , ed. Hillsdale College Politics Faculty	Chapters 10–11
<i>The State</i> , Woodrow Wilson	
"Socialism and Democracy," Woodrow Wilson	
"Ethics and Economics," Richard Ely	
<i>Ethics</i> , John Dewey and James Tufts	
<i>The New State</i> , Mary Parker Follett	

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101
Constitution 201
Civil Rights in American History

Primary Sources Studied in This Unit

"What Is Progress?" Woodrow Wilson
 "Recent Tendencies," Charles Merriam
 "Natural Law," Oliver Wendell Holmes Jr.
Liberalism and Social Action, John Dewey
 "The New Nationalism," Theodore Roosevelt
 War Message to Congress, Woodrow Wilson
 Fourteen Points, Woodrow Wilson
 "Leaders of Men," Woodrow Wilson
 "The Presidency," Theodore Roosevelt
 "The Study of Administration," Woodrow Wilson
 Commonwealth Club Address, Franklin Delano Roosevelt
 Democratic Convention Address, 1936, Franklin Delano Roosevelt
 Annual Message to Congress, 1941, Franklin Delano Roosevelt
 Annual Message to Congress, 1944, Franklin Delano Roosevelt
 Commencement Address at the University of Michigan, Lyndon Johnson
 "The Inspiration of the Declaration," Calvin Coolidge
 "A Time for Choosing," Ronald Reagan
 First Inaugural Address, Ronald Reagan

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — Criticism of the Declaration of Independence

3-4 classes

LESSON PREVIEW

Students learn about Progressives' evolving view of human nature, relativism concerning truth and morals, and expanding government, their assertion of group instead of individual rights, and their rejection of the philosophical principles of the American founding.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution

Lecture 12

Constitution 101

Lecture 8

Constitution 201

Lectures 1, 2, 4

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

"What Is Progress?" Woodrow Wilson

"Recent Tendencies," Charles Merriam

"Natural Law," Oliver Wendell Holmes, Jr.

Liberalism and Social Action, John Dewey

TERMS AND TOPICS

Progressivism

special interests

relativism

monopolies

government activism

QUESTIONS FOR THE AMERICAN MIND

- How did Progressives explain their argument that human nature, truth, and politics were inevitably evolving and improving over the course of history?
- How and why did the Progressives reject the Declaration of Independence, natural rights, and social contract theory?
- What were the Progressives' conceptions of freedom, equality, and justice?
- Why and in what ways did Progressives claim that the individual person's identity and will are bound up with the State?

- What did Progressives mean by equality? Why did they believe that creating equality of opportunity and treating everyone with equal dignity necessitated greater activism from government?
- How did Progressives critique individualism and the power of special interests, monopolies, and the wealthy in politics?
- What social reforms did Progressives pursue to deal with problems of urbanization and industrialization?
- Why did Progressives approach foreign affairs with the expectation that the world would become freer and more peaceful with the spread of democracy and international institutions?

KEYS TO THE LESSON

Students should come to understand how Progressivism, while intended to bring progress and improvement, was actually a rejection of the American founding, beginning with and especially concerning the philosophical and moral principles on which it was based. While the Progressives mostly shared the Founders' conceptions of moral conduct, they rejected the Founders' views of human nature, individual rights, equality, moral formation, and the pursuit of happiness. Students should see how these views are born partly of the changes resulting from first generations of industrialization but especially new philosophical ideas that fundamentally questioned the basis of the Founders' ideas.

Teachers might best plan and teach Criticism of the Declaration of Independence with emphasis on the following approaches:

- While scheduling may limit the study of other thinkers related the American founding and Progressivism, it would be good for teachers to familiarize themselves with those thinkers who informed many of the earliest Progressives and Progressive thought, such as Jean-Jacques Rousseau, Georg Hegel, Karl Marx, Friedrich Nietzsche, and Charles Darwin. Spending some time to review these figures, ideas, and histories with students or at least to refer to them where appropriate may be helpful in teaching this unit as well as unit 8.
- Students should understand the Progressive critique of the American founding. Begin with practical considerations in which the Progressives juxtapose life and society at the founding to that of the Gilded Age. Then proceed to consider the theoretical differences between the Founders and the Progressives on the question of rights.
- On the practical side, lead students through considerations of how the Progressives judged the Founders to have been too focused on the individual and the value of private property ownership. Of course, the United States as a nation without titles of nobility and class distinctions understood the great importance of the ability of all Americans to acquire and hold private property. But that was by no means the sole or primary objective of the American founding. The Progressives, however, argued that the founding (and the Constitution in particular) was designed solely to protect private property and that the great changes in industry and the accumulation of capital had made the founding problem even worse by placing too much power in the hands of wealthy industrialists and large businesses.
- Help students understand that the presence of large corporations may not have been an issue in and of itself so long as individuals were still free to seek their own material prosperity. The reason

it was an issue for the Progressives was due to their second critique of the Founders, one that was more theoretical concerning the idea of rights. The Progressives rejected the Founders' insistence that rights were natural, that they were part of what made one human, and that they existed only at the individual level. Instead, they maintained that rights were conditioned on social circumstances and belong to groups of people, usually organized by class. The problem with the Founders' system of equal natural rights was that the equal protection of those rights now favored the wealthy and powerful. Progressives believed government should redefine rights according to class and group, and that government should not protect rights equally when it came to the wealthy and other "special interests." Indeed, since rights were not based on natural personhood, they were derived instead from some other source as determined by government. This means that the possession of rights is controlled by government: they can be given but also taken away by government. Rejecting the Founders' understanding of equal and unalienable rights grounded in human nature, the Progressive's argued for changing rights that were controlled by government.

- Review with students the American Founders' understanding of human nature. They understood human nature to be fixed and unchanging, good but also flawed and tending toward corrupting power. In response to human nature, government must guard against the opposite dangers of lawlessness and tyranny, accounting for the realities of human nature and rejecting the possibility of utopia. The Constitution, therefore, did not deny, demonize, or elevate human nature, but rather tried to channel the powers of human beings into constructive institutions while mitigating man's baser tendencies. In brief, the Constitution was constructed on a deep and accurate understanding of fixed human nature born of the Founders' knowledge of history, their own experience, and their prudence.
- Share with students that while both the Founders and Progressives believed in a moral foundation to politics, Progressives rejected the above-mentioned view of human nature and government as being too pessimistic and too simplistic. Progressives instead generally believed history to be evolving and automatically moving forward. That is, when looking on the technological gains, improvements in the standard of living, and the general pace of scientific discovery, Progressives believed that human beings, even human nature itself, would also improve and would be more likely to do what is right and good automatically. At the societal level, therefore, government ought to bring about that improvement and even aim to perfect human nature. Progressives rejected the Founders' argument that government's primary purpose was to secure unchanging rights and maintain a framework for self-government. Instead, they held that the purpose of government was to keep up with evolving rights and constant social change, what they called "progress."
- Explain to students how the Progressives depart from what they considered the meager understanding of rights and equality, i.e., that justice and morality require that the natural rights of individuals be equally protected. Instead, the Progressives saw government as a force not to protect rights but to grant groups of people special advantages in order to fulfill the potential outcomes of having certain rights. It was not enough, for example, to be free to earn a living if there was no job by which to earn it. It is the job of government not only to preserve the right to have a job but also perhaps to supply the job itself.

- Clarify with students that studying the philosophical, institutional, and political break that the Progressives made with the Founders does not mean that Progressives were wrong to highlight issues such as child labor, workplace and consumer safety, conservation, and monopolies (as the Founders also did). These are serious problems that ought to have been and should continue to be addressed. The point of studying the Progressives, however, is to ask whether it is the role of government to address these issues, or if private individuals, charities, businesses, consumers, churches, civic associations, and state and local governments are the most just entities to answer these problems, especially in light of students' understanding of both the American founding and Progressivism.
- Emphasize for students how such an idealistic philosophy (and idealistic view of human nature) would lead one to assume that the bad qualities of human nature (such as a desire for political power or human fallibility) is no longer a problem and that one need not worry (as the Founders did) about the distribution and separation of power within government or about the accumulated of power in any one place. What James Madison considered "the very definition of tyranny" is thus less of a concern.
- Make sure students appreciate the shift in the purpose and operation of government under such a view: government is no longer the defender of certain fundamental rights but otherwise limited to the basic functions (lawmaking, executing law, and adjudicating law) and core responsibilities (such as maintaining courts of law and the nation's security) of government. Rather, government is to be *the* active force for change in America, bringing about personal fulfilment of individuals and progress for society. Moreover, these ends were not meant to be attained merely in domestic policies but also on the world stage in foreign affairs. Woodrow Wilson's War Message to Congress articulates the spirit of Progressivism in foreign policy.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how the Progressives rejected America's principles and the Founders' understandings of rights, equality, human nature, and the purpose of government (3–4 paragraphs).

Lesson 2 — Politics, Leadership, and the Administrative State

3-4 classes

LESSON PREVIEW

Students learn how Progressives reimagined the roles of elected officials and political parties to inform and lead the people toward certain Progressive goals instead of governing as representatives of the people, while leaving governance to a new fourth branch of government with almost limitless power: the federal bureaucracy.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

<i>Introduction to the Constitution</i>	Lecture 12
<i>Constitution 101</i>	Lecture 8
<i>Constitution 201</i>	Lectures 1, 3, 4

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

“The New Nationalism,” Theodore Roosevelt
War Message to Congress, Woodrow Wilson
Fourteen Points, Woodrow Wilson
“Leaders of Men,” Woodrow Wilson
“The Presidency,” Theodore Roosevelt
“The Study of Administration,” Woodrow Wilson

TERMS AND TOPICS

direct democracy	bureaucracy
politics	delegation
living Constitution	16th Amendment
expertise	17th Amendment
administration	18th Amendment
administrative state	

QUESTIONS FOR THE AMERICAN MIND

- In what ways did Progressives critique the Constitution as being too slow, mechanical, and at odds with itself?
- For what reasons did Progressives insist upon an “organic” constitutional arrangement that more easily allows the government to carry out the general will of the people?
- What were Progressives’ early arguments for a “living Constitution”?
- Why did the Progressives critique the separation of powers and checks and balances?
- Why did Progressives believe that many of the Founders’ worries over the dangers of tyranny, and majority tyranny, were outdated, and thus that limits and checks on the government’s power were outdated?
- In what ways did Progressives promote direct democracy?
- What was government by expertise, and why did the Progressives insist upon it?
- In what sense did Progressives argue that many political questions were essentially noncontroversial and called for technical, nonpartisan guidance?
- In what sense did Progressives believe that the main problems in politics stemmed from special interests and the prejudices of the people?
- How could these interests and prejudices be overcome by an administrative state insulated from the sway of politics that could enact the people’s true will?
- How did Progressives try to replace partisan competition, political deliberation, and interest group bargaining with good management?
- How does the administrative bureaucracy often claim the formerly separated legislative, executive, and judicial branches all for itself?
- How has Congress delegated its legislative power to the administrative state?
- How have independent regulatory agencies gained and wielded unchecked power outside the direct control of the executive branch?
- How did Progressives reframe the president as a visionary, rhetorical, and partisan leader who sets the legislative agenda and guides general legislation through Congress—legislation that usually delegates legislative, executive, and even judicial power to bureaucratic agencies?
- Questions from the U.S. Civics Test:
 - Question 5: How are changes made to the U.S. Constitution?
 - Question 32: Who elects U.S. senators?
 - Question 63: There are four amendments to the U.S. Constitution about who can vote. Describe one of them.
 - Question 71: Why is it important to pay federal taxes?

KEYS TO THE LESSON

The philosophical differences between Progressivism and the founding had many practical consequences in actual governance, both for the institutions of government and in the agents of government. Progressivism established an unofficial dividing line between those who represented the people and those who made, enforced, and judged the laws. They labeled this distinction “politics” on the one hand and “administration” on the other. Politics included those who ran for and were elected to office. Their purpose, once elected, was not actually to govern or to represent the will of the people, but rather to lead the people to desire and demand certain government outcomes. Once such a mandate for government activity was secured through the passage of general laws that stated an overall goal, the detailed tasks of the actual

creation, enforcement, and judging violations of law was left to a conglomerate of administrative experts or bureaucrats. Being insulated from the people and from politics (by not being subject to election), these experts were then to govern so as to effectively bring about the grand objectives defined in general terms by politics. Can one say that such a government arrangement is truly representative self-government? With such an arrangement, the dangers of tyranny—of the accumulation of power in a singular body unaccountable to the people—are more pressing than ever.

Teachers might best plan and teach Politics, Leadership, and the Administrative State with emphasis on the following approaches:

- Review with students the philosophical departure the Progressives made from the Founders' understanding of human nature. The Founders recognized and accounted for a permanent and unchanging human nature, and the Progressives posited an evolving and changing human nature.
- Walk students through what this new view of human nature means for the purpose of government and for practical politics and the activities of government. For Progressives, a more optimistic view of human nature made them supportive of direct democratic rule. A prime example of this change was the 17th Amendment, which required the direct election of senators. The use of initiative, referendum, and recall at the state level are other examples.
- Help students to understand the role of elected officials in this new paradigm. Elected officials are not merely to reflect consent and refine the views of the people but rather to show (or convince) the people what they should truly want through the use of rhetoric and, as Theodore Roosevelt popularized, the bully pulpit. Progressives were especially interested in the presidency as the national leader of popular opinion.
- Consider with students how this emphasis on direct democracy was to a certain extent “smoke and mirrors.” The democratic push may have worked around the power of powerful but narrow interests, at least at the time, but it certainly did not mean that more laws would be enacted through the popular institutions of government. Instead, this democratic push was mainly aimed at ascertaining the “general will” of the people through democratic processes shaping opinion to follow progressive leadership. That is, the Progressives emphasized more direct democracy to determine the general aspiration of what most people think “sounds good,” and even this was up to elected officials to show the people what that ought to be. For example, suppose most people want a general outcome (such as clean air and clean water) but powerful interests may not care as much about clean air and clean water. Expanded democratic processes make it easier and more immediate for the people to express their will about the general outcome they want. Politics is about expressing general ideas and establishing popular support to get those ideas expressed in law. Separate from this more democratic process is the difficult and less democratic task of turning general ideas into actual governance. The Progressives called this task “administration.”
- The Progressives argued that the technical and time-consuming work of actually carrying out the broad, general ideas of the law—detailing how it is to be done, implementing the laws, and making sure they are enforced to achieve their objectives—is not the work of Congress or even the President but require a new body of experts and bureaucrats to do the real work of governing (administration) outside of and not subject to politics. Congress would *delegate* some of its lawmaking power to these bureaucrats, most of whom would exist under the executive branch and so could also execute the “laws” or regulations they make (in this example, the clean air and water experts would make the specific details of the law). The president can delegate his power to enforce it. They often also are given judicial powers, and have their own courts to adjudicate

claims against their own laws and regulations. This shift of legislative, executive, and judicial powers away from the branches in which these powers had been separately vested by the people through the Constitution, and its accumulation under various departments and agencies, amounts to the second great shift in the Progressive worldview: government needed to be rearranged through the creation of the administrative state to get around the Constitution and bring about “progress.”

- Stress for students the importance of this shift away from government by representatives of the people to government by bureaucratic expertise. It strikes at the very principle of representative self-government on which the Founders established the United States and is more reminiscent of the *lack* of representation, against which the colonists revolted. Other words to characterize this view is “government by bureaucracy” or “the administrative state.”
- Emphasize how the advent of the administrative state changes the Founders’ careful insistence that powers be separated and dispersed through the separation of powers, checks and balances, and federalism, not to mention government by elected representatives. All three types of government power (legislative, executive, and judicial) are instead consolidated into bureaucratic agencies that are, moreover, almost entirely autonomous from the people. And all of this is in the name of efficiency: trusting in improved human nature and scientific expertise to achieve higher aims via government than the founding generation ever thought possible.
- It is worth asking students if such experts should be making political decisions. The role of statesmen is to consider all the various factors and people that a certain policy would affect and make the decision that best preserves the rights, freedom, and safety of the most people and the common good. That is a political decision, which requires prudence or practical wisdom, not merely expertise or technical knowledge.
- Remind students of the different ends that the Progressives had in mind when it came to the role of government. Instead of protecting, permitting, and encouraging individuals to pursue moral ends by exercising their liberty under a limited government, progressivism saw government as a social mechanism for achieving moral ends. That is, instead of assuring self-government so that a diverse people could pursue different vocations and seek different opportunities under the rule of law (meant to check the baser aspects of human nature and the desire for power), progressivism saw government as a moral force that should organize and regulate public action in order to bring about social progress. The result is that politics becomes moralized in a way that it was not previously, and also both more all-encompassing and more ideological.
- Help students to understand the various changes the Progressives made to the functioning of the government. Include in this treatment the 16th, 17th, and 18th amendments.
- In looking ahead, note how the Progressive expansion in government activity would appear less problematic, since many Progressives sometimes shared a similar moral outlook as the American Founders. But this is the crucial difference: the Founders understood and appreciated that man’s flawed human nature meant that government should remain limited and powers should not be consolidated, and that the ends of man are better served by constitutional self-government rather than government regulation of more and more aspects of society. This divide would become more problematic as the inheritors of Progressive ideas ceased to believe in the moral of civic principles that had defined America and American life.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the relationship between politics and administration in Progressive government and how this arrangement and these roles depart from the American founding (2–3 paragraphs).

Name_____

Date_____

Unit 5 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. How did Progressives explain their argument that human nature, truth, and politics were inevitably evolving and improving over the course of history?

2. What did Progressives mean by equality? Why did they believe that creating equality of opportunity and treating everyone with equal dignity necessitated greater activism from government?

3. Why did the Progressives critique the separation of powers and checks and balances?

4. What was government by expertise, and why did the Progressives insist upon it?

5. How has Congress delegated its legislative power to the administrative state?

Lesson 3 — The New Deal and the Great Society

3-4 classes

LESSON PREVIEW

Students learn how Franklin Delano Roosevelt's New Deal program amidst the Great Depression changed the relationship between government and the individual, and how Lyndon Johnson's Great Society ushered in even greater government involvement in many more areas of human life.

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Constitution 101

Lecture 9

Constitution 201

Lecture 6

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Commonwealth Club Address, Franklin Delano Roosevelt
 Democratic Convention Address, 1936, Franklin Delano Roosevelt
 Annual Message to Congress, 1941, Franklin Delano Roosevelt
 Annual Message to Congress, 1944, Franklin Delano Roosevelt
 Commencement Address at the University of Michigan, Lyndon Johnson

TERMS AND TOPICS

The New Deal
 Second Bill of Rights
 commerce power
 Japanese internment

Great Society
 war on poverty
 welfare
 welfare state

QUESTIONS FOR THE AMERICAN MIND

- What was Franklin Roosevelt's new conception of the social contract?
- Why did Franklin Roosevelt argue that rights are to be granted by the government according to the social conditions of the historical moment?
- How does this view of rights and their origin differ from the Founders' understanding of rights?
- Beyond whether or not this is true, what great risk does such a view of rights imply (consider the case of Japanese internment)?
- What was Franklin Roosevelt's Second Bill of Rights? How did these rights differ from the Founders' original Bill of Rights?

- What is the theoretical foundation for entitlements and viewing them as rights?
- What is the argument that real freedom requires material security?
- During the New Deal, what was the new understanding of the Commerce Power?
- How did the New Deal and Progressivism in general weaken federalism?
- What were the ideological and practical components of Lyndon Johnson's Great Society?
- What was the war on poverty?
- What is the welfare state?

KEYS TO THE LESSON

Early Progressivism made important changes to the American constitutional order and, more importantly, established the ground and precedents for rearranging American institutions and increasing government activity in American life in a way very different from the founding principles of basic equality, liberty, and limited constitutional government. World War I put a pause on the Progressives' optimistic view of human nature and enlightened government. Calvin Coolidge's limited government policies of the 1920s witnessed rising economic opportunity that partly undercut the Progressives' claims for federal government activity to address economic issues. The Great Depression, however, allowed a second generation of Progressives to expand and cement the Progressive view of government in the American order. Students should understand how Franklin Delano Roosevelt's New Deal, despite the circumstances of the Great Depression and Roosevelt's leadership during the Second World War, dramatically expanded the size and power of the federal government while enlarging the administrative state. Lyndon Johnson's Great Society in the 1960s expanded further on the New Deal and World War II's growth in government administration and regulation by establishing larger welfare and other social programs. Johnson, moreover, attempted to expand once more the purposes of government, this time beyond the equal protection of rights of the founding and beyond the economic concerns of the early Progressives and the New Deal. For the Great Society, personal human fulfillment through government and social action was introduced as the new end of government.

Teachers might best plan and teach the New Deal and the Great Society with emphasis on the following approaches:

- Clarify for students that the chief consequence of the New Deal was the expansion and formalization of the administrative state, its bureaucratic agencies and employees, and its extensive place in American life. Students should understand that Roosevelt justified such an aggressive political shift as a response to the Great Depression. In this way, the New Deal, by greatly expanding and centrally organizing many new aspects of government, was responsible for cementing the idea of government as expert administration. As Roosevelt said in his "Commonwealth Club Address," the day of "enlightened administration" had arrived.
- Emphasize that Roosevelt saw the power of government not merely as a guarantor of the freedom to exercise natural rights but as actually guaranteeing economic conditions and assuring new economic rights. In this context, teach students about the advent of large entitlement programs in the New Deal, not just welfare programs for the poor but the general entitlement of Social Security. These programs guarantee certain benefits to groups or segments of the population, and imply that individuals have a right to such government entitlements just as or even more important than their natural rights. Roosevelt argued (in his "Second Bill of Rights" speech) that the old rights guaranteed in the Constitution were inadequate and that Americans required a new

economic bill of rights to guarantee employment, housing, medical care, social security, education, and even recreation. These ideas would inform future political debates over several decades.

- Note for students the effect that the New Deal had on federalism and the separation of powers. While the courts at first attempted to uphold limits on the powers of the federal government (by rejecting, for instance, attempts to delegate power to the bureaucracy) by the end of the New Deal, the Supreme Court had abandoned attempts to restrict such limits, granting Congress vast authority to legislate about anything that pertained to economic activity. And in expanding its delegations of power to the bureaucracy, Congress in turn expanded the federal government's power to regulate those activities.
- Present the Great Society as the third phase of Progressivism, and the bridge to contemporary political movements, particularly on the political Left. Lyndon Johnson's Great Society sought to broaden the focus of Progressivism while maintaining its views on rights and the purpose and methods of government. Government was not merely meant to preserve rights (as the Founders asserted), or even to achieve economic equality and fulfillment (as in early Progressivism and the New Deal). Taking Progressivism a step further, the Great Society sought to use government to achieve a kind of human fulfillment for groups of people. It sought to bring government action to areas previously not the realm of the *federal* government, such as public education.
- It is worth noting for students that although Johnson's rhetoric hinted at a spiritual nature and spiritual ends to the political body and government, his actions stayed for the most part in the realm of economics, for example in the great expansions of welfare programs such as Medicare and Medicaid. Johnson's rhetoric did attempt, however, to tap into and give voice to the cultural changes that would overtake the progressive movement in the 1960s and subsequent decades, and the Great Society launched the federal government's expanded involvement in race relations, education, and the environment. There is a certain moral fervor in these Great Society programs that models the idealism of the earlier Progressive movement.
- While worth mentioning the role of the judiciary, especially the Warren Court, in facilitating the Great Society, a closer study of some key cases related to the Great Society and underlying cultural changes is reserved for Unit 8.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the ways in which the New Deal and the Great Society each expanded the administrative state and the philosophical and moral precepts Franklin Roosevelt and Lyndon Johnson cited in doing so (3–4 paragraphs).

Lesson 4 — Constitutionalist Responses to Progressivism

2-3 classes

LESSON PREVIEW

Students learn about the various ways that defenders of the old constitutional order, who employed what came to be called an originalist interpretation of the Constitution, responded to the various challenges of Progressivism, especially since the New Deal and the Great Society.

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Constitution 201

Lecture 10

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

“The Inspiration of the Declaration,” Calvin Coolidge

“A Time for Choosing,” Ronald Reagan

First Inaugural Address, Ronald Reagan

TERMS AND TOPICS

traditionalism

libertarianism

the conservative movement

neoconservatism

Reaganism

constitutional conservatism

populism

nationalism

QUESTIONS FOR THE AMERICAN MIND

- For all of the following: what were their origins, how do they attempt to answer Progressivism, how are they distinct from one another, how might the Founders respond to them, what are their shortcomings?
 - originalism
 - traditionalism
 - libertarianism
 - the conservative movement
 - neoconservatism
 - Reaganism
 - constitutional conservatism
 - populism
 - nationalism

KEYS TO THE LESSON

Help students to understand the multifaceted and varied responses to Progressivism by constitutionalists and those who later came to be called conservatives. Students do not need to spend very much time with each of the various types of conservatism, but students should be asked how each kind of conservatism compares to America's founding principles, both philosophically and in government, as well as to Progressivism. Since many of these responses claim to "conserve" the American Founding and seek the original meaning of the Constitution, as opposed to a "living" Constitution, this is an appropriate question to consider when studying these ideas.

Teachers might best plan and teach Constitutionalist Responses to Progressivism with emphasis on the following approaches:

- Share with students the extent to which each constitutionalist or conservative movement claimed to adhere to all or specific parts of the American founding, particularly through appeals to the Declaration of Independence and an originalist reading of the Constitution.
- Read with students Calvin Coolidge's "The Inspiration of the Declaration" speech on the one hundred and fiftieth anniversary of the signing of the Declaration of Independence, and consider his description of the moral and intellectual grounding of the Declaration, in particular his statement that "If all men are created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just powers from the consent of the governed, that is final. No advance, no progress can be made beyond these propositions."
- Explain to students that the general tension within views emphasizing the Constitution in the modern context tend to be along a fault lines of the degree to which government is used to secure, encourage, or achieve constitutional principles, economic liberty, and the common good.
- Help students understand that the libertarian views government in the most limited sense: to securing the rule of law and economic contracts while permitting most other activities, regardless of their morality, so long as they do not immediately harm another.
- Explain how the modern conservative movement had its origins in the thought and work of William F. Buckley, who was critical of the New Deal and especially its socialistic tendencies, and of modern liberalism in general as being secular and destructive of the non-governmental intermediary institutions of society, such as churches, fraternal organizations, and the family. After the Great Society, new groups of conservatives expanded these ideas in to a broader movement. One group called neoconservatives, who had previously been progressive or liberals, emerged as critics of the welfare state and the liberalization of social policy and advocates of a strong American foreign policy. Another group of more religious conservatives, referred to as the New Right, were especially concerned about social issues arising out of government policies (especially driven by the Supreme Court) regarding abortion and the rise of secularism.
- Consider with students Ronald Reagan's ability to combine free-market economic concerns, the new concerns of the social effects of modern liberalism on American society, and concerns about America's national security (especially in the midst of the Cold War). This new consensus about conservatism sought to decrease the size of government (especially the federal government and its role in America's economy) and reestablish Constitutional limits (especially to revive federalism) while asserting American principles and national strength on the world stage.
- A particular interest of conservatism was to return the country to a proper understanding of American constitutionalism, which meant in general a respect and appreciation for the

accomplishments of the American Founding, its grounding in the principles of the Declaration of Independence, and its establishment of the rule of law and the forms of constitutional government. In particular was an emphasis on abiding by the Constitution as a ruling expression of the consent of the governed, and this brought prominence to the appointment of judges and how they should be guided by the original meaning of the Constitution rather than reading the Constitution as a “living” document that evolves with times.

- Over several decades, constitutionalism and conservatism have debated how core principles apply to contemporary political circumstances and more recently have begun to emphasize secure borders, economic nationalism, a moral outlook reflective of the founding generation, and an American-centric foreign policy as policy manifestations of those principles.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Outline the major constitutionalist or conservative positions and how they attempt to answer Progressivism and claim to adhere to the American founding (2–3 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — Progressivism and the State Test

Unit 5

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

Progressivism	delegation	welfare state
relativism	16th Amendment	traditionalism
government activism	17th Amendment	libertarianism
special interests	18th Amendment	fusionism
monopolies	The New Deal	the conservative movement
direct democracy	Second Bill of Rights	neoconservatism
living Constitution	Commerce Power	Reaganism
expertise	Japanese internment	constitutional conservatism
administration	Great Society	populism
administrative state	war on poverty	nationalism
bureaucracy	welfare	

PRIMARY SOURCES

Explain the main arguments in each of the following sources and the significance of each to understanding Progressivism.

“What Is Progress?” Woodrow Wilson
Liberalism and Social Action, John Dewey
 “The New Nationalism,” Theodore Roosevelt
 War Message to Congress, Woodrow Wilson
 Fourteen Points, Woodrow Wilson
 “Leaders of Men” Woodrow Wilson
 “The Study of Administration,” Woodrow Wilson
 “Commonwealth Club Address,” Franklin Delano Roosevelt
 Annual Message to Congress, 1941, Franklin Delano Roosevelt
 Annual Message to Congress, 1944, Franklin Delano Roosevelt
 Commencement Address at the University of Michigan, Lyndon Johnson
 “The Inspiration of the Declaration,” Calvin Coolidge
 “A Time for Choosing,” Ronald Reagan

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | Criticism of the Declaration of Independence

- ☐ How did Progressives explain their argument that human nature, truth, and politics were inevitably evolving and improving over the course of history?
- ☐ How and why did the Progressives reject the Declaration of Independence, natural rights, and social contract theory?
- ☐ What were the Progressives' conceptions of freedom, equality, and justice?
- ☐ Why and in what ways did Progressives claim that the individual person's identity and will are bound up with the State?
- ☐ What did Progressives mean by equality? Why did they believe that creating equality of opportunity and treating everyone with equal dignity necessitated greater activism from government?
- ☐ How did Progressives critique individualism and the power of special interests, monopolies, and the wealthy in politics?
- ☐ What social reforms did Progressives pursue to deal with problems of urbanization and industrialization?
- ☐ Why did Progressives approach foreign affairs with the expectation that the world would become freer and more peaceful with the spread of democracy and international institutions?

Lesson 2 | Politics, Leadership, and the Administrative State

- ☐ In what ways did Progressives critique the Constitution as being too slow, mechanical, and at odds with itself?
- ☐ For what reasons did Progressives insist upon an "organic" constitutional arrangement that more easily allows the government to carry out the general will of the people?
- ☐ What were Progressives' early arguments for a "living Constitution"?
- ☐ Why did the Progressives critique the separation of powers and checks and balances?
- ☐ Why did Progressives believe that many of the Founders' worries over the dangers of tyranny, and majority tyranny, were outdated and thus that limits and checks on the government's power were outdated?
- ☐ In what ways did Progressives promote direct democracy?
- ☐ What was government by expertise and why did the Progressives insist upon it?
- ☐ In what sense did Progressives argue that many political questions were essentially noncontroversial and called for technical, nonpartisan guidance?
- ☐ In what sense did Progressives believe that the main problems in politics stemmed from special interests and the prejudices of the people?
- ☐ How could these interests and prejudices be overcome by an administrative state insulated from the sway of politics that could enact the people's true will?
- ☐ How did Progressives try to replace partisan competition, political deliberation, and interest group bargaining with good management?
- ☐ How does the administrative bureaucracy often claim the formerly separated legislative, executive, and judicial branches all for itself?
- ☐ How has Congress delegated its legislative power to the administrative state?

- ☐ How have independent regulatory agencies gained and wielded unchecked power outside the direct control of the executive branch?
- ☐ How did Progressives reframe the president as a visionary, rhetorical, and partisan leader who sets the legislative agenda and guides general legislation through Congress—legislation that usually delegates legislative, executive, and even judicial power to bureaucratic agencies?

Lesson 3 | The New Deal and the Great Society

- ☐ What was Franklin Roosevelt's new conception of the social contract?
- ☐ Why did Franklin Roosevelt argue that rights are to be granted by the government according to the social conditions of the historical moment?
- ☐ How does this view of rights and their origin differ from the Founders' understanding of rights?
- ☐ Beyond whether this is true, what great risk does such a view of rights imply (consider the case of Japanese internment)?
- ☐ What was Franklin Roosevelt's Second Bill of Rights? How did those rights differ from the Founders' original Bill of Rights?
- ☐ What is the theoretical foundation for entitlements and viewing them as rights?
- ☐ What is the argument that real freedom requires material security?
- ☐ During the New Deal, what was the new understanding of the Commerce Power?
- ☐ How did the New Deal and Progressivism in general weaken federalism?
- ☐ What were the ideological and practical components of Lyndon Johnson's Great Society?
- ☐ What was the war on poverty?
- ☐ What is the welfare state?

Lesson 4 | Constitutionalist Responses to Progressivism

- ☐ For all of the following, what were their origins, how do they attempt to answer Progressivism, and how are they distinct from one another:
 - traditionalism
 - libertarianism
 - the conservative movement
 - neoconservatism
 - Reaganism
 - constitutional conservatism
 - populism
 - nationalism

Name_____

Date_____

Test — Progressivism and the State

Unit 5

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. government activism
2. special interests
3. direct democracy
4. expertise
5. administration
6. bureaucracy
7. delegation
8. 17th Amendment
9. Second Bill of Rights
10. Commerce Power
11. Great Society
12. welfare state

13. libertarianism

14. constitutional conservatism

15. populism

PRIMARY SOURCES

Explain the main arguments in each of the following sources and the significance of each to understanding Progressivism.

16. “What Is Progress?” Woodrow Wilson

17. “Commonwealth Club Address,” Franklin Delano Roosevelt

18. Annual Message to Congress, 1944, Franklin Delano Roosevelt

19. Commencement Address at the University of Michigan, Lyndon Johnson

20. “A Time for Choosing,” Ronald Reagan

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

21. How did Progressives explain their argument that human nature, truth, and politics were inevitably evolving and improving over the course of history?
22. How and why did the Progressives reject the Declaration of Independence, natural rights, and social contract theory?
23. Why and in what ways did Progressives claim that the individual person’s identity and will are bound up with the State?
24. What did Progressives mean by equality? Why did they believe that creating equality of opportunity and treating everyone with equal dignity necessitated greater activism from government?
25. How did Progressives critique individualism and the power of special interests, monopolies, and the wealthy in politics?
26. Why did Progressives approach foreign affairs with the expectation that the world would become freer and more peaceful with the spread of democracy and international institutions?

27. What were Progressives' early arguments for a "living Constitution"?
28. Why did the Progressives critique the separation of powers and checks and balances?
29. Why did Progressives believe that many of the Founders' worries over the dangers of tyranny, and majority tyranny, were outdated and thus that limits and checks on the government's power were outdated?
30. What was government by expertise, and why did the Progressives insist upon it?
31. How has Congress delegated its legislative power to the administrative state?
32. Why did Franklin Roosevelt argue that rights are to be granted by the government according to the social conditions of the historical moment?
33. How did the New Deal and Progressivism in general weaken federalism?
34. What were the ideological and practical components of Lyndon Johnson's Great Society?
35. What were the origins of Reaganism, and how did it attempt to answer Progressivism?

Writing Assignment — Progressivism and the State

Unit 5

Due on _____

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question:

How did the early Progressives, the New Deal, and the Great Society each criticize and depart from the American founding with respect to the principles of the Declaration of Independence and the principles and structures of the Constitution?

APPENDIX B

Primary Sources

Woodrow Wilson

Charles Merriam

Oliver Wendell Holmes Jr.

John Dewey

Theodore Roosevelt

Franklin Delano Roosevelt

Lyndon Johnson

Calvin Coolidge

Ronald Reagan

GOVERNOR WOODROW WILSON (D-NJ)

What is Progress?

SPEECH

1912

BACKGROUND

Woodrow Wilson delivered versions of this speech on several occasions during his campaign for the presidency in 1912.

GUIDING QUESTIONS

1. What conditions does Wilson say compel him to be a progressive?
2. According to Wilson, what is "change," and when is it worthwhile?
3. Why does Wilson prefer that young men be unlike their fathers, and what does this have to do with his notions of patriotism and progress?
4. What value does Wilson place upon the past and traditions, and what happens to them as progress is made?
5. What is the Newtonian Theory with respect to the Constitution, and why does Wilson say that the Darwinian Theory is preferable?
6. According to Wilson, what does the Declaration of Independence have to say about questions at the time of the Founding and about questions of today?

Woodrow Wilson, "What is Progress?" in *The New Freedom* (New York: Doubleday, Page, and Company, 1913), 33-54.

ANNOTATIONS

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In that sage and veracious chronicle, "Alice Through the Looking-Glass," it is recounted how, on a noteworthy occasion, the little heroine is seized by the Red Chess Queen, who races her off at a terrific pace. They run until both of them are out of breath; then they stop, and Alice looks around her and says, "Why, we are just where we were when we started!"

5 "Oh, yes," says the Red Queen; "you have to run twice as fast as that to get anywhere else."

That is a parable of progress. The laws of this country have not kept up with the change of economic circumstances in this country; they have not kept up with the change of political circumstances; and therefore we are not even where we were when we started. We shall have to run, not until we are out of breath, but until we have caught up with our own con-
10 ditions, before we shall be where we were when we started; when we started this great experiment which has been the hope and the beacon of the world. And we should have to run twice as fast as any rational program I have seen in order to get anywhere else.

I am, therefore, forced to be a progressive, if for no other reason, because we have not kept up with our changes of conditions, either in the economic field or in the political field. We
15 have not kept up as well as other nations have. We have not kept our practices adjusted to the facts of the case, and until we do, and unless we do, the facts of the case will always have the better of the argument; because if you do not adjust your laws to the facts, so much the worse for the laws, not for the facts, because law trails along after the facts. Only that law is unsafe which runs ahead of the facts and beckons to it and makes it follow the will-o'-the-
20 wisps of imaginative projects.

Business is in a situation in America which it was never in before; it is in a situation to which we have not adjusted our laws. Our laws are still meant for business done by individuals; they have not been satisfactorily adjusted to business done by great combinations, and we have got to adjust them. I do not say we may or may not; I say we must; there is no
25 choice. If your laws do not fit your facts, the facts are not injured, the law is damaged; because the law, unless I have studied it amiss, is the expression of the facts in legal relationships. Laws have never altered the facts; laws have always necessarily expressed the facts; adjusted interests as they have arisen and have changed toward one another.

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Politics in America is in a case which sadly requires attention. The system set up by our law and our usage doesn't work,—or at least it can't be depended on; it is made to work only by a most unreasonable expenditure of labor and pains. The government, which was designed for the people, has got into the hands of bosses and their employers, the special interests.

5 An invisible empire has been set up above the forms of democracy.

There are serious things to do. Does any man doubt the great discontent in this country? Does any man doubt that there are grounds and justifications for discontent? Do we dare stand still? Within the past few months we have witnessed (along with other strange political phenomena, eloquently significant of popular uneasiness) on one side a doubling of
10 the Socialist vote and on the other the posting on dead walls and hoardings all over the country of certain very attractive and diverting bills warning citizens that it was "better to be safe than sorry" and advising them to "let well enough alone." Apparently a good many citizens doubted whether the situation they were advised to let alone was really well enough, and concluded that they would take a chance of being sorry. To me, these counsels of do-
15 nothingism, these counsels of sitting still for fear something would happen, these counsels addressed to the hopeful, energetic people of the United States, telling them that they are not wise enough to touch their own affairs without marring them, constitute the most extraordinary argument of fatuous ignorance I ever heard. Americans are not yet cowards. True, their self-reliance has been sapped by years of submission to the doctrine that pros-
20 perity is something that benevolent magnates provide for them with the aid of the government; their self-reliance has been weakened, but not so utterly destroyed that you can twit them about it. The American people are not naturally stand-patters. Progress is the word that charms their ears and stirs their hearts.

There are, of course, Americans who have not yet heard that anything is going on. The
25 circus might come to town, have the big parade and go, without their catching a sight of the camels or a note of the calliope. There are people, even Americans, who never move themselves or know that anything else is moving.

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A friend of mine who had heard of the Florida "cracker," as they call a certain ne'er-do-well portion of the population down there, when passing through the State in a train, asked some one to point out a "cracker" to him. The man asked replied, "Well, if you see something off in the woods that looks brown, like a stump, you will know it is either a stump or
5 a cracker; if it moves, it is a stump."

Now, movement has no virtue in itself. Change is not worth while for its own sake. I am not one of those who love variety for its own sake. If a thing is good today, I should like to have it stay that way tomorrow. Most of our calculations in life are dependent upon things staying the way they are. For example, if, when you got up this morning, you had forgotten
10 how to dress, if you had forgotten all about those ordinary things which you do almost automatically, which you can almost do half awake, you would have to find out what you did yesterday. I am told by the psychologists that if I did not remember who I was yesterday, I should not know who I am today, and that, therefore, my very identity depends upon my being able to tally today with yesterday. If they do not tally, then I am confused; I do not
15 know who I am, and I have to go around and ask somebody to tell me my name and where I came from.

I am not one of those who wish to break connection with the past; I am not one of those who wish to change for the mere sake of variety. The only men who do that are the men who want to forget something, the men who filled yesterday with something they would
20 rather not recollect today, and so go about seeking diversion, seeking abstraction in something that will blot out recollection, or seeking to put something into them which will blot out all recollection. Change is not worth while unless it is improvement. If I move out of my present house because I do not like it, then I have got to choose a better house, or build a better house, to justify the change.

25 It would seem a waste of time to point out that ancient distinction,—between mere change and improvement. Yet there is a class of mind that is prone to confuse them. We have had political leaders whose conception of greatness was to be forever frantically doing some-

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thing,—it mattered little what; restless, vociferous men, without sense of the energy of concentration, knowing only the energy of succession. Now, life does not consist of eternally running to a fire. There is no virtue in going anywhere unless you will gain something by being there. The direction is just as important as the impetus of motion.

- 5 All progress depends on how fast you are going, and where you are going, and I fear there has been too much of this thing of knowing neither how fast we were going or where we were going. I have my private belief that we have been doing most of our progressiveness after the fashion of those things that in my boyhood days we called "treadmills,"—a treadmill being a moving platform, with cleats on it, on which some poor devil of a mule was
10 forced to walk forever without getting anywhere. Elephants and even other animals have been known to turn treadmills, making a good deal of noise, and causing certain wheels to go round, and I daresay grinding out some sort of product for somebody, but without achieving much progress. Lately, in an effort to persuade the elephant to move, really, his friends tried dynamite. It moved,—in separate and scattered parts, but it moved.
- 15 A cynical but witty Englishman said, in a book, not long ago, that it was a mistake to say of a conspicuously successful man, eminent in his line of business, that you could not bribe a man like that, because, he said, the point about such men is that they have been bribed— not in the ordinary meaning of that word, not in any gross, corrupt sense, but they have achieved their great success by means of the existing order of things and therefore they
20 have been put under bonds to see that that existing order of things is not changed; they are bribed to maintain the *status quo*.

- It was for that reason that I used to say, when I had to do with the administration of an educational institution, that I should like to make the young gentlemen of the rising generation as unlike their fathers as possible. Not because their fathers lacked character or intelligence or knowledge or patriotism, but because their fathers, by reason of their advancing years and their established position in society, had lost touch with the processes of life; they had forgotten what it was to begin; they had forgotten what it was to rise; they had
25 forgotten what it was to be dominated by the circumstances of their life on their way up

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from the bottom to the top, and, therefore, they were out of sympathy with the creative, formative and progressive forces of society.

Progress! Did you ever reflect that that word is almost a new one? No word comes more often or more naturally to the lips of modern man, as if the thing it stands for were almost
5 synonymous with life itself, and yet men through many thousand years never talked or thought of progress. They thought in the other direction. Their stories of heroisms and glory were tales of the past. The ancestor wore the heavier armor and carried the larger spear. "There were giants in those days." Now all that has altered. We think of the future, not the past, as the more glorious time in comparison with which the present is nothing.

10 Progress, development,—those are modern words. The modern idea is to leave the past and press onward to something new.

But what is progress going to do with the past, and with the present? How is it going to treat them? With ignominy, or respect? Should it break with them altogether, or rise out of them, with its roots still deep in the older time? What attitude shall progressives take to-
15 ward the existing order, toward those institutions of conservatism, the Constitution, the laws, and the courts?

Are those thoughtful men who fear that we are now about to disturb the ancient foundations of our institutions justified in their fear? If they are, we ought to go very slowly about the processes of change. If it is indeed true that we have grown tired of the institutions
20 which we have so carefully and sedulously built up, then we ought to go very slowly and very carefully about the very dangerous task of altering them. We ought, therefore, to ask ourselves, first of all, whether thought in this country is tending to do anything by which we shall retrace our steps, or by which we shall change the whole direction of our development?

25 I believe, for one, that you cannot tear up ancient rootages and safely plant the tree of liberty in soil which is not native to it. I believe that the ancient traditions of a people are its ballast; you cannot make a tabula rasa upon which to write a political program. You cannot take a new sheet of paper and determine what your life shall be tomorrow. You must knit the new

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into the old. You cannot put a new patch on an old garment without ruining it; it must be not a patch, but something woven into the old fabric, of practically the same pattern, of the same texture and intention. If I did not believe that to be progressive was to preserve the essentials of our institutions, I for one could not be a progressive.

- 5 One of the chief benefits I used to derive from being president of a university was that I had the pleasure of entertaining thoughtful men from all over the world. I cannot tell you how much has dropped into my granary by their presence. I had been casting around in my mind for something by which to draw several parts of my political thought together when it was my good fortune to entertain a very interesting Scotsman who had been devoting
- 10 himself to the philosophical thought of the seventeenth century. His talk was so engaging that it was delightful to hear him speak of anything, and presently there came out of the unexpected region of his thought the thing I had been waiting for. He called my attention to the fact that in every generation all sorts of speculation and thinking tend to fall under the formula of the dominant thought of the age. For example, after the Newtonian Theory
- 15 of the universe had been developed, almost all thinking tended to express itself in the analogies of the Newtonian Theory, and since the Darwinian Theory has reigned amongst us, everybody is likely to express whatever he wishes to expound in terms of development and accommodation to environment.

- Now, it came to me, as this interesting man talked, that the Constitution of the United
- 20 States had been made under the dominion of the Newtonian Theory. You have only to read the papers of *The Federalist* to see that fact written on every page. They speak of the "checks and balances" of the Constitution, and use to express their idea the simile of the organization of the universe, and particularly of the solar system,—how by the attraction of gravitation the various parts are held in their orbits; and then they proceed to represent Con-
- 25 gress, the Judiciary, and the President as a sort of imitation of the solar system.

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They were only following the English Whigs, who gave Great Britain its modern constitution. Not that those Englishmen analyzed the matter, or had any theory about it; Englishmen care little for theories. It was a Frenchman, Montesquieu, who pointed out to them how faithfully they had copied Newton's description of the mechanism of the heavens.

- 5 The makers of our Federal Constitution read Montesquieu with true scientific enthusiasm. They were scientists in their way,—the best way of their age,—those fathers of the nation. Jefferson wrote of "the laws of Nature,"—and then by way of afterthought,— "and of Nature's God." And they constructed a government as they would have constructed an orrery,—to display the laws of nature. Politics in their thought was a variety of mechanics.
- 10 The Constitution was founded on the law of gravitation. The government was to exist and move by virtue of the efficacy of "checks and balances."

- The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks,
- 15 shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other, as checks, and live. On the contrary, its life is dependent upon their quick cooperation, their ready response to the commands of instinct or intelligence, their amicable community of purpose. Government is not a body of blind forces; it is a body of men, with highly differentiated functions, no doubt, in our modern day, of special-
- 20 ization, with a common task and purpose. Their cooperation is indispensable, their warfare fatal. There can be no successful government without the intimate, instinctive coordination of the organs of life and action. This is not theory, but fact, and displays its force as fact, whatever theories may be thrown across its track. Living political constitutions must be Darwinian in structure and in practice. Society is a living organism and must obey the laws
- 25 of life, not of mechanics; it must develop.

All that progressives ask or desire is permission—in an era when "development," "evolution," is the scientific word—to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine.

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Some citizens of this country have never got beyond the Declaration of Independence, signed in Philadelphia, July 4th, 1776. Their bosoms swell against George III, but they have no consciousness of the war for freedom that is going on today.

5 The Declaration of Independence did not mention the questions of our day. It is of no consequence to us unless we can translate its general terms into examples of the present day and substitute them in some vital way for the examples it itself gives, so concrete, so intimately involved in the circumstances of the day in which it was conceived and written. It is an eminently practical document, meant for the use of practical men; not a thesis for philosophers, but a whip for tyrants; not a theory of government, but a program of action.

10 Unless we can translate it into the questions of our own day, we are not worthy of it, we are not the sons of the sires who acted in response to its challenge.

What form does the contest between tyranny and freedom take today? What is the special form of tyranny we now fight? How does it endanger the rights of the people, and what do we mean to do in order to make our contest against it effectual? What are to be the items

15 of our new declaration of independence?

By tyranny, as we now fight it, we mean control of the law, of legislation and adjudication, by organizations which do not represent the people, by means which are private and selfish. We mean, specifically, the conduct of our affairs and the shaping of our legislation in the interest of special bodies of capital and those who organize their use. We mean the alliance,

20 for this purpose, of political machines with selfish business. We mean the exploitation of the people by legal and political means. We have seen many of our governments under these influences cease to be representative governments, cease to be governments representative of the people, and become governments representative of special interests, controlled by machines, which in their turn are not controlled by the people.

25 Sometimes, when I think of the growth of our economic system, it seems to me as if, leaving our law just about where it was before any of the modern inventions or developments took place, we had simply at haphazard extended the family residence, added an office here and

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a workroom there, and a new set of sleeping rooms there, built up higher on our foundations, and put out little lean-tos on the side, until we have a structure that has no character whatever. Now, the problem is to continue to live in the house and yet change it.

5 Well, we are architects in our time, and our architects are also engineers. We don't have to stop using a railroad terminal because a new station is being built. We don't have to stop any of the processes of our lives because we are rearranging the structures in which we conduct those processes. What we have to undertake is to systematize the foundations of the house, then to thread all the old parts of the structure with the steel which will be laced together in modern fashion, accommodated to all the modern knowledge of structural
10 strength and elasticity, and then slowly change the partitions, relay the walls, let in the light through new apertures, improve the ventilation; until finally, a generation or two from now, the scaffolding will be taken away, and there will be the family in a great building whose noble architecture will at last be disclosed, where men can live as a single community, cooperative as in a perfected, coordinated beehive, not afraid of any storm of nature,
15 not afraid of any artificial storm, any imitation of thunder and lightning, knowing that the foundations go down to the bedrock of principle, and knowing that whenever they please they can change that plan again and accommodate it as they please to the altering necessities of their lives.

But there are a great many men who don't like the idea. Some wit recently said, in view of
20 the fact that most of our American architects are trained in a certain *École* in Paris, that all American architecture in recent years was either bizarre or "Beaux Arts." I think that our economic architecture is decidedly bizarre; and I am afraid that there is a good deal to learn about matters other than architecture from the same source from which our architects have learned a great many things. I don't mean the School of Fine Arts at Paris, but the experi-
25 ence of France; for from the other side of the water men can now hold up against us the reproach that we have not adjusted our lives to modern conditions to the same extent that they have adjusted theirs. I was very much interested in some of the reasons given by our friends across the Canadian border for being very shy about the reciprocity arrangements. They said: "We are not sure whither these arrangements will lead, and we don't care to

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associate too closely with the economic conditions of the United States until those conditions are as modern as ours." And when I resented it, and asked for particulars, I had, in regard to many matters, to retire from the debate. Because I found that they had adjusted their regulations of economic development to conditions we had not yet found a way to meet in the United States.

Well, we have started now at all events. The procession is under way. The stand-patter doesn't know there is a procession. He is asleep in the back part of his house. He doesn't know that the road is resounding with the tramp of men going to the front. And when he wakes up, the country will be empty. He will be deserted, and he will wonder what has happened. Nothing has happened. The world has been going on. The world has a habit of going on. The world has a habit of leaving those behind who won't go with it. The world has always neglected stand-patters. And, therefore, the stand-patter does not excite my indignation; he excites my sympathy. He is going to be so lonely before it is all over. And we are good fellows, we are good company; why doesn't he come along? We are not going to do him any harm. We are going to show him a good time. We are going to climb the slow road until it reaches some upland where the air is fresher, where the whole talk of mere politicians is stilled, where men can look in each other's faces and see that there is nothing to conceal, that all they have to talk about they are willing to talk about in the open and talk about with each other; and whence, looking back over the road, we shall see at last that we have fulfilled our promise to mankind. We had said to all the world, "America was created to break every kind of monopoly, and to set men free, upon a footing of equality, upon a footing of opportunity, to match their brains and their energies." and now we have proved that we meant it.

CHARLES MERRIAM

“Recent Tendencies”

CHAPTER EXCERPTS FROM *A HISTORY OF AMERICAN POLITICAL THEORIES*

1903

BACKGROUND

University of Chicago political science professor Charles Merriam surveyed the historical development of American political principles and the new progressive ideas in his 1903 book *A History of American Political Theories*.

GUIDING QUESTIONS

1. How does Merriam characterize the new group of political theorists that appeared in the last half of the 19th century?
2. Why did Francis Lieber claim that the "state of nature" had no basis in fact?
3. Why was John Burgess strongly opposed to the idea of the social contract?
4. What is the origin of the state according to these new political theorists?
5. What is the new idea of liberty formulated by these new political theorists?
6. What is the purpose of the state according to these new political theorists?
7. What are the ends of the state according to Burgess, and how are they to be achieved?

Charles E. Merriam, *A History of American Political Theories* (London: MacMillan, 1903), 305-33.

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In the last half of the nineteenth century there appeared in the United States a group of political theorists differing from the earlier thinkers in respect to method and upon many important doctrines of political science. The new method was more systematic and scientific than that which preceded it, while the results reached showed a pronounced reaction from the individualistic philosophy of the early years of the century.

Much of the credit of the establishment of this new school belongs to Francis Lieber, a German scientist who came to this country in 1827 and, as an educator and author, left a deep impress on the political thought of America. His *Manual of Political Ethics* (1838–39) and *Civil Liberty and Self-Government* (1853) were the first systematic treatises on political science that appeared in the United States, and their influence was widespread. Following Lieber came a line of American political scientists, many of whom were trained in German schools, and all of whom had acquired a scientific method of discussing political phenomena. Among the most conspicuous figures in the new school are Theodore Woolsey, whose *Political Science* appeared in 1877, and John W. Burgess, who wrote, in 1890, *Political Science and Comparative Constitutional Law*, and a number of others who have contributed materially to the development of the subject....

The doctrines of these men differ in many important respects from those earlier entertained. The individualistic ideas of the “natural right” school of political theory, endorsed in the [American] Revolution, are discredited and repudiated. The notion that political society and government are based upon a contract between independent individuals and that such a contract is the sole source of political obligation, is regarded as no longer tenable. Calhoun and his school had already abandoned this doctrine, while such men as Story had seen the need of extensive qualification of it. Objections to the social contract were strongly urged by Lieber, and were later more fully and clearly stated by others. In Lieber’s opinion, the “state of nature” has no basis in fact. Man is essentially a social creature, and hence no artificial means for bringing him into society need be devised. Lieber condemned the contract theory as generally held, on the ground that it was both artificial and inadequate. Such an explanation of the origin of the state can be regarded as true only in the sense that every political society is composed of individuals who recognize the existence of mutual rights

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and duties. Only in the sense that there is a general recognition of these reciprocal claims can we say that the state is founded on contract; and this, of course, is far from what the doctrine is ordinarily taken to mean. As a matter of fact, the state may originate, and has originated, Lieber said, in a variety of ways, as, for example, through force, fraud, consent,
5 religion.

Still more strongly is the opposition to the social-contract theory stated by Burgess. The hypothesis of an original contract to form the state is, as he reasons, wholly contrary to our knowledge of the historical development of political institutions. The social-contract theory assumes that “the idea of the state with all its attributes is consciously present in the
10 minds of the individuals proposing to constitute the state, and that the disposition to obey law is universally established.” These conditions, history shows, are not present at the beginning of the political development of a people, but are the result of long growth and experience. This theory therefore cannot account for the origin of the state. Its only possible application is in changing the form of the state, or in the cases when a state is planted upon
15 new territory by a population already politically educated.

In the refusal to accept the contract theory as the basis for government, practically all the political scientists of note agree. The old explanation no longer seems sufficient, and is with practical unanimity discarded. The doctrines of natural law and natural rights have met a similar fate....

By the later thinkers the idea that men possess inherent and inalienable rights of a political or quasi-political character which are independent of the state, has been generally given up. It is held that these natural rights can have no other than an ethical value, and have no proper place in politics. “There never was, and there never can be,” says Burgess, “any liberty upon this earth and among human beings, outside of state organization.” In speaking
20 of natural rights, therefore, it is essential to remember that these alleged rights have no political force whatever, unless recognized and enforced by the state. It is asserted by Willoughby that “natural rights” could not have even a moral value in the supposed “state
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of nature”; they would really be equivalent to force and hence have no ethical significance....

The present tendency, then, in American political theory is to disregard the once dominant ideas of natural rights and the social contract, although it must be admitted that the political scientists are more agreed upon this point than is the general public. The origin of the state is regarded, not as the result of a deliberate agreement among men, but as the result of historical development, instinctive rather than conscious; and rights are considered to have their source not in nature, but in law. This new point of view involves no disregard of or contempt for human liberty, but only a belief that the earlier explanation and philosophy of the state was not only false but dangerous and misleading.

The modern school has, indeed, formulated a new idea of liberty, widely different from that taught in the early years of the Republic. The “Fathers” believed that in the original state of nature all men enjoy perfect liberty, that they surrender a part of this liberty in order that a government may be organized, and that therefore the stronger the government, the less the liberty remaining to the individual. Liberty is, in short, the natural and inherent right of all men; government the necessary limitation of this liberty. Calhoun and his school, as it has been shown, repudiated this idea, and maintained that liberty is not the natural right of all men, but only the reward of the races or individuals properly qualified for its possession. Upon this basis, slavery was defended against the charge that it was inconsistent with human freedom, and in this sense and so applied, the theory was not accepted outside the South. The mistaken application of the idea had the effect of delaying recognition of the truth in what had been said until the controversy over slavery was at an end.

The Revolutionary idea of the nature of liberty was never realized in actual practice, and recent political events and political philosophy have combined to show that another theory of liberty has been generally accepted. The new doctrine is best stated by Burgess. By liberty he understands “a domain in which the individual is referred to his own will, and upon which government shall neither encroach itself nor permit encroachments from any other quarter.” Such a sphere of action is necessary for the welfare and progress both of state and

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of individual. It is of vital importance to notice, however, that liberty is not a natural right which belongs to every human being without regard to the state or society under which he lives. On the contrary, it is logically true and may be historically demonstrated that “the state is the source of individual liberty.” It is the state that makes liberty possible, determines what its limits shall be, guarantees and protects it. In Burgess’s view, then, men do not begin with complete liberty and organize government by sacrificing certain parts of this liberty, but on the contrary they obtain liberty only through the organization of political institutions. The state does not take away from civil liberty, but is the creator of liberty—the power that makes it possible.

Liberty, moreover, is not a right equally enjoyed by all. It is dependent upon the degree of civilization reached by the given people, and increases as this advances. The idea that liberty is a natural right is abandoned, and the inseparable connection between political liberty and political capacity is strongly emphasized. After an examination of the principle of nationality, and the characteristic qualities of various nations or races, the conclusion is drawn that the Teutonic nations are particularly endowed with political capacity. Their mission in the world is the political civilization of mankind.

From this as a premise are deduced further conclusions of the utmost importance. The first of these is that in a state composed of several nationalities, the Teutonic element should never surrender the balance of power to the others. Another is that the Teutonic race can never regard the exercise of political power as a right of man, but it must always be their policy to condition the exercise of political rights on the possession of political capacity. A final conclusion is that the Teutonic races must civilize the politically uncivilized. They must have a colonial policy. Barbaric races, if incapable, may be swept away; and such action “violates no rights of these populations which are not petty and trifling in comparison with its transcendent right and duty to establish political and legal order everywhere.” On the same principle, interference with the affairs of states not wholly barbaric, but nevertheless incapable of effecting political organization for themselves, is fully justified. Jurisdiction may be assumed over such a state, and political civilization worked out for those who

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are unable to accomplish this unaided. This propaganda of political civilization, it is asserted, is not only the right and privilege, but the mission and duty, the very highest obligation incumbent on the Teutonic races, including the United States. Such action is not unwarrantable or unjustifiable interference with the affairs of those who should rightly be left unmolested, but is the performance of the part marked out for the Teutonic nations in the world's development.

Closely related to the theory of liberty is the doctrine as to the purpose or function of the state. In the days of the Revolution, it was thought that the end of the political society is to protect the life, liberty, and property of its citizens, and beyond this nothing more. The duty of the state was summed up in the protection of individual rights, in harmony with the individualistic character of the philosophy of that day. In the theory of Lieber, this idea was broadened out, and, as he phrased it, the duty of the state is to do for man: first, what he cannot do alone; second, what he ought not to do alone; and third, what he will not do alone. In more recent times there has been in America a decided tendency to react against the early “protection theory” of government, and to consider that the aim of the state is not limited to the maintenance of law and order in the community and defense against foreign foes. In the new view, the state acts not only for the individual as such, but in the interests of the community as a whole. It is not limited to the negative function of preventing certain kinds of action, but may positively advance the general welfare by means and measures expressly directed to that end. This opinion is shared by such authorities as Woolsey, Burgess, Wilson, Willoughby, and others. To these thinkers it appears that the duty of the state is not and cannot be limited to the protection of individual interests, but must be regarded as extending to acts for the advancement of the general welfare in all cases where it can safely act, and that the only limitations on governmental action are those dictated by experience or the needs of the time.

Woolsey took the position that the state cannot be limited to restraining individuals from injuring each other, but may justly act positively for the general welfare. “The sphere of the state,” he said, “may reach as far as the nature and needs of man and of men reach”; and this each people decides for itself in accordance with its own peculiar conditions. In general

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the actions of the state fall under four groups: (1) the redress of wrongs; (2) the prevention of wrongs; (3) a degree of care for the outward welfare of the community, as in respect to industry, roads, and health; (4) the cultivation of the spiritual nature, “by educating the religious nature, the moral sense, the taste, the intellect.” The general limitation on the power of the state is that there shall be no act in restraint of the individual, except where there is imperative reason for such restriction. He also enumerates a series of individual rights which no just government ought to take away.

Woodrow Wilson asserts that the objects of government are the objects of organized society. The great end for which society exists is “mutual aid to self-development,” and this purpose, therefore, is the proper function of government. With particular reference to modern industrial conditions, a distinction is drawn between what is termed “interference” on the part of the state, and what is called “regulation,” by which is meant an “equalization of conditions in all branches of endeavor.” The limit of state activity is that of “necessary cooperation”—the point at which such enforced cooperation becomes a convenience rather than an imperative necessity. This line is difficult to draw, but may nevertheless be drawn. In general, we may lay down the rule that “the state should do nothing which is equally possible under equitable conditions to optional associations.”

A still broader view is that taken by Burgess in his discussion of the ends of the state. These may be considered, he says, under three heads: the primary, the secondary, and the ultimate. The ultimate end of the state is defined as the “perfection of humanity, the civilization of the world; the perfect development of the human reason and its attainment to universal command over individualism; the apotheosis of man.” This end can be realized, however, only when a world-state is organized, and for this, mankind is not yet ready. Men must first be organized into national states, based on the principle of nationality. The proximate ends of the state are the establishment of government and liberty. The state must first of all establish peace and order; and in the next place mark out a sphere of liberty for the individual and later for associations. These are then the great ends of the state; the establishment of government and liberty, so that the national genius may find proper expression; and finally,

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the perfection of humanity. These objects must be followed, moreover, in an historical order which cannot be successfully reversed. Government must precede liberty, government and liberty must precede the final purpose for which the state exists. In the present stage of development, only the realization of government and liberty through the national state are
5 proper objects of state activity. Beyond this broad outline Burgess makes no other attempt to mark out the limits of the operation either of state or of government....

SUPREME COURT JUSTICE OLIVER WENDELL HOLMES, JR.

“Natural Law”

ESSAY

1918

Harvard Law Review

BACKGROUND

Supreme Court Justice Oliver Wendell Holmes Jr. offers a critique of the idea of natural law espoused by the Founders.

GUIDING QUESTIONS

1. What does Holmes say motivates the philosopher's search for truth?
2. Does Holmes believe there is a moral foundation for rights?

Oliver Wendell Holmes, "Natural Law," in Holmes, *Collected Legal Papers* (New York: Peter Smith, 1952), 167.

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It is not enough for the knight of romance that you agree that his lady is a very nice girl— if you do not admit that she is the best that God ever made or will make, you must fight. There is in all men a demand for the superlative, so much so that the poor devil who has no other way of reaching it attains it by getting drunk. It seems to me that this demand is at the bottom of the philosopher’s effort to prove that truth is absolute and of the jurist’s search for criteria of universal validity which he collects under the head of natural law.

I used to say when I was young, that truth was the majority vote of that nation that could lick all others. Certainly we may expect that the received opinion about the present war will depend a good deal upon which side wins (I hope with all my soul it will be mine), and I think that the statement was correct insofar as it implied that our test of truth is a reference to either a present or an imagined future majority in favor of our view. If ... the truth may be defined as the system of my (intellectual) limitations, what gives it objectivity is the fact that I find my fellow man to a greater or less extent (never wholly) subject to the same Can’t Helps. If I think that I am sitting at a table I find that the other persons present agree with me; so if I say that the sum of the angles of a triangle is equal to two right angles. If I am in a minority of one they send for a doctor or lock me up; and I am so far able to transcend the to me convincing testimony of my sense or my reason as to recognize that if I am alone probably something is wrong with my works.

Certitude is not the test of certainty. We have been cocksure of many things that were not so. If I may quote myself again, property, friendship, and truth have a common root in time. One cannot be wrenched from the rocky crevices into which one has grown for many years without feeling that one is attacked in one’s life. What we most love and revere generally is determined by early associations. I love granite rocks and barberry bushes, no doubt because with them were my earliest joys that reach back through the past eternity of my life. But while one’s experience thus makes certain preferences dogmatic for oneself, recognition of how they came to be so leaves one able to see that others, poor souls, may be equally dogmatic about something else. And this again means skepticism. Not that one’s belief or love does not remain. Not that we would not fight and die for it if important—we all, whether we know it or not, are fighting to make the kind of a world that we should

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like—but that we have learned to recognize that others will fight and die to make a different world, with equal sincerity or belief. Deep-seated preferences cannot be argued about—you cannot argue a man into liking a glass of beer—and therefore, when differences are sufficiently far reaching, we try to kill the other man rather than let him have his way. But that
5 is perfectly consistent with admitting that, so far as appears, his grounds are just as good as ours.

The jurists who believe in natural law seem to me to be in that naïve state of mind that accepts what has been familiar and accepted by all men everywhere. No doubt it is true that, so far as we can see ahead, some arrangements and the rudiments of familiar institutions
10 seem to be necessary elements in any society that may spring from our own and that would seem to us to be civilized—some form of permanent association between the sexes—some residue of property individually owned—some mode of binding oneself to specified future conduct—at the bottom of all, some protection for the person. But without speculating
15 whether a group is imaginable in which all but the last of these might disappear and the last be subject to qualifications that most of us would abhor, the question remains as to the Ought of natural law.

It is true that beliefs and wishes have a transcendental basis in the sense that their foundation is arbitrary. You cannot help entertaining and feeling them, and there is an end of it. As an arbitrary fact people wish to live, and we say with various degrees of certainty that
20 they can do so only on certain conditions. To do it they must eat and drink. That necessity is absolute. It is a necessity of less degree but practically general that they should live in society. If they live in society, so far as we can see, there are further conditions. Reason working on experience does tell us, no doubt, that if our wish to live continues, we can do it only on those terms. But that seems to me the whole of the matter. I see no a priori duty
25 to live with others and in that way, but simply a statement of what I must do if I wish to remain alive. If I do live with others they tell me that I must do and abstain from doing various things or they will put the screws on to me. I believe that they will, and being of the same mind as to their conduct I not only accept the rules but come in time to accept them with sympathy and emotional affirmation and begin to talk about duties and rights. But for

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legal purposes a right is only the hypostasis of a prophecy—the imagination of a substance supporting the fact that the public force will be brought to bear upon those who do things said to contravene it—just as we talk of the force of gravitation accounting for the conduct of bodies in space. One phrase adds no more than the other to what we know without it.

- 5 No doubt behind these legal rights is the fighting will of the subject to maintain them, and the spread of his emotions to the general rules by which they are maintained; but that does not seem to me the same thing as the supposed a priori discernment of a duty or the assertion of a preexisting right. A dog will fight for his bone.

- 10 The most fundamental of the supposed preexisting rights—the right to life—is sacrificed without a scruple not only in war, but whenever the interest of society, that is, of the predominant power in the community, is thought to demand it. Whether that interest is the interest of mankind in the long run no one can tell, and as, in any event, to those who do not think with Kant and Hegel it is only an interest, the sanctity disappears. I remember a very tender-hearted judge being of opinion that closing a hatch to stop a fire and the de-
- 15 struction of a cargo was justified even if it was known that doing so would stifle a man below. It is idle to illustrate further, because to those who agree with me I am uttering commonplaces and to those who disagree I am ignoring the necessary foundations of thought. The a priori men generally call the dissentients superficial. But I do agree with them in believing that one’s attitude on these matters is closely connected with one’s general attitude
- 20 toward the universe. Proximately, as has been suggested, it is determined largely by early associations and temperament, coupled with the desire to have an absolute guide. Men to a great extent believe what they want to—although I see in that no basis for a philosophy that tells us what we should want to want.

- Now when we come to our attitude toward the universe I do not see any rational ground
- 25 for demanding the superlative—for being dissatisfied unless we are assured that our truth is cosmic truth, if there is such a thing—that the ultimates of a little creature on this little earth are the last word of the unimaginable whole. If a man sees no reason for believing that significance, consciousness and ideals are more than marks of the finite, that does not justify what has been familiar in French skeptics; getting upon a pedestal and professing to

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look with haughty scorn upon a world in ruins. The real conclusion is that the part cannot swallow the whole—that our categories are not, or may not be, adequate to formulate what we cannot know. If we believe that we come out of the universe, not it out of us, we must admit that we do not know what we are talking about when we speak of brute matter. We

5 do know that a certain complex of energies can wag its tail and another can make syllogisms. These are among the powers of the unknown, and if, as may be, it has still greater powers that we cannot understand, as Fabre in his studies of instinct would have us believe, studies that gave Bergson one of the strongest strands for his philosophy and enabled Maeterlinck to make us fancy for a moment that we heard a clang from behind phenomena—

10 if this be true, why should we not be content? Why should we employ the energy that is furnished to us by the cosmos to defy it and shake our fist at the sky? It seems to me silly.

That the universe has in it more than we understand, that the private soldiers have not been told the plan of campaign, or even that there is one, rather than some vaster unthinkable to which every predicate is an impertinence, has no bearing upon our conduct. We still

15 shall fight—all of us because we want to live, some, at least, because we want to realize our spontaneity and prove our powers, for the joy of it, and we may leave to the unknown the supposed final valuation of that which in any event has value to us. It is enough for us that the universe has produced us and has within it, as less than it, all that we believe and love. If we think of our existence not as that of a little god outside, but as that of a ganglion

20 within, we have the infinite behind us. It gives us our only but our adequate significance. A grain of sand has the same, but what competent person supposes that he understands a grain of sand? That is as much beyond our grasp as man. If our imagination is strong enough to accept the vision of ourselves as parts inseverable from the rest, and to extend our final interest beyond the boundary of our skins, it justifies the sacrifice even of our lives

25 for ends outside of ourselves. The motive, to be sure, is the common wants and ideals that we find in man. Philosophy does not furnish motives, but it shows men that they are not fools for doing what they already want to do. It opens to the forlorn hopes on which we throw ourselves away, the vista of the farthest stretch of human thought, the chords of a harmony that breathes from the unknown.

JOHN DEWEY

Liberalism and Social Action

BOOK EXCERPTS

1935

BACKGROUND

Retired Columbia University professor John Dewey wrote *Liberalism and Social Action*, outlining his views on liberalism and what he considered to be the crises challenging liberalism in the early 20th century.

GUIDING QUESTIONS

1. With whom does liberalism begin?
2. How does Dewey characterize political liberalism?
3. How does Dewey characterize the split within liberalism?
4. What was the problem with the earlier liberalism, according to Dewey?

John Dewey, "Liberalism and Social Action," in *The Papers of John Dewey: The Later Works, 1925-1953*, Vol. 11, ed. Jo Ann Boydston (Carbondale, IL: Southern Illinois University, 1987), 6-16, 21-23, 25-27, 39-40.

1. The History of Liberalism

....The use of the words liberal and liberalism to denote a particular social philosophy does not appear to occur earlier than the first decade of the nineteenth century. But the thing to which the words are applied is older. It might be traced back to Greek thought; some of its ideas, especially as to the importance of the free play of intelligence, may be found notably expressed in the funeral oration attributed to Pericles. But for the present purpose it is not necessary to go back of John Locke, the philosopher of the “glorious revolution” of 1688. The outstanding points of Locke’s version of liberalism are that governments are instituted to protect the rights that belong to individuals prior to political organization of social relations. These rights are those summed up a century later in the American Declaration of Independence: the rights of life, liberty and the pursuit of happiness. Among the “natural” rights especially emphasized by Locke is that of property, originating, according to him, in the fact that an individual has “mixed” himself, through his labor, with some natural hitherto unappropriated object. This view was directed against levies on property made by rulers without authorization from the representatives of the people. The theory culminated in justifying the right of revolution. Since governments are instituted to protect the natural rights of individuals, they lose claim to obedience when they invade and destroy these rights instead of safeguarding them: a doctrine that well served the aims of our forefathers in their revolt against British rule, and that also found an extended application in the French Revolution of 1789.

The impact of this earlier liberalism is evidently political. Yet one of Locke’s greatest interests was to uphold toleration in an age when intolerance was rife, persecution of dissenters in faith almost the rule, and when wars, civil and between nations, had a religious color. In serving the immediate needs of England—and then those of other countries in which it was desired to substitute representative for arbitrary government—it bequeathed to later social thought a rigid doctrine of natural rights inherent in individuals independent of social organization. It gave a directly practical import to the older semi-theological and semi-metaphysical conception of natural law as supreme over positive law and gave a new version

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of the old idea that natural law is the counterpart of reason, being disclosed by the natural light with which man is endowed.

The whole temper of this philosophy is individualistic in the sense in which individualism is opposed to organized social action. It held to the primacy of the individual over the state not only in time but in moral authority. It defined the individual in terms of liberties of thought and action already possessed by him in some mysterious ready-made fashion, and which it was the sole business of the state to safeguard. Reason was also made an inherent endowment of the individual, expressed in men's moral relations to one another, but not sustained and developed because of these relations. It followed that the great enemy of individual liberty was thought to be government because of its tendency to encroach upon the innate liberties of individuals. Later liberalism inherited this conception of a natural antagonism between ruler and ruled, interpreted as a natural opposition between the individual and organized society. There still lingers in the minds of some the notion that there are two different "spheres" of action and of rightful claims; that of political society and that of the individual, and that in the interest of the latter the former must be as contracted as possible. Not till the second half of the nineteenth century did the idea arise that government might and should be an instrument for securing and extending the liberties of individuals. This later aspect of liberalism is perhaps foreshadowed in the clauses of our Constitution that confer upon Congress power to provide for "public welfare" as well as for public safety....

Because the liberalism of the economists and the Benthamites was adapted to contemporary conditions in Great Britain, the influence of the liberalism of the school of Locke waned. By 1820 it was practically extinct. Its influence lasted much longer in the United States. We had no Bentham and it is doubtful whether he would have had much influence if he had appeared. Except for movements in codification of law, it is hard to find traces of the influence of Bentham in this country. As was intimated earlier, the philosophy of Locke bore much the same relation to the American revolt of the colonies that it had to the British revolution of almost a century earlier. Up to, say, the time of the Civil War, the United

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States were predominantly agrarian. As they became industrialized, the philosophy of liberty of individuals, expressed especially in freedom of contract, provided the doctrine needed by those who controlled the economic system. It was freely employed by the courts in declaring unconstitutional legislation that limited this freedom. The ideas of Locke embodied in the Declaration of Independence were congenial to our pioneer conditions that gave individuals the opportunity to carve their own careers. Political action was lightly thought of by those who lived in frontier conditions. A political career was very largely annexed as an adjunct to the action of individuals in carving their own careers. The gospel of self-help and private initiative was practiced so spontaneously that it needed no special intellectual support....

Thus from various sources and under various influences there developed an inner split in liberalism. This cleft is one cause of the ambiguity from which liberalism still suffers and which explains a growing impotency. These are still those who call themselves liberals who define liberalism in terms of the old opposition between the province of organized social action and the province of purely individual initiative and effort. In the name of liberalism they are jealous of every extension of governmental activity. They may grudgingly concede the need of special measures of protection and alleviation undertaken by the state at times of great social stress, but they are the confirmed enemies of social legislation (even prohibition of child labor), as standing measures of political policy. Wittingly or unwittingly, they still provide the intellectual system of apologetics for the existing economic régime, which they strangely, it would seem ironically, uphold as a régime of individual liberty for all.

But the majority who call themselves liberals today are committed to the principle that organized society must use its powers to establish the conditions under which the mass of individuals can possess actual as distinct from merely legal liberty. They define their liberalism in the concrete in terms of a program of measures moving toward this end. They believe that the conception of the state which limits the activities of the latter to keeping order as between individuals and to securing redress for one person when another person

infringes the liberty existing law has given him, is in effect simply a justification of the brutalities and inequities of the existing order. Because of this internal division within liberalism its later history is wavering and confused. The inheritance of the past still causes many liberals, who believe in a generous use of the powers of organized society to change the terms on which human beings associate together, to stop short with merely protective and alleviatory measures—a fact that partly explains why another school always refers to “reform” with scorn. It will be the object of the next chapter to portray the crisis in liberalism, the *impasse* in which it now almost finds itself, and through criticism of the deficiencies of earlier liberalism to suggest the way in which liberalism may resolve the crisis, and emerge as a compact, aggressive force.

2. The Crisis in Liberalism

The net effect of the struggle of early liberals to emancipate individuals from restriction imposed upon them by the inherited type of social organization was to pose a problem, that of a new social organization. The ideas of liberals set forth in the first third of the nineteenth century were potent in criticism and in analysis. They released forces that had been held in check. But analysis is not construction, and release of force does not of itself give direction to the force that is set free. Victorian optimism concealed for a time the crisis at which liberalism had arrived. But when that optimism vanished amid the conflict of nations, classes and races characteristic of the latter part of the nineteenth century—a conflict that has grown more intense with the passing years—the crisis could no longer be covered up. The beliefs and methods of earlier liberalism were ineffective when faced with the problems of social organization and integration. Their inadequacy is a large part of belief now so current that all liberalism is an outmoded doctrine. At the same time, insecurity and uncertainty in belief and purpose are powerful factors in generating dogmatic faiths that are profoundly hostile to everything to which liberalism in any possible formulation is devoted....

The earlier liberals lacked historic sense and interest. For a while this lack had an immediate pragmatic value. It gave liberals a powerful weapon in their fight with reactionaries. For it enabled them to undercut the appeal to origin, precedent and past history by which the

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opponents of social change gave sacrosanct quality to existing inequities and abuses. But disregard of history took its revenge. It blinded the eyes of liberals to the fact that their own special interpretations of liberty, individuality and intelligence were themselves historically conditioned, and were relevant only to their own time. They put forward their ideas as
5 immutable truths good at all times and places; they had no idea of historic relativity, either in general or in its application to themselves....

If the early liberals had put forth their special interpretation of liberty as something subject to historic relativity they would not have frozen it into a doctrine to be applied at all times under all social circumstances. Specifically, they would have recognized that effective lib-
10 erty is a function of the social conditions existing at any time. If they had done this, they would have known that as economic relations became dominantly controlling forces in setting the pattern of human relations, the necessity of liberty for individuals which they proclaimed will require social control of economic forces in the interest of the great mass of individuals. Because the liberals failed to make a distinction between purely formal or
15 legal liberty and effective liberty of thought and action, the history of the last one hundred years is the history of non-fulfillment of their predictions....

THEODORE ROOSEVELT (PROGRESSIVE)

The New Nationalism

SPEECH EXCERPTS

August 31, 1910

John Brown Memorial Park | Osawatomie, Kansas

BACKGROUND

Though delivered at the dedicatory ceremonies for the John Brown Memorial Park, this speech would form the basis of Theodore Roosevelt's presidential campaign as the nominee of Progressive Party.

GUIDING QUESTIONS

1. What political problem is Roosevelt speaking against?
2. What is Roosevelt's New Nationalism? What is its purpose or end?
3. What political and institutional reforms does Roosevelt suggest are necessary?

Theodore Roosevelt, *The New Nationalism* (New York: The Outlook Company, 1911), 3-33.

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...Nothing is more true than that excess of every kind is followed by reaction; a fact which should be pondered by reformer and reactionary alike. 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.

- 5 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. If I could ask but one thing of my fellow
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countrymen, my request would be that, whenever they go in for reform, they remember the two sides, and that they always exact justice from one side as much as from the other. I have small use for the public servant who can always see and denounce the corruption of the capitalist, but who cannot persuade himself, especially before election, to say a word about lawless mob-violence. And I have equally small use for the man, be he a judge on the bench or editor of a great paper, or wealthy and influential private citizen, who can see clearly enough and denounce the lawlessness of mob-violence, but whose eyes are closed so that he is blind when the question is one of corruption of business on a gigantic scale. Also, remember what I said about excess in reformer and reactionary alike. If the reactionary man, who thinks of nothing but the rights of property, could have his way, he would bring about a revolution; and one of my chief fears in connection with progress comes because I do not want to see our people, for lack of proper leadership, compelled to follow men whose intentions are excellent, but whose eyes are a little too wild to make it really safe to trust them. Here in Kansas there is one paper which habitually denounces me as the tool of Wall Street, and at the same time frantically repudiates the statement that I am a Socialist on the ground that that is an unwarranted slander of the Socialists.

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.

I believe in shaping the ends of government to protect property as well as human welfare. Normally, and in the long run, the ends are the same; but whenever the alternative must be

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faced, I am for men and not for property, as you were in the Civil War. I am far from underestimating the importance of dividends; but I rank dividends below human character. Again, I do not have any sympathy with the reformer who says he does not care for dividends. Of course, economic welfare is necessary, for a man must pull his own weight and be able to support his family. I know well that the reformers must not bring upon the people economic ruin, or the reforms themselves will go down in the ruin. But we must be ready to face temporary disaster, whether or not brought on by those who will war against us to the knife. Those who oppose reform will do well to remember that ruin in its worst form is inevitable if our national life brings us nothing better than swollen fortunes for the few and the triumph in both politics and business of a sordid and selfish materialism.

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.

One of the fundamental necessities in a representative government such as ours is to make certain that the men to whom the people delegate their power shall serve the people by whom they are elected, and not the special interests. I believe that every national officer, elected or appointed, should be forbidden to perform any service or receive any compensation, directly or indirectly, from interstate corporations; and a similar provision could not fail to be useful within the States.

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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. Let me again illustrate by a reference to the Grand Army. You could not have won simply as a disorderly and disorganized mob. You needed generals; you needed careful administration of the most advanced type; and a good commissary-the cracker line. You well remember that success was necessary in many different lines in order to bring about general success. You had to have the administration at Washington good, just as you had to have the administration in the field; and you had to have the work of the generals good. You could not have triumphed without the administration and leadership; but it would all have been worthless if the average soldier had not had the right stuff in him. He had to have the right stuff in him, or you could not get it out of him. In the last analysis, therefore, vitally necessary though it was to have the right kind of organization and the right kind of generalship, it was even more vitally necessary that the average soldier should have the fighting edge, the right character. So it is in our civil life. No matter how honest and decent we are in our private lives, if we do not have the right kind of law and the right kind of administration of the law, we cannot go forward as a nation. That is imperative; but it must be an addition to, and not a substitute for, the qualities that make us good citizens. In the last analysis, the most important elements in any man's career must be the sum of those qualities which, in the aggregate, we speak of as character. If he has not got it, then no law that the wit of man can devise, no administration of the law by the boldest and strongest executive, will avail to help him. 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,

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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.

PRESIDENT WOODROW WILSON (D)

War Message to Congress

SPEECH EXCERPTS

February 3, 1917
Congress | Washington, D.C.

BACKGROUND

President Woodrow Wilson delivered this address to Congress regarding the relationship between the United States and Germany.

GUIDING QUESTIONS

1. What is the cause of war with Germany?
2. What is the purpose of war with Germany?
3. Who does Wilson blame for this war?

Woodrow Wilson, "Address of the President of the United States," *Senate Documents*, Vol. 10, 65th Congress, First Session (Washington, DC: Government Printing Office, 1917), 3-8.

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Gentlemen of the Congress:

I have called the Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making.

- 5 On the third of February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after the first day of February it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coasts of Europe or any of the ports controlled by the enemies of Germany within
- 10 the Mediterranean. That had seemed to be the object of the German submarine warfare earlier in the war, but since April of last year the Imperial Government had somewhat restrained the commanders of its undersea craft in conformity with its promise then given to us that passenger boats should not be sunk and that due warning would be given to all other vessels which its submarines might seek to destroy when no resistance was offered or escape
- 15 attempted, and care taken that their crews were given at least a fair chance to save their lives in their open boats. The precautions taken were meager and haphazard enough, as was proved in distressing instance after instance in the progress of the cruel and unmanly business, but a certain degree of restraint was observed. The new policy has swept every restriction aside. Vessels of every kind, whatever their flag, their character, their cargo, their
- 20 destination, their errand, have been ruthlessly sent to the bottom: without warning and without thought of help or mercy for those on board, the vessels of friendly neutrals along with those of belligerents. Even hospital ships and ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with safe conduct through the proscribed areas by the German Government itself and were distinguished by
- 25 unmistakable marks of identity, have been sunk with the same reckless lack of compassion or of principle. I was for a little while unable to believe that such things would in fact be done by any government that had hitherto subscribed to the humane practices of civilized nations. International law had its origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where

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lay the free highways of the world.... This minimum of right the German Government has swept aside under the plea of retaliation and necessity and because it had no weapons which it could use at sea except these which it is impossible to employ as it is employing them without throwing to the winds all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the world. I am not now thinking of the loss of property involved, immense and serious as that is, but only of the wanton and wholesale destruction of the lives of noncombatants, men, women, and children, engaged in pursuits which have always, even in the darkest periods of modern history, been deemed innocent and legitimate. Property can be paid for; the lives of peaceful and innocent people cannot be. The present German submarine warfare against commerce is a warfare against mankind.

It is a war against all nations. American ships have been sunk, American lives taken, in ways which it has stirred us very deeply to learn of, but the ships and people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been no discrimination. The challenge is to all mankind. Each nation must decide for itself how it will meet it. The choice we make for ourselves must be made with a moderation of counsel and a temperateness of judgment befitting our character and our motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right, of human right, of which we are only a single champion.

When I addressed the Congress on the twenty—sixth of February last I thought that it would suffice to assert our neutral rights with arms, our right to use the seas against unlawful interference, our right to keep our people safe against unlawful violence. But armed neutrality, it now appears, is impracticable. Because submarines are in effect outlaws when used as the German submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving chase upon the open sea. It is common prudence in such circumstances, grim necessity indeed, to endeavor to destroy them before they have shown their own intention. They must be dealt with upon

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sight, if dealt with at all. The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend. The intimation is conveyed that the armed guards which we have placed on our merchant ships will be
5 treated as beyond the pale of law and subject to be dealt with as pirates would be. Armed neutrality is ineffectual enough at best; in such circumstances and in the face of such pretensions it is worse than ineffectual: it is likely only to produce what it was meant to prevent; it is practically certain to draw us into the war without either the rights or the effectiveness of belligerents. There is one choice we cannot make, we are incapable of making:
10 we will not choose the path of submission and suffer the most sacred rights of our Nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I
15 deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it, and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources
20 to bring the Government of the German Empire to terms and end the war.

What this will involve is clear. It will involve the utmost practicable cooperation in counsel and action with the governments now at war with Germany, and, as incident to that, the extension to those governments of the most liberal financial credit, in order that our resources may so far as possible be added to theirs. It will involve the organization and mobilization of all the material resources of the country to supply the materials of war and
25 serve the incidental needs of the Nation in the most abundant and yet the most economical and efficient way possible. It will involve the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemy's submarines. It will involve the immediate addition to the armed forces of the United States

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already provided for by law in case of war at least five hundred thousand men, who should, in my opinion, be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training. It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as they can equitably be sustained by the present generation, by well conceived taxation. I say sustained so far as may be equitable by taxation because it seems to me that it would be most unwise to base the credits which will now be necessary entirely on money borrowed. It is our duty, I most respectfully urge, to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

In carrying out the measures by which these things are to be accomplished we should keep constantly in mind the wisdom of interfering as little as possible in our own preparation and in the equipment of our own military forces with the duty—for it will be a very practical duty—of supplying the nations already at war with Germany with the materials which they can obtain only from us or by our assistance. They are in the field and we should help them in every way to be effective there.

I shall take the liberty of suggesting, through the several executive departments of the Government, for the consideration of your committees, measures for the accomplishment of the several objects I have mentioned. I hope that it will be your pleasure to deal with them as having been framed after very careful thought by the branch of the Government upon which the responsibility of conducting the war and safeguarding the Nation will most directly fall.

While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are. My own thought has not been driven from its habitual and normal course by the unhappy events of the last two months, and I do not believe that the thought of the Nation has been altered or clouded by them. I have exactly the same things in mind now that I had in mind when I addressed the Senate on the twenty—second of January last, the same that I had in mind when I addressed

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the Congress on the third of February and on the twenty-sixth of February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and selfgoverned peoples of the world such a concert of purpose and of action as will henceforth insure the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic governments backed by organized force which is controlled wholly by their will, not by the will of their people. We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval. It was a war determined upon as wars used to be determined upon in the old, unhappy days when peoples were nowhere consulted by their rulers and wars were provoked and waged in the interest of dynasties or of little groups of ambitious men who were accustomed to use their fellow men as pawns and tools.

Selfgoverned nations do not fill their neighbor states with spies or set the course of intrigue to bring about some critical posture of affairs which will give them an opportunity to strike and make conquest. Such designs can be successfully worked out only under cover and where no one has the right to ask questions. Cunningly contrived plans of deception or aggression, carried, it may be, from generation to generation, can be worked out and kept from the light only within the privacy of courts or behind the carefully guarded confidences of a narrow and privileged class. They are happily impossible where public opinion commands and insists upon full information concerning all the nation's affairs.

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A steadfast concert for peace can never be maintained except by a partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its covenants. It must be a league of honor, a partnership of opinion. Intrigue would eat its vitals away; the plottings of inner circles who could plan what they would and render account to no one would be a corruption seated at its very heart. Only free peoples can hold their purpose and their honor steady to a common end and prefer the interests of mankind to any narrow interest of their own.

Does not every American feel that assurance has been added to our hope for the future peace of the world by the wonderful and heartening things that have been happening within the last few weeks in Russia? Russia was known by those who knew it best to have been always in fact democratic at heart, in all the vital habits of her thought, in all the intimate relationships of her people that spoke their natural instinct, their habitual attitude towards life. The autocracy that crowned the summit of her political structure, long as it had stood and terrible as was the reality of its power, was not in fact Russian in origin, character, or purpose; and now it has been shaken off and the great, generous Russian people have been added in all their naive majesty and might to the forces that are fighting for freedom in the world, for justice, and for peace. Here is a fit partner for a League of Honor.

One of the things that has served to convince us that the Prussian, autocracy was not and could never be our friend is that from the very outset of the present war it has filled our unsuspecting communities and even our offices of government with spies and set criminal intrigues everywhere afoot against our national unity of counsel, our peace Within and without, our industries and our commerce. Indeed it is now evident that its spies were here even before the war began; and it is unhappily not a matter of conjecture but a fact proved in our courts of justice that the intrigues which have more than once come perilously near to disturbing the peace and dislocating the industries of the country have been carried on at the instigation, with the support, and even under the personal direction of official agents of the Imperial Government accredited to the Government of the United States. Even in checking these things and trying to extirpate them we have sought to put the most generous interpretation possible upon them because we knew that their source lay, not in any hostile

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feeling or purpose of the German people towards us (who were, no doubt, as ignorant of them as we ourselves were), but only in the selfish designs of a Government that did what it pleased and told its people nothing. But they have played their part in serving to convince us at last that that Government entertains no real friendship for us and means to act against
5 our peace and security at its convenience. That it means to stir up enemies against us at our very doors the intercepted note to the German Minister at Mexico City is eloquent evidence.

We are accepting this challenge of hostile purpose because we know that in such a Government, following such methods, we can never have a friend; and that in the presence of its
10 organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic Governments of the world. We are now about to accept gauge of battle with this natural foe to liberty and shall, if necessary, spend the whole force of the nation to check and nullify its pretensions and its power. We are glad, now that we see the facts with no veil of false pretense about them to fight thus for the ultimate peace
15 of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve.

We desire no conquest, no dominion. We seek no indemnities for ourselves, no material
20 compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them. Just because we fight without rancor and without selfish object, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without
25 passion and ourselves observe with proud punctilio the principles of right and of fair play we profess to be fighting for.

I have said nothing of the Governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our

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- honor. The Austro—Hungarian Government has, indeed, avowed its unqualified endorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government, and it has therefore not been possible for this Government to receive Count Tarnowski, the Ambassador recently accredited to this
- 5 Government by the Imperial and Royal Government of Austria—Hungary; but that Government has not actually engaged in warfare against citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other means of defending our rights.
- 10 It will be all the easier for us to conduct ourselves as belligerents in a high spirit of right and fairness because we act without animus, not in enmity towards a people or with the desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible government which has thrown aside all considerations of humanity and of right and is running amuck. We are, let me say again, the sincere friends of the German people,
- 15 and shall desire nothing so much as the early reestablishment of intimate relations of mutual advantage between us,— however hard it may be for them, for the time being, to believe that this is spoken from our hearts. We have borne with their present Government through all these bitter months because of that friendship,—exercising a patience and forbearance which would otherwise have been impossible. We shall, happily, still have an opportunity
- 20 to prove that friendship in our daily attitude and actions towards the millions of men and women of German birth and native sympathy who live amongst us and share our life, and we shall be proud to prove it towards all who are in fact loyal to their neighbors and to the Government in the hour of test. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us
- 25 in rebuking and restraining the few who may be of a different mind and purpose. If there should be disloyalty, it will be dealt with with a firm hand of stern repression; but, if it lifts its head at all, it will lift it only here and there and without countenance except from a lawless and malignant few.

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It is a distressing and oppressive duty, Gentlemen of the Congress, which I have performed in thus addressing you. There are, it may be many months of fiery trial and sacrifice ahead of us. It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance.

- 5 But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts,—for democracy, for the right of those who submit to authority to have a voice in their own Governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we can
- 10 dedicate our lives and our fortunes, every thing that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other.

o no other.

PRESIDENT WOODROW WILSON (D)

To a Joint Session of Congress

SPEECH

January 8, 1918
Congress | Washington, D.C.

The Fourteen Points

BACKGROUND

President Woodrow Wilson gave this speech to Congress to outline the principles and policies he argued were necessary to negotiate an end to the Great War and a lasting peace afterwards.

GUIDING QUESTIONS

1. Why does Wilson say he is delivering this speech?
2. How does Wilson suggest changing the political boundaries of Europe?
3. What kind of institution is needed to maintain international peace?

Woodrow Wilson, "Fourteen Points" in *Woodrow Wilson: The Essential Political Writings*, ed. Ronald J. Pestritto (Lanham: Lexington Books, 2005), 259-64.

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Gentlemen of the Congress:

Once more, as repeatedly before, the spokesmen of the Central Empires have indicated their desire to discuss the objects of the war and the possible basis of a general peace. Parleys have been in progress at Brest-Litovsk between Russian representatives and representatives
5 of the Central Powers to which the attention of all the belligerents have been invited for the purpose of ascertaining whether it may be possible to extend these parleys into a general conference with regard to terms of peace and settlement.

The Russian representatives presented not only a perfectly definite statement of the principles upon which they would be willing to conclude peace but also an equally definite pro-
10 gram of the concrete application of those principles. The representatives of the Central Powers, on their part, presented an outline of settlement which, if much less definite, seemed susceptible of liberal interpretation until their specific program of practical terms was added. That program proposed no concessions at all either to the sovereignty of Russia or to the preferences of the populations with whose fortunes it dealt, but meant, in a word,
15 that the Central Empires were to keep every foot of territory their armed forces had occupied -- every province, every city, every point of vantage -- as a permanent addition to their territories and their power. It is a reasonable conjecture that the general principles of settlement which they at first suggested originated with the more liberal statesmen of Germany and Austria, the men who have begun to feel the force of their own people's thought
20 and purpose, while the concrete terms of actual settlement came from the military leaders who have no thought but to keep what they have got. The negotiations have been broken off. The Russian representatives were sincere and in earnest. They cannot entertain such proposals of conquest and domination.

The whole incident is full of significances. It is also full of perplexity. With whom are the
25 Russian representatives dealing? For whom are the representatives of the Central Empires speaking? Are they speaking for the majorities of their respective parliaments or for the minority parties, that military and imperialistic minority which has so far dominated their whole policy and controlled the affairs of Turkey and of the Balkan states which have felt

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obliged to become their associates in this war? The Russian representatives have insisted, very justly, very wisely, and in the true spirit of modern democracy, that the conferences they have been holding with the Teutonic and Turkish statesmen should be held within open, not closed, doors, and all the world has been audience, as was desired.

- 5 To whom have we been listening, then? To those who speak the spirit and intention of the resolutions of the German Reichstag of the 9th of July last, the spirit and intention of the Liberal leaders and parties of Germany, or to those who resist and defy that spirit and intention and insist upon conquest and subjugation? Or are we listening, in fact, to both, unreconciled and in open and hopeless contradiction? These are very serious and pregnant
- 10 questions. Upon the answer to them depends the peace of the world.

- But, whatever the results of the parleys at Brest-Litovsk, whatever the confusions of counsel and of purpose in the utterances of the spokesmen of the Central Empires, they have again attempted to acquaint the world with their objects in the war and have again challenged their adversaries to say what their objects are and what sort of settlement they would deem
- 15 just and satisfactory. There is no good reason why that challenge should not be responded to, and responded to with the utmost candor. We did not wait for it. Not once, but again and again, we have laid our whole thought and purpose before the world, not in general terms only, but each time with sufficient definition to make it clear what sort of definite terms of settlement must necessarily spring out of them.

- 20 Within the last week Mr. Lloyd George has spoken with admirable candor and in admirable spirit for the people and Government of Great Britain. There is no confusion of counsel among the adversaries of the Central Powers, no uncertainty of principle, no vagueness of detail. The only secrecy of counsel, the only lack of fearless frankness, the only failure to make definite statement of the objects of the war, lies with Germany and her allies. The
- 25 issues of life and death hang upon these definitions. No statesman who has the least conception of his responsibility ought for a moment to permit himself to continue this tragical and appalling outpouring of blood and treasure unless he is sure beyond a peradventure

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that the objects of the vital sacrifice are part and parcel of the very life of Society and that the people for whom he speaks think them right and imperative as he does.

There is, moreover, a voice calling for these definitions of principle and of purpose which is, it seems to me, more thrilling and more compelling than any of the many moving voices with which the troubled air of the world is filled. It is the voice of the Russian people. They are prostrate and all but hopeless, it would seem, before the grim power of Germany, which has hitherto known no relenting and no pity. Their power, apparently, is shattered. And yet their soul is not subservient. They will not yield either in principle or in action. Their conception of what is right, of what is humane and honorable for them to accept, has been stated with a frankness, a largeness of view, a generosity of spirit, and a universal human sympathy which must challenge the admiration of every friend of mankind; and they have refused to compound their ideals or desert others that they themselves may be safe.

They call to us to say what it is that we desire, in what, if in anything, our purpose and our spirit differ from theirs; and I believe that the people of the United States would wish me to respond, with utter simplicity and frankness. Whether their present leaders believe it or not, it is our heartfelt desire and hope that some way may be opened whereby we may be privileged to assist the people of Russia to attain their utmost hope of liberty and ordered peace.

It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world

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secure once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us.

The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

10 I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

15 II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

20 IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

25 VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in

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obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

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XII. The Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end.

For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this program does remove. We have no jealousy of German greatness, and there is nothing in this program that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world, -- the new world in which we now live, -- instead of a place of mastery.

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Neither do we presume to suggest to her any alteration or modification of her institutions. But it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know whom her spokesmen speak for when they speak to us, whether for the Reichstag majority or for the military party and the men
5 whose creed is imperial domination.

We have spoken now, surely, in terms too concrete to admit of any further doubt or question. An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle
10 be made its foundation no part of the structure of international justice can stand. The people of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything they possess. The moral climax of this the culminating and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity and
15 devotion to the test.

WOODROW WILSON

Leaders of Men

SPEECH EXCERPTS

June 17, 1890

BACKGROUND

The political science professor Woodrow Wilson gave a version of this address several times in 1889 and 1890 while on the faculties of Wesleyan University and Princeton University.

GUIDING QUESTIONS

1. What distinction does Wilson initially draw between men who write and men who act?
2. In what ways do men "in the mass" differ from men "as individuals"? How must a leader treat men in the mass, according to Wilson?
3. What essential qualities must a popular leader have?
4. What distinctions does Wilson draw between the statesman and the demagogue?
5. How does Wilson characterize political leadership in particular?
6. How does reform come about, according to Wilson?

Woodrow Wilson, "Leaders of Men," in *Leaders of Men*, ed. T. H. Vail Motter (Princeton University Press, 1952).

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Only those are 'leaders of men,' in the general eye, who lead in action. The title belongs, if the whole field of the world be justly viewed, no more rightfully to the men who lead in action than to those who lead in silent thought. A book is often quite as quickening a trumpet as any made of brass and sounded in the field. But it is the estimate of the world that bestows their meaning upon words: and that estimate is not often very far from the fact. The men who act stand nearer to the mass of men than do the men who write; and it is at their hands that new thought gets its translation into the crude language of deeds. The very crudity of that language of deeds exasperates the sensibilities of the author; and his exasperation proves the world's point. He may be *back* of the leaders, but he is not the leader. In his thought there is due and studied proportion; all limiting considerations are set in their right places, as guards to ward off misapprehension. Every cadence of right utterance is made to sound in the careful phrases, in the perfect adjustments of sense. Translate the thought into action and all its shadings disappear. It stands out a naked, lusty thing, sure to rasp the sensibilities of every man of fastidious taste. Stripped for action, a thought must always shock those who cultivate the nice fashions of literary dress, as authors do. But it is only when thought does thus stand forth in unabashed force that it can perform deeds of strength in the arena round about which the great public sit as spectators, awarding the prizes by the suffrage of their applause.

Here, unquestionably, we come upon the heart of the perennial misunderstanding between the men who write and the men who act. The men who write love proportion; the men who act must strike out practicable lines of action, and neglect proportion. This would seem to explain the well-nigh universal repugnance felt by literary men towards Democracy. The arguments which induce popular action must always be broad and obvious arguments. Only a very gross substance of concrete conception can make any impression on the minds of the masses; they must get their ideas very absolutely put, and are much readier to receive a half-truth which they can promptly understand than a whole truth which has too many sides to be seen all at once. How can any man whose method is the method of artistic completeness of thought and expression, whose mood is the mood of contemplation, for a moment understand or tolerate the majority whose purpose and practice it is to strike out

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broad, rough-hewn *policies*, whose mood is the mood of action? The great stream of freedom which “broadens down from precedent to precedent,” is not a clear mountain current such as the fastidious man of chastened taste likes to drink from: it is polluted with not a few of the coarse elements of the gross world on its banks; it is heavy with the drainage of
5 a very material universe....

The competent leader of men cares little for the interior niceties of other people’s characters: he cares much—everything for the external uses to which they may be put. His will seeks the lines of least resistance; but the whole question with him is a question *of the application of force*. There are men to be moved: how shall he move them? He supplies the power;
10 others supply only the materials upon which that power operates. The power will fail if it be misapplied; it will be misapplied if it be not suitable both in kind and method to the nature of the materials upon which it is spent; but that nature is, after all, only its means. It is the *power* which dictates, dominates: the materials yield. Men are as clay in the hands of the consummate leader.

15 It often happens that the leader displays a sagacity and an insight in the handling of men in the mass which quite baffle the wits of the shrewdest analyst of *individual* character. Men in the mass differ from men as individuals. A man who knows, and keenly knows, every man in town may yet fail to understand a mob or a mass-meeting of his fellow-townsmen. Just as the whole tone and method suitable for a public speech are foreign to the tone and
20 method proper in individual, face to face dealings with separate men, so is the art of leading different from the art of writing novels.

Some of the gifts and qualities which most commend the literary man to success would inevitably doom the would-be leader to failure....

Men are not led by being told what they do not know. *Persuasion* is a force, *but not information*; and persuasion is accomplished by creeping into the confidence of those you would
25 lead. Their confidence is not gained by preaching new thoughts to them. It is gained by qualities which they can recognize at first sight by arguments which they can assimilate at once: by the things which find easy and intermediate entrance into their minds, and which

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are easily transmitted to the palms of their hands or to the ends of their walking-sticks in the shape of applause. Burke's thoughts penetrate the mind and possess the heart of the quiet student. His style of saying things fills the attention as if it were finest music. But his are not thoughts to be shouted over; his is not a style to ravish the ear of the voter at the hustings. If you would be a leader of men, you must lead your own generation, not the next. Your playing must be good *now*, while the play is on the boards and the audience in the seats: it will not get you the repute of a great actor to have excellencies discovered in you afterwards. Burke's genius, besides, made conservative men uneasy. How *could* a man be *safe* who had so many ideas?....

The whole question of leadership receives sharp practical test in a popular legislative assembly. The revolutions which have changed the whole principle and method of government within the last hundred years have created a new kind of leadership in legislation: a leadership which is not yet, perhaps, fully understood. It used to be thought that legislation was an affair proper to be conducted only by the few who were instructed, for the benefit of the many who were uninstructed: that statesmanship was a function of origination for which only trained and instructed men were fit. Those who actually conducted legislation and undertook affairs were rather whimsically chosen by Fortune to illustrate this theory, but such was the ruling thought in politics. The Sovereignty of the People, however, that great modern dogma of politics, has erected a different conception-or, if so be that, in the slowness of our thought, we adhere to the old *conception*, has at least created a very different *practice*. When we are angry with public men nowadays we charge them with *subserving* instead of forming and directing public opinion. It is to be suspected that when we make such charges we are suffering our standards of judgment to lag behind our politics....

Pray do not misunderstand me. I am not radical. I would not for the world be instrumental in discrediting the ancient and honorable pastime of abusing demagogues. Demagogues were quite evidently, it seems to me, meant for abuse, if we are to argue by exclusion: for assuredly they were never known to serve any other useful purpose. I will follow the hounds any day in pursuit of one of the wily, doubling rascals, however rough the country to be ridden over. But you must allow me to make my condemnations tally with my theory of

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government. Is Irish opinion ripe for Home Rule, as the Liberals claim? Very well then: let it have Home Rule. Every community, says my political philosophy, should be governed for its own interests, as it understands them, and not for the satisfaction of any other community.

- 5 Still I seem radical, without in reality being so. I advance my explanation, therefore, another step. Society is not a crowd, but an organism; and, like every organism, it must grow as a whole or else be deformed. The world is agreed, too, that it is an organism also in this, that it will die unless it be vital in every part. That is the only line of reasoning by which we can really establish the majority in legitimate authority. This organic whole, Society, is made
10 up, obviously, for the most part, of the majority. It grows by the development of its aptitudes and desires, and under their guidance. The evolution of its institutions must take place by slow modification and nice all-round adjustment. And all this is but a careful and abstract way of saying that no reform may succeed for which the major thought of the nation is not prepared: that the instructed few may not be safe leaders except in so far as they
15 have communicated their instruction to the many -except in so far as they have transmuted their thought into a common, a popular thought.

- Let us fairly distinguish, therefore, the peculiar and delicate duties of the popular leader from the not very peculiar or delicate misdemeanors of the demagogue. Leadership, for the statesman, is *interpretation*. He must read the common thought: he must test and calculate
20 very circumspectly the *preparation* of the nation for the next move in the progress of politics. If he fairly hit the popular thought, when we have missed it, are we to say that he is a demagogue? The nice point is to distinguish the firm and progressive popular *thought* from the momentary and whimsical popular *mood*, the transitory or mistaken popular passion. But it is fatally easy to blame or misunderstand the statesman.

- 25 Our temperament is one of logic, let us say. We hold that one and one make two and we see no salvation for the people except they receive the truth. The statesman is of another opinion. 'One and one doubtless make two', he is ready to admit, 'but the people think that one and one make more than two and until they see otherwise we shall have to legislate on

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that supposition'. This is not to talk nonsense. The Roman augurs very soon discovered that sacred fowls drank water and pecked grain with no sage intent of prophecy, but from motives quite mundane and simple. But it would have been a revolution to say so in the face of a people who believed otherwise, and executive policy had to proceed on the theory of a divine method of fowl appetite and digestion. The divinity that once did hedge a king, grows not now very high about the latest Hohenzollern; but who that prefers growth to revolution would propose that legislation in Germany proceed independently of this accident of hereditary succession?...

This function of interpretation, this careful exclusion of individual origination it is that makes it difficult for the impatient original mind to distinguish the popular statesman from the demagogue. *The demagogue* sees and seeks *self-interest* in an acquiescent reading of that part of the public thought upon which he depends for votes; *the statesman*, also reading the common inclination, also, when he reads aright, obtains the votes that keep him in power. But if you will justly observe the two, you will find the one trimming to the inclinations of the moment, the other obedient only to the permanent purposes of the public mind. The one adjusts his sails to the breeze of the day; the other makes his plans to ripen with the slow progress of the years. While the one solicitously watches the capricious changes of the weather, the other diligently sows the grains in their seasons. The one ministers to himself, the other to the race....

There is a familiar anecdote that belongs just here. The captain of a Mississippi steamboat had made fast to the shore because of a thick fog lying upon the river. The fog lay low and dense upon the surface of the water, but overhead all was clear. A cloudless sky showed a thousand points of starry light. An impatient passenger inquired the cause of the delay. "We can't see to steer," said the captain. "But all's clear overhead," suggested the passenger, "you can see the North Star." "Yes," replied the officer, "but we are not going that way." Politics must follow the actual windings of the channel: if it steer by the stars it will run aground.

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- You may say that if all this be truth: if practical political thought may not run in straight lines, but must twist and turn through all the sinuous paths of various circumstance, then compromise is the true gospel of politics. I cannot wholly gainsay the proposition. But it depends almost altogether upon how you conceive and define compromise whether it seem
- 5 hateful or not, -whether it *be* hateful or not. I understand the biologists to say that all *growth* is a process of compromise: a compromise of the vital forces within the organism with the physical forces without, which constitute the environment. Yet growth is not dishonest. Neither need compromise in politics be dishonest, -if only it be progressive. Is not compromise the law of society in all things? Do we not in all dealings adjust views, compound
- 10 differences, placate antagonisms? Uncompromising thought is the luxury of the closeted recluse. Untrammelled reasoning is the indulgence of the philosopher, of the dreamer of sweet dreams. We make always a sharp distinction between the literature of conduct and the literature of the imagination. 'Poetic justice' we recognize as being quite out of the common run of experience.
- 15 Nevertheless, leadership does not always wear the harness of compromise. Once and again one of those great Influences which we call a *Cause* arises in the midst of a nation. Men of strenuous minds and high ideals come forward, with a sort of gentle majesty, as champions of a political or moral principle. They wear no armour; they bestride no chargers; they only speak their thought, in season and out of season. But the attacks they sustain are more cruel
- 20 than the collisions of arms. Their souls are pierced with a thousand keen arrows of obloquy. Friends desert and despise them. They stand alone: and oftentimes are made bitter by their isolation. They are doing nothing less than defy public opinion, and shall they convert it by blows? Yes. Presently the forces of the popular thought hesitate, waver, seem to doubt their power to subdue a half score stubborn minds. Again a little while and those forces have
- 25 actually yielded. Masses come over to the side of the reform. Resistance is left to the minority, and such as will not be convinced are crushed....

Our slow world spends its time catching up with the ideas of its best minds. It would seem that in almost every generation men are born who embody the *projected* consciousness of their time and people. Their thought runs forward apace into the regions whither the race

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is advancing, but where it will not for many a *weary* day arrive. A few generations, and that point, thus early descried, is passed; the new thoughts of one age are the commonplaces of the next. Such is the literary function: it reads the present fragments of thought as completed wholes, and thus enables the fragments, no doubt, in due time to achieve their completion. There are, on the other hand, again, other periods which we call periods of critical thought, and these do not project their ideas as wholes, but speak them incomplete, as parts. Whoever can hit the latent conceptions of such a period will receive *immediate* recognition: he is simply the articulate utterance of itself.

Such a man, of such fortune, was Voltaire. No important distinction can be drawn between his mind and the mind of France in the period in which he lived, – except, no doubt, that the mind of France was diffused, Voltaire’s concentrated. It was an Englishman, doubtless who said he would like to slap Voltaire’s face, for then he could feel that he had given France the affront direct. I suppose we cannot imagine how happy it must have made a Frenchman of the last century to laugh with Voltaire. His hits are indeed palpable: no literary swordsman but must applaud them. The speed of his style, too, and the swift critical destructiveness of it are in the highest degree exhilarating and admirable. It is capital sport to ride at tilt with him against some belated superstition, to see him unseat priest and courtier alike in his dashing overthrow of shams. But for us it is not vital sport. The things that he killed are now *long* dead; the things he found it *impossible* to slay, *still triumph* over all opponents-are grown old in conquest. But for a Frenchman of the last century the thing was *being done*. To read Voltaire must have made him feel that he was reading his own thoughts; laughing his own laugh; speaking his own scorn; speeding his own present impulses. Voltaire shocked political and ecclesiastical magnates, but he rejoiced the general mind of France. The men whom he attacked felt at once and instinctively that this was not the mere premonitory flash from a distant storm, but a bolt from short range; that the danger was immediate, the need for some shelter of authority an instantaneous need. No wonder the people of Paris took the horses from Voltaire’s coach and themselves dragged him through the streets. The load ought to have been light, as light as the carriage, for they were pulling themselves. The old man inside the coach was presently to die and carry away with him the

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spirit of the eighteenth century. If Voltaire seriously doubted the existence of a future life, we have no grounds for wonder. It is hard to think of him in any world but this. It is awkward to conceive the Eighteenth Century given a place in either of the realms of eternity. It would chill the one; it would surely liberalize the other. That singular century does not
5 seem to belong in the line of succession to *any* immortality.

Men who hit the critical, floating thought of their age, seem to me leaders in all but initiative. *They* are not ahead of their age. They do not conceive its thoughts in future wholes. They gather to a head each characteristic sentiment of their day. They are at once listened to; they would be followed, if they would but lead....

THEODORE ROOSEVELT

“The Presidency”

CHAPTER EXCERPTS FROM *THE ROUGH RIDERS: AN AUTOBIOGRAPHY*

1913

BACKGROUND

Former president Theodore Roosevelt shared his views on the office in his autobiography, *The Rough Riders*.

GUIDING QUESTIONS

1. What are the limits on executive power under the Constitution, according to Roosevelt?
2. What does Roosevelt mean when he says that every executive officer must be a "steward of the people"?
3. What were Roosevelt's "convictions" upon assuming the presidency?

Theodore Roosevelt, "The Presidency: Making an Old Party Progressive," in *The Rough Riders, An Autobiography* (New York: The Macmillan Company, 1913), 614-15, 643.

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...The most important factor in getting the right spirit in my Administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition. I did not care a rap for the mere form and show of power; I cared immensely for the use that could be made of the substance....

In internal affairs I cannot say that I entered the Presidency with any deliberately planned and far-reaching scheme of social betterment. I had, however, certain strong convictions; and I was on the lookout for every opportunity of realizing those convictions. I was bent upon making the Government the most efficient possible instrument in helping the people of the United States to better themselves in every way, politically, socially, and industrially. I believed with all my heart in real and thoroughgoing democracy, and I wished to make this democracy industrial as well as political, although I had only partially formulated the methods I believed we should follow. I believed in the people's rights, and therefore in National rights and States' rights just exactly to the degree in which they severally secured popular rights. I believed in invoking the National power with absolute freedom for every

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National need; and I believed that the Constitution should be treated as the greatest document ever devised by the wit of man to aid a people in exercising every power necessary for its own betterment, and not as a straitjacket cunningly fashioned to strangle growth. As for the particular methods of realizing these various beliefs, I was content to wait and see what
5 method might be necessary in each given case as it arose; and I was certain that the cases would arise fast enough....

WOODROW WILSON

“The Study of Administration”

ESSAY EXCERPTS

November 2, 1886

Political Science Quarterly

BACKGROUND

Bryn Mawr College political science professor Woodrow Wilson wrote this essay proposing independent regulatory agencies insulated from the political process.

GUIDING QUESTIONS

1. Why is administrative progress more difficult in democracies?
2. What views does Wilson hold of the American people?
3. How does Wilson distinguish administration from politics? Why should the former be insulated from the latter?
4. What role, according to Wilson, should public opinion play in the administration of government?
5. What does Wilson mean when he says that “[w]e can borrow the science of administration”?

Woodrow Wilson, “The Study of Administration,” *Political Science Quarterly* 2 (July 1887): 197-222.

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...It is harder for democracy to organize administration than for monarchy. The very completeness of our most cherished political successes in the past embarrasses us. We have enthroned public opinion; and it is forbidden us to hope during its reign for any quick schooling of the sovereign in executive expertness or in the conditions of perfect functional balance in government. The very fact that we have realized popular rule in its fulness has made the task of *organizing* that rule just so much the more difficult. In order to make any advance at all we must instruct and persuade a multitudinous monarch called public opinion,—a much less feasible undertaking than to influence a single monarch called a king. An individual sovereign will adopt a simple plan and carry it out directly: he will have but one opinion, and he will embody that one opinion in one command. But this other sovereign, the people, will have a score of differing opinions. They can agree upon nothing simple: advance must be made through compromise, by a compounding of differences, by a trimming of plans and a suppression of too straightforward principles. There will be a succession of resolves running through a course of years, a dropping fire of commands running through a whole gamut of modifications.

In government, as in virtue, the hardest of hard things is to make progress. Formerly the reason for this was that the single person who was sovereign was generally either selfish, ignorant, timid, or a fool,—albeit there was now and again one who was wise. Nowadays the reason is that the many, the people, who are sovereign have no single ear which one can approach, and are selfish, ignorant, timid, stubborn, or foolish with the selfishness, the ignorances, the stubbornnesses, the timidities, or the follies of several thousand persons,—albeit there are hundreds who are wise. Once the advantage of the reformer was that the sovereign's mind had a definite locality, that it was contained in one man's head, and that consequently it could be gotten at; though it was his disadvantage that the mind learned only reluctantly or only in small quantities, or was under the influence of some one who let it learn only the wrong things. Now, on the contrary, the reformer is bewildered by the fact that the sovereign's mind has no definite locality, but is contained in a voting majority of several million heads; and embarrassed by the fact that the mind of this sovereign also is under the influence of favorites, who are none the less favorites in a good old-fashioned

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sense of the word because they are not persons by preconceived opinions; *i.e.*, prejudices which are not to be reasoned with because they are not the children of reason....

Even if we had clear insight into all the political past, and could form out of perfectly instructed heads a few steady, infallible, placidly wise maxims of government into which all sound political doctrine would be ultimately resolvable, *would the country act on them?* That is the question. The bulk of mankind is rigidly unphilosophical, and nowadays the bulk of mankind votes. A truth must become not only plain but also commonplace before it will be seen by the people who go to their work very early in the morning; and not to act upon it must involve great and pinching inconveniences before these same people will make up their minds to act upon it.

And where is this unphilosophical bulk of mankind more multifarious in its composition than in the United States? To know the public mind of this country, one must know the mind, not of Americans of the older stocks only, but also of Irishmen, of Germans, of negroes. In order to get a footing for new doctrine, one must influence minds cast in every mold of race, minds inheriting every bias of environment, warped by the histories of a score of different nations, warmed or chilled, closed or expanded by almost every climate of the globe.

So much, then, for the history of the study of administration, and the peculiarly difficult conditions under which, entering upon it when we do, we must undertake it. What, now, is the subject-matter of this study, and what are its characteristic objects?

II.

The field of administration is a field of business. It is removed from the hurry and strife of politics; it at most points stands apart even from the debatable ground of constitutional study. It is a part of political life only as the methods of the counting-house are a part of the life of society; only as machinery is part of the manufactured product. But it is, at the same time, raised very far above the dull level of mere technical detail by the fact that through its

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greater principles it is directly connected with the lasting maxims of political wisdom, the permanent truths of political progress.

The object of administrative study is to rescue executive methods from the confusion and costliness of empirical experiment and set them upon foundations laid deep in stable principle.

It is for this reason that we must regard civil-service reform in its present stages as but a prelude to a fuller administrative reform. We are now rectifying methods of appointment; we must go on to adjust executive functions more fitly and to prescribe better methods of executive organization and action. Civil-service reform is thus but a moral preparation for what is to follow. It is clearing the moral atmosphere of official life by establishing the sanctity of public office as a public trust, and, by making service unpartisan, it is opening the way for making it businesslike. By sweetening its motives it is rendering it capable of improving its methods of work....

One cannot easily make clear to every one just where administration resides in the various departments of any practicable government without entering upon particulars so numerous as to confuse and distinctions so minute as to distract. No lines of demarcation, setting apart administrative from non-administrative functions, can be run between this and that department of government without being run up hill and down dale, over dizzy heights of distinction and through dense jungles of statutory enactment, hither and thither around "ifs" and "buts," "whens" and "however," until they become altogether lost to the common eye not accustomed to this sort of surveying, and consequently not acquainted with the use of the theodolite of logical discernment. A great deal of administration goes about *incognito* to most of the world, being confounded now with political "management," and again with constitutional principle....

A clear view of the difference between the province of constitutional law and the province of administrative function ought to leave no room for misconception; and it is possible to name some roughly definite criteria upon which such a view can be built. Public administration is detailed and systematic execution of public law. Every particular application of

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general law is an act of administration. The assessment and raising of taxes, for instance, the hanging of a criminal, the transportation and delivery of the mails, the equipment and recruiting of the army and navy, *etc.*, are all obviously acts of administration; but the general laws which direct these things to be done are as obviously outside of and above administration. The broad plans of governmental action are not administrative; the detailed execution of such plans is administrative. Constitutions, therefore, properly concern themselves only with those instrumentalities of government which are to control general law. Our federal constitution observes this principle in saying nothing of even the greatest of the purely executive offices, and speaking only of that President of the Union who was to share the legislative and policy-making functions of government, only of those judges of highest jurisdiction who were to interpret and guard its principles, and not of those who were merely to give utterance to them....

Just here we manifestly emerge upon the field of that still larger question,—the proper relations between public opinion and administration.

To whom is official trustworthiness to be disclosed, and by whom is it to be rewarded? Is the official to look to the public for his need of praise and his push of promotion, or only to his superior in office? Are the people to be called in to settle administrative discipline as they are called in to settle constitutional principles? These questions evidently find their root in what is undoubtedly the fundamental problem of this whole study. That problem is: What part shall public opinion take in the conduct of administration?

The right answer seems to be, that public opinion shall play the part of authoritative critic.

But the *method* by which its authority shall be made to tell? Our peculiar American difficulty in organizing administration is not the danger of losing liberty, but the danger of not being able or willing to separate its essentials from its accidents. Our success is made doubtful by that besetting error of ours, the error of trying to do too much by vote. Self-government does not consist in having a hand in everything, any more than housekeeping consists necessarily in cooking dinner with one's own hands. The cook must be trusted with a large discretion as to the management of the fires and the ovens.

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In those countries in which public opinion has yet to be instructed in its privileges, yet to be accustomed to having its own way, this question as to the province of public opinion is much more readily soluble than in this country, where public opinion is wide awake and quite intent upon having its own way anyhow. It is pathetic to see a whole book written by
5 a German professor of political science for the purpose of saying to his countrymen, "Please try to have an opinion about national affairs"; but a public which is so modest may at least be expected to be very docile and acquiescent in learning what things it has *not* a right to think and speak about imperatively. It may be sluggish, but it will not be meddlesome. It will submit to be instructed before it tries to instruct. Its political education will come be-
10 fore its political activity. In trying to instruct our own public opinion, we are dealing with a pupil apt to think itself quite sufficiently instructed beforehand.

The problem is to make public opinion efficient without suffering it to be meddlesome. Directly exercised, in the oversight of the daily details and in the choice of the daily means of government, public criticism is of course a clumsy nuisance, a rustic handling delicate
15 machinery. But as superintending the greater forces of formative policy alike in politics and administration, public criticism is altogether safe and beneficent, altogether indispensable. Let administrative study find the best means for giving public criticism this control and for shutting it out from all other interference.

But is the whole duty of administrative study done when it has taught the people what sort
20 of administration to desire and demand, and how to get what they demand? Ought it not to go on to drill candidates for the public service?

There is an admirable movement towards universal political education now afoot in this country. The time will soon come when no college of respectability can afford to do without a well-filled chair of political science. But the education thus imparted will go but a certain
25 length. It will multiply the number of intelligent critics of government, but it will create no competent body of administrators. It will prepare the way for the development of a sure-footed understanding of the general principles of government, but it will not necessarily

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foster skill in conducting government. It is an education which will equip legislators, perhaps, but not executive officials. If we are to improve public opinion, which is the motive power of government, we must prepare better officials as the *apparatus* of government. If we are to put in new boilers and to mend the fires which drive our governmental machinery, we must not leave the old wheels and joints and valves and bands to creak and buzz and clatter on as best they may at bidding of the new force. We must put in new running parts wherever there is the least lack of strength or adjustment. It will be necessary to organize democracy by sending up to the competitive examinations for the civil service men definitely prepared for standing liberal tests as to technical knowledge. A technically schooled civil service will presently have become indispensable....

The ideal for us is a civil service cultured and self-sufficient enough to act with sense and vigor, and yet so intimately connected with the popular thought, by means of elections and constant public counsel, as to find arbitrariness of class spirit quite out of the question.

III.

Having thus viewed in some sort the subject-matter and the objects of this study of administration, what are we to conclude as to the methods best suited to it—the points of view most advantageous for it?

Government is so near us, so much a thing of our daily familiar handling, that we can with difficulty see the need of any philosophical study of it, or the exact point of such study, should it be undertaken. We have been on our feet too long to study now the art of walking. We are a practical people, made so apt, so adept in self-government by centuries of experimental drill, that we are scarcely any longer capable of perceiving the awkwardness of the particular system we may be using, just because it is so easy for us to use any system. We do not study the art of governing; we govern. But mere unschooled genius for affairs will not save us from sad blunders in administration. Though democrats by long inheritance and repeated choice, we are still rather crude democrats. Old as democracy is, its organization on a basis of modern ideas and conditions is still an unaccomplished work. The democratic state has yet to be equipped for carrying those enormous burdens of administration

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which the needs of this industrial and trading age are so fast accumulating. Without comparative studies in government we cannot rid ourselves of the misconception that administration stands upon an essentially different basis in a democratic state from that on which it stands in a non-democratic state....

- 5 We can borrow the science of administration with safety and profit if only we read all fundamental differences of condition into its essential tenets. We have only to filter it through our constitutions, only to put it over a slow fire of criticism and distil away its foreign gases.

I know that there is a sneaking fear in some conscientiously patriotic minds that studies of European systems might signalize some foreign methods as better than some American
10 methods; and the fear is easily to be understood. But it would scarcely be avowed in any just company....

Let it be noted that it is the distinction, already drawn, between administration and politics which makes the comparative method so safe in the field of administration. When we study the administrative systems of France and Germany, knowing that we are not in search of
15 *political* principles, we need not care a peppercorn for the constitutional or political reasons which Frenchmen or Germans give for their practices when explaining them to us. If I see a murderous fellow sharpening a knife cleverly, I can borrow his way of sharpening the knife without borrowing his probable intention to commit murder with it; and so, if I see a monarchist dyed in the wool managing a public bureau well, I can learn his business
20 methods without changing one of my republican spots. He may serve his king; I will continue to serve the people; but I should like to serve my sovereign as well as he serves his. By keeping this distinction in view,—that is, by studying administration as a means of putting our own politics into convenient practice, as a means of making what is democratically politic towards all administratively possible towards each,—we are on perfectly safe
25 ground, and can learn without error what foreign systems have to teach us. We thus devise an adjusting weight for our comparative method of study. We can thus scrutinize the anatomy of foreign governments without fear of getting any of their diseases into our veins; dissect alien systems without apprehension of blood-poisoning.

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Our own politics must be the touchstone for all theories. The principles on which to base a science of administration for America must be principles which have democratic policy very much at heart. And, to suit American habit, all general theories must, as theories, keep modestly in the background, not in open argument only, but even in our own minds,—lest
5 opinions satisfactory only to the standards of the library should be dogmatically used, as if they must be quite as satisfactory to the standards of practical politics as well. Doctrinaire devices must be postponed to tested practices. Arrangements not only sanctioned by conclusive experience elsewhere but also congenial to American habit must be preferred without hesitation to theoretical perfection. In a word, steady, practical statesmanship must
10 come first, closet doctrine second. The cosmopolitan what-to-do must always be commanded by the American how-to-do-it.

Our duty is, to supply the best possible life to a *federal* organization, to systems within systems; to make town, city, county, state, and federal governments live with a like strength and an equally assured healthfulness, keeping each unquestionably its own master and yet
15 making all interdependent and cooperative, combining independence with mutual helpfulness. The task is great and important enough to attract the best minds.

This interlacing of local self-government with federal self-government is quite a modern conception. It is not like the arrangements of imperial federation in Germany. There local government is not yet, fully, local *self*-government. The bureaucrat is everywhere busy. His
20 efficiency springs out of *esprit de corps*, out of care to make ingratiating obeisance to the authority of a superior, or at best, out of the soil of a sensitive conscience. He serves, not the public, but an irresponsible minister. The question for us is, how shall our series of governments within governments be so administered that it shall always be to the interest of the public officer to serve, not his superior alone but the community also, with the best
25 efforts of his talents and the soberest service of his conscience? How shall such service be made to his commonest interest by contributing abundantly to his sustenance, to his dearest interest by furthering his ambition, and to his highest interest by advancing his honor and establishing his character? And how shall this be done alike for the local part and for the national whole?

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If we solve this problem we shall again pilot the world. There is a tendency—is there not?—a tendency as yet dim, but already steadily impulsive and clearly destined to prevail, towards, first the confederation of parts of empires like the British, and finally of great states themselves. Instead of centralization of power, there is to be wide union with tolerated divisions of prerogative. This is a tendency towards the American type—of governments joined with governments for the pursuit of common purposes, in honorary equality and honorable subordination. Like principles of civil liberty are everywhere fostering like methods of government; and if comparative studies of the ways and means of government should enable us to offer suggestions which will practicably combine openness and vigor in the administration of such governments with ready docility to all serious, well-sustained public criticism, they will have approved themselves worthy to be ranked among the highest and most fruitful of the great departments of political study. That they will issue in such suggestions I confidently hope.

GOVERNOR FRANKLIN D. ROOSEVELT (D-NY)

On Progressive Government

SPEECH

September 23, 1932

Commonwealth Club | San Francisco, California

Commonwealth Club Address

BACKGROUND

In campaigning for the presidency in 1932, New York Governor Franklin Roosevelt delivered this speech at the Commonwealth Club in San Francisco.

GUIDING QUESTIONS

1. What does Roosevelt consider to be the eternal, central question of government?
2. What is Roosevelt's conception of rights?
3. What force has changed the American way of life?
4. What does Roosevelt say is unprecedented about the economic situation of early 1930s America?
5. According to Roosevelt, what is and will be government's new role? Why?
6. Who does Roosevelt say has the power to grant and alter rights?
7. What must business leaders pursue, according to Roosevelt? What is government's role in enforcing that?

Franklin D. Roosevelt, "Campaign Address on Progressive Government at the Commonwealth Club," 23 September 1932, in *The Public Papers and Addresses of Franklin D. Roosevelt*, Vol. 1, ed. Samuel Irving Rosenman (New York: Russell & Russell, 1938), 742-56.

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...I want to speak not of politics but of Government. I want to speak not of parties, but of universal principles. They are not political, except in that larger sense in which a great American once expressed a definition of politics, that nothing in all of human life is foreign to the science of politics.

5 I do want to give you, however, a recollection of a long life spent for a large part in public office. Some of my conclusions and observations have been deeply accentuated in these past few weeks. I have traveled far—from Albany to the Golden Gate. I have seen many people, and heard many things, and today, when in a sense my journey has reached the half-way mark, I am glad of the opportunity to discuss with you what it all means to me.

10 Sometimes, my friends, particularly in years such as these, the hand of discouragement falls upon us. It seems that things are in a rut, fixed, settled, that the world has grown old and tired and very much out of joint. This is the mood of depression, of dire and weary depression. But then we look around us in America, and everything tells us that we are wrong. America is new. It is in the process of change and development. It has the great potentialities of youth, and particularly is this true of the great West, and of this coast, and of California.

I would not have you feel that I regard this as in any sense a new community. I have traveled in many parts of the world, but never have I felt the arresting thought of the change and development more than here, where the old, mystic East would seem to be near to us, where
20 the currents of life and thought and commerce of the whole world meet us. This factor alone is sufficient to cause man to stop and think of the deeper meaning of things, when he stands in this community.

But more than that, I appreciate that the membership of this club consists of men who are thinking in terms beyond the immediate present, beyond their own immediate tasks, beyond their own individual interest. I want to invite you, therefore, to consider with me in
25 the large, some of the relationships of Government and economic life that go deeply into our daily lives, our happiness, our future and our security.

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The issue of Government has always been whether individual men and women will have to serve some system of Government or 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 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, had been completed, ambition and ruthlessness, having served their term, tended to overstep their mark.

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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.

- 5 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
10 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
15 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
20 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
25 who cannot live without labor, either manual or professional, being few and of moderate wealth. Most of the laboring class possess property, cultivate their own lands, have families and from the demand for their labor, are enabled to exact from the rich and the competent

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such prices as enable them to feed abundantly, clothe above mere decency, to labor moderately and raise their families."

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
5 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
10 not exist, must intervene, not to destroy individualism, but to protect it.

You are familiar with the great political duel which followed; and how Hamilton, and his friends, building toward a dominant centralized power were at length defeated in the great election of 1800, by Mr. Jefferson's party. Out of that duel came the two parties, Republican and Democratic, as we know them today.

15 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
20 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
25 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.

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It was in the middle of the nineteenth 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, often wasteful, and frequently corrupt; but they did build railroads, and 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 this 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 own 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

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done at the request of business men 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. A nascent merchant marine was assisted by grants of money, or by mail subsidies, so that our steam shipping might ply the seven seas. Some of my friends tell me that they do not want the Government in business. With this I agree; but I wonder whether they realize the implications of the past. For while 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. The same man who tells you that he does not want to see the Government interfere in business—and he means it, and has plenty of good reasons for saying so—is the first to go to Washington and ask the Government for a prohibitory tariff on his product. When things get just bad enough, as they did two years ago, he will go with equal speed to the United States Government and ask for a loan; and the Reconstruction Finance Corporation is the outcome of it. Each group has sought protection from the Government for its own special interests, 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

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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, were 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 saw, in the highly centralized economic system, the despot of the twentieth century, on whom great masses of individuals relied for their safety and their livelihood, and whose irresponsibility and greed (if they were not controlled) would reduce them to starvation and penury. The concentration of financial power had not proceeded so far in 1912 as it has today; but it had grown far enough for Mr. Wilson to realize fully its implications. It is interesting, now, to read his speeches. What is called "radical" today (and I have reason to know whereof I speak) is mild compared to the campaign of Mr. Wilson. "No man can deny," he said, "that the lines of endeavor have more and more narrowed and stiffened; no man who knows anything about the development of industry in this country can have failed to observe that the larger kinds of credit are more and more difficult to obtain unless you obtain them upon terms of uniting your efforts with those who already control the industry of the country, and nobody can fail to observe that every man who tries to set himself up in competition with any process of manufacture which has taken place under the control of large combinations of capital will presently find himself either squeezed out or obliged to sell and allow himself to be absorbed." Had there been no World War—had Mr. Wilson been able to devote eight years to domestic instead of to international affairs—we might have had a wholly different situation at the present time. However, the then distant roar of European cannon, growing ever louder, forced him to abandon the study of this issue. The problem he saw so clearly is left with us as a legacy;

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and no one of us on either side of the political controversy can deny that it is a matter of grave concern to the Government.

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 which 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 under 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

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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
5 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, an organizer of m 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 underconsumption, 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
10 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 there-
20 fore 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.

25 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.

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Happily, the times indicate that to create such an order not only is the proper policy of Government, but it is the only line of safety for our economic structures as well. We know, now, that these economic units cannot exist unless prosperity is uniform, that is, unless purchasing power is well distributed throughout every group in the Nation. That is why even the most selfish of corporations for its own interest would be glad to see wages restored and unemployment ended and to bring the Western farmer back to his accustomed level of prosperity and to assure a permanent safety to both groups. That is why some enlightened industries themselves endeavor to limit the freedom of action of each man and business group within the industry in the common interest of all; why business men everywhere are asking a form of organization which will bring the scheme of things into balance, even though it may in some measure qualify the freedom of action of individual units within the business.

The exposition need not further be elaborated. It is brief and incomplete, but you will be able to expand it in terms of your own business or occupation without difficulty. I think everyone who has actually entered the economic struggle—which means everyone who was not born to safe wealth—knows in his own experience and his own life that we have now to apply the earlier concepts of American Government to the conditions of today.

The Declaration of Independence discusses the problem of Government in terms of a contract. Government is a relation of give and take, a contract, perforce, if we would follow the thinking out of which it grew. Under such a contract rulers were accorded power, and the people consented to that power on consideration that they be accorded certain rights. The task of statesmanship has always been the redefinition of these rights in terms of a changing and growing social order. New conditions impose new requirements upon Government and those who conduct government.

I held, for example, in proceedings before me as Governor, the purpose of which was the removal of the Sheriff of New York, that under modern conditions it was not enough for a public official merely to evade the legal terms of official wrongdoing. He owed a positive duty as well. I said in substance that if he had acquired large sums of money, he was when

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accused required to explain the sources of such wealth. To that extent this wealth was colored with a public interest. I said that in financial matters public servants should, even beyond private citizens, be held to a stern and uncompromising rectitude.

I feel that we are coming to a view through the drift of our legislation and our public thinking in the past quarter century that private economic power is, to enlarge an old phrase, a public trust as well. I hold that continued enjoyment of that power by any individual or group must depend upon the fulfillment of that trust. The men who have reached the summit of American business life know this best; happily, many of these urge the binding quality of this greater social contract.

10 The terms of that contract are as old as the Republic, and as new as the new economic order.

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 dearth; our industrial and agricultural mechanism can produce enough and to spare. Our Government formal and informal, political and economic, owes to everyone 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 of property. I am not prepared to say that the system which produces them is wrong. I am

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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.

5 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 chose—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, 10 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 the public welfare, the Government must be swift to enter and protect the public interest.

15 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.

20 The final term of the high contract was for liberty and the pursuit of happiness. We have learned 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 25 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

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such power as his ability permits, consistent with his assuming the accompanying responsibility.

5 All this is a long, slow task. Nothing is more striking than the simple innocence of the men who insist, whenever an objective is present, on the prompt production of a patent scheme guaranteed to produce a result. Human endeavor is not so simple as that. Government includes the art of formulating a policy, and using the political technique to attain so much of that policy as will receive general support; persuading, leading, sacrificing, teaching always, because the greatest duty of a statesman is to educate. But in the matters of which I have spoken, we are learning rapidly, in a severe school. The lessons so learned must not
10 be forgotten, even in the mental lethargy of a speculative upturn. We must build toward the time when a major depression cannot occur again; and if this means sacrificing the easy profits of inflationist booms, then let them go; and good riddance.

Faith in America, faith in our tradition of personal responsibility, faith in our institutions, faith in ourselves demand that we recognize the new terms of the old social contract. We
15 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.

PRESIDENT FRANKLIN D. ROOSEVELT (D)

To the Democratic National Convention

SPEECH

June 27, 1936

Franklin Field | Philadelphia, Pennsylvania

BACKGROUND

President Franklin Roosevelt delivered this speech beginning the 1936 election campaign and in light of recent Supreme Court rulings that cut against some of his New Deal programs.

GUIDING QUESTIONS

1. What obstacle did the Founders face and overcome, according to Roosevelt?
2. What does Roosevelt point to as the newest form of tyranny?
3. What, according to Roosevelt, is flawed about the "economic royalists'" conception of government?
4. Why does Roosevelt feel an interventionist is more forgivable in its errors than a restrained one?

Franklin D. Roosevelt, "Acceptance of the Renomination for the Presidency," 27 June 1936, in *The Public Papers and Addresses of Franklin D. Roosevelt*, Vol. 5, ed. Samuel Irving Rosenman (New York: Russell & Russell, 1969), 230-36.

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Senator Robinson, Members of the Democratic Convention, my friends:

Here, and in every community throughout the land, we are met at a time of great moment to the future of the Nation. It is an occasion to be dedicated to the simple and sincere expression of an attitude toward problems, the determination of which will profoundly affect
5 America.

I come not only as a leader of a party, not only as a candidate for high office, but as one upon whom many critical hours have imposed and still impose a grave responsibility.

For the sympathy, help and confidence with which Americans have sustained me in my task I am grateful. For their loyalty I salute the members of our great party, in and out of
10 political life in every part of the Union. I salute those of other parties, especially those in the Congress of the United States who on so many occasions have put partisanship aside. I thank the Governors of the several States, their Legislatures, their State and local officials who participated unselfishly and regardless of party in our efforts to achieve recovery and destroy abuses. Above all I thank the millions of Americans who have borne disaster
15 bravely and have dared to smile through the storm.

America will not forget these recent years, will not forget that the rescue was not a mere party task. It was the concern of all of us. In our strength we rose together, rallied our energies together, applied the old rules of common sense, and together survived.

In those days we feared fear. That was why we fought fear. And today, my friends, we have
20 won against the most dangerous of our foes. We have conquered fear.

But I cannot, with candor, tell you that all is well with the world. Clouds of suspicion, tides of ill-will and intolerance gather darkly in many places. In our own land we enjoy indeed a fullness of life greater than that of most Nations. But the rush of modern civilization itself has raised for us new difficulties, new problems which must be solved if we are to preserve
25 to the United States the political and economic freedom for which Washington and Jefferson planned and fought.

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Philadelphia is a good city in which to write American history. This is fitting ground on which to reaffirm the faith of our fathers; to pledge ourselves to restore to the people a wider freedom; to give to 1936 as the founders gave to 1776—an American way of life.

5 That very word freedom, in itself and of necessity, suggests freedom from some restraining power. In 1776 we sought freedom from the tyranny of a political autocracy—from the eighteenth century royalists who held special privileges from the crown. It was to perpetuate their privilege that they governed without the consent of the governed; that they denied the right of free assembly and free speech; that they restricted the worship of God; that they put the average man's property and the average man's life in pawn to the mercenaries of
10 dynastic power; that they regimented the people.

And so it was to win freedom from the tyranny of political autocracy that the American Revolution was fought. That victory gave the business of governing into the hands of the average man, who won the right with his neighbors to make and order his own destiny through his own Government. Political tyranny was wiped out at Philadelphia on July 4,
15 1776.

Since that struggle, however, man's inventive genius released new forces in our land which reordered the lives of our people. The age of machinery, of railroads; of steam and electricity; the telegraph and the radio; mass production, mass distribution—all of these combined to bring forward a new civilization and with it a new problem for those who sought to remain free.
20

For out of this modern civilization economic royalists carved new dynasties. New kingdoms were built upon concentration of control over material things. Through new uses of corporations, banks and securities, new machinery of industry and agriculture, of labor and capital—all undreamed of by the fathers—the whole structure of modern life was impressed into this royal service.
25

There was no place among this royalty for our many thousands of small business men and merchants who sought to make a worthy use of the American system of initiative and

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profit. They were no more free than the worker or the farmer. Even honest and progressive-minded men of wealth, aware of their obligation to their generation, could never know just where they fitted into this dynastic scheme of things.

5 It was natural and perhaps human that the privileged princes of these new economic dynasties, thirsting for power, reached out for control over Government itself. They created a new despotism and wrapped it in the robes of legal sanction. In its service new mercenaries sought to regiment the people, their labor, and their property. And as a result the average man once more confronts the problem that faced the Minute Man.

10 The hours men and women worked, the wages they received, the conditions of their labor—these had passed beyond the control of the people, and were imposed by this new industrial dictatorship. The savings of the average family, the capital of the small business man, the investments set aside for old age—other people's money—these were tools which the new economic royalty used to dig itself in.

15 Those who tilled the soil no longer reaped the rewards which were their right. The small measure of their gains was decreed by men in distant cities.

Throughout the Nation, opportunity was limited by monopoly. Individual initiative was crushed in the cogs of a great machine. The field open for free business was more and more restricted. Private enterprise, indeed, became too private. It became privileged enterprise, not free enterprise.

20 An old English judge once said: "Necessitous men are not free men." Liberty requires opportunity to make a living—a living decent according to the standard of the time, a living which gives man not only enough to live by, but something to live for.

25 For too many of us the political equality we once had won was meaningless in the face of economic inequality. A small group had concentrated into their own hands an almost complete control over other people's property, other people's money, other people's labor—other people's lives. For too many of us life was no longer free; liberty no longer real; men could no longer follow the pursuit of happiness.

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Against economic tyranny such as this, the American citizen could appeal only to the organized power of Government. The collapse of 1929 showed up the despotism for what it was. The election of 1932 was the people's mandate to end it. Under that mandate it is being ended.

5 The royalists of the economic order have conceded that political freedom was the business of the Government, but they have maintained that economic slavery was nobody's business. They granted that the Government could protect the citizen in his right to vote, but they denied that the Government could do anything to protect the citizen in his right to work and his right to live.

10 Today we stand committed to the proposition that freedom is no half-and-half affair. If the average citizen is guaranteed equal opportunity in the polling place, he must have equal opportunity in the market place.

These economic royalists complain that we seek to overthrow the institutions of America. What they really complain of is that we seek to take away their power. Our allegiance to
15 American institutions requires the overthrow of this kind of power. In vain they seek to hide behind the Flag and the Constitution. In their blindness they forget what the Flag and the Constitution stand for. Now, as always, they stand for democracy, not tyranny; for freedom, not subjection; and against a dictatorship by mob rule and the overprivileged alike.

The brave and clear platform adopted by this Convention, to which I heartily subscribe,
20 sets forth that Government in a modern civilization has certain inescapable obligations to its citizens, among which are protection of the family and the home, the establishment of a democracy of opportunity, and aid to those overtaken by disaster.

But the resolute enemy within our gates is ever ready to beat down our words unless in greater courage we will fight for them.

25 For more than three years we have fought for them. This Convention, in every word and deed, has pledged that that fight will go on.

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The defeats and victories of these years have given to us as a people a new understanding of our Government and of ourselves. Never since the early days of the New England town meeting have the affairs of Government been so widely discussed and so clearly appreciated. It has been brought home to us that the only effective guide for the safety of this most
5 worldly of worlds, the greatest guide of all, is moral principle.

We do not see faith, hope and charity as unattainable ideals, but we use them as stout supports of a Nation fighting the fight for freedom in a modern civilization.

Faith—in the soundness of democracy in the midst of dictatorships.

Hope—renewed because we know so well the progress we have made.

- 10 Charity—in the true spirit of that grand old word. For charity literally translated from the original means love, the love that understands, that does not merely share the wealth of the giver, but in true sympathy and wisdom helps men to help themselves.

We seek not merely to make Government a mechanical implement, but to give it the vibrant personal character that is the very embodiment of human charity.

- 15 We are poor indeed if this Nation cannot afford to lift from every recess of American life the dread fear of the unemployed that they are not needed in the world. We cannot afford to accumulate a deficit in the books of human fortitude.

In the place of the palace of privilege we seek to build a temple out of faith and hope and charity.

- 20 It is a sobering thing, my friends, to be a servant of this great cause. We try in our daily work to remember that the cause belongs not to us, but to the people. The standard is not in the hands of you and me alone. It is carried by America. We seek daily to profit from experience, to learn to do better as our task proceeds.

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Governments can err, Presidents do make mistakes, but the immortal Dante tells us that divine justice weighs the sins of the cold-blooded and the sins of the warm-hearted in different scales.

5 Better the occasional faults of a Government that lives in a spirit of charity than the consistent omissions of a Government frozen in the ice of its own indifference.

There is a mysterious cycle in human events. To some generations much is given. Of other generations much is expected. This generation of Americans has a rendezvous with destiny.

10 In this world of ours in other lands, there are some people, who, in times past, have lived and fought for freedom, and seem to have grown too weary to carry on the fight. They have sold their heritage of freedom for the illusion of a living. They have yielded their democracy.

15 I believe in my heart that only our success can stir their ancient hope. They begin to know that here in America we are waging a great and successful war. It is not alone a war against want and destitution and economic demoralization. It is more than that; it is a war for the survival of democracy. We are fighting to save a great and precious form of government for ourselves and for the world.

I accept the commission you have tendered me. I join with you. I am enlisted for the duration of the war.

PRESIDENT FRANKLIN D. ROOSEVELT (D)

Annual Message to Congress

SPEECH EXCERPTS

January 6, 1941
Congress | Washington, D.C.

Four Freedoms Speech

BACKGROUND

President Franklin Roosevelt delivered this state of the union speech to Congress in 1941, later known as the Four Freedoms Speech.

GUIDING QUESTIONS

1. What are the three elements of Roosevelt's national policy at this time?
2. What sacrifices does Roosevelt call on Americans to make at this time?
3. What are the four essential freedoms that Roosevelt introduces?

Franklin Roosevelt, "The Annual Message to the Congress," 6 January 1941, in *The Public Papers and Addresses of Franklin D. Roosevelt*, Vol. 9, ed. Samuel Irving Rosenman (New York: Russell and Russell, 1969), 663-78.

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Mr. President, Mr. Speaker, Members of the Seventy-seventh Congress:

I address you, the Members of the Seventy-seventh 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. . . .

- 5 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, 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 re-
10 member that the Peace of 1919¹ was far less unjust than the kind of “pacification” which began even before Munich,² 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.

- Every realist knows that the democratic way of life is at this moment being directly assailed
15 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. The assailants are still
20 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.

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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, Asia, Africa and Australasia will be dominated by the conquerors. Let us remember that the total of those populations and their resources in those four continents greatly exceeds the sum total of the population and the resources of the whole of the Western Hemisphere – 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. . . .

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 our fellow men within our gates, so our national policy in foreign affairs has been based on a decent respect for the rights and 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 peoples, 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.

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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.

- 5 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. Today it is abundantly evident that American citizens everywhere are demanding and supporting speedy and complete action in recognition of obvious danger.

- 10 Therefore, the immediate need is a swift and driving increase in our armament production.

...

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.

- 15 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 worth fighting for.
- 20

- 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 fiber of our people, have renewed their faith and strengthened their devotion to the institutions we make ready to protect.
- 25

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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.

- 5 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.

- 10 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.

- 15 These are the simple, 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:

- 20 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.

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I have called for personal sacrifice. 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 shall recommend that a greater portion of this great defense program be paid for from
5 taxation than we are paying today. No person should try, or be allowed, to get rich out of this 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 pocket-books, will give you their applause.

10 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.

15 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
20 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.

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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.

5 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 camp³ 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.

10 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 or keep them. Our strength is our unity of purpose. To that high concept there can be no end save victory.

PRESIDENT FRANKLIN D. ROOSEVELT (D)

Message on the State of the Union

SPEECH

January 11, 1944
Congress | Washington, D.C.

BACKGROUND

President Franklin Roosevelt outlined his second or “economic Bill of Rights” while delivering his state of the union address to Congress looking forward to post-war policies.

GUIDING QUESTIONS

1. What does Roosevelt consider our "political rights"?
2. Why are those political rights no longer adequate, according to Roosevelt?
3. How would the government go about securing things such as a right to a decent living or recreation?
4. What or who in America does Roosevelt label as Fascistic?
5. Who is the source for all these rights?

Franklin Roosevelt, “Message on the State of the Union,” 11 January 1944, in *The Public Papers and Addresses of Franklin D. Roosevelt*, Vol. 13, ed. Samuel Irving Rosenman (New York: Harper, 1950), 40-42.

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It is our duty now to begin to lay the plans and determine the strategy for the winning of a lasting peace and the establishment of an American standard of living higher than ever before known. We cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—
5 is ill-fed, ill-clothed, ill-housed, and insecure.

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.

10 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
15 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:

20 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;

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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;

- 5 The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education.

- 10 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.

- 15 One of the great American industrialists of our day—a man who has rendered yeoman service to his country in this crisis—recently emphasized the grave dangers of "rightist reaction" in this Nation. All clear-thinking businessmen share his concern. Indeed, if such reaction should develop—if history were to repeat itself and we were to return to the so-called "normalcy" of the 1920's—then it is certain that even though we shall have conquered our enemies on the battlefields abroad, we shall have yielded to the spirit of Fascism here
20 at home.

I ask the Congress to explore the means for implementing this economic bill of rights—for it is definitely the responsibility of the Congress so to do. Many of these problems are already before committees of the Congress in the form of proposed legislation. I shall from time to time communicate with the Congress with respect to these and further proposals.

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In the event that no adequate program of progress is evolved, I am certain that the Nation will be conscious of the fact.

Our fighting men abroad—and their families at home—expect such a program and have the right to insist upon it. It is to their demands that this Government should pay heed
5 rather than the whining demands of selfish pressure groups who seek to feather their nests while young Americans are dying.

The foreign policy that we have been following—the policy that guided us at Moscow, Cairo, and Teheran—is based on the common sense principle which was best expressed by Benjamin Franklin on July 4, 1776: "We must all hang together, or assuredly we shall all
10 hang separately."

I have often said that there are no two fronts for America in this war. There is only one front. There is one line of unity which extends from the hearts of the people at home to the men of our attacking forces in our farthest outposts. When we speak of our total effort, we speak of the factory and the field, and the mine as well as of the battleground—we speak of
15 the soldier and the civilian, the citizen and his Government.

Each and every one of us has a solemn obligation under God to serve this Nation in its most critical hour—to keep this Nation great—to make this Nation greater in a better world.

PRESIDENT LYNDON B. JOHNSON (D)

Remarks at the University of Michigan

SPEECH

May 22, 1964

Michigan Stadium | Ann Arbor, Michigan

BACKGROUND

President Lyndon Johnson delivered this address to the graduating class of 1964 at the University of Michigan.

GUIDING QUESTIONS

1. What are the features of Johnson's "Great Society"?
2. What ills does Johnson see in America that necessitate such a program?

Lyndon B. Johnson, "Remarks at the University of Michigan," 22 May 1964, in *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1963-64*, Vol. 1 (Washington, D.C.: Government Printing Office, 1965), 704-07.

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President Hatcher, Governor Romney, Senators McNamara and Hart, Congressmen Meader and Staebler, and other members of the fine Michigan delegation, members of the graduating class, my fellow Americans:

It is a great pleasure to be here today. This university has been coeducational since 1870,
5 but I do not believe it was on the basis of your accomplishments that a Detroit high school girl said, "In choosing a college, you first have to decide whether you want a coeducational school or an educational school."

Well, we can find both here at Michigan, although perhaps at different hours.

10 I came out here today very anxious to meet the Michigan student whose father told a friend of mine that his son's education had been a real value. It stopped his mother from bragging about him.

I have come today from the turmoil of your Capital to the tranquility of your campus to speak about the future of your country.

15 The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation.

For a century we labored to settle and to subdue a continent. For half a century we called upon unbounded invention and untiring industry to create an order of plenty for all of our people.

20 The challenge of the next half century is whether we have the wisdom to use that wealth to enrich and elevate our national life, and to advance the quality of our American civilization.

Your imagination, your initiative, and your indignation will determine whether we build a society where progress is the servant of our needs, or a society where old values and new visions are buried under unbridled growth. For in your time we have the opportunity to

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move not only toward the rich society and the powerful society, but upward to the Great Society.

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning.

5 The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness. It is a place where the city of man serves not only the needs of the body and the demands of commerce but the desire for beauty and the hunger for community.

10 It is a place where man can renew contact with nature. It is a place which honors creation for its own sake and for what it adds to the understanding of the race. It is a place where men are more concerned with the quality of their goals than the quantity of their goods.

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where
15 the meaning of our lives matches the marvelous products of our labor.

So I want to talk to you today about three places where we begin to build the Great Society--in our cities, in our countryside, and in our classrooms.

Many of you will live to see the day, perhaps 50 years from now, when there will be 400 million Americans four-fifths of them in urban areas. In the remainder of this century urban
20 population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must rebuild the entire urban United States.

Aristotle said: "Men come together in cities in order to live, but they remain together in order to live the good life." It is harder and harder to live the good life in American cities
25 today.

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The catalog of ills is long: there is the decay of the centers and the despoiling of the suburbs. There is not enough housing for our people or transportation for our traffic. Open land is vanishing and old landmarks are violated.

5 Worst of all expansion is eroding the precious and time honored values of community with neighbors and communion with nature. The loss of these values breeds loneliness and boredom and indifference.

Our society will never be great until our cities are great. Today the frontier of imagination and innovation is inside those cities and not beyond their borders.

10 New experiments are already going on. It will be the task of your generation to make the American city a place where future generations will come, not only to live but to live the good life.

I understand that if I stayed here tonight I would see that Michigan students are really doing their best to live the good life.

15 This is the place where the Peace Corps was started. It is inspiring to see how all of you, while you are in this country, are trying so hard to live at the level of the people.

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution. Our parks are overcrowded, our
20 seashores overburdened. Green fields and dense forests are disappearing.

A few years ago we were greatly concerned about the "Ugly American." Today we must act to prevent an ugly America.

For once the battle is lost, once our natural splendor is destroyed, it can never be recaptured. And once man can no longer walk with beauty or wonder at nature his spirit will
25 wither and his sustenance be wasted.

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A third place to build the Great Society is in the classrooms of America. There your children's lives will be shaped. Our society will not be great until every young mind is set free to scan the farthest reaches of thought and imagination. We are still far from that goal.

5 Today, 8 million adult Americans, more than the entire population of Michigan, have not finished 5 years of school. Nearly 20 million have not finished 8 years of school. Nearly 54 million--more than one-quarter of all America--have not even finished high school.

Each year more than 100,000 high school graduates, with proved ability, do not enter college because they cannot afford it. And if we cannot educate today's youth, what will we do in 1970 when elementary school enrollment will be 5 million greater than 1960? And high
10 school enrollment will rise by 5 million. College enrollment will increase by more than 3 million.

In many places, classrooms are overcrowded and curricula are outdated. Most of our qualified teachers are underpaid, and many of our paid teachers are unqualified. So we must give every child a place to sit and a teacher to learn from. Poverty must not be a bar to
15 learning, and learning must offer an escape from poverty.

But more classrooms and more teachers are not enough. We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of
20 learning and the capacity for creation.

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

But I do promise this: We are going to assemble the best thought and the broadest
25 knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings-on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from

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these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society.

The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority. They require us to create new
5 concepts of cooperation, a creative federalism, between the National Capital and the leaders of local communities.

Woodrow Wilson once wrote: "Every man sent out from his university should be a man of his Nation as well as a man of his time."

10 Within your lifetime powerful forces, already loosed, will take us toward a way of life beyond the realm of our experience, almost beyond the bounds of our imagination.

For better or for worse, your generation has been appointed by history to deal with those problems and to lead America toward a new age. You have the chance never before afforded to any people in any age. You can help build a society where the demands of morality, and the needs of the spirit, can be realized in the life of the Nation.

15 So, will you join in the battle to give every citizen the full equality which God enjoins and the law requires, whatever his belief, or race, or the color of his skin?

Will you join in the battle to give every citizen an escape from the crushing weight of poverty?

20 Will you join in the battle to make it possible for all nations to live in enduring peace--as neighbors and not as mortal enemies ?

Will you join in the battle to build the Great Society, to prove that our material progress is only the foundation on which we will build a richer life of mind and spirit?

There are those timid souls who say this battle cannot be won; that we are condemned to a soulless wealth. I do not agree. We have the power to shape the civilization that we want.

25 But we need your will, your labor, your hearts, if we are to build that kind of society.

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Those who came to this land sought to build more than just a new country. They sought a new world. So I have come here today to your campus to say that you can make their vision our reality. So let us from this moment begin our work so that in the future men will look back and say: It was then, after a long and weary way, that man turned the exploits of his
5 genius to the full enrichment of his life.

Thank you. Goodbye.

PRESIDENT CALVIN COOLIDGE (R)

The Inspiration of the Declaration of Independence

SPEECH

July 5, 1926
Philadelphia, Pennsylvania

BACKGROUND

President Calvin Coolidge delivered this speech at Philadelphia to celebrate the one hundred and fiftieth anniversary of the signing of the Declaration of Independence and the founding of the United States.

GUIDING QUESTIONS

1. What theories and principles does Coolidge say need to be reaffirmed and reestablished?
2. What kind of people were the American revolutionaries, according to Coolidge?
3. Who was the great apostle of the sovereignty of the people in the colonial clergy?
4. What is the relationship between government and ideals according to Coolidge?
5. According to Coolidge, why are Progressives not truly proponents of progress when they reject the principles of the American founding?

Calvin Coolidge, "The Inspiration of the Declaration," in *Foundations of the Republic: Speeches and Addresses* (New York: Scribner's Sons, 1926), 441–54.

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We meet to celebrate the birthday of America. The coming of a new life always excites our interest. Although we know in the case of the individual that it has been an infinite repetition reaching back beyond our vision, that only makes it the more wonderful. But how our interest and wonder increase when we behold the miracle of the birth of a new nation. It is
5 to pay our tribute of reverence and respect to those who participated in such a mighty event that we annually observe the fourth day of July. Whatever may have been the impression created by the news which went out from this city on that summer day in 1776, there can be no doubt as to the estimate which is now placed upon it. At the end of 150 years the four corners of the earth unite in coming to Philadelphia as to a holy shrine in grateful acknowl-
10 edgement of a service so great, which a few inspired men here rendered to humanity, that it is still the preeminent support of free government throughout the world.

Although a century and a half measured in comparison with the length of human experience is but a short time, yet measured in the life of governments and nations it ranks as a very respectable period. Certainly enough time has elapsed to demonstrate with a great deal
15 of thoroughness the value of our institutions and their dependability as rules for the regulation of human conduct and the advancement of civilization. They have been in existence long enough to become very well seasoned. They have met, and met successfully, the test of experience.

It is not so much then for the purpose of undertaking to proclaim new theories and prin-
20 ciples that this annual celebration is maintained, but rather to reaffirm and reestablish those old theories and principles which time and the unerring logic of events have demonstrated to be sound. Amid all the clash of conflicting interests, amid all the welter of partisan politics, every American can turn for solace and consolation to the Declaration of Independence and the Constitution of the United States with the assurance and confidence that
25 those two great charters of freedom and justice remain firm and unshaken. Whatever perils appear, whatever dangers threaten, the Nation remains secure in the knowledge that the ultimate application of the law of the land will provide an adequate defense and protection.

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It is little wonder that people at home and abroad consider Independence Hall as hallowed ground and revere the Liberty Bell as a sacred relic. That pile of bricks and mortar, that mass of metal, might appear to the uninstructed as only the outgrown meeting place and the shattered bell of a former time, useless now because of more modern conveniences, but to those who know they have become consecrated by the use which men have made of them. They have long been identified with a great cause. They are the framework of a spiritual event. The world looks upon them, because of their associations of one hundred and fifty years ago, as it looks upon the Holy Land because of what took place there nineteen hundred years ago. Through use for a righteous purpose they have become sanctified.

10 It is not here necessary to examine in detail the causes which led to the American Revolution. In their immediate occasion they were largely economic. The colonists objected to the navigation laws which interfered with their trade, they denied the power of Parliament to impose taxes which they were obliged to pay, and they therefore resisted the royal governors and the royal forces which were sent to secure obedience to these laws. But the conviction is inescapable that a new civilization had come, a new spirit had arisen on this side of the Atlantic more advanced and more developed in its regard for the rights of the individual than that which characterized the Old World. Life in a new and open country had aspirations which could not be realized in any subordinate position. A separate establishment was ultimately inevitable. It had been decreed by the very laws of human nature. Man everywhere has an unconquerable desire to be the master of his own destiny.

We are obliged to conclude that the Declaration of Independence represented the movement of a people. It was not, of course, a movement from the top. Revolutions do not come from that direction. It was not without the support of many of the most respectable people in the Colonies, who were entitled to all the consideration that is given to breeding, education, and possessions. It had the support of another element of great significance and importance to which I shall later refer. But the preponderance of all those who occupied a position which took on the aspect of aristocracy did not approve of the Revolution and held toward it an attitude either of neutrality or open hostility. It was in no sense a rising of the oppressed and downtrodden. It brought no scum to the surface, for the reason that colonial

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society had developed no scum. The great body of the people were accustomed to privations, but they were free from depravity. If they had poverty, it was not of the hopeless kind that afflicts great cities, but the inspiring kind that marks the spirit of the pioneer. The American Revolution represented the informed and mature convictions of a great mass of independent, liberty-loving, God-fearing people who knew their rights, and possessed the courage to dare to maintain them.

The Continental Congress was not only composed of great men, but it represented a great people. While its members did not fail to exercise a remarkable leadership, they were equally observant of their representative capacity. They were industrious in encouraging their constituents to instruct them to support independence. But until such instructions were given they were inclined to withhold action.

While North Carolina has the honor of first authorizing its delegates to concur with other Colonies in declaring independence, it was quickly followed by South Carolina and Georgia, which also gave general instructions broad enough to include such action. But the first instructions which unconditionally directed its delegates to declare for independence came from the great Commonwealth of Virginia. These were immediately followed by Rhode Island and Massachusetts, while the other Colonies, with the exception of New York, soon adopted a like course.

This obedience of the delegates to the wishes of their constituents, which in some cases caused them to modify their previous positions, is a matter of great significance. It reveals an orderly process of government in the first place; but more than that, it demonstrates that the Declaration of Independence was the result of the seasoned and deliberate thought of the dominant portion of the people of the Colonies. Adopted after long discussion and as the result of the duly authorized expression of the preponderance of public opinion, it did not partake of dark intrigue or hidden conspiracy. It was well advised. It had about it nothing of the lawless and disordered nature of a riotous insurrection. It was maintained on a plane which rises above the ordinary conception of rebellion. It was in no sense a radical movement but took on the dignity of a resistance to illegal usurpations. It was conservative

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and represented the action of the colonists to maintain their constitutional rights which from time immemorial had been guaranteed to them under the law of the land.

When we come to examine the action of the Continental Congress in adopting the Declaration of Independence in the light of what was set out in that great document and in the
5 light of succeeding events, we can not escape the conclusion that it had a much broader and deeper significance than a mere secession of territory and the establishment of a new nation. Events of that nature have been taking place since the dawn of history. One empire after another has arisen, only to crumble away as its constituent parts separated from each other and set up independent governments of their own. Such actions long ago became
10 commonplace. They have occurred too often to hold the attention of the world and command the admiration and reverence of humanity. There is something beyond the establishment of a new nation, great as that event would be, in the Declaration of Independence which has ever since caused it to be regarded as one of the great charters that not only was to liberate America but was everywhere to ennoble humanity.

15 It was not because it was proposed to establish a new nation, but because it was proposed to establish a nation on new principles, that July 4, 1776, has come to be regarded as one of the greatest days in history. Great ideas do not burst upon the world unannounced. They are reached by a gradual development over a length of time usually proportionate to their importance. This is especially true of the principles laid down in the Declaration of Inde-
20 pendence. Three very definite propositions were set out in its preamble regarding the nature of mankind and therefore of government. These were the doctrine that all men are created equal, that they are endowed with certain inalienable rights, and that therefore the source of the just powers of government must be derived from the consent of the governed.

If no one is to be accounted as born into a superior station, if there is to be no ruling class,
25 and if all possess rights which can neither be bartered away nor taken from them by any earthly power, it follows as a matter of course that the practical authority of the Government has to rest on the consent of the governed. While these principles were not altogether new in political action, and were very far from new in political speculation, they had never

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been assembled before and declared in such a combination. But remarkable as this may be, it is not the chief distinction of the Declaration of Independence. The importance of political speculation is not to be underestimated, as I shall presently disclose. Until the idea is developed and the plan made there can be no action.

- 5 It was the fact that our Declaration of Independence containing these immortal truths was the political action of a duly authorized and constituted representative public body in its sovereign capacity, supported by the force of general opinion and by the armies of Washington already in the field, which makes it the most important civil document in the world. It was not only the principles declared, but the fact that therewith a new nation was born
10 which was to be founded upon those principles and which from that time forth in its development has actually maintained those principles, that makes this pronouncement an incomparable event in the history of government. It was an assertion that a people had arisen determined to make every necessary sacrifice for the support of these truths and by their practical application bring the War of Independence to a successful conclusion and
15 adopt the Constitution of the United States with all that it has meant to civilization.

- The idea that the people have a right to choose their own rulers was not new in political history. It was the foundation of every popular attempt to depose an undesirable king. This right was set out with a good deal of detail by the Dutch when as early as July 26, 1581, they declared their independence of Philip of Spain. In their long struggle with the Stuarts the
20 British people asserted the same principles, which finally culminated in the Bill of Rights deposing the last of that house and placing William and Mary on the throne. In each of these cases sovereignty through divine right was displaced by sovereignty through the consent of the people. Running through the same documents, though expressed in different terms, is the clear inference of inalienable rights. But we should search these charters in
25 vain for an assertion of the doctrine of equality. This principle had not before appeared as an official political declaration of any nation. It was profoundly revolutionary. It is one of the corner stones of American institutions.

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But if these truths to which the declaration refers have not before been adopted in their combined entirety by national authority, it is a fact that they had been long pondered and often expressed in political speculation. It is generally assumed that French thought had some effect upon our public mind during Revolutionary days. This may have been true.

5 But the principles of our declaration had been under discussion in the Colonies for nearly two generations before the advent of the French political philosophy that characterized the middle of the eighteenth century. In fact, they come from an earlier date. A very positive echo of what the Dutch had done in 1581, and what the English were preparing to do, appears in the assertion of the Reverend Thomas Hooker of Connecticut as early as 1638,
10 when he said in a sermon before the General Court that—

“The foundation of authority is laid in the free consent of the people.

“The choice of public magistrates belongs unto the people by God’s own allowance.”

This doctrine found wide acceptance among the nonconformist clergy who later made up the Congregational Church. The great apostle of this movement was the Reverend John

15 Wise, of Massachusetts. He was one of the leaders of the revolt against the royal governor Andros in 1687, for which he suffered imprisonment. He was a liberal in ecclesiastical controversies. He appears to have been familiar with the writings of the political scientist, Samuel Pufendorf, who was born in Saxony in 1632. Wise published a treatise, entitled “The Church’s Quarrel Espoused,” in 1710, which was amplified in another publication in 1717.
20 In it he dealt with the principles of civil government. His works were reprinted in 1772 and have been declared to have been nothing less than a textbook of liberty for our Revolutionary fathers.

While the written word was the foundation, it is apparent that the spoken word was the vehicle for convincing the people. This came with great force and wide range from the successors of Hooker and Wise. It was carried on with a missionary spirit which did not fail to
25 reach the Scotch-Irish of North Carolina, showing its influence by significantly making that

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Colony the first to give instructions to its delegates looking to independence. This preaching reached the neighborhood of Thomas Jefferson, who acknowledged that his “best ideas of democracy” had been secured at church meetings.

5 That these ideas were prevalent in Virginia is further revealed by the Declaration of Rights, which was prepared by George Mason and presented to the general assembly on May 27, 1776. This document asserted popular sovereignty and inherent natural rights, but confined the doctrine of equality to the assertion that “All men are created equally free and independent.” It can scarcely be imagined that Jefferson was unacquainted with what had been done in his own Commonwealth of Virginia when he took up the task of drafting the
10 Declaration of Independence. But these thoughts can very largely be traced back to what John Wise was writing in 1710. He said, “Every man must be acknowledged equal to every man.” Again, “The end of all good government is to cultivate humanity and promote the happiness of all and the good of every man in all his rights, his life, liberty, estate, honor, and so forth....”

15 And again, “For as they have a power every man in his natural state, so upon combination they can and do bequeath this power to others and settle it according as their united discretion shall determine.” And still again, “Democracy is Christ’s government in church and state.” Here was the doctrine of equality, popular sovereignty, and the substance of the theory of inalienable rights clearly asserted by Wise at the opening of the eighteenth century, just as we have the principle of the consent of the governed stated by Hooker as early
20 as 1638.

When we take all these circumstances into consideration, it is but natural that the first paragraph of the Declaration of Independence should open with a reference to Nature’s God and should close in the final paragraphs with an appeal to the Supreme Judge of the world
25 and an assertion of a firm reliance on Divine Providence. Coming from these sources, having as it did this background, it is no wonder that Samuel Adams could say “The people seem to recognize this resolution as though it were a decree promulgated from heaven.”

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No one can examine this record and escape the conclusion that in the great outline of its principles the Declaration was the result of the religious teachings of the preceding period. The profound philosophy which Jonathan Edwards applied to theology, the popular preaching of George Whitefield, had aroused the thought and stirred the people of the Colonies in preparation for this great event. No doubt the speculations which had been going on in England, and especially on the Continent, lent their influence to the general sentiment of the times. Of course, the world is always influenced by all the experience and all the thought of the past. But when we come to a contemplation of the immediate conception of the principles of human relationship which went into the Declaration of Independence we are not required to extend our search beyond our own shores. They are found in the texts, the sermons, and the writings of the early colonial clergy who were earnestly undertaking to instruct their congregations in the great mystery of how to live. They preached equality because they believed in the fatherhood of God and the brotherhood of man. They justified freedom by the text that we are all created in the divine image, all partakers of the divine spirit.

Placing every man on a plane where he acknowledged no superiors, where no one possessed any right to rule over him, he must inevitably choose his own rulers through a system of self-government. This was their theory of democracy. In those days such doctrines would scarcely have been permitted to flourish and spread in any other country. This was the purpose which the fathers cherished. In order that they might have freedom to express these thoughts and opportunity to put them into action, whole congregations with their pastors had migrated to the colonies. These great truths were in the air that our people breathed. Whatever else we may say of it, the Declaration of Independence was profoundly American.

If this apprehension of the facts be correct, and the documentary evidence would appear to verify it, then certain conclusions are bound to follow. A spring will cease to flow if its source be dried up; a tree will wither if its roots be destroyed. In its main features the Declaration of Independence is a great spiritual document. It is a declaration not of material but of spiritual conceptions. Equality, liberty, popular sovereignty, the rights of man—these

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are not elements which we can see and touch. They are ideals. They have their source and their roots in the religious convictions. They belong to the unseen world. Unless the faith of the American people in these religious convictions is to endure, the principles of our Declaration will perish. We can not continue to enjoy the result if we neglect and abandon
5 the cause.

We are too prone to overlook another conclusion. Governments do not make ideals, but ideals make governments. This is both historically and logically true. Of course the government can help to sustain ideals and can create institutions through which they can be the better observed, but their source by their very nature is in the people. The people have to
10 bear their own responsibilities. There is no method by which that burden can be shifted to the government. It is not the enactment, but the observance of laws, that creates the character of a nation.

About the Declaration there is a finality that is exceedingly restful. It is often asserted that the world has made a great deal of progress since 1776, that we have had new thoughts and
15 new experiences which have given us a great advance over the people of that day, and that we may therefore very well discard their conclusions for something more modern. But that reasoning can not be applied to this great charter. If all men are created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just powers from the consent of the governed, that is final. No advance, no progress can be
20 made beyond these propositions. If anyone wishes to deny their truth or their soundness, the only direction in which he can proceed historically is not forward, but backward toward the time when there was no equality, no rights of the individual, no rule of the people. Those who wish to proceed in that direction can not lay claim to progress. They are reactionary. Their ideas are not more modern, but more ancient, than those of the Revolution-
25 ary fathers.

In the development of its institutions America can fairly claim that it has remained true to the principles which were declared 150 years ago. In all the essentials we have achieved an equality which was never possessed by any other people. Even in the less important matter

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of material possessions we have secured a wider and wider distribution of wealth. The rights of the individual are held sacred and protected by constitutional guarantees, which even the Government itself is bound not to violate. If there is any one thing among us that is established beyond question, it is self-government—the right of the people to rule. If
5 there is any failure in respect to any of these principles, it is because there is a failure on the part of individuals to observe them. We hold that the duly authorized expression of the will of the people has a divine sanction. But even in that we come back to the theory of John Wise that “Democracy is Christ’s government....” The ultimate sanction of law rests on the righteous authority of the Almighty.

10 On an occasion like this a great temptation exists to present evidence of the practical success of our form of democratic republic at home and the ever-broadening acceptance it is securing abroad. Although these things are well known, their frequent consideration is an encouragement and an inspiration. But it is not results and effects so much as sources and causes that I believe it is even more necessary constantly to contemplate. Ours is a govern-
15 ment of the people. It represents their will. Its officers may sometimes go astray, but that is not a reason for criticizing the principles of our institutions. The real heart of the American Government depends upon the heart of the people. It is from that source that we must look for all genuine reform. It is to that cause that we must ascribe all our results.

It was in the contemplation of these truths that the fathers made their declaration and
20 adopted their Constitution. It was to establish a free government, which must not be permitted to degenerate into the unrestrained authority of a mere majority or the unbridled weight of a mere influential few. They undertook the balance these interests against each other and provide the three separate independent branches, the executive, the legislative, and the judicial departments of the Government, with checks against each other in order
25 that neither one might encroach upon the other. These are our guarantees of liberty. As a result of these methods enterprise has been duly protected from confiscation, the people have been free from oppression, and there has been an ever-broadening and deepening of the humanities of life.

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Under a system of popular government there will always be those who will seek for political preferment by clamoring for reform. While there is very little of this which is not sincere, there is a large portion that is not well informed. In my opinion very little of just criticism can attach to the theories and principles of our institutions. There is far more danger of
5 harm than there is hope of good in any radical changes. We do need a better understanding and comprehension of them and a better knowledge of the foundations of government in general. Our forefathers came to certain conclusions and decided upon certain courses of action which have been a great blessing to the world. Before we can understand their conclusions we must go back and review the course which they followed. We must think the
10 thoughts which they thought. Their intellectual life centered around the meeting-house. They were intent upon religious worship. While there were always among them men of deep learning, and later those who had comparatively large possessions, the mind of the people was not so much engrossed in how much they knew, or how much they had, as in how they were going to live. While scantily provided with other literature, there was a wide
15 acquaintance with the Scriptures. Over a period as great as that which measures the existence of our independence they were subject to this discipline not only in their religious life and educational training, but also in their political thought. They were a people who came under the influence of a great spiritual development and acquired a great moral power.

No other theory is adequate to explain or comprehend the Declaration of Independence. It
20 is the product of the spiritual insight of the people. We live in an age of science and of abounding accumulation of material things. These did not create our Declaration. Our Declaration created them. The things of the spirit come first. Unless we cling to that, all our material prosperity, overwhelming though it may appear, will turn to a barren scepter in our grasp. If we are to maintain the great heritage which has been bequeathed to us, we
25 must be like-minded as the fathers who created it. We must not sink into a pagan materialism. We must cultivate the reverence which they had for the things that are holy. We must follow the spiritual and moral leadership which they showed. We must keep replenished, that they may glow with a more compelling flame, the altar fires before which they worshipped.

RONALD REAGAN

A Time for Choosing

SPEECH

October 27, 1964

Televised

BACKGROUND

Former actor and President of the Screen Actors Guild Ronald Reagan gave this television speech in support of Republican presidential candidate Barry Goldwater's 1964 campaign a week before the election.

GUIDING QUESTIONS

1. What are the freedoms intended by the Founding Fathers, according to Reagan?
2. Why does Reagan bring up the example of the divorced woman?
3. What is Reagan's critique of the United Nations?
4. How have Americans lost many of their Constitutional freedoms, according to Reagan?
5. With what does Reagan contrast the policy of appeasement?

Ronald Reagan, "A Time for Choosing," 27 October 1964, in *A Time for Choosing: The Speeches of Ronald Reagan, 1961–1982*, ed. Alfred A. Bolitzer, et al. (Chicago: Regnery, 1983), 41–57.

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I am going to talk of controversial things. I make no apology for this. I have been talking on this subject for ten years, obviously under the administration of both parties. I mention this only because it seems impossible to legitimately debate the issues of the day without being subjected to name-calling and the application of labels. Those who deplore use of the terms “pink” and “leftist” are themselves guilty of branding all who oppose their liberalism as right wing extremists. How long can we afford the luxury of this family fight when we are at war with the most dangerous enemy ever known to man?

If we lose that war, and in so doing lose our freedom, it has been said history will record with the greatest astonishment that those who had the most to lose did the least to prevent its happening. The guns are silent in this war but frontiers fall while those who should be warriors prefer neutrality. Not too long ago two friends of mine were talking to a Cuban refugee. He was a businessman who had escaped from Castro. In the midst of his tale of horrible experiences, one of my friends turned to the other and said, “We don’t know how lucky we are.” The Cuban stopped and said, “How lucky you are? I had some place to escape to.” And in that sentence he told the entire story. If freedom is lost here there is no place to escape to.

It’s time we asked ourselves if we still know the freedoms intended for us by the Founding Fathers. James Madison said, “We base all our experiments on the capacity of mankind for self-government.” This idea that government was beholden to the people, that it had no other source of power except the sovereign people, is still the newest, most unique idea in all the long history of man’s relation to man. For almost two centuries we have proved man’s capacity for self-government, but today we are told we must choose between a left and a right or, as others suggest, a third alternative, a kind of safe middle ground. I suggest to you there is no left or right, only an up or down. Up to the maximum of individual freedom consistent with law and order, or down to the ant heap of totalitarianism; and regardless of their humanitarian purpose those who would sacrifice freedom for security have, whether they know it or not, chosen this downward path. Plutarch warned, “The real destroyer of the liberties of the people is he who spreads among them bounties, donations, and benefits.”

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Today there is an increasing number who can't see a fat man standing beside a thin one without automatically coming to the conclusion the fat man got that way by taking advantage of the thin one. So they would seek the answer to all the problems of human need through government. Howard K. Smith of television fame has written, "The profit motive is outmoded. It must be replaced by the incentives of the welfare state." He says, "The distribution of goods must be effected by a planned economy."

Another articulate spokesman for the welfare state defines liberalism as meeting the material needs of the masses through the full power of centralized government. I for one find it disturbing when a representative refers to the free men and women of this country as the masses, but beyond this the full power of centralized government was the very thing the Founding Fathers sought to minimize. They knew you don't control things; you can't control the economy without controlling people. So we have come to a time for choosing. Either we accept the responsibility for our own destiny, or we abandon the American Revolution and confess that an intellectual belief in a far-distant capitol can plan our lives for us better than we can plan them ourselves.

Already the hour is late. Government has laid its hand on health, housing, farming, industry, commerce, education, and, to an ever-increasing degree, interferes with the people's right to know. Government tends to grow; government programs take on weight and momentum, as public servants say, always with the best of intentions, "What greater service we could render if only we had a little more money and a little more power." But the truth is that outside of its legitimate function, government does nothing as well or as economically as the private sector of the economy. What better example do we have of this than government's involvement in the farm economy over the last thirty years. One-fourth of farming has seen a steady decline in the per capita consumption of everything it produces. That one-fourth is regulated and subsidized by government.

In contrast, the three-fourths of farming unregulated and unsubsidized has seen a twenty-one percent increase in the per capita consumption of all its produce. Since 1955 the cost of the farm program has nearly doubled. Direct payment to farmers is eight times as great

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as it was nine years ago, but farm income remains unchanged while farm surplus is bigger. In that same period we have seen a decline of five million in the farm population, but an increase in the number of Department of Agriculture employees.

5 There is now one such employee for every thirty farms in the United States, and still they can't figure how sixty-six shiploads of grain headed for Austria could disappear without a trace, and Billy Sol Estes never left shore. Three years ago the government put into effect a program to curb the over-production of feed grain. Now, two and a half billion dollars later, the corn crop is one hundred million bushels bigger than before the program started. And the cost of the program prorates out to forty-three dollars for every dollar bushel of corn
10 we don't grow. Nor is this the only example of the price we pay for government meddling. Some government programs with the passage of time take on a sacrosanct quality.

One such considered above criticism, sacred as motherhood, is TVA. This program started as a flood control project; the Tennessee Valley was periodically ravaged by destructive floods. The Army Engineers set out to solve this problem. They said that it was possible
15 that once in 500 years there could be a total capacity flood that would inundate some six hundred thousand acres. Well, the engineers fixed that. They made a permanent lake which inundated a million acres. This solved the problem of floods, but the annual interest on the TVA debt is five times as great as the annual flood damage they sought to correct.

Of course, you will point out that TVA gets electric power from the impounded waters, and
20 this is true, but today eighty-five percent of TVA's electricity is generated in coal-burning steam plants. Now perhaps you'll charge that I'm overlooking the navigable waterway that was created, providing cheap barge traffic, but the bulk of the freight barged on that waterway is coal being shipped to the TVA steam plants, and the cost of maintaining that channel each year would pay for shipping all of the coal by rail, and there would be money left over.

25 One last argument remains: the prosperity produced by such large programs of government spending. Certainly there are few areas where more spending has taken place. The Labor department lists fifty percent of the 169 counties in the Tennessee Valley as permanent areas of poverty, distress, and unemployment.

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Meanwhile, back in the city, under Urban Renewal, the assault on freedom carries on. Private property rights have become so diluted that public interest is anything a few planners decide it should be. In Cleveland, Ohio, to get a project under way, city officials reclassified eighty-four buildings as substandard in spite of the fact their own inspectors had previously pronounced these buildings sound. The owners stood by and watched twenty-six million dollars worth of property as it was destroyed by the headache ball. Senate Bill 628 says: “Any property, be it home or commercial structure, can be declared slum or blighted and the owner has no recourse at law. The Law Division of the Library of Congress and the General Accounting Office have said that the Courts will have to rule against the owner.”

- 10 Housing. In one key Eastern city a man owning a blighted area sold his property to Urban Renewal for several million dollars. At the same time, he submitted his own plan for the rebuilding of this area and the government sold him back his own property for twenty-two percent of what they paid. Now the government announces, “We are going to build subsidized housing in the thousands where we have been building in the hundreds.” At the same
- 15 time FHA and the Veterans Administration reveal they are holding 120 thousand housing units reclaimed from mortgage foreclosure, mostly because the low down payment and the easy terms brought the owners to a point where they realized the unpaid balance on the homes amounted to a sum greater than the homes were worth, so they just walked out the front door, possibly to take up residence in newer subsidized housing, again with little or
- 20 no down payment and easy terms.

Some of the foreclosed homes have already been bulldozed into the earth, others, it has been announced, will be refurbished and put on sale for down payments as low as \$100 and thirty-five years to pay. This will give the bulldozers a second crack. It is in the area of social welfare that government has found its most fertile growing bed. So many of us accept our

25 responsibility for those less fortunate. We are susceptible to humanitarian appeals.

Federal welfare spending is today ten times greater than it was in the dark depths of the Depression. Federal, state, and local welfare combined spend forty-five billion dollars a

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year. Now the government has announced that twenty percent, some 9.3 million families, are poverty-stricken on the basis that they have less than a \$3,000 a year income.

If this present welfare spending was prorated equally among these poverty-stricken families, we could give each family more than \$4,500 a year. Actually, direct aid to the poor averages less than \$600 per family. There must be some administrative overhead somewhere. Now, are we to believe that another billion dollar program added to the half a hundred programs and the forty-five billion dollars, will, through some magic, end poverty? For three decades we have tried to solve unemployment by government planning, without success. The more the plans fail, the more the planners plan.

- 10 The latest is the Area Redevelopment Agency, and in two years less than one-half of one percent of the unemployed could attribute new jobs to this agency, and the cost to the taxpayer for each job found was \$5,000. But beyond the great bureaucratic waste, what are we doing to the people we seek to help?

- 15 Recently a judge told me of an incident in his court. A fairly young woman with six children, pregnant with her seventh, came to him for a divorce. Under his questioning it became apparent her husband did not share this desire. Then the whole story came out. Her husband was a laborer earning \$250 a month. By divorcing him she could get an eighty dollars raise. She was eligible for \$350 a month from the Aid to Dependent Children Program. She had been talked into the divorce by two friends who had already done this very thing. But any time we question the schemes of the do-gooders, we are denounced as being opposed to their humanitarian goal. It seems impossible to legitimately debate their solutions with the assumption that all of us share the desire to help those less fortunate. They tell us we are always against, never for anything. Well, it isn't so much that liberals are ignorant. It's just that they know so much that isn't so.

- 25 We are for a provision that destitution should not follow unemployment by reason of old age. For that reason we have accepted Social Security as a step toward meeting that problem. However, we are against the irresponsibility of those who charge that any criticism or

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suggested improvement of the program means we want to end payment to those who depend on Social Security for a livelihood.

Fiscal Irresponsibility. We have been told in millions of pieces of literature and press releases that Social Security is an insurance program, but the executives of Social Security appeared before the Supreme Court in the case of *Nestor v. Fleming* and proved to the Court's satisfaction that it is not insurance but is a welfare program, and Social Security dues are a tax for the general use of the government. Well it can't be both: insurance and welfare. Later, appearing before a Congressional Committee, they admitted that Social Security is today 298 billion dollars in the red. This fiscal irresponsibility has already caught up with us.

Faced with a bankruptcy, we find that today a young man in his early twenties, going to work at less than an average salary, will, with his employer, pay into Social Security an amount which could provide the young man with a retirement insurance policy guaranteeing \$220 a month at age sixty-five, and the government promises him \$127.

Now, are we so lacking in business sense that we cannot put this program on a sound actuarial basis, so that those who do depend on it won't come to the cupboard and find it bare, and at the same time can't we introduce voluntary features so that those who can make better provision for themselves are allowed to do so? Incidentally, we might also allow participants in Social Security to name their own beneficiaries, which they cannot do in the present program. These are not insurmountable problems.

Youth Aid Plans. We have today thirty million workers protected by industrial and union pension funds that are soundly financed by some seventy billion dollars invested in corporate securities and income earning real estate. I think we are for telling our senior citizens that no one in this country should be denied medical care for lack of funds, but we are against forcing all citizens into a compulsory government program regardless of need. Now the government has turned its attention to our young people, and suggests that it can solve the problem of school dropouts and juvenile delinquency through some kind of revival of the old C.C.C. camps. The suggested plan prorates out to a cost of \$4,700 a year for each

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young person we want to help. We can send them to Harvard for \$2,700 a year. Of course, don't get me wrong—I'm not suggesting Harvard as the answer to juvenile delinquency.

We are for an international organization where the nations of the world can legitimately seek peace. We are against subordinating American interests to an organization so structurally unsound that a two-thirds majority can be mustered in the U.N. General Assembly among nations representing less than ten percent of the world population.

Is there not something of hypocrisy in assailing our allies for so-called vestiges of colonialism while we engage in a conspiracy of silence about the peoples enslaved by the Soviet in the satellite nations? We are for aiding our allies by sharing our material blessings with those nations which share our fundamental beliefs. We are against doling out money, government to government, which ends up financing socialism all over the world.

We set out to help nineteen war-ravaged countries at the end of World War II. We are now helping 107. We have spent 146 billion dollars. Some of that money bought a two million dollar yacht for Haile Selassie. We bought dress suits for Greek undertakers. We bought one thousand TV sets with twenty-three-inch screens for a country where there is no electricity, and some of our foreign aid funds provided extra wives for Kenya government officials. When Congress moved to cut foreign aid they were told that if they cut it one dollar they endangered national security, and then Senator Harry Byrd revealed that since its inception foreign aid has rarely spent its allotted budget. It has today \$21 billion in unexpended funds.

Some time ago Dr. Howard Kershner was speaking to the Prime Minister of Lebanon. The Prime Minister told him proudly that his little country balanced its budget each year. It had no public debt, no inflation, a modest tax rate, and had increased its gold holdings from seventy to 120 million dollars. When he finished, Dr. Kershner said, "Mr. Prime Minister, my country hasn't balanced its budget twenty-eight out of the last forty years. My country's debt is greater than the combined debt of all the nations of the world. We have inflation, we have a tax rate that takes from the private sector a percentage of income greater than any civilized nation has ever taken and survived. We have lost gold at such a rate that the

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solvency of our currency is in danger. Do you think that my country should continue to give your country millions of dollars each year?" The Prime Minister smiled and said, "No, but if you are foolish enough to do it, we are going to keep on taking the money."

5 Nine Stalls for One Bull. And so we built a model stock farm in Lebanon, and we built nine stalls for each bull. I find something peculiarly appropriate in that. We have in our vaults \$15 billion in gold. We don't own an ounce. Foreign dollar claims against that gold total \$27 billion. In the last six years, fifty-two nations have bought \$7 billion worth of our gold and all fifty-two are receiving foreign aid.

10 Because no government ever voluntarily reduces itself in size, government programs once launched never go out of existence. A government agency is the nearest thing to eternal life we'll ever see on this earth. The United States Manual takes twenty-five pages to list by name every Congressman and Senator, and all the agencies controlled by Congress. It then lists the agencies coming under the Executive Branch, and this requires 520 pages.

15 Since the beginning of the century our gross national product has increased by thirty-three times. In the same period the cost of federal government has increased 234 times, and while the work force is only one and one-half times greater, federal employees number nine times as many. There are now two and one-half million federal employees. No one knows what they all do. One Congressman found out what one of them does. This man sits at a desk in Washington. Documents come to him each morning. He reads them, initials them, and
20 passes them on to the proper agency. One day a document arrived he wasn't supposed to read, but he read it, initialled it and passed it on. Twenty four hours later it arrived back at his desk with a memo attached that said, "You weren't supposed to read this. Erase your initials, and initial the erasure."

25 While the federal government is the great offender, the idea filters down. During a period in California when our population has increased ninety percent, the cost of state government has gone up 862 percent and the number of employees 500 percent. Governments, state and local, now employ one out of six of the nation's work force. If the rate of increase

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of the last three years continues, by 1970 one-fourth of the total work force will be employed by government. Already we have a permanent structure so big and complex it is virtually beyond the control of Congress and the comprehension of the people, and tyranny inevitable follows when this permanent structure usurps the policy-making function that belongs to elected officials.

One example of this occurred when Congress was debating whether to lend the United Nations \$100 million. While they debated, the State Department gave the United Nations \$217 million and the United Nations used part of that money to pay the delinquent dues of Castro's Cuba.

Under bureaucratic regulations adopted with no regard to the wish of the people, we have lost much of our Constitutional freedom. For example, federal agents can invade a man's property without a warrant, can impose a fine without a formal hearing, let alone a trial by jury, and can seize and sell his property at auction to enforce payment of that fine.

Rights by Dispensation. An Ohio deputy fire marshal sentenced a man to prison after a secret proceeding in which the accused was not allowed to have a lawyer present. The Supreme Court upheld that sentence, ruling that it was an administrative investigation of incidents damaging to the economy. Someplace a perversion has taken place. Our natural unalienable rights are now presumed to be a dispensation of government, divisible by a vote of the majority. The greatest good for the greatest number is a high-sounding phrase but contrary to the very basis of our nation, unless it is accompanied by recognition that we have certain rights which cannot be infringed upon, even if the individual stands outvoted by all of his fellow citizens. Without this recognition, majority rule is nothing more than mob rule.

It is time we realized that socialism can come without overt seizure of property or nationalization of private business. It matters little that you hold the title to your property or business if government can dictate policy and procedure and holds life and death power over your business. The machinery of this power already exists. Lowell Mason, former anti-trust law enforcer for the Federal Trade Commission, has written "American business is

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being harassed, bled and even blackjacked under a preposterous crazy quilt system of laws.”
There are so many that the government literally can find some charge to bring against any
concern it chooses to prosecute. Are we safe in our books and records?

5 The natural gas producers have just been handed a 428-page questionnaire by the Federal
Power Commission. It weights ten pounds. One firm has estimated it will take 70,000 ac-
countant man-hours to fill out this questionnaire, and it must be done in quadruplicate.
The Power Commission says it must have it to determine whether a proper price is being
charged for gas. The National Labor Relations Board ruled that a business firm could not
discontinue its shipping department even though it was more efficient and economical to
10 subcontract this work out.

The Supreme Court has ruled the government has the right to tell a citizen what he can
grow on his own land for his own use. The Secretary of Agriculture has asked for the right
to imprison farmers who violate their planting quotas. One business firm has been in-
formed by the Internal Revenue Service that it cannot take a tax deduction for its institu-
15 tional advertising because this advertising espoused views not in the public interest.

A child’s prayer in a school cafeteria endangers religious freedom, but the people of the
Amish religion in the State of Ohio, who cannot participate in Social Security because of
their religious beliefs, have had their livestock seized and sold at auction to enforce pay-
ment of Social Security dues.

20 We approach a point of no return when government becomes so huge and entrenched that
we fear the consequences of upheaval and just go along with it. The federal government
accounts for one-fifth of the industrial capacity of the nation, one-fourth of all construc-
tion, holds or guarantees one-third of all mortgages, owns one-third of the land, and en-
gages in some nineteen thousand businesses covering half a hundred different lines. The
25 Defense Department runs 269 supermarkets. They do a gross business of \$730 million a
year, and lose \$150 million. The government spends \$11 million an hour every hour of the
twenty-four and pretends we had a tax cut while it pursues a policy of planned inflation
that will more than wipe out any benefit with depreciation of our purchasing power.

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We need true tax reform that will at least make a start toward restoring for our children the American dream that wealth is denied to no one, that each individual has the right to fly as high as his strength and ability will take him. The economist Sumner Schlichter has said, “If a visitor from Mars looked at our tax policy, he would conclude it had been designed by a

5 Communist spy to make free enterprise unworkable.” But we cannot have such reform while our tax policy is engineered by people who view the tax as a means of achieving changes in our social structure. Senator [Joseph S.] Clark (D.-Pa.) says the tax issue is a class issue, and the government must use the tax to redistribute the wealth and earnings downward.

10 Karl Marx. On January 15th in the White House, the President [Lyndon Johnson] told a group of citizens they were going to take all the money they thought was being unnecessarily spent, “take it from the haves and give it to the have-nots who need it so much.” When Karl Marx said this he put it:...“from each according to his ability, to each according to his need.”

15 Have we the courage and the will to face up to the immorality and discrimination of the progressive surtax, and demand a return to traditional proportionate taxation? Many decades ago the Scottish economist, John Ramsey McCulloch, said, “The moment you abandon the cardinal principle of exacting from all individuals the same proportion of their income or their property, you are at sea without a rudder or compass and there is no

20 amount of injustice or folly you may not commit.”

No nation has survived the tax burden that reached one-third of its national income. Today in our country the tax collector’s share is thirty-seven cents of every dollar earned. Freedom has never been so fragile, so close to slipping from our grasp. I wish I could give you some magic formula, but each of us must find his own role. One man in Virginia found what he

25 could do, and dozens of business firms have followed his lead. Concerned because his two hundred employees seemed unworried about government extravagance he conceived the idea of taking all of their withholding out of only the fourth paycheck each month. For three paydays his employees received their full salary. On the fourth payday all withholding

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was taken. He has one employee who owes him \$4.70 each fourth payday. It only took one month to produce two hundred conservatives.

Are you willing to spend time studying the issues, making yourself aware, and then conveying that information to family and friends? Will you resist the temptation to get a government handout for your community? Realize that the doctor's fight against socialized medicine is your fight. We can't socialize the doctors without socializing the patients. Recognize that government invasion of public power is eventually an assault upon your own business. If some among you fear taking a stand because you are afraid of reprisals from customers, clients, or even government, recognize that you are just feeding the crocodile hoping he'll eat you last.

If all of this seems like a great deal of trouble, think what's at stake. We are faced with the most evil enemy mankind has known in his long climb from the swamp to the stars. There can be no security anywhere in the free world if there is not fiscal and economic stability within the United States. Those who ask us to trade our freedom for the soup kitchen of the welfare state are architects of a policy of accommodation. They tell us that by avoiding a direct confrontation with the enemy he will learn to love us and give up his evil ways. All who oppose this idea are blanket indicted as war-mongers. Well, let us set one thing straight, there is no argument with regard to peace and war. It is cheap demagoguery to suggest that anyone would want to send other people's sons to war. The only argument is with regard to the best way to avoid war. There is only one sure way—surrender.

Appeasement or Courage? The spectre our well-meaning liberal friends refuse to face is that their policy of accommodation is appeasement, and appeasement does not give you a choice between peace and war, only between fight and surrender. We are told that the problem is too complex for a simple answer. They are wrong. There is no easy answer, but there is a simple answer. We must have the courage to do what we know is morally right, and this policy of accommodation asks us to accept the greatest possible immorality. We are

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being asked to buy our safety from the threat of “the bomb” by selling into permanent slavery our fellow human beings enslaved behind the Iron Curtain, to tell them to give up their hope of freedom because we are ready to make a deal with their slave masters.

- 5 Alexander Hamilton warned us that a nation which can prefer disgrace to danger is prepared for a master and deserves one. Admittedly there is a risk in any course we follow. Choosing the high road cannot eliminate that risk. Already some of the architects of accommodation have hinted what their decision will be if their plan fails and we are faced with the final ultimatum. The English commentator [Kenneth] Tynan has put it this way: he would rather live on his knees than die on his feet. Some of our own have said “Better
- 10 Red than dead.” If we are to believe that nothing is worth the dying, when did this begin? Should Moses have told the children of Israel to live in slavery rather than dare the wilderness? Should Christ have refused the Cross? Should the patriots at Concord Bridge have refused to fire the shot heard ’round the world? Are we to believe that all the martyrs of history died in vain?
- 15 You and I have a rendezvous with destiny. We can preserve for our children this, the last best hope of man on earth, or we can sentence them to take the first step into a thousand years of darkness. If we fail, at least let our children and our children’s children say of us we justified our brief moment here. We did all that could be done.

PRESIDENT RONALD REAGAN (R)

First Inaugural Address

SPEECH

January 20, 1981
U.S. Capitol | Washington, D.C.

BACKGROUND

President Ronald Reagan delivered this speech upon his inauguration in 1981.

GUIDING QUESTIONS

1. What crisis does Reagan identify as facing America in 1981?
2. What does Reagan consider the problem with a government that is too large?
3. What is Reagan's attitude toward the crisis he identifies?
4. Why does Reagan refer to the statues surrounding the U.S. Capitol? What do they represent?

Ronald Reagan, "First Inaugural Address," 20 January 1981, in *The Inaugural Addresses of the Presidents*, ed. John Gabriel Hunt (New York: Gramercy, 1995), 471–78.

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Senator Hatfield, Mr. Chief Justice, Mr. President, Vice President Bush, Vice President Mondale, Senator Baker, Speaker O'Neill, Reverend Moomaw, and my fellow citizens: 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
5 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, I want our fellow citizens to know how much you did to carry on this tradi-
tion. By your gracious cooperation in the transition process, you have shown a watching
10 world that we are a united people pledged to maintaining a political system which guaran-
tees 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 eco-
nomic affliction of great proportions. We suffer from the longest and one of the worst sus-
15 tained 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
20 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 tem-
porary convenience of the present. To continue this long trend is to guarantee tremendous
social, cultural, political, and economic upheavals.

25 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?

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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 Ameri-
5 cans, 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
10 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 gov-
ernment, must bear the burden. The solutions we seek must be equitable, with no one
group singled out to pay a higher price.

15 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,
20 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 pro-
vides equal opportunity for all Americans, with no barriers born of bigotry or discrimina-
tion. 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
25 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.

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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.

- 5 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.

- 10 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.

- 15 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.

- 20 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
25 an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope.

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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

5 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.

10 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

15 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

20 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

25 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.

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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
5 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
10 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
15 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
20 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 ad-
25 versaries 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.

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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.

- 5 This is the first time in history that this ceremony has been held, as you have been told, on this West Front of the Capitol. Standing here, one faces a magnificent vista, opening up on this city's special beauty and history. At the end of this open mall are those shrines to the giants on whose shoulders we stand.

- 10 Directly in front of me, the monument to a monumental man: George Washington, Father of our country. A man of humility who came to greatness reluctantly. He led America out of revolutionary victory into infant nationhood. Off to one side, the stately memorial to Thomas Jefferson. The Declaration of Independence flames with his eloquence.

- 15 And then beyond the Reflecting Pool the dignified columns of the Lincoln Memorial. Whoever would understand in his heart the meaning of America will find it in the life of Abraham Lincoln.

Beyond those monuments to heroism is the Potomac River, and on the far shore the sloping hills of Arlington National Cemetery with its row on row of simple white markers bearing crosses or Stars of David. They add up to only a tiny fraction of the price that has been paid for our freedom.

- 20 Each one of those markers is a monument to the kinds of hero I spoke of earlier. Their lives ended in places called Belleau Wood, The Argonne, Omaha Beach, Salerno and halfway around the world on Guadalcanal, Tarawa, Pork Chop Hill, the Chosin Reservoir, and in a hundred rice paddies and jungles of a place called Vietnam.

- 25 Under one such marker lies a young man--Martin Treptow--who left his job in a small town barber shop in 1917 to go to France with the famed Rainbow Division. There, on the western front, he was killed trying to carry a message between battalions under heavy artillery fire.

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We are told that on his body was found a diary. On the flyleaf under the heading, "My Pledge," he had written these words: "America must win this war. Therefore, I will work, I will save, I will sacrifice, I will endure, I will fight cheerfully and do my utmost, as if the issue of the whole struggle depended on me alone."

- 5 The crisis we are facing today does not require of us the kind of sacrifice that Martin Trep-tow and so many thousands of others were called upon to make. It does require, however, our best effort, and our willingness to believe in ourselves and to believe in our capacity to perform great deeds; to believe that together, with God's help, we can and will resolve the problems which now confront us.
- 10 And, after all, why shouldn't we believe that? We are Americans. God bless you, and thank you.

UNIT 6

Institutions and Policy

45-50-minute classes | 17-23 classes

UNIT PREVIEW**Structure**

LESSON 1	Congress	3-4 classes	p. 7
LESSON 2	The Presidency	3-4 classes	p. 10
LESSON 3	The Bureaucracy and the Administrative State	3-4 classes	p. 14
LESSON 4	Placeholder: State and Local Government	1-2 classes	p. 18
LESSON 5	Domestic Policy	3-4 classes	p. 20
LESSON 6	National Security and Foreign Policy	2-3 classes	p. 23
APPENDIX	Study Guide, Test, and Writing Assignment		p. 27

Why Teach Institutions and Policy

Few Americans ever hold public office, let alone the offices of the highest government in the land. Nevertheless, those officeholders are to be representatives of the people. Citizens themselves should therefore be familiar with what their representatives ought to do and how they are meant to go about representing their constituents. Such knowledge will enable students to be better informed about the ends and means of government institutions and their representatives. They will be able to make more informed decisions when considering voting for someone, and they will be better attuned to what may be reasonably expected of their representative in office. This unit aims to teach students about each of these institutions

and the public policy issues that officeholders seek to address through them. Students should be able to understand how government works within the federal government, the more recent administrative state, and their state and local government. They should also be familiar with how these institutions address and carry out certain public policies, both domestic and foreign, and be able to converse with one another on certain specific policy issues with civility and respect.

What Teachers Should Consider

This unit builds on the students' study of the Constitution's design, the arguments of *The Federalist*, and the later changes to the constitutional order made by the Progressives and their successors. Students may now draw on what they first learned about the Founders' intentions and designs for governing institutions in Unit 3 (Governing in the Constitution) and the Progressives' departures from those intentions in Unit 5 (Progressivism and the State). While this unit involves more of the modern "nuts and bolts" of government (with a placeholder lesson for a school to incorporate instruction on its own state and local governments), teachers may still point out both the consistency and change in our constitutional practices. Students should see how the Constitution still directs modern governance but also how modern governance breaks with the Constitution and its original purposes.

Noteworthy among these changes to our constitutional order are the decline of Congress as a lawmaking body and the rising power of the administrative state and the courts. Teachers may stress how our newer system of government challenges the constitutional separation of powers and weakens federalism. They should also discuss the ways in which the presidency has been made stronger—especially in foreign policy and in the president's role as a rhetorical and partisan leader rather than a mere executor of laws. Students should also discuss the ways in which laws, court cases, and the growth of the bureaucracy and the administrative state have weakened the president's control of the executive branch. Other important themes include the budget process, the rise of the welfare state, and the growth of entitlements.

Throughout this entire section, students should be asked to determine who really makes the rules that govern citizens' lives and to evaluate the justness of such a system in light of the founding ideas. Students should also learn about the public policy that governing bodies seek to address today. While teachers should by no means attempt to drive student opinions on policies in a particular partisan direction, they may explain the nature of example policy issues and present the strongest logical arguments for each side of a given position. Conversation on such policies will likely arise and students should be civil, logical, and respectful in disagreements. Ultimately, students should gain a "lay of the land" concerning broad areas of public policy rather than attempting to address current event issues.

How Teachers Can Learn More

TEXTS

American Government and Politics, Joseph Bessette and John Pitney
Democracy in America, Alexis de Tocqueville

Chapters 12–14, 16–18
II.3.22–26

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
Constitution 101
Constitution 201
Congress
The Presidency and the Constitution
The U.S. Supreme Court

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — Congress

3-4 classes

LESSON OBJECTIVE

Students learn about Congress, congressional power, and how the legislative process operates today, drawing comparisons between the intentions of the Founders in the Constitution and Progressive departures therefrom.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Congress

Lectures 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on questions on pages 373–374 of *American Government and Politics*.

American Government and Politics

Chapter 12

TERMS AND TOPICS

legislative power
bicameral legislature
Senate
House of Representatives
majority/minority leader
legislation
oversight
casework
cloture
earmark
logrolling
pork barrel
joint committee

joint resolution
lame duck
rider
filibuster
committees/subcommittees
Speaker of the House
President pro tempore
veto
whip
divided government
delegate
nondelegation doctrine
10th, 14th, 16th, and 17th Amendments

QUESTIONS FOR THE AMERICAN MIND

- What is the legislative power, and who has it, per the Constitution?
- Why were the Articles of Confederation insufficient?
- Why, in a representative democracy, did the Founders consider the legislature the most important branch of government?
- What does it mean to be a representative? What does it mean to be a delegate?
- What are the major differences between the House of Representatives and the Senate? What does this say about their purposes?

- What are the different types of committees, and what do they accomplish? Why would Congress have to split up into committees?
- Explain how impeachment works in each house of Congress.
- How does a bill become a law?
- How have Congress and the legislative power changed since the founding?
- What is delegation? Why has it been so consequential? Why has Congress embraced it?
- Questions from the U.S. Civics Test:
 - Question 18: What part of the federal government writes laws?
 - Question 19: What are the two parts of the U.S. Congress?
 - Question 20: Name one power of the U.S. Congress.
 - Question 21: How many U.S. senators are there?
 - Question 22: How long is a term for a U.S. senator?
 - Question 23: Who is one of your state's U.S. senators now?
 - Question 24: How many voting members are in the House of Representatives?
 - Question 25: How long is a term for a member of the House of Representatives?
 - Question 26: Why do U.S. representatives serve shorter terms than U.S. senators?
 - Question 27: How many senators does each state have?
 - Question 28: Why does each state have two senators?
 - Question 29: Name your U.S. representative.
 - Question 30: What is the name of the Speaker of the House of Representatives now?
 - Question 31: Who does a U.S. senator represent?
 - Question 32: Who elects U.S. senators?
 - Question 33: Who does a member of the House of Representatives represent?
 - Question 34: Who elects members of the House of Representatives?
 - Question 35: Some states have more representatives than other states. Why?

KEYS TO THE LESSON

The legislative power and the Congress that holds it are the most quintessentially American facets to government in the United States. Composed of the elected representatives of the American people, Congress embodies self-government in America. Historically, its power had been great and intentionally so. The two houses of Congress were intended to bring a diverse group of elected leaders from individual States together to form national laws for the common good of the American people. The structure and functions of Congress are manifold but also inspiring, for it is the clearest expression of the people governing themselves. A proper understanding of legislative power, and the constitutional original intent, make the abdication or delegation of this power by members of Congress an affront to the very principles of self-government and representative government. Students should come away from this unit knowing both the mechanics and functions of Congress today, and how those mechanics and functions make the modern Congress very different from the design of the Founders.

Teachers might best plan and teach Congress with emphasis on the following approaches:

- Discuss with students the nature of legislative power and the central role of lawmaking in government. Note that the legislative branch is listed first in the Constitution.
- Have students understand clearly the requirements for holding office in the House of Representatives and the Senate and the terms of office. Students should be able to account for the

differences and what it means for the purposes and manner of legislating in each body: namely, that the House is more reflective and responsive to the people, while the Senate is more deliberative and refining of the majority will.

- Discuss how the division of the Congress into two houses was a compromise at the Constitutional Convention (between the large and small states) but also allows each to check the other and fosters better legislative outcomes. This can be seen in some of the differences between them: the House must instigate all legislation raising revenue and has the power to declare war, and the Senate approves judges and treaties. The two Houses share the power of impeachment of the President: the House impeaches (charges) and the Senate conducts the trial.
- Walk students through the various offices and committees within Congress and the details of how laws are made. Discuss how “regular order” (holding committee hearings and legislation-writing sessions, and debating and amending legislation before voting) makes for a more deliberative and representative process.
- Consider the enormous power of Congress to check the other branches of government and shape the direction of government through its control of the federal budget. The “power of the purse” gives Congress the ability (and responsibility) to control and oversee all the operations of the federal government. The President cannot spend money without the authorization of Congress.
- Note for students the incredible power that party leadership wields in determining committee appointments, lower leadership positions, and the introduction and advancement of legislation. Students should understand the relationship between these awards and the leadership’s financial support in campaign funding for members of Congress in their party.
- Explain how Members of Congress address constituent relations, and note the amount of time Members today spend on helping their constituents deal with the activities of the federal government (both in terms of over-regulation and receiving benefits).
- Consider with students the ways in which Congress’s power has waned in comparison to the executive branch, the judicial branch, and the so-called fourth branch called the bureaucracy or the administrative state. Note especially Congress’s delegation of legislative authority to federal bureaucracies. Students should understand how many members of Congress either do not understand the authority they have over federal bureaucracies or actually prefer delegating the responsibility for detailed lawmaking in order to avoid criticism by their constituents when policies created by the bureaucrats end up not working.
- Survey and discuss with students the various amendments to the Constitution that have changed the role and functioning of Congress, namely the 10th, 14th, 16th, and 17th Amendments. Students should consider the merits and consequences of each change to Congress.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how Congress works today and the merits and disadvantages of today’s Congress in light of the intentions the American Founders had for the legislative branch (2–3 paragraphs).

Lesson 2 — The Presidency

3-4 classes

LESSON OBJECTIVE

Students learn how the executive power and how the presidency is structured, how it has changed through American history, and how it functions today.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

The Presidency and the Constitution

Lectures 1, 2, 3, 4, 5, 6, 7, 8, 9

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on questions on pages 408–409 of *American Government and Politics*.

American Government and Politics

Chapter 13

TERMS AND TOPICS

executive prerogative
 presidential oath
 bully pulpit
 rhetorical presidency
 imperial presidency
 State of the Union address
 foreign policy
 executive office
 chief of staff
 cabinet
 vice president
 executive order

signing statement
 veto
 line-item veto
 impoundment
 War Powers Resolution
 National Security Council
 executive privilege
 pardoning power
 impeachment
 12th, 20th, 22nd, and 25th
 Amendments

QUESTIONS FOR THE AMERICAN MIND

- What were the debates about the presidency at the Constitutional Convention?
- What is the executive power? Why do we need a president?
- Why did the Founders create the office of the vice president?
- How does the Constitution aim to keep Congress and the presidency separate?
- What were the original cabinet positions in the executive branch? What has happened to these positions? Why were they not a threat to the idea of a unitary executive?
- What was the purpose of the State of the Union address?
- How have presidents used rhetoric?

- How have presidents used emergency powers?
- Why has executive privilege been deemed necessary?
- Why is the pardoning power an executive function? What purpose does it serve?
- What is an executive order? Is it constitutional?
- How has the role of the president changed as political parties have changed?
- Explain the role of the president in relation to foreign policy. What powers does he have and not have? How has this role been misused?
- Questions from the U.S. Civics Test:
 - Question 17: The President of the United States is in charge of which branch of government?
 - Question 36: The President of the United States is elected for how many years?
 - Question 37: The President of the United States can serve only two terms. Why?
 - Question 38: What is the name of the President of the United States now?
 - Question 39: What is the name of the Vice President of the United States now?
 - Question 40: If the president can no longer serve, who becomes president?
 - Question 41: Name one power of the president.
 - Question 42: Who is Command in Chief of the U.S. military?
 - Question 43: Who signs bills to become laws?
 - Question 44: Who vetoes bills?
 - Question 45: Who appoints federal judges?
 - Question 46: The executive branch has many parts. Name one.
 - Question 47: What does the President's cabinet do?
 - Question 48: What are two Cabinet-level positions?
 - Question 49: Why is the Electoral College important?

KEYS TO THE LESSON

Although the presidency is a unique and powerful position created by the Constitution, it has acquired an outsized role and prestige over the course of American history. This is partly owing to the talents of exceptional presidents in defining the necessities of the office, partly to the Progressive reinvention of the office, and partly to America becoming a superpower in which international relations and presidential foreign policy have played a more prominent role on the world stage. It is important, therefore, to help students understand the nature of the executive power and its relation to the president.

The key to executive power as expressed in the Constitution is its subordination to the rule of law. The primary job of the president is to “take care that the laws be faithfully executed.” Though the president participates in the legislative process by signing or vetoing legislation (and any veto may be overridden by Congress), the president cannot create laws and is duty bound to enforce them. In this sense, the president is beholden to the laws passed by Congress—and so the rule of law. This is rarely how the presidency is thought of or conducts itself today, but it is an important distinction to draw for students and should permeate this lesson on the executive.

The second part to executive power is found in the presidential oath of office: “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.” The highest law that the president has to enforce—but also protect and defend—is the supreme law of the land, the Constitution.

This is an acknowledgement that the executive power is something more than merely the execution of the laws but has a character of its own: law enforcement, which ultimately means the necessary force behind law, as well as the power under certain circumstances to protect and defend the rule of law and the Constitution from enemies foreign and domestic that intend it harm. Students should understand these features of executive power as well as how the presidency functions.

Teachers might best plan and teach the Presidency with emphasis on the following approaches:

- Consider with students the nature of executive power and its ultimate reliance on a fear of losing liberty, property, or even life, should appeals to virtue and right conduct fail to elicit an adherence to the law by citizens.
- Explain the Electoral College system as intended by the Founders and as it functions today.
- Make sure students understand how the presidency operates in the twenty-first century, with its various personnel and the responsibilities and roles the White House has acquired over the years. Spend time discussing the cabinet, the armed forces, and the bureaucratic agencies. Consider the president's role in foreign policy and in appointing members of the judiciary.
- Discuss the parameters of exigency in the executive branch. The executive is necessary for those particular and unforeseen *situations* for which the legislature cannot or has not made laws. The legislature cannot legislate in advance for every exigency; it is not possible to know all human action and plan for it in advance. Furthermore, there are instances in which swift action is necessary to avoid lawlessness (for example, rebellion), where there must be a person to act in the absence of specific laws. In these cases, a unified singular executive is necessary to provide force to the situation in order to regain lawfulness.
- Explain how the presidency has gained and lost power over the decades. Like the delegation of legislative authority, executive authority has also been increasingly delegated by Congress to bureaucratic agencies. Nevertheless, the election of the president is more significant than it used to be, and the president's power in foreign affairs has been greatly expanded. The chief role of the modern president is to lead and direct rather than work with Congress to determine policy. As such, Congress is undermined and the power of the presidency has moved more and more into the legislative arena.
- Explain how presidential power is exercised to its greatest extent during times of war when the president has the "war power," which fully exercises the president's constitutional power as commander in chief of military forces. Since the Progressive era, presidents (authorized by Congress) have more frequently declared states of emergency in order to exert their authority in domestic policy matters. Students should examine the Constitution and the nature of the executive to determine the consequences of this reorientation of presidential authority.
- Discuss with students the idea of executive orders. Although a legitimate way for the president to direct those under the executive branch, students should consider how the vast expansion and increased authority of the executive branch (by the legislative creation of departments and agencies under the executive, and then the delegation of legislative power to those departments and agencies) has enabled executive orders to fundamentally redirect government policy with or without congressional approval.
- Survey and discuss with students the various amendments to the Constitution that have changed the role and functioning of the president and the executive branch, namely the 12th, 20th, 22nd, and 25th Amendments. Students should consider the merits and consequences of each change to the presidency.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the various roles the presidency fulfills, how the president fulfills them today, and how these roles have changed from the Founders' intentions (2-3 paragraphs).

Lesson 3 — The Bureaucracy and the Administrative State

3-4 classes

LESSON OBJECTIVE

Students learn about the federal bureaucracy and the administrative state that have arisen since the Progressive era, how these function within government, and how their existence is contrary to the principles of the Founders.

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<i>Constitution 101</i>	Lectures 8 and 9
<i>Introduction to the Constitution</i>	Lectures 11 and 12
<i>Constitution 201</i>	Lecture 7
<i>Congress</i>	Lectures 3, 4, 5
<i>The Presidency and the Constitution</i>	Lecture 8
<i>The U.S. Supreme Court</i>	Lecture 9

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on questions on pages 434–435 of *American Government and Politics*.

<i>American Government and Politics</i>	Chapter 14

TERMS AND TOPICS

bureaucracy/bureaucrat	Pendleton Act
civil service	Office of Management and Budget
administrative state	independent regulatory commission
red tape	iron triangle
accountability	spoils system
administrative law	consent
merit system	Congressional Review Act

QUESTIONS FOR THE AMERICAN MIND

- What powers does the bureaucracy have, how did it acquire those powers, and what does it look like when those powers are exercised?
- How does the administrative state violate the principle of separation of powers?
- To what extent are bureaucrats accountable to the people? How so?
- What are the arguments for and against government by expertise?
- What are the arguments for and against the control of bureaucracies by political appointments that change with administrations?

- What is meant by the “iron triangle,” and how does it function? Why is it considered “iron”?
- What is bureaucratic work like? Why does it have this character?
- What are the arguments for and against centralized planning by federal bureaucrats? What is lost in the process?
- How can the concentration of all three powers in the bureaucracies be weaponized against political opponents or specific groups of people?
- To what extent have Americans come to accept lawmaking by bureaucrats? Why do you think this is the case?

KEYS TO THE LESSON

Students should review how the bureaucratic government or administrative state was created by the Progressives. One reason for bureaucracy or administration, in the Progressive view, was that government by expertise was necessary in order to address the complexity of the modern world. The other justification was that the powers of government ought to be insulated from politics. This was accomplished through apolitical positions that would be protected from the influence of interests of the people and then consolidated for the sake of efficiency. Students should understand how these views have shaped the structure and role of the bureaucracy today. They should also understand what departments and agencies exist, how these departments and agencies exercise their power, and how this bureaucratic system is or is not connected to the principles of self-government. In the process, students should see Congress’s willingness to cede its power to the administrative bureaucracies throughout the government, the tremendous growth in the size and centralization of power under unelected officials of the federal government, and the absence of separation of powers in many cases in that arrangement, as the extent of independence these bureaucrats have from Congress, the President, and the consent of the people.

Teachers might best plan and teach the Bureaucracy and the Administrative State with emphasis on the following approaches:

- Walk students through the mechanics of bureaucratic government. Teach students about the departments and various kinds of agencies and their roles, origins, and the private sector fields from which they usually draw their employees.
- Consider with students the argument of trusting governance to experts vs. elected representatives. The Founders would have argued that it is the role of the representative to listen to the views of the experts in their various fields and then employ prudence to govern (whether in Congress or as President) in a manner that preserves rights, follows the rule of law, and upholds the common good. Abdicating governing authority to those whom some regard as experts necessarily allows government policy to be determined by a very narrow set of technical criteria and goals. These often do not consider the totality of a situation, nor the principles that should guide such decision-making. It is the responsibility of those elected to not only represent their constituents but also exercise sound judgment and to employ prudence in making policy decisions for the entire political body.
- Explain to students the argument for making bureaucrats independent of politics and entrusting lawmaking to career civil servants rather than to political appointments. While separating such government employees from elected officials may imply that all of politics is dishonest and corrupt, the Founders argued that however dishonest or corrupt politics sometimes seems, government must still be responsive to the people. While the Founders would have warned

against a large bureaucracy in general beyond the cabinet positions and immediate assistance, they would have argued that more positions should be appointed, directed by, and subject to removal based on who has been elected to office. The idea of a permanent civil service was an affront to consent and self-government.

- Describe to students what is called the “iron triangle” of Congress, interest groups, and bureaucratic agencies. Lawmaking on the federal (and state) levels has largely fallen to conversations between these entities rather than to the collaboration between elected members of the government who reflect and represent the views of their citizens. Walk students through what is meant by this term and how those involved in it orchestrate legislation.
- Consider with students the nature of bureaucratic work. On the one hand, the concentration of legislative, executive, and judicial power into singular hands violates the principle of separation of powers and is, as many Founders asserted, the very definition of tyranny. On the other hand, note how cumbersome and slow bureaucratic work is and why this is the case, contrary to the expectations of the Progressives. Also discuss the risk of such agencies targeting certain political opponents or groups of people.
- Consider the issue of those who are the most removed from the people being the ones who are making what amount to laws (technically regulations) for all the people. Also, consider the consequences of top-down, “one-size-fits-all” rules for the nation. Students should see how this direction, particularly in domestic policy, is an affront to one of the key conditions of the rule of law: that those who make the laws are also bound by the law just as much as their constituents. Students should also consider whether political life under centralized, bureaucratic rule might be understood to resemble the rule of a faraway parliament or king.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how the federal bureaucracy functions today and the extent to which it is consistent with the principles of self-government on which America was founded (2–3 paragraphs).

Name_____

Date_____

Unit 6 — Formative Quiz

Covering Lessons 1-3
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. What are the major differences between the House of Representatives and the Senate? What does this say about their purposes?

2. How does a bill become a law?

3. What is delegation? Why has it been so consequential? Why has Congress embraced it?

4. How does the Constitution aim to keep Congress and the presidency separate?

5. How have presidents used emergency powers?

6. How does the administrative state violate the principle of separation of powers?

7. What is meant by the “iron triangle,” and how does it function? Why is it considered “iron”?

Lesson 4 — Placeholder: State and Local Government

1-2 classes

Note: This lesson affords a school the space to teach about the specific details of their own state and local governments. Teachers may pull in content related to their state and community while still addressing the broad points outlined below.

LESSON OBJECTIVE

Students learn about the state and local governments in which they are represented, as well as some of the principles and history undergirding these governing institutions in the United States.

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Constitution 101
The Federalist Papers

Lecture 4
 Lecture 4

TERMS AND TOPICS

federalism
 local government
 state government
 county
 township
 ward

precinct
 village
 city
 school board
 domestic policy
 incorporation doctrine

QUESTIONS FOR THE AMERICAN MIND

- What value did the Founders place on state and local governments?
- How did the Framers of the Constitution seek to empower state and local governments?
- What benefits has federalism afforded the American experiment in self-government?
- What are the structure and primary roles of offices in the state government?
- What are the structure and primary roles of offices in the local government?
- What is the relationship among federal, state, and local governments?
- Which domestic policy areas are most commonly addressed by state governments?
- Which domestic policy areas are most commonly addressed by local governments?
- How has the power of the federal, state, and local governments changed in relationship to each other through history? What has accounted for those fluctuations?
- Questions from the U.S. Civics Test:
 - Question 61: Who is the governor of your state now?
 - Question 62: What is the capital of your state?

KEYS TO THE LESSON

Students should understand how their state and local governments are structured, along with the roles that each has. Students should also consider these governments in light of the Founders' views.

Beyond teaching about their specific state and local governments, teachers might best plan and teach with emphasis on the following approaches:

- Emphasize with students how, historically, states and local governments had far more power than they do today. The Founders placed great importance on the roles and powers of state and local governments as being one of the fundamental checks on the authority of the federal government.
- Note how the policies enacted in state and local governments often directly affect and shape the daily lives of citizens more than the policies of the federal government.
- Explain to students some of the benefits of federalism and of state and local governments, asking them to recall what they had read of *The Federalist* concerning this point. Besides forming another kind of separation of powers, state and local governments allow for experimentation with certain policies on small scales prior to adopting a policy for the entire country. Federal lawmakers can then learn from these experiments. They can avoid those that were poor or adapt or improve those that worked without inflicting experimental damage on the entire country. These state governments can also sue the federal government in court and, perhaps most importantly, state and local governments allow citizens to “vote with their feet” by moving from one place with policies they dislike to another place with policies they believe are good. This requires another level of responsiveness to the people and affords sanctuaries for freedom when one state becomes more tyrannical for a time.
- Point out to students that it is the state and especially the local governments where they and their fellow citizens have the greatest opportunity to be involved officially in government and where they are most likely to bring about policy changes. The local level in particular becomes both an outlet for civic participation as well as an arena for future state and federal statesmen to gain experience and practice in the art of statesmanship. These levels of government, due to the smaller and more personal constituency, are also the most likely to be the most representative of a citizenry's interests and opinions.
- Discuss with students how the power of the federal government has grown relative to state and local governments. Help students to consider the roles the Civil War, Progressivism, welfare programs, the incorporation doctrine, and federal funding mandates have played in shifting power to such an extreme concentration in the federal government and its bureaucracy.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENTS

Assignment 1: Explain why the Founders sought to preserve the roles and powers of state and local governments and how these governments function today by comparison (1 paragraph).

Assignment 2: Outline the kinds of government under which you live and how these kinds of government affect the daily lives of you and your neighbors (1–2 paragraphs).

Lesson 5 — Domestic Policy

3-4 classes

LESSON OBJECTIVE

Students learn about social and economic policy within the United States—including the various fields of social and economic policy, the branches of government, bureaucratic agencies, and interests involved in such policy decisions—and a broad overview of the types of contested issues in these fields that have emerged in the country's history to the present day.

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Constitution 201
The U.S. Supreme Court

Lecture 8
 Lecture 4

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on questions on pages 504 and 531–532 of *American Government and Politics*.

American Government and Politics

Chapters 16–17

TERMS AND TOPICS

free market capitalism
 socialism
 mixed market
 communism
 welfare state
 New Deal
 Social Security
 Medicare/Medicaid
 payroll tax
 negative rights
 positive rights
 charter school
 War on Poverty
 Great Society
 redistribution
 entitlement
 Gross Domestic Product (GDP)

unemployment
 inflation
 fiscal policy
 monetary policy
 deficit
 mandatory spending
 progressive taxation
 income tax
 supply-side economics
 Federal Reserve System
 Internal Revenue Service
 tariff
 protectionism
 Justice Department
 Federal Bureau of Investigation

QUESTIONS FOR THE AMERICAN MIND

- What are the various kinds of social and economic policies?
- How have these policy areas and the arguments within them changed through American history?
- What were the views of the Founders in these areas?
- How did Progressivism and the New Deal change the role of government in domestic policy?
- Explain the difference between negative and positive rights. Why do positive rights usually require a larger government and higher taxation?
- How have entitlement programs changed the way people view the government?
- Government involvement in domestic issues has effectively removed what non-governmental institutions from being of service?
- Is GDP a good measure for the economic health of a country?
- Why are few politicians concerned with fiscal and monetary policy?
- What accounts for the complexity of the United States tax system?
- Explain how the Federal Reserve works. What might the Founders have thought about this?
- How are government programs funded?
- How does trade policy with other nations affect U.S. businesses, individuals, GDP, and unemployment?
- Questions from the U.S. Civics Test:
 - Question 20: Name one power of the U.S. Congress.
 - Question 41: Name one power of the president.
 - Question 48: What are two Cabinet-level positions?
 - Question 58: Name one power that is only for the federal government.
 - Question 59: Name one power that is only for the states.
 - Question 71: Why is it important to pay federal taxes?

KEYS TO THE LESSON

Students should receive a survey of the kinds of domestic policy areas in which government is involved. This would include especially economic, fiscal, monetary, and welfare policy, but also cultural matters and various kinds of legal, election, immigration, education, and family policy. *American Government and Politics* can provide a good guide to these fields. Students should understand of what each consists, how policy is determined, and the government officials and interest groups involved in such decisions. Students need not have a deep knowledge of each field but should understand the types of practical effects that certain policy decisions have and the basic contours of opposing arguments on a policy, both in history and today. Of special note is the role that Progressivism played in expanding the influence of the federal government in domestic policy, which led to associated growth of the federal government, especially in economic policy. Concerning economic policy, students should be able to draw on their study of economics in a separate economics course, but the main purpose of its study here is to see how policy is set in relation to economics.

Teachers might best plan and teach Domestic Policy with emphasis on the following approaches:

- Outline for students the various domestic policy areas. Students should be able to identify each and the kinds of actions that fall within each field.

- Proceed to trace in history the growth in kinds of policy fields and the basic arguments that emerged within those areas. Students should appreciate that the Founders recognized and had carefully informed views on many of the same policy areas that are dealt with today. In many cases, their views defy contemporary stereotypes about how they approached various issues. Their thoughts regarding policy for the poor, immigration, and trade, for example, are worth careful consideration. Review the views of the Founders from Unit 1 to access with accuracy these positions and arguments.
- Discuss with students some of today's leading domestic policy issues. Explain each side with the strongest arguments that each side would use. Students may naturally engage in some debate or conversation on these issues, but ensure that any debate is civil and that it does not replace instruction. Students should gain a "lay of the land" but not be expected to form judgments on which policy ought to be adopted.
- While there are certain functions of the federal government that deal with domestic policy (most notably maintaining the rule of law, regulating interstate commerce, coining money and setting weights and measures), note for students the great expansion in the size of the federal government, and in particular, its role in domestic policy. The Founders had structured the federal government to be principally concerned with national security and foreign policy, those fields which only an energetic and united federal government could address.
- The vast majority of policies that most directly affect the daily lives of citizens were to be made by state and local governments. This was purposeful, as such lower governments could be more knowledgeable and responsive to their constituents and the needs and interests associated with life in a certain geographic area, much more so than a centralized and distant central government could be. The Civil War, Progressive era, and New Deal all shifted the locus of power in domestic policy away from states and localities and toward Washington, DC, and its bureaucracies.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Choose one area of domestic policy and outline what it addresses, how decisions are made, its historical development, and the basic arguments of each side of a current issue within that field (2–3 paragraphs).

Lesson 6 — National Security and Foreign Policy

2-3 classes

LESSON OBJECTIVE

Students learn about the foreign policy of the United States, including the branches of the armed forces, bureaucratic agencies, and interests involved in such policy decisions, and gain a broad overview of the types of contested issues related to national security that have emerged in the country's history to the present day.

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The Presidency and the Constitution

Lecture 6

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on questions on page 558 of *American Government and Politics*.

American Government and Politics

Chapter 18

TERMS AND TOPICS

national security
foreign policy
border
citizen-controlled military
U.S. Army
U.S. Navy
U.S. Marine Corps
U.S. Air Force
U.S. Coast Guard
U.S. Space Force
U.S. Border Patrol
State Department
National Security Agency

Central Intelligence Agency
Department of Homeland Security
Monroe Doctrine
containment
uplift
preemption
isolationism
unilateralism
multilateralism
intelligence
embargo
sanctions
nongovernmental organizations

QUESTIONS FOR THE AMERICAN MIND

- What is the primary purpose of the federal government? Why is this the case?
- What is foreign policy? How is it related to national security?
- How is foreign policy determined in the United States?
- How is foreign policy carried out in the United States?
- Who makes treaties? Who declares war? Who conducts war? Why are these powers separated in this manner?

- How has foreign policy changed throughout American history? Consider trade, treaties, war, alliances, etc.
- What was the Monroe Doctrine? Was this a continuation of or a departure from the principles of the founding?
- What were the foreign policy concerns about expansion?
- What is the Progressive idea of “uplift,” and how did it play out in foreign policy?
- What is the difference between unilateralism and multilateralism? When did the shift to multilateralism occur, and what domestic policies accompanied it?
- What is the liberal world order? How does it relate to spreading democracy?
- What are the major lessons of Cold War foreign policy?
- How did the policy of containment and preemption change the goals of foreign policy?
- What are the main divisions of view on foreign policy today?
- Questions from the U.S. Civics Test:
 - Question 20: Name one power of the U.S. Congress.
 - Question 41: Name one power of the president.
 - Question 48: What are two Cabinet-level positions?
 - Question 58: Name one power that is only for the federal government.
 - Question 67: Name two promises that new citizens make in the Oath of Allegiance.
 - Question 70: What is one way Americans can serve their country?
 - Question 72: It is important for all men ages 18 through 25 to register for the Selective Service. Name one reason why.
 - Question 76: What war did the Americans fight to win independence from Britain?
 - Question 91: Name one war fought by the United States in the 1800s.
 - Question 100: Name one war fought by the United States in the 1900s.
 - Question 101: Why did the United States enter World War I?
 - Question 106: Why did the United States enter World War II?
 - Question 108: Who was the United States’ main rival during the Cold War?
 - Question 110: Why did the United States enter the Korean War?
 - Question 111: Why did the United States enter the Vietnam War?
 - Question 114: Why did the United States enter the Persian Gulf War?
 - Question 115: What major event happened on September 11, 2001 in the United States?
 - Question 116: Name one U.S. military conflict after the September 11, 2001 attacks.
 - Question 128: What is Veterans Day?

KEYS TO THE LESSON

Students should understand the importance of the country’s foreign policy and its fundamental connection to America’s national security. The core purpose of the federal government (as with any national government) as laid out in the United States Constitution is to provide for the common defense. All other functions—lawmaking itself, and the establishment of justice—will fall if the nation is not defended. As such, the federal government has been historically and is still primarily oriented toward national security and national self-defense. Students should be made familiar with what government actions are involved in foreign policy and national security, how the executive branch and the military are arranged toward this end, and what other entities and groups are involved in determining foreign policy. Students should also learn about the changes in foreign policy in history, including the moments in which foreign policy resulted

in conflict, as well as foreign policy issues in recent years and today. The views of the Founders per the Constitution and George Washington should be reviewed from Unit 1 and referenced in this unit.

Teachers might best plan and teach National Security and Foreign Policy with emphasis on the following approaches:

- Outline with students which areas of government action fall under the titles of national security, which fall under foreign policy, and how the two categories are related.
- Review with students how the Constitution designed the federal government and the executive in particular to address issues of national security above all its other roles. Compare the structure and functioning of the federal government with respect to foreign policy in the view of the Founders to how it is conducted today.
- Emphasize with students how the American armed forces are citizen-controlled, which means military authority is responsible to political authority under the constitutional rule of law. Spend some time outlining the roles of each branch of the armed forces.
- Chart with students the changes in the principles that underlie foreign policy through American history. In general, students should recognize a shift from a defensive posture during much of the first 150 years of American history toward a positive idealistic thrust to, as Woodrow Wilson put it, “Make the world safe for democracy.” While this is partly owing to the greater power and capacities America garnered on the world stage, there was also shift toward international activism. Progressives and many subsequent administrations have asserted the idea of America’s moral obligation to improve man’s nature and bring progress to other peoples and countries of the world, sometimes through military force.
- Review how this shift has departed from the American founding, both in principle and practice, as articulated by statements such as George Washington’s Farewell Address: “The great rule of conduct for us, in regard to foreign Nations[,] is in extending our commercial relations to have with them as little *political* connection as possible.” Political alliances or conflicts with other nations were only to be out of necessity. As in the Declaration of Independence, other nations assume their own “separate and equal station” as well, and their independence should be respected. In general, the United States should not interfere in the internal governance of other nations unless necessary for self-defense regarding the nation’s security. Today, the United States is often involved in the governance of other nations, and has largely abandoned its founding principles of national-self-determination and sovereignty.
- Discuss with students how George Washington’s overall objective in foreign policy was to defend the institutions of American constitutional government at home and develop the United States to “that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.” That is, the purpose of American foreign policy is to protect and defend American constitutional self-government. America’s principles are universal (“all men are created equal”) but America is a particular nation, which means that while the United States models and advocates for American principles its first obligation is to the defense and perpetuation of this country.
- Discuss with students the broad contours of arguments related to foreign policy issues today. Debate will naturally arise, but make sure it remains civil and that it does not overtake the rest of class. Students should be familiar with policy issues of today, but they need not arrive at decisions on the course of action the nation should take. In doing so, they will learn that foreign policy is

informed by principle but is largely an exercise in prudential decision-making in particular circumstances.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Outline the areas that national security and foreign policy address, how decisions are made in these fields, their historical development, and the basic arguments of each side of a current issue within these fields (2–3 paragraphs).

APPENDIX

Study Guide

Test

Writing Assignment

Study Guide — Institutions and Policy Test

Unit 6

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which each was discussed during this unit's lessons.

legislative power	executive privilege	charter school
bicameral	pardoning power	War on Poverty
Senate	impeachment	Great Society
House of Representatives	bureaucracy/bureaucrat	redistribution
majority/minority leader	administrative state	entitlement
oversight	red tape	Gross Domestic Product (GDP)
earmark	merit system	unemployment
logrolling	Pendleton Act	inflation
pork barrel	iron triangle	fiscal policy
joint committee	spoils system	monetary policy
joint resolution	Congressional Review Act	deficit
lame duck	federalism	progressive taxation
filibuster	local government	income tax
committees/subcommittees	state government	supply-side economics
Speaker of the House	county	Federal Reserve System
President pro tempore	township	Internal Revenue Service
veto	ward/precinct	tariff
whip	city	protectionism
nondelegation doctrine	school board	Monroe Doctrine
bully pulpit	domestic policy	containment
State of the Union address	incorporation doctrine	uplift
foreign policy	welfare state	preemption
chief of staff	New Deal	isolationism
cabinet	Social Security	unilateralism
vice president	Medicare/Medicaid	multilateralism
executive order	payroll tax	
War Powers Resolution	negative rights	
National Security Council	positive rights	

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | Congress

- ☐ What is the legislative power and who has it, per the Constitution?
- ☐ Why, in a representative democracy, did the Founders consider the legislature the most important branch of government?
- ☐ What are the major differences between the House of Representatives and the Senate? What does this say about their purposes?
- ☐ What are the different types of committees and what do they accomplish? Why would Congress have to split up into committees?
- ☐ How does a bill become a law?
- ☐ How have Congress and the legislative power changed since the Founding?
- ☐ What is delegation? Why has it been so consequential? Why has Congress embraced it?

Lesson 2 | The Presidency

- ☐ What is the executive power? Why do we need a president?
- ☐ What were the original cabinet positions in the executive branch? What has happened to these positions? Why were they not a threat to the idea of a unitary executive?
- ☐ How have presidents used rhetoric?
- ☐ How have presidents used emergency powers?
- ☐ Why is the pardoning power an executive function? What purpose does it serve?
- ☐ What is an executive order? Is it constitutional?
- ☐ How has the role of the president changed as political parties have changed?

Lesson 3 | The Bureaucracy and the Administrative State

- ☐ What powers does the bureaucracy have, how did the bureaucracy acquire those powers, and what does it look like when those powers are exercised?
- ☐ How does the administrative state violate the principle of separation of powers?
- ☐ To what extent are bureaucrats accountable to the people? How so?
- ☐ What are the arguments for and against government by expertise?
- ☐ What are the arguments for and against the control of bureaucracies by political appointments that change with administrations?
- ☐ What is meant by the “iron triangle” and how does it function? Why is it considered “iron”?
- ☐ What is bureaucratic work like? Why does it have this character?
- ☐ What are the arguments for and against centralized planning by federal bureaucrats? What is lost in the process?
- ☐ How can the concentration of all three powers in the bureaucracies be weaponized against political opponents or specific groups of people?
- ☐ To what extent have Americans come to accept lawmaking by bureaucrats? Why do you think this is the case?

Lesson 4 | State and Local Government

- ☐ What value did the Founders place on state and local governments?
- ☐ How did the Framers of the Constitution seek to empower state and local governments?
- ☐ What benefits has federalism afforded the American experiment in self-government?
- ☐ What are the structure and primary roles of offices in the state government?
- ☐ What are the structure and primary roles of offices in the local government?
- ☐ How has the power of the federal, state, and local governments changed in relationship to each other throughout history? What has accounted for those fluctuations?

Lesson 5 | Domestic Policy

- ☐ What are the various kinds of social and economic policies?
- ☐ How have these policy areas and the arguments within them changed through American history?
- ☐ What were the views of the Founders in these areas?
- ☐ How did Progressivism and the New Deal change the role of government in domestic policy?
- ☐ Explain the difference between negative and positive rights. Why do positive rights usually require a larger government and higher taxation?
- ☐ How have entitlement programs changed the way people view the government?
- ☐ What accounts for the complexity of the United States tax system?
- ☐ Explain how the Federal Reserve works. What might the Founders have thought about this?
- ☐ How are government programs funded?

Lesson 6 | National Security and Foreign Policy

- ☐ What is the primary purpose of the federal government? Why is this the case?
- ☐ What is foreign policy? How is it related to national security?
- ☐ How is foreign policy determined in the United States?
- ☐ How is foreign policy carried out in the United States?
- ☐ Who makes treaties? Who declares war? Who conducts war? Why are these powers separated in this manner?
- ☐ How has foreign policy changed throughout American history? Consider trade, treaties, war, alliances, etc.
- ☐ What is the Progressive idea of “uplift,” and how did it play out in foreign policy?
- ☐ What is the difference between unilateralism and multilateralism? When did the shift to multilateralism occur, and what domestic policies accompanied it?
- ☐ What are the main divisions of view on foreign policy today?

Name_____

Date_____

Test — Institutions and Policy

Unit 6

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. majority/minority leader
2. earmark
3. filibuster
4. Speaker of the House
5. nondelegation doctrine
6. cabinet
7. Pendleton Act
8. township
9. domestic policy
10. fiscal policy
11. monetary policy
12. deficit

13. supply-side economics

14. Federal Reserve System

15. multilateralism

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

16. Why, in a representative democracy, did the Founders consider the legislature the most important branch of government?

17. What is delegation? Why has it been so consequential? Why has Congress embraced it?

18. What is the executive power? Why do we need a president?

19. What is an executive order? Is it constitutional?

20. How does the administrative state violate the principle of separation of powers?

21. To what extent are bureaucrats accountable to the people? How so?

22. What are the arguments for and against government by expertise?

23. What is meant by the “iron triangle,” and how does it function? Why is it considered “iron”?
24. What value did the Founders place on state and local governments?
25. What benefits has federalism afforded the American experiment in self-government?
26. How has the power of the federal, state, and local governments changed in relationship to each other throughout history? What has accounted for those fluctuations?
27. Explain the difference between negative and positive rights. Why do positive rights usually require a larger government and higher taxation?
28. How have entitlement programs changed the way people view the government?
29. What is the primary purpose of the federal government? Why is this the case?
30. What is foreign policy? How is it related to national security?

Writing Assignment — Institutions and Policy

Unit 6

Due on _____

DIRECTIONS

Citing conversations from class in your argument, write a 500–800-word essay answering the question:

What have been the combined effects on government and politics that have resulted from the following changes to the American constitutional order:

- the increased power of Congressional leadership
- the increased power of the presidency
- the delegation, centralization, and insulation of power in the federal bureaucracy
- the increased power of the federal government compared to state and local government
- the increased role of the federal government in domestic policy
- the increased role of the United States in world affairs

UNIT 7

Politics in Practice

45-50-minute classes | 14-18 classes

UNIT PREVIEW

Structure

LESSON 1	Parties, Elections, and Campaigns	4-5 classes	p. 5
LESSON 2	Civic Participation and Public Opinion	3-4 classes	p. 8
LESSON 3	Civic Associations and Interest Groups	3-4 classes	p. 13
LESSON 4	The First Amendment and the Media	2-3 classes	p. 16
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 19
APPENDIX B	Primary Source		p. 29

Why Teach Politics in Practice

After studying the history of political thought in the United States and the institutions and policies involved in American governance, students must recognize that such thought and governance does not happen in a vacuum. Instead, many individuals and private associations together influence and reflect the views of citizens and lawmakers alike. The political process and arena in the United States are the unofficial parts to American representative democracy. Students should understand their origins and how they operate so as to know the ways in which their civic participation may be effective and effected. Students can also make judgments on which elements in politics are proper to the Founders' understanding of self-government and which inhibit or curtail such self-rule.

What Teachers Should Consider

The Founders' principal fears in practical politics—faction and demagogues—were well founded, and their attempts to mitigate these threats were some of the most innovative parts to the constitutional order they arranged. Nevertheless, partisanship arose even with the ratification of the Constitution. The growth of political parties, the dominance of the election cycle, and the plethora of interest groups and civic associations have become hallmarks of American self-government. While the Founders may have sought to avoid this arrangement more than was possible, party politics are cemented in place in the United States. Moreover, general civic participation, as Alexis de Tocqueville noted, has provided for a degree of stability and practice in self-government that has been salutary. Students should appreciate the roles of these various forms of civic participation and how they function. They should of course consider circumstances today in light of the Founders' views and understand how politics work practically in twenty-first century America. Students should come to understand their own role in the political process, the important privilege that Americans have to participate in the political process, and the various associations, groups, parties, and media with which they may engage. The goal of this unit is to help students make sense of how representatives are chosen, how policy decisions are shaped, how public opinion is formed, and the civic responsibilities and opportunities afforded to students when they become adult citizens.

How Teachers Can Learn More

TEXTS

American Government and Politics, Joseph Bessette and John Pitney Chapters 4, 7–11

ONLINE COURSES | Online.Hillsdale.edu

Introduction to the Constitution
The U.S. Supreme Court

Primary Sources Studied in This Unit

Seneca Falls “Declaration of Sentiments and Resolutions,” Elizabeth Cady Stanton

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — Parties, Elections, and Campaigns

4-5 classes

LESSON OBJECTIVE

Students learn how representative self-government is achieved through the constitutional framework for elections, the Electoral College, the election process, political parties, and campaigns.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Introduction to the Constitution

Lecture 10

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the readings. The reading quiz should be based on the questions on pages 286–287 and 316 of *American Government and Politics*.

American Government and Politics

Chapters 9–10

TERMS AND TOPICS

political party
Electoral College
proportional vote
popular vote
winner-take-all
party realignment
caucus
king caucus
ballot
split ticket
tabulation
divided government
platform

Federal Election Commission
referendum
recall
initiative
general election
primary/primary election
voter turnout
gerrymandering
incumbent
incumbency advantage
PAC/super PAC
campaign advertisements

QUESTIONS FOR THE AMERICAN MIND

- What does it mean to have free and fair elections?
- What is the significance of “ballots over bullets”?
- What are the major party realignments, when did they happen, and what were the consequences?
- What has happened to local parties? How did this happen? What are the consequences?
- What was the purpose of the Electoral College? How does it work?
- Why do we have two parties? What are the advantages and disadvantages of this system?

- Why have third parties historically been unable to gain a foothold in the election process?
- Why was the election of 1800 so important?
- What was the change in the party system that happened in the New Deal era?
- Why do incumbents usually win elections even when people are unsatisfied with the institution?
- What makes gerrymandering possible, and what are the advantages and disadvantages of this process?
- How do candidates finance their campaigns?
- Questions from the U.S. Civics Test:
 - Question 1: What is the form of government of the United States?
 - Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
 - Question 22: How long is a term for a U.S. Senator?
 - Question 25: How long is a term for a member of the House of Representatives?
 - Question 32: Who elects U.S. senators?
 - Question 34: Who elects members of the House of Representatives?
 - Question 36: The President of the United States is elected for how many years?
 - Question 64: Who can vote in federal elections, run for federal office, and serve on a jury in the United States?
 - Question 69: What are two examples of civic participation in the United States?
 - Question 70: What is one way Americans can serve their country?
 - Question 119: What is the capital of the United States?

KEYS TO THE LESSON

If there is one practice that is the most famous gesture of American life, it is the holding of elections. Indeed, the foundational governing principle of America—that of representative self-government—is expressed and achieved through elections. Freely voting for our neighbors to represent our views in making and enforcing laws—and to have confidence that the process for doing so is fair and just—is the bedrock of American representative democracy, the great achievement of the founding and the envy of oppressed peoples throughout the world and down through the ages. Students should appreciate these facts and also understand how this process of choosing representatives works: both how it was originally intended to work and how it has changed over the centuries to the political process of today.

Teachers might best plan and teach Parties, Elections, and Campaigns with emphasis on the following approaches:

- Explain to students how the American Founders structured the election process. Note the great deference in matters of elections that the Founders gave to state legislatures in particular. The reason they lodged this power for establishing election procedures in state legislatures is so that a separate elected body responsive to the people of a certain area would be accountable to the people for how the elections are conducted in that area. The key was, as much as possible, to make sure that those who establish election procedure were accountable to the people of a whole state, thus dispersing the potential for election fraud and corruption. This is the same reason why redrawing congressional districts is also left up to the state legislatures.
- Explain the one major nationally directed election, that of the president. Explain what the Electoral College is, how it works, and why. Chief goals for the Founders in establishing the

Electoral College for choosing the president were twofold. First, by dividing the electorate into geographic groups by state, the Electoral College forces presidential candidates to recognize and incorporate the interests of more rural and remote citizens instead of only the interests of citizens who live in high-density areas, where it is easiest and most efficient to campaign. This arrangement has arguably prevented the division of American citizens into a ruling class of cities and a colony class of rural dwellers, whose interests and needs are ignored. Second, the Electoral College was meant to allow its electors to deny someone the presidency should the electors determine that the candidate was a demagogue or might act tyrannically. Students should understand that many state legislatures have both allotted the state's electoral vote to the winner of the state's popular vote and have required that electors be faithful to that outcome, thus undermining the second purpose of the Electoral College. The first goal, however, remains in place, except in those states that have required their state electors to follow the national popular vote.

- Walk students through the election process.
- Review with students the emergence of parties and how they have changed in history to their current form, particularly the changes from the founding generation and those that took place during the Progressive era.
- Emphasize how it is the parties that determine the vast majority of what happens in the election process and who ends up on a ballot. Students should recognize that one of the most influential roles ordinary citizens can have in the official election process is being involved in the leadership of political parties, beginning at the local level. In fact, it was the focus on the local party that was the traditional place to practice self-government in the United States. Politicians first gained power in their local communities, where they had to develop a good reputation before becoming part of the national system. This meant they were personally tied to their local communities and the issues therein. This enabled local issues to be considered by national politicians as well. Students should understand that while this tradition may still be the most congruent with the intentions of the Founders and with much of American history, in recent decades national parties often dictate the direction of a party based on national priorities, rather than local parties and the issues they seek to address.
- Share with students how campaigns work and the various ways in which candidates attempt to secure citizens' votes.
- Consider the relationship between elected officials and their constituents. Not only do relatively few Americans know who their representatives are or who governs them, the representative himself or herself has increasingly been separated from his or her constituency in terms of geography—and especially by lifestyle and economic status. Have students consider what effect this has on self-government.
- Have students consider why so many people do not know who governs them. Help them to understand that politicians used to be part of the community and not separate from it. Ask them what this separation does to politicians, to politics, and to the people governed by such representatives.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how elections are the embodiment of representative self-government and how political parties and campaigns may honor or subvert that principle in how they choose and support candidates (2–3 paragraphs).

Lesson 2 — Civic Participation and Public Opinion

3-4 classes

LESSON OBJECTIVE

Students learn about how public opinion shapes personal opinion and how civic participation can influence election outcomes.

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on questions from pages 233–234 of *American Government and Politics*.

American Government and Politics

Chapters 4 and 7

Students are to read or, if they have previously read, review the following primary source. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Seneca Falls “Declaration of Sentiments and Resolutions,” Elizabeth Cady Stanton

TERMS AND TOPICS

citizen
citizenship
13th, 14th, 15th, and 19th Amendments
Worcester v. Georgia
Dawes Act
Indian Citizenship Act
birthright citizenship
naturalization
assimilation
melting pot
public opinion poll
suffrage

19th Amendment
turnout
political participation
liberal
conservative
moderate
independent
libertarian
populist
voter registration
polling
poll tax
social media

QUESTIONS FOR THE AMERICAN MIND

- What were the limits on voting at the time of the founding? While these were limits compared to today, how did they compare to practices in human history up to the time of the founding?
- How has suffrage been expanded since the founding?

- Why are polls often inaccurate measures of public opinion?
- How do citizens learn about or become influenced by public opinion?
- How has new technology (social media) impacted how public opinion is spread and understood?
- What are direct and indirect means of political participation?
- Should everyone choose to exercise their right to vote? Why or why not?
- Questions from the U.S. Civics Test:
 - Question 1: What is the form of government of the United States?
 - Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
 - Question 63: There are four amendments to the U.S. Constitution about who can vote. Describe one of them.
 - Question 64: Who can vote in federal elections, run for federal office, and serve on a jury in the United States?
 - Question 68: How can people become United States citizens?
 - Question 69: What are two examples of civic participation in the United States?
 - Question 70: What is one way Americans can serve their country?
 - Question 97: What amendment gives citizenship to all persons born in the United States?
 - Question 98: When did all men get the right to vote?
 - Question 102: When did all women get the right to vote?

KEYS TO THE LESSON

In human history, the right to vote is extraordinarily, almost miraculously, rare. It is yet another of the many privileges and benefits that Americans have and that are so easily taken for granted. This right to vote and the holding of elections lies at the heart of representative self-government, as it is this action and this process through which the people give consent to the laws under which they conduct all their other actions. It is thus important that as many legal voters be enabled to vote as wish to do so, that they vote only once, that their vote counts so long as it abides by the process, and that those who do not have a legal right to vote are not permitted to do so. Students should also recognize, however, how their views when they go to vote are often influenced by the prevailing opinion shared in the community. This public opinion can be shaped not only by the combination of views of the people, but also by individual leaders or powerful groups, including the media and, at present, social media. Beyond voting and running for office, students should recognize the other ways in which citizens may and should seek to fulfill their responsibilities as free citizens, including being well-informed, making their views heard at government meetings, generally abiding by the law, and respecting and assisting others.

Teachers might best plan and teach Civic Participation and Public Opinion with emphasis on the following approaches:

- Discuss with students what a citizen is and the meaning, rights, and responsibilities of citizenship. Survey and discuss with students the various amendments to the Constitution that concern citizenship, namely the 13th, 14th, 15th, and 19th Amendments. Include conversations on birthright citizenship and the naturalization process, the various responsibilities held by citizens such as respecting the rule of law, voting, volunteering, staying well-informed, and exhibited personal virtue and a responsible use of time, talents, and resources.

- Students should gain a clear perspective on voting in human history. In brief, this privilege has been exceptionally rare and, therefore, the American citizen's right to vote is a remarkable achievement. And nearly all of the groundbreaking moments in this achievement occurred in American history. The American colonies, for instance, were one of the few places in history where most ordinary male citizens of European descent were permitted to vote. The rule in history has been that one person made the law (monarchy) or a few did so (oligarchy). That most male citizens, even though still restricted to those of European descent, were allowed to vote in the American colonies is therefore a consequential development in world history, a significant step toward universal suffrage.
- Explain to students how women, African Americans, and men who did not own property were generally, though not always, prohibited from voting. At the Founding, every state north of Pennsylvania allowed free African Americans to vote. Students should appreciate the historic gains the American people made securing the right to vote for each of these groups while also recognizing that their original curtailment was more the rule than the exception in human history, not a phenomenon unique to America. What was unique to America was the right to vote at all and then the relatively rapid rate at which the right to vote was expanded to these groups.
- Explain that originally, voting was a privilege of citizenship and not a right. It was also a serious duty. It was meant to be carried out by people who had significant interest in protecting America, who actively informed themselves on the issues independent of what they were simply told, and who would be called to give their lives up for their country if it were threatened. Put another way, they had a high personal stake in what the country did regarding various policies, including going to war.
- In general, canvass with students various government actions related to voter participation, such as the 15th, 19th, and 26th Amendments, Jim Crow, poll taxes, and absentee, early, and mail-in voting. Students should consider how each of these changes affects voting and the practice of representative self-government.
- Read with students Elizabeth Cady Stanton's 1848 Seneca Falls "Declaration of Sentiments and Resolutions." Note Stanton's appeal to the principles of the Declaration to argue for women's suffrage.
- Trace with students the history of Native Americans and U.S. citizenship. Consider the numerous instances in which Native Americans were denied their rights and the great gains they have witnessed in having those rights secured through American history, including the various laws to make Native Americans citizens and the ways in which Native Americans retain their own status as nations.
- Consider with students the power of public opinion and its foundations in a moral outlook and education. Students should understand how public opinion is formed and influenced and how, in turn, it influences the opinions of individual citizens. Public opinion is something that dominates in a democratic society because everyone is equally powerful in a democratic republic through their votes. People tend, therefore, to consider the majority opinion to be correct, meaning that many political fights occur in the court of public opinion more than in the legislative process. The side that can command public opinion can shape the nation politically. Students should recognize the famous importance that Abraham Lincoln placed on public opinion in moving northerners not only to vote but also fight and even to die to preserve a union without slavery.
- Make special note of how generations of educational practices, particularly at the collegiate level, as well as the emergence of powerful new forces such as activist organizations, corporate marketing, and social media have greatly influenced public opinion over the past several decades.

- Share with students the variety of ways in which citizens can and in many cases should participate in the civic life of the country and their local community. At the very least, citizens have a responsibility to respect the rights of others, conduct their own personal lives with virtue, and take minimal steps to be informed on issues and on their representatives by seeking out the truth and thinking for themselves.
- Help students see the robust tradition of local civic participation America used to have and the great decline in civic participation in the United States, partly owing to the centralization of politics and lawmaking at the national level, the power of interest groups, activist groups, and bureaucracy in lawmaking, and the various new kinds of entertainment and technology that occupy citizens' time and attention.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENTS

Assignment: Explain the responsibilities and ways in which ordinary American citizens may participate in the American experiment of self-government, why such participation has been historically significant, and why civic participation has declined in recent years (2-3 paragraphs).

Name_____

Date_____

Unit 7 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. What is the significance of “ballots over bullets”?
2. What has happened to local parties? How did this happen? What are the consequences?
3. What was the purpose of the Electoral College? How does it work?
4. How has suffrage been expanded since the founding?
5. Why are polls often inaccurate measures of public opinion?

Lesson 3 — Civic Associations and Interest Groups

3-4 classes

LESSON OBJECTIVE

Students learn about civic associations and interest groups, the power they hold, and the ways in which they may enhance or detract from the interests of individuals.

TEXTS

Students should read the below texts and come to class prepared to complete a short reading quiz on the contents of the readings. The reading quiz should be based on questions on pages 257-258 of *American Government and Politics*.

American Government and Politics

Chapter 8

TERMS AND TOPICS

interest group
faction
civic association
philanthropy
churches

unions
think tank
grassroots
lobbyist

QUESTIONS FOR THE AMERICAN MIND

- Why did James Madison say that factions will always exist in a free society? What is the significance of this?
- How do interest groups ensure that individuals' voices are heard?
- How do interest groups act against the wills of individuals?
- Are interest groups factions? Do they serve an important function?
- Why are interest groups often looked down upon?
- How did unions change the way political associations were understood?
- Why are most interest groups and think tanks headquartered in Washington, DC? What does this say about power in America? What does this mean about local associations?
- What are the benefits and drawbacks to allowing professional lobbying?
- What forms of civic associations have been more traditional in American history? On what levels of government did they tend to focus?
- Questions from the U.S. Civics Test:
 - Question 65: What are three rights of everyone living in the United States?
 - Question 69: What are two examples of civic participation in the United States?
 - Question 70: What is one way Americans can serve their country?

KEYS TO THE LESSON

So long as there is human nature, there will be differences of opinion and interest. Factions, as the Founders so aptly recognized, will always arise and will always exist. In a political community, these factions may coalesce into separate but sometimes overlapping official entities. Such groups serve different purposes and go about achieving their goals through different means, but they all have the same goal: to influence lawmaking by influencing lawmakers, public opinion, and, increasingly, government bureaucrats. Students should understand what these kinds of groups are, how they arise, what they do, and how effective they are in American society. While such civic-focused groups have historically been a hallmark of American representative democracy, they have become increasingly separated from the interests of ordinary Americans and have instead operated on behalf of the comparably wealthy and well-connected portion of the American citizenry.

Teachers might best plan and teach Civic Associations and Interest Groups with emphasis on the following approaches:

- Make sure students understand the Founders' argument that factions have and will always exist in a free society because people who are free willingly choose to associate with others who have the same interests. When a government begins to tell its people what to think and with whom they can associate, it encroaches on the natural rights of those people to think for themselves. At the same time, the Founders were concerned that factions could gain enough power to take away the rights of others. Instead of prohibiting liberty, however, the Founders created the Constitution with the principles of representation, an enlarged republic, separation of powers, checks and balances, and federalism in order to channel factions to constructive, cooperative ends. Review with students these principles from Unit 2 and, in particular, *Federalist* 10.
- Note for students how private associations have always existed in America and that America was known for the vibrancy of such associations, a phenomenon recognized by Alexis de Tocqueville. Associations are innately factious, because they define beliefs and prescribe limits to participation. In early America, associations allowed individuals to come together to make their voices heard against the majority. In this way, they protected individual rights.
- Consider the role that philanthropic individuals, organizations, and religious institutions have played in American representative democracy. These associations have shaped not only the moral character and conduct of their members but also major reform movements in America, such as abolition, anti-poverty, temperance, and civil rights.
- Clarify for students that the modern interest groups that lobby in Washington, DC, are significantly different from the private and local associations that existed in early America. Many interest groups generally do not represent private individuals but reflect the interests of the comparably wealthy and powerful—and even those who have become wealthy and powerful in the name of representing the weak and the downtrodden. Their ascendancy tracks with that of the federal government. As government power was increasingly concentrated in the federal government, and as the federal bureaucracy burgeoned under Progressivism, it was natural that wealthier and more powerful interests throughout the entire country would centralize themselves into single groups to influence lawmaking most efficiently in that singular national location. By comparison, federalism and the previous power of state and local governments had not only required interests to disperse their efforts but also allowed for greater voice and representation from local citizens.

- Help students to understand why certain interests dominate national policy, even when that interest represents a relatively small number of individuals.
- Ask students how they can have political sway as individuals. Help them imagine what it would have been like to have local associations that were powerful and what that would have meant for their individual interests.
- Canvass with students the structure and methods of the various types of civic associations: think tanks, activist groups, political action committees, nonprofits, grassroots groups, local civic associations, etc.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how the nature and methods of civic-focused groups have changed over the timeline of American history (1–2 paragraphs).

Lesson 4 — The First Amendment and the Media

2-3 classes

LESSON OBJECTIVE

Students learn about the role of the media in the political process and in public opinion, as well as the ways in which the First Amendment preserves the freedoms necessary for citizens to participate freely in the civic body.

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The U.S. Supreme Court

Lecture 5

TEXTS

Students should read the text below and come to class prepared to complete a short reading quiz on the contents of the reading. The reading quiz should be based on the questions on page 342 of *American Government and Politics*.

American Government and Politics

Chapter 11

TERMS AND TOPICS

news
news media
mass media
yellow journalism
muckrakers
political cartoons
network
radio
priming
framing

editorial
watchdogs
spin
narrative
“fake news”
news release
opposition research
Federal Communications Commission
(FCC)
First Amendment

QUESTIONS FOR THE AMERICAN MIND

- What is the relationship between reporting and creating news?
- How has mass media centralized public opinion?
- What is the purpose of freedom of the press? Does mass media accomplish this?
- Why does local journalism matter?
- Analyze the advantages and disadvantages of a government organization overseeing broadcast media.
- Alexis de Tocqueville wrote that Americans were attached to the news. Is this true? Why would this occur in a representative democracy?

- How has yellow journalism impacted the way people think about politics? Do personal scandals matter?
- How and why has journalism changed, especially in recent decades?
- Why is freedom of speech for individuals necessary for freedom and justice?
- What role has social media played in the civic body?
- Are social media restrictions on what users share violations of freedom of speech? Why or why not?
- Questions from the U.S. Civics Test:
 - Question 65: What are three rights of everyone living in the United States?
 - Question 69: What are two examples of civic participation in the United States?

KEYS TO THE LESSON

The freedom of the press is the extension of freedom of speech to enable the mass distribution of ideas. This freedom has been and is still crucial to a free civic body. The free press is yet another emblem by which people all over the world have recognized American freedom and self-government. At the same time, students should understand the value of individual free speech and the freedom of speech of other organizations guaranteed by the First Amendment. Free speech itself allows citizens to think for themselves and share what they think with others.

Teachers might best plan and teach the First Amendment and the Media with emphasis on the following approaches:

- Help students understand the central role journalism and writing played in the American Revolution and founding. Consider all the documents that students have read that were published and promoted through newspapers or print.
- Have students consider also the reason behind the First Amendment. Freedom of speech and of the press are a vital check against the government. They provide a means for criticizing the government and for informing the public about government actions. Furthermore, freedom of speech is connected to freedom of conscience. The destruction of speech will inevitably lead to the destruction of ideas, which is possible only by destroying the creators and possessors of those ideas: people themselves.
- Consider how the media is also able to abuse the respect traditionally afforded to them by the people to engage in biased reporting under the cover of objectivity, oftentimes to the benefit of those who are most powerful in society.
- Emphasize that intentional efforts by individuals to research, critique, and discern true reporting when making informed political decisions is essential to a free people and to being a responsible citizen.
- Consider also with students the rise of social media and its influence on public opinion. Important questions have been raised in recent years over the power that social media has held in shaping public opinion by channeling or restricting access to the sharing of certain ideas.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the role that free speech and freedom of the press play in representative self-government and how such rights have influenced public opinion in recent decades (1–2 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — Politics in Practice Test

Unit 7

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

political party	suffrage	news media
Electoral College	liberal	mass media
caucus	conservative	yellow journalism
ballot	moderate	muckrakers
split ticket	independent	network
divided government	libertarian	priming
platform	populist	framing
Federal Election Commission	voter registration	editorial
referendum	social media	watchdogs
recall	interest group	spin
initiative	faction	narrative
general election	civic association	“fake news”
primary/primary election	unions	news release
gerrymandering	think tank	Federal Communications
incumbent	grassroots	Commission (FCC)
PAC/super PAC	lobbyist	First Amendment
public opinion poll	news	

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | Parties, Elections, and Campaigns

- ☐ What does it mean to have free and fair elections?
- ☐ What is the significance of “ballots over bullets”?
- ☐ What has happened to local parties? How did this happen? What are the consequences?
- ☐ What was the purpose of the Electoral College? How does it work?
- ☐ Why do we have two parties? What are the advantages and disadvantages of this system?
- ☐ Why do incumbents usually win elections, even when people are dissatisfied with the institution?
- ☐ What makes gerrymandering possible, and what are the advantages and disadvantages of this process?
- ☐ How do candidates finance their campaigns?

Lesson 2 | Civic Participation and Public Opinion

- ☐ What were the limits on voting at the time of the founding? While these were limits compared to today, how did they compare to practices in human history up to the time of the founding?

- ☐ How has suffrage been expanded since the founding?
- ☐ Why are polls often inaccurate measures of public opinion?
- ☐ How do citizens learn about or become influenced by public opinion?
- ☐ How has new technology (e.g., social media) impacted how public opinion is spread and understood?
- ☐ What are direct and indirect means of political participation?

Lesson 3 | Civic Associations and Interest Groups

- ☐ Why did James Madison say that factions will always exist in a free society? What is the significance of this?
- ☐ How do interest groups ensure that individuals' voices are heard?
- ☐ How do interest groups act against the wills of individuals?
- ☐ How did unions change the way political associations were understood?
- ☐ Why are most interest groups and think tanks headquartered in Washington, DC? What does this say about power in America? What does this mean about local associations?
- ☐ What are the benefits and drawbacks to allowing professional lobbying?
- ☐ What forms of civic associations have been more traditional in American history? On what levels of government did they tend to focus?

Lesson 4 | The First Amendment and the Media

- ☐ What is the relationship between reporting and creating news?
- ☐ How has mass media centralized public opinion?
- ☐ What is the purpose of freedom of the press?
- ☐ Why does local journalism matter?
- ☐ Analyze the advantages and disadvantages of a government organization overseeing broadcast media.
- ☐ Alexis de Tocqueville wrote that Americans were attached to the news. Is this true? Why would this occur in a representative democracy?
- ☐ How has yellow journalism impacted the way people think about politics? Do personal scandals matter?
- ☐ How and why has journalism changed, especially in recent decades?
- ☐ Why is freedom of speech for individuals necessary for freedom and justice?
- ☐ What role has social media played in the civic body?
- ☐ Are social media restrictions on what users share violations of freedom of speech? Why or why not?

Name_____

Date_____

Test — Politics in Practice

Unit 7

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. split ticket
2. platform
3. referendum
4. recall
5. initiative
6. primary/primary election
7. liberal
8. conservative
9. interest group
10. think tank
11. lobbyist
12. yellow journalism

13. framing

14. narrative

15. Federal Communications Commission (FCC)

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

16. What is the significance of “ballots over bullets”?

17. What has happened to local parties? How did this happen? What are the consequences?

18. What was the purpose of the Electoral College? How does it work?

19. What makes gerrymandering possible, and what are the advantages and disadvantages of this process?

20. What were the limits on voting at the time of the founding? While these were limits compared to today, how did they compare to practices in human history up to the time of the founding?

21. How has suffrage been expanded since the founding?

22. How do citizens learn about or become influenced by public opinion?

23. Why did James Madison say that factions will always exist in a free society? What is the significance of this?
24. How do interest groups act against the wills of individuals?
25. What forms of civic associations have been more traditional in American history? At which levels of government did these associations tend to focus?
26. What is the relationship between reporting and creating news?
27. What is the purpose of freedom of the press?
28. How and why has journalism changed, especially in recent decades?
29. Why is freedom of speech for individuals so necessary for freedom and justice?
30. What role has social media played in the civic body?

Writing Assignment — Politics in Practice

Unit 7

Due on _____

DIRECTIONS

Citing conversations from class in your argument, write a 500–800-word essay answering the question:

How does the American political process ensure government by the people, and what challenges have emerged in recent decades to these mechanisms for determining representation?

APPENDIX B

Primary Source

Elizabeth Cady Stanton

WOMEN'S RIGHTS CONVENTION

Declarations of Sentiments and Resolutions

DECLARATION

July 19, 1848

Wesleyan Chapel | Seneca Falls, New York

BACKGROUND

Early suffragist leader Elizabeth Cady Stanton drafted this statement at the 1848 Women's Rights Convention at Seneca Falls.

GUIDING QUESTIONS

1. Who is the "he" referred to in the document?
2. What do the women demand from American society?

Elizabeth Cady Stanton, et al, eds. "Declaration of Sentiments," in *History of Women Suffrage*, Vol. 1 (Guttenberg Press, 2009), 70, <https://www.gutenberg.org/files/28020/28020-h/28020-h.htm>.

ANNOTATIONS

NOTES & QUESTIONS

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 were 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.

ANNOTATIONS

NOTES & QUESTIONS

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.

- 5 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.
- 10

- He has so framed the laws of divorce, as to what shall be the proper causes, and 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 a false supposition of the supremacy of man, and giving all power into his hands.
- 15

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.
- 20

He has denied her the facilities for obtaining a thorough education, all colleges being closed against her.

ANNOTATIONS

NOTES & QUESTIONS

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.

5 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 to her God.

10 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
15 which belong to them as citizens of the 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
20 this Convention will be followed by a series of Conventions embracing every part of the country.

UNIT 8

Late 20th Century Government and Politics

45-50-minute classes | 15-19 classes

UNIT PREVIEW**Structure**

LESSON 1	The Civil Rights Movement	4-5 classes	p. 7
LESSON 2	New Progressive Movements	3-4 classes	p. 10
LESSON 3	Major Supreme Court Decisions	4-5 classes	p. 16
LESSON 4	Recent Debates about Equality	2-3 classes	p. 21
APPENDIX A	Study Guide, Test, and Writing Assignment		p. 27
APPENDIX B	Primary Sources		p. 39

Why Teach Late 20th Century Government and Politics

The civil rights movement was a fulfillment of America's founding principles of equality before the law based on the inherent equal dignity and natural rights of all people. While it remained to the consciences of individual Americans to decide how they would view their fellow man going forward, in the eyes of the law people's rights would be protected equally. Even as the civil rights movement secured such rights, new Progressive movements emerged with new ends for government and politics. At the same time the Supreme Court adopted a different judicial approach to cases before it. Following from such movements, cultural

changes, and judicial decisions, new debates have arisen concerning the meaning and status of equality in America. Students who are approaching the full responsibilities of adult citizens should be familiar with these late twentieth century changes and such debates surrounding equality, for the claim that “all men are created equal” is the central principle by which the United States exists.

What Teachers Should Consider

From *The 1776 Report*, Pages 41-43

The civil rights movement culminated in the 1960s with the passage of three major legislative reforms affecting segregation, voting, and housing rights. It presented itself, and was understood by the American people, as consistent with the principles of the founding. “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,” Martin Luther King Jr. said in his “I Have a Dream” speech. “This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights to life, liberty, and the pursuit of happiness.”

It seemed, finally, that America’s nearly two-century effort to realize fully the principles of the Declaration had reached a culmination. But the heady spirit of the original civil rights movement, whose leaders forcefully quoted the Declaration of Independence, the Constitution, and the rhetoric of the Founders and of Lincoln, proved to be short-lived.

The civil rights movement was almost immediately turned to programs that ran counter to the lofty ideals of the Founders. The ideas that drove this change had been growing in America for decades, and they distorted many areas of policy in the half century that followed. Among the distortions was the abandonment of nondiscrimination and equal opportunity in favor of “group rights” not unlike those advanced by Calhoun and his followers. The justification for reversing the promise of color-blind civil rights was that past discrimination requires present effort, or affirmative action in the form of preferential treatment, to overcome long-accrued inequalities. Those forms of preferential treatment built up in our system over time, first in administrative rulings, then in executive orders, and later in congressionally passed law; finally they were sanctified by the Supreme Court.

Today, far from a regime of equal natural rights for equal citizens, enforced by the equal application of law, we have moved toward a system of explicit group privilege that, in the name of “social justice,” demands equal results and explicitly sorts citizens into “protected classes” based on race and other demographic categories.

Eventually this regime of formal inequality would come to be known as “identity politics.” The stepchild of earlier rejections of the founding, identity politics values people by characteristics like race, sex, and sexual orientation and holds that new times demand new rights to replace the old. This is the opposite of King’s hope that his children would “live in a nation where they will not be judged by the color of their skin but by the content of their character,” and denies that all are endowed with the unalienable rights to life, liberty, and the pursuit of happiness.

Identity politics makes it less likely that racial reconciliation and healing can be attained by pursuing the dream for America of Martin Luther King Jr. and upholding the highest ideals of our Constitution and our Declaration of Independence.

How Teachers Can Learn More

TEXTS

<i>The 1776 Report</i> , The President's Advisory 1776 Commission	Pages 40–43, 76–86
<i>The U.S. Constitution: A Reader</i> , ed. Hillsdale College Politics Faculty	Chapter 11
"A Letter to the New Left," C. Wright Mills	
<i>Taking Rights Seriously</i> , Ronald Dworkin	
<i>American Government and Politics</i> , Joseph Bessette and John Pitney	Chapters 5, 6, 15

ONLINE COURSES | [Online.Hillsdale.edu](https://online.hillsdale.edu)

Constitution 101
Constitution 201
Civil Rights in American History
The U.S. Supreme Court

Primary Sources Studied in This Unit

Plessy v. Ferguson
Brown v. Board of Education
 "I Have a Dream," Martin Luther King Jr.
 "Letter from Birmingham Jail," Martin Luther King Jr.
 Port Huron Statement, Students for a Democratic Society
 "Repressive Tolerance," Herbert Marcuse
A Theory of Justice, John Rawls
Roe v. Wade
Planned Parenthood of Southeastern Pennsylvania v. Casey, "Mystery of Life" passage
Griswold v. Connecticut
Abrams v. United States, Dissent by Justice Holmes
Gitlow v. New York, Dissent by Justice Holmes
United States v. Carolene Products Company, Footnote 4
Brandenburg v. Ohio
Everson v. Board of Education
Engel v. Vitale
Cohen v. California
Buckley v. Valeo
District of Columbia v. Heller
 Commencement address at Howard University, Lyndon Johnson
Regents of the University of California v. Bakke

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — The Civil Rights Movement

4-5 classes

LESSON OBJECTIVE

Students learn about the civil rights movement as well as the ideas of those who supported but detracted from the movement as championed by Martin Luther King Jr.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Civil Rights in American History
The U.S. Supreme Court

Lectures 7 and 8
 Lecture 8

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Plessy v. Ferguson
Brown v. Board of Education
 “I Have a Dream,” Martin Luther King Jr.
 “Letter from Birmingham Jail,” Martin Luther King Jr.

TERMS AND TOPICS

discrimination
 segregation
 “separate but equal”
 civil rights

civil rights movement
 “promissory note”
 color-blind
 Civil Rights Act of 1964

QUESTIONS FOR THE AMERICAN MIND

- What was the civil rights movement?
- How did Justice Thurgood Marshall’s opinion in *Brown v. Board of Education* depart from Justice John Marshall Harlan’s dissent in *Plessy v. Ferguson*?
- How did Martin Luther King Jr. justify the civil rights movement with the Declaration of Independence and the principles of the American founding?
- What did King mean by the “promissory note”?
- In what ways and by what means did the civil rights movement seek to change laws?
- In what ways and by what means did the civil rights movement seek to change the private consciences of individuals?
- Against which forms of discrimination did the early civil rights movement work?

- What were the differences between the early and late stages of the civil rights movement?
- How does the issue of public accommodation enter into the blurred area between public and private realms?
- Questions from the U.S. Civics Test:
 - Question 112: What did the civil rights movement do?
 - Question 113: Martin Luther King Jr. Is famous for many things. Name one.

KEYS TO THE LESSON

Students should understand the fundamental link between the civil rights movement as presented by Martin Luther King Jr. and the founding principles of the United States, namely, the equal dignity of each person and his or her possession of natural rights. King saw the civil rights movement as fulfilling the “promissory note” that the American Founders had set forth in the Declaration of Independence, that the Constitution sought to defend, and that Abraham Lincoln and millions of Union soldiers fought to fulfill. The civil rights movement ensured that the law would be applied equally in the protection of each person’s rights, regardless of skin color. But King also called for a conversion in the heart of each American, a conversion to color-blindness that only the individual’s own free will, not government force, could bring about.

Teachers might best plan and teach the Civil Rights Movement with emphasis on the following approaches:

- Explain to students how the Supreme Court argued in *Plessy v. Ferguson* that segregation based on race, so long as circumstances were the same, would be considered “equal.” Students should think about Justice Harlan’s dissent, however, which appealed to the understanding of equality as found in the Declaration in order to condemn the ruling, for the government was still making judgments based on the color of one’s skin instead of treating all equally under the law.
- Help students to understand the significance of *Brown v. Board of Education*. Note in particular that although the court arrived at a judgment that aligns with the founding understanding of equality, its citation of social science instead of the founding principles in order to decide the case did not condemn or prohibit racial discrimination by the government. The opinion of the majority thus left open the possibility for government discrimination in different forms going forward.
- Consider with students the goals and means of the civil rights movement in the terms in which Martin Luther King Jr. set them. The civil rights movement was meant to fulfill the “promissory note” of the Declaration of Independence that founded America on an idea: that since all men are created equal, justice demands that the rule of law be applied equally to all citizens to protect their rights. The original civil rights movement thus carried on the legacy of the Founders, Frederick Douglass, and Abraham Lincoln. King’s two speeches here demonstrate this view, its ties to the natural law, and its appeals to the Christian roots of such a political philosophy.
- Spend time outlining what was meant by equality during the civil rights movement, both politically and philosophically. On the civil or political side, the civil rights movement’s appeal to equality in the Declaration of Independence demanded the equal application of the rule of law and the end to laws that established and enforced segregation. The rights of all citizens should be equally protected instead of protecting the rights of only some and not others based on the color of their skin. Moreover, the law would be equally applied to all citizens. On the philosophical or moral side, King argued for a voluntary transformation in the heart of each American. While the

enactment and enforcement of laws and the protection of rights should be color-blind and should be mandated as such in law, the individual outlook of each American ought to be a voluntary assent to the same principles of color-blindness in their interactions with all fellow citizens. It is important not to conflate the two parts to the civil rights movement to presume that both should or could be enforced by government, as no government can truly or justly change the opinions of individual people, no matter how evil those opinions may be. Although King appealed to the individual conscience and not the force of law to bring about a color-blind society, some who partook in the civil rights movement and subsequent political and moral philosophies would instead seek to use the power of the government to change individual consciences.

- Clarify with students how the civil rights movement largely focused on the government's ability to enforce the rule of law equally while appealing to each person to change his or her own conscience, as opposed to the creation of equity, that is, to the equality of result.
- Ask students to consider the areas in which the civil rights movement did move into the realm of controlling private property and activity, namely in private businesses open to the public and in hiring practices. This area of public accommodation was where the line between private conscience and government coercion began to blur. It is one thing to require that those responsible for passing, enforcing, and judging laws be equal and color-blind in their enforcement, and it is another thing to leave individual private conscience free to not be color-blind within private conversation and dwellings. But what about those private institutions and businesses that nevertheless interact with and hire members of the public? Does a government have the authority to use force so as to enforce color-blind actions in such venues? Does such force violate the right to assembly and to private property? Students should consider how such provisions in the Civil Rights Act and in subsequent laws and court decisions were new uses of government power, because enforcing personal non-discrimination erased the public/private distinction. Indeed, this foray, as well-intentioned and morally correct as it was, of government power into the private associations of individuals and businesses would set the agenda for other movements that would become increasingly hostile to King's view of civil rights.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the relationship between the civil rights movement as led by Martin Luther King Jr. and the principles of the American founding (3–4 paragraphs).

Lesson 2 — New Progressive Movements

3-4 classes

LESSON OBJECTIVE

Students learn about the new Progressive movements sometimes collectively referred to as the New Left that emerged during the Great Society and in subsequent decades, and their views on rights and the purpose of government.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

Constitution 201

Lecture 8

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Port Huron Statement, Students for a Democratic Society

“Repressive Tolerance,” Herbert Marcuse

A Theory of Justice, John Rawls

TERMS AND TOPICS

personal fulfillment
culture conflict
moral judgments
self-expression
middle class
participatory democracy
social democracy
socialism

the New Left
Critical Theory
identity politics
protest movements
feminism
pacifism
environmentalism
political correctness

QUESTIONS FOR THE AMERICAN MIND

- What were the various late 20th century movements that may broadly be considered Progressive?
- What are the chief characteristics of each late 20th century Progressive movement:
 - in academia
 - in moral and political philosophy
 - student activism
 - against traditional cultural norms
 - feminism
 - environmentalism

- In what sense do these movements change the ends of government compared to the Founders and previous Progressives?
- To what extent did these various movements make up what came to be called the New Left?
- What is the connection between personal fulfillment and acceptance in society?
- How are objective moral judgments considered impediments to personal fulfillment and, therefore, violations of rights?
- Which segment of the United States population had traditionally held moral standards and the principles of the American founding?
- To what extent did Marxist thought inform these new Progressive movements?
- What is the relationship between the class conflict of Marxism and the cultural conflict adopted by some of these Progressive movements?
- What government policies did some Progressive movements support in order to bring about cultural change, liberation, and personal fulfillment?
- What are participatory democracy and social democracy?
- In which ways did new Progressive movements adopt socialist economic policies?
- What is the significance of protest movements? How did these manifest themselves in the 1960s?
- What roles did pacifism and environmentalism play in the 1960s and in the decades since?

KEYS TO THE LESSON

The purpose of this lesson is to help students understand the thought of new Progressive movements that emerged in the late 20th century, which held very different conceptions of human society, both in its ends and its means. Many of these movements were informed by “mid-twentieth-century European thinkers who sought the revolutionary overthrow of their political and social systems but were disillusioned by the working class’s lack of interest in inciting revolution. This setback forced revolutionaries to reconsider their strategy.

“One of the most prominent, the Italian Marxist Antonio Gramsci, argued that the focus should not be on economic revolution as much as taking control of the institutions that shape culture. In Gramsci’s language, revolutionaries should focus on countering the ‘Hegemonic Narrative’ of the established culture with a ‘Counter-Narrative,’ creating a counterculture that subverts and seeks to destroy the established culture.

“Gramsci was an important influence on the thinkers of the ‘Frankfurt School’ in Germany, who developed a set of revolutionary ideas called Critical Theory. Herbert Marcuse, one member of the Frankfurt School who immigrated to the United States in the 1940s, became the intellectual godfather of American identity politics. With little hope that the white American worker could be coaxed to revolution, Marcuse focused not on instigating class conflict but on instigating cultural conflicts around racial identity. He saw revolutionary potential in ‘the substratum of the outcasts and outsiders, the exploited and persecuted of other races and other colors.’”

— *The 1776 Report*, Pages 79–80

Teachers might best plan and teach New Progressive Movements with emphasis on the following approaches:

- Review with students from the beginning of the course the philosophical premises on which America was established. Ask students to consider once more the claims to objective truth and objective morality on which the American regime rests. Thinkers in the West since ancient times have seen in nature and in human nature an objective reality that the human mind is capable of recognizing and understanding. The Founders also argued for the existence of an objective good, something toward which all human actions aim and by which human beings act so as to seek happiness. These pillars of knowledge and virtue oriented toward objective truth and objective morality form the philosophical foundation of Western civilization and of America.
- Proceed to reviewing with students the Progressive movement from its philosophical origins through its Early, New Deal, and Great Society phases.
- Introduce the new Progressive movements of the late 20th Century in light of previous Progressive movements. These new movements accepted and expanded the Progressive ideas of the active role that politics and government should play in society, but they generally substituted a new moral philosophy, which in turn meant government was more active in areas of life that it had not been even under previous Progressives. This new moral philosophy departed not only from the Founders but, to an extent, from previous Progressive thought as well.
- Consider with students the new Progressive criticism of two philosophical premises of America: objective truth and objective morality. These new movements generally denied such objectivity and instead claimed that the assertion of objective truth and morality was an oppressive construct of those in power, i.e., that objectivity is used to trick the oppressed and weak into serving the powerful. It may be worth sharing that similar critiques are found in the thought of previous European thinkers Jean-Jacques Rousseau, Georg Hegel, and Karl Marx.
- Ask students to consider a replacement for truth and for right and wrong. The answer generally offered through these new movements was that there is no truth and that there are no absolute standards of right and wrong but only private values, self-definition, and personal fulfillment. The pursuit of happiness was no longer a right, secured by government, to the individual *pursuit* of happiness according to the moral norms and standards of the community, but had become a right to the fulfillment of one's personal conception of happiness and being accepted and affirmed by others and by the community at large. Under such a view, a moral philosophy based on an objective standard of goodness is not only false but is actually discriminatory because it means making judgments about whether oneself or others have aligned their conduct with the pronounced standard of goodness. The result is perceived unequal treatment by others and society, which can lead to limits on expression and violations of personal conscience or religious liberty since expressions of right and wrong can now be considered forms of oppression.
- Explain how many in these new Progressive movements saw the role of government as a mighty force not merely to protect rights but to actually bring about moral ends without the threat of tyranny. The end of government is not to protect fundamental rights and liberties, as in the founding, nor even to lift all people economically, as in early and New Deal Progressivism. Instead, the role of politics, the government, and bureaucracy is to delegitimize objective moral standards of conduct and to reallocate power and freedom away from the privileged group to the underprivileged. This is because personal happiness and fulfillment are found only in acceptance in a group or society, and all inequality is the result of prejudices that an oppressor group imposes by asserting certain objective standards for moral conduct.

- Note with students the objects at which such government action would need to be directed, namely at the traditional supports and products of objective truth and morality in American society: the family, religious belief, and a cultural adherence to the rules and norms of self-government, all of which have historically been embodied in and defended by the American middle class.
- Consider the extent to which such views were informed by the thought of Karl Marx. Instead of focusing on economics and class conflict, these movements generally focused on the other supports (e.g., family, religious belief, culture, principles of self-government) they believed were utilized by the traditional middle class to oppress the less fortunate.
- Consider with students what these views mean for the role and functioning of government. This reallocation of power and the overall critique of traditional institutions was to be led by an expert class. As it so happened, these civil servants and bureaucrats, as with many student activists, were oftentimes from the middle class. But they believed that if they were generally aware of their privilege, they would commit to maintain and use their advantages to lead efforts against these traditional institutions and cultural norms. Some in academia, for instance, viewed themselves as an elite group to advocate for the oppressed.
- Read with students excerpts from the Port Huron Statement and “Repressive Tolerance.” The above-mentioned ideas are captured in each work, and the works outline certain practical ideas for adoption. One such action was to outlaw intolerant thought and speech as oppressive to an individual’s personal fulfillment, which are the first theoretical statements on what would become known as hate speech and political correctness.
- Read with students John Rawls’s *A Theory of Justice*. Highlight with students Rawls’s argument that if everybody pretended-away their advantages and privileges, they would live so as to prioritize the disadvantaged. Note his view that government must help those who do not willingly pretend-away their advantages and privileges by actually taking such advantages away from them. Government then redistributes not merely material resources but also societal and cultural honor and respect, those sources of a human being’s sense of dignity and self. Ask students what this means for the American founding’s principle of human inherent human dignity, as articulated in the words “all men are created equal.” Ask them if Rawls thinks everyone has inherent human dignity as a person or only as a victim. If the latter and not all people are victims, does this mean that not everyone deserves equal human dignity and respect for their rights? To what extent is this compatible with America’s principles?
- Emphasize for students how such views require a new kind of politics. The early Progressives sought to reorganize government for a more active role in achieving traditional moral ends, but the new Progressive movements sought to reorient the entire purpose and means of government. Equality as so construed might require the work of government expertise and political activists to liberate all the people who are oppressed not simply economically but by others’ moral judgments of their chosen and expressed identities.
- Make clear for students how the ideas of liberation and social justice were important in the feminist movement and the sexual revolution. Assertions of new rights to privacy and self-expression against the moral judgments of parents, religious institutions, and established morality coalesced into group identity. Liberation and justice for the social group replaced these traditional

institutions as individuals expressed their own identities and found community with others who did the same.

- Share with students the role of communal acceptance through activism and protest that took hold during the 1960s, whether it was an element of the civil rights movement, in opposition to the Vietnam War, or for environmentalism. On the environmentalism point, clarify that what was unique about this form of environmentalism was the placement of environmental concerns always and absolutely above human concerns and the willingness to use government force to carry out such priorities.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the moral and political philosophy of the New Left, particularly as it concerns the understanding of rights and the new realms of government activity necessary to fulfill such an understanding (2–3 paragraphs).

Unit 8 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. How did Martin Luther King Jr. justify the civil rights movement with the Declaration of Independence and the principles of the American founding?
2. In what ways and by what means did the civil rights movement seek to change laws?
3. In what sense did new Progressive movements change the ends of government compared to the Founders and the Progressives?
4. How are objective moral judgments supposedly impediments to personal fulfillment and, therefore, violations of rights, according to new Progressive thought?
5. What means did more recent Progressives envision government utilizing in order to attain such ends?

Lesson 3 — Major Supreme Court Decisions

4-5 classes

LESSON OBJECTIVE

Students learn about the major Supreme Court decisions of the late twentieth century and their relationship to civil rights, civil liberties, cultural changes, and the role of the Court itself.

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Constitution 201

Lectures 7 and 8

The U.S. Supreme Court

Lectures 2, 4, 5, 6, 7, 10

TEXTS

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

*Roe v. Wade**Planned Parenthood of Southeastern Pennsylvania v. Casey*, “Mystery of Life” passage*Griswold v. Connecticut**Abrams v. United States*, Dissent by Justice Holmes*Gitlow v. New York*, Dissent by Justice Holmes*United States v. Carolene Products Company*, Footnote 4*Brandenburg v. Ohio**Everson v. Board of Education**Engel v. Vitale**Cohen v. California**Buckley v. Valeo**District of Columbia v. Heller*

Students should also read the below texts and come to class prepared to complete a short reading quiz on the contents of the readings. The reading quiz should be based on questions on pages 171–172 of *American Government and Politics*.

American Government and Politics

Chapter 5

TERMS AND TOPICS

originalism

Bill of Rights

living Constitution

14th Amendment

judicial activism

civil rights

Due Process Clause
incorporation doctrine
criminal procedure
rights of criminals and the accused
feminism
sexual revolution
“right to privacy”
“right to abortion”

obscenity
Equal Protection Clause
religious liberty
free exercise of religion
Establishment Clause
freedom of speech
freedom of the press
rights to assembly and petition

QUESTIONS FOR THE AMERICAN MIND

- How did the Supreme Court change the focus of the kinds of cases it would consider in the late twentieth century?
- What is the difference between originalism and a living Constitution?
- How has the Supreme Court utilized the incorporation doctrine to use the Bill of Rights and 14th Amendment to change laws in individual states?
- What was the relationship between cultural and moral changes and the Supreme Court’s review, discovery, and incorporation of rights?
- How did family structure and supports change with the culture during the 1960s and 1970s?
- On what basis were rights to privacy and to abortion asserted by the Supreme Court?
- What is feminism?
- What have been the arguments and motivations for the liberalization of immigration policy?
- How has freedom of religion been both curtailed and protected by recent Supreme Court decisions?
- How have freedom of speech and freedom of the press been both curtailed and protected by recent Supreme Court decisions?

KEYS TO THE LESSON

In recent decades, the Supreme Court shifted away from originalist readings of the Constitution and has relied more on a “living Constitution” view. It has sought to meet the questions and challenges of the day with a certain degree of doubt concerning both the permanency of the Founders’ views and the ability to apply them definitively to contemporary issues. Thus has the Court relied more on the views of academic thought, contemporary science, and a general pragmatism in deciding cases, rather than following to the original meaning of the Constitution or its amendments. These novel approaches, moreover, were applied amidst many meaningful cultural changes, being both influenced by and shaping of such changes.

Teachers might best plan and teach Major Supreme Court Decisions with emphasis on the following approaches:

- Set up this lesson by explaining to students the new focus the Supreme Court would have in the second half of the twentieth century as articulated in its fourth footnote in *United States v. Carolene Products Co.* The Supreme Court in this footnote states that having repeatedly upheld the government’s ability to regulate nearly any activity that has an economic effect, the Court would in future years shift away from cases concerning economic activity. Instead, the Court

would become more concerned with civil liberties, the democratic process, and questions of discrimination. Rather than simply judging as disputes arise before it, the Court would now choose cases that tacked toward these issues, one component of what some would criticize as “judicial activism.”

- Explain how the new direction and activism that the Supreme Court would take led to its reevaluating a host of new ideas about rights. The result was that some rights were expanded while others were restricted. Undergirding it all were evolving standards of what is just and what freedom demands. The overall message from the Court was generally that the government cannot judge or base its laws on how people decide to use their freedom. In fact, the Court would utilize the 14th Amendment to discover more and greater freedoms, some of which challenged the moral philosophy of the founding generation.
- Spend some time with students to consider the changes that the Supreme Court wrought in criminal law. In particular, focus on the incorporation of civil liberties related to criminals by applying the due process clause of the 14th Amendment to expand the rights protected in the 4th, 5th, 6th, and 8th amendments. This would include the exclusionary rule, Miranda rights, and the right to an attorney at the taxpayers’ expense. While many rulings make logical sense, their combination, alongside the shift in cultural focus away from protecting the innocent toward rehabilitating the criminal, resulted in more lenient sentencing and arguably led to higher crime rates during the 1970s and ’80s. This challenged the founding view that while rehabilitation is necessary, it must not come at the expense of protecting the innocent.
- Consider with students the Supreme Court’s assertion of a new right to privacy. In and of itself, the Constitution, by implication, also guarantees a right to privacy. The shift that the Supreme Court made through *Griswold v. Connecticut*, *Roe v. Wade*, and *Planned Parenthood v. Casey* was that the government did not have power to prevent private activities that might harm others (or society in general) simply by claiming that such activities were untethered from nature. In these instances, preventing or aborting the natural result of a natural biological act—one that normally promotes family life and the procreation of future citizens—was deemed to be legal. The Court indicated that the public interest for family life and the country’s population do not constitute a government interest or power to limit practices that inhibit them (e.g., abortion), as such limits on what were judged to be private practices infringed on the individual’s personal fulfillment.
- Read with students aloud in class and discuss the paradigmatic statement on not only new understandings of liberty, truth, and justice but also how the Supreme Court ushered in such moral and political shifts: Justice Kennedy’s “Mystery of Life” passage from *Planned Parenthood v. Casey*. Students should consider whether this acknowledged relativism toward truth is compatible with the American founding. That is, does *liberty* so construed become separated from the nature of things, from truth, and from the prerequisites for a free and just society that respects the inherent human dignity of each person? To what extent is this conception of liberty compatible with reason, logic, justice, and equality, and with the experience of our daily lives?
- Track with students the changes in the right to freedom of speech. Although there was some question regarding the protection of revolutionary speech in the founding generation, the understanding that political speech and written arguments were permissible was widely held. Indeed, America’s history catalogs the remarkable and continuous protection of the freedom of

speech as a fundamental component to a free society. The greatest shift in freedom of speech again came in the 1960s and onward as the Supreme Court in *Cohen v. California* established a new right in freedom of expression. Expression was again separate from a moral foundation as the Court instead accepted expressive speech as another form of the new focus on personal self-fulfillment in the eyes of society. The liberalization of laws curbing obscenity in public and the publication of obscene materials were the immediate conduits for this change. The court soon abandoned doing more with such cases, but the potential for turning freedom of expression towards curbing one's freedom of speech if certain language judged or criticized one's freedom of expression has always been a possibility. In recent years, some have sought to employ the freedom of expression against freedom of speech through political correctness and laws prohibiting whatever is perceived to be "hate speech."

- Help students to see the changes in the freedom of religion in the last several decades. The 1st Amendment's free exercise clause and establishment clause capture the Founders' consensus on religious freedom. It was necessary that individuals be permitted to express their religion so long as it did not infringe on the rights of another. And it was necessary that there not be an official church of the United States at the national level. The question of official churches at the state level varied from the actual existence of such official churches to those who argued against them. But what is equally important is the emphasis the Founders placed on a people practicing religion for free self-government, as evident in their speeches and writings. Review with students the Founders' various statements on this point from Unit 1. They held the general position that government should express a mild support and encouragement of religion, so long as all were free to practice their own religion. Beginning in the New Deal and accelerating in the 1960s, the Supreme Court began to dismantle government support for religion. The shift first came in requiring schools to become more secular, which tracked with the general secularization of the country and culture. Government could not support, even indirectly, the promotion of religious belief that held to certain moral judgments about others, especially the perceived oppressed groups. The establishment clause has been strictly applied, even to the point of curtailing the free exercise clause. In recent years, direct efforts to restrict the free exercise of religion when that religion prohibits, for its asserted moral reasons, its members or organizations from engaging in certain practices have become more common.
- While certain recent cases concerning marriage, sex, and the family that have expanded the Court's understanding of rights have not yet determined their effect on the religious liberty of institutions and individuals, clarify with students that the underlying message in most of these cases is that the decisions on these issues are being removed from state legislatures and localities and concentrated in the federal courts.
- Consider with students attempts to limit the right to bear arms but also the Supreme Court's general reluctance to hear cases that infringe on this right. The essential natural law purposes of the right to bear arms was both for personal self-defense and for guarding against and preventing tyranny. Some argue that the latter purpose has operated as a deterrence that has slowed attempts to limit other rights in recent decades while others argue for greater limits on this right.
- Consider with students whether the inconsistency in these shifts concerning rights is problematic. For instance, one may argue that relativistic views and actions assert as much of a moral claim as

views and actions rooted in traditional religion or objective reality and nature, but the former have generally been advanced at the expense of the latter. When views on liberty that are relativistic thus collide with understandings of liberty rooted in a claim to objective truth, students should consider how the issue can logically be resolved, and whether it has been resolved thus. In the United States, in light of both its unprecedented achievements for human life and the first principles on which it was founded, should the people forgo America's principles and replace them with moral relativism? Why or why not? What would be the consequences? Has this been tried before in other times or countries?

- In addition to the cases highlighted above, students may also benefit from summary explanations of the following cases: *Gideon v. Wainwright*; *Miranda v. Arizona*; *in re Gault*; *Tinker v. Des Moines*; *Hazelwood v. Kuhlmeier*; *United States v. Nixon*; *Bush v. Gore*; *Texas v. Johnson*; *Mapp v. Ohio*; *Obergefell v. Hodges*.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the major Supreme Court rulings of the late twentieth century pertaining to criminal rights, privacy, speech, and religion (2–3 paragraphs).

Lesson 4 — Recent Debates about Equality

2-3 classes

LESSON OBJECTIVE

Students learn about recent debates concerning the status of equality in American government and politics, namely the positions taken by the Founders, abolitionists, the leaders of the Civil Rights Movement, affirmative action, social justice, identity politics, and what has been called “anti-racism.”

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<i>Civil Rights in American History</i>	Lectures 7, 8, 9
<i>The U.S. Supreme Court</i>	Lecture 8
<i>Constitution 201</i>	Lecture 8

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

Commencement address at Howard University, Lyndon Johnson
Regents of the University of California v. Bakke

TERMS AND TOPICS

equality of result	critical race theory
equity	social justice
affirmative action	liberation
political correctness	nuclear family
hate speech	identity politics
relativism	“anti-racism”
social justice	

QUESTIONS FOR THE AMERICAN MIND

- How has Supreme Court jurisprudence changed since Justice John Marshall Harlan’s dissent in *Plessy v. Ferguson*?
- What is the concept of political correctness?
- What is hate speech? How is it defined? Who defines it?
- Do political correctness and attempts to define and outlaw hate speech conflict with the natural right to freedom of speech? Why or why not?
- What is meant by “social justice”? How does it depart from the views of the Founders?

- What is the difference between equality of opportunity and equality of result(s) (or equity)? Which one did the Founders intend?
- What is affirmative action?
- How does affirmative action and equity differ from “all men are created equal”?
- What is critical race theory? How does it reject the principles of the American founding? To what extent is it compatible with the civil rights movement?
- How does government making policies based on claims of identity politics or picking and choosing which racial or ethnic groups to favor over others contradict the principles of the founding?
- What is identity politics? What are its origins and aims?
- What is the role of government action in identity politics and “anti-racism”? What does this mean for the relationship between government power and individual Americans?
- What risks to freedom and equality are inherent in critical race theory?
- How are critical race theory and “anti-racism” discriminatory?

KEYS TO THE LESSON

“Prior to the 1960s, movements in American history that sought to end racial and sexual discrimination, such as abolition, women’s suffrage, or the civil rights movement, did so on the ground set by the Declaration of Independence.

“In leading the civil rights movement, Martin Luther King Jr. was aware that other, more revolutionary groups wanted to fight in terms of group identities. In his ‘I Have a Dream’ speech, King rejected hateful stereotyping based on a racialized group identity. The ‘marvelous new militancy which has engulfed the Negro community must not lead us to distrust all white people,’ he warned. King refused to define Americans in terms of permanent racialized identities and called on Americans ‘to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood’ and see ourselves as one nation united by a common political creed and commitment to Christian love.

“‘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,’ King wrote. ‘This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights to life, liberty, and the pursuit of happiness.’

“As the 1960s advanced, however, many rejected King’s formulation of civil rights and reframed debates about equality in terms of racial and sexual identities. The civil rights movement came to abandon the nondiscrimination and equal opportunity of color-blind civil rights in favor of ‘group rights’ and preferential treatment. A radical women’s liberation movement reimagined America as a patriarchal system, asserting that every woman is a victim of oppression by men. The Black Power and black nationalist movements reimagined America as a white supremacist regime. Meanwhile, other activists constructed artificial groupings to further divide Americans by race, creating new categories like ‘Asian American’ and ‘Hispanic’ to teach Americans to think of themselves in terms of group identities and to rouse various groups into politically cohesive bodies.

“Identity politics divides Americans by placing them perpetually in conflict with each other. This extreme ideology assaults and undermines the American principle of equality in several key ways.

“First, identity politics attacks American self-government. Through the separation of powers and the system of checks and balances, American constitutionalism prevents any one group from having complete control of the government. In order to form a majority, the various groups that comprise the nation must resolve their disagreements in light of shared principles and come to a deliberative consensus over how best to govern. In the American system, public policy is decided by prudential compromise among different interest groups for the sake of the common good.

“Identity politics, on the other hand, sees politics as the realm of permanent conflict and struggle among racial, gender, and other groups, and no compromise between different groups is possible. Rational deliberation and compromise only preserve the oppressive status quo. Instead, identity politics relies on humiliation, intimidation, and coercion. American self-government, where all citizens are equal before the law, is supplanted by a system where certain people use their group identity to get what they want.

“Second, by dividing Americans into oppressed and oppressor groups, activists of identity politics propose to punish some citizens—many times for wrongs their ancestors allegedly committed—while rewarding others. Members of oppressed groups must ascend, and members of oppressor groups must descend. This new system denies that human beings are endowed with the same rights, and creates new hierarchies with destructive assumptions and practices.

“On the one hand, members of oppressed groups are told to abandon their shared civic identity as Americans and think of themselves in terms of their sexual or racial status. The consequence is that they should no longer see themselves as agents responsible for their own actions but as victims controlled by impersonal forces. In a word, they must reject, not affirm, the Declaration’s understanding of self-government according to the consent of the governed. If members of oppressed groups want to become free, they must rely upon a regime of rewards and privileges assigned according to group identity.

“On the other hand, members of oppressor groups merit public humiliation at the hands of others. Diversity training programs, for example, force members of ‘oppressor’ groups to confess before their coworkers how they contribute to racism. Educational programs based on identity politics often use a person’s race to degrade or ostracize them.

“These degradations of individuals on the basis of race expose the lie that identity politics promotes the equal protection of rights. Advocates of identity politics argue that all hate speech should be banned but then define hate speech as only applying to protected identity groups who are in turn free to say whatever they want about their purported oppressors. This leads to a ‘cancel culture’ that punishes those who violate the terms of identity politics.

“Third, identity politics denies the fundamental moral tenet of the Declaration, that human beings are equal by nature. This founding principle provides a permanent and immutable standard for remedying wrongs done to Americans on the basis of race, sex, or any group identity.

“Repudiating this universal tenet, activists pushing identity politics rely instead on cultural and historical generalizations about which groups have stronger moral claims than others. They claim this approach offers a superior and more historically sensitive moral standard. But unlike the standard based on a common humanity—what Lincoln called ‘an abstract truth, applicable to all men and all times’—their historical

standard is not permanent. Rather, it adjusts to meet the political fashions of a particular moment. By this standard, ethnicities that were once considered ‘oppressed’ can in short order turn into ‘oppressors,’ and a standard that can turn a minority from victim to villain within the course of a few years is no standard at all.

“Fourth, identity-politics activists often are radicals whose political program is fundamentally incompatible not only with the principles of the Declaration of Independence but also the rule of law embodied by the United States Constitution. Antagonism to the creed expressed in the Declaration seems not an option but a necessary part of their strategy. When activists are discussing seemingly innocuous campaigns to promote ‘diversity,’ they are often aiming for fundamental structural change.”

— *The 1776 Report*, Pages 81–85

Teachers might best plan and teach Recent Debates about Equality with emphasis on the following approaches:

- Help students understand affirmative action as actions (especially in law and government policy) that treat some groups in a more beneficial way than it does others in order to address real or perceived unequal group outcomes. Ask students the extent to which government policies of affirmative action are compatible with the principles on which America was founded, namely that all persons are equal by nature in their possession of natural rights and that a just government will *equally protect* the rights of all its citizens and judge and treat them equally before the law. Students should see that inherited disparities based on past injustices that many face are by no means illegitimate concerns and struggles. Attempts to address these injustices may in fact be well intended, and individuals, groups, or organizations in their personal or private capacities should work to correct those injustices, especially concerning those unable to defend themselves. But to assemble the powers of the government to correct the consequences of injustice with more injustice—by treating one innocent group differently by law in order to benefit another innocent group whose ancestors were wronged in the past—is antithetical to the moral philosophy on which the country was established. The protection of equal rights and equality before the law, combined with personal moral volition and a healthy civil society, will not undo the consequences of past injustices but will allow and encourage all to pursue opportunity and thrive as equal members of a common community.
- Consider with students the nature of inequality and the various dimensions and ways in which inequality exists. Nevertheless, it is important to consider that absolute equality in all things is not possible in reality. Failing to recognize this fact leads to a constant cycle of conflict in which government, rather than focusing on securing and protecting equal rights under the rule of law, takes action against one supposed oppressor group to advantage a supposed victim group before turning to the next group and then the next in the constant attempt to force equal outcomes on society. .
- Consider the modern descendant of critical theory, namely critical race theory, or the theory that race is central to how to understand man and politics. Critical race theory is not merely an insistence on recognizing the injustice of slavery or Jim Crow laws and their negative effects in

history, which are necessary to an honest account of history. Rather, beyond this, critical race theory teaches that race is at the very center of everything in modern social life and that the United States was founded on and remains the incarnation of racism. It argues that America's very nature is defined by racism (hence it is "systemically" racist) and that it exists—in its people, founding, laws, culture, history, the free market, and institutions—to perpetuate racism. Indeed, some people—in particular, those of European descent—are inherently racist against those of other races and ethnic heritages. In brief, critical race theory and its various manifestations is diametrically opposed to the principles of equality on which America was founded. By so rejecting America's founding principles, critical race theory and its adherents reject the principles of equality and human dignity that have led to the most free, prosperous, and secure country in the history of civilization.

- Consider with students the argument that so long as those who are privileged acknowledge their privilege, they can and perhaps even ought to maintain their privileged lifestyle in order to use their advantages and become experts on how to remove these same privileges from those who refuse to acknowledge them. This results in a kind of partnership between businesses, elected officials, and bureaucrats with the supposed victim group.
- Lastly, consider the ideas and proposals of what has been labeled "anti-racism," namely that every form of inequality is by definition due to racial discrimination—not natural differences of talent and effort, or personal volition, or community environment—and that it is the job of government to use its power and authority to remove such sources of inequality. Students should consider how the problems with this understanding of inequality, whether real or perceived, amounts to a call to use government coercion to reshape society, which is destructive of liberty and often violates the rights of conscience.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain how affirmative action, identity politics, political correctness, and "anti-racism" differ from the principles of the American founding (2–3 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — Late 20th Century Government and Politics Test

Unit 8

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

discrimination	protest movements	religious liberty
segregation	pacifism	free exercise of religion
separate but equal	environmentalism	Establishment Clause
civil rights	political correctness	freedom of speech
civil rights movement	originalism	freedom of the press
promissory note	living Constitution	rights to assembly and
color-blind	Bill of Rights	petition
the New Left	14th Amendment	equality of result
Marxism	Due Process Clause	equity
personal fulfillment	incorporation doctrine	affirmative action
culture conflict	criminal procedure	hate speech
moral judgments	rights of criminals	relativism
middle class	feminism	social justice
participatory democracy	sexual revolution	critical race theory
social democracy	right to privacy	liberation
socialism	right to abortion	nuclear family
Critical Theory	obscenity	"anti-racism"
identity politics	Equal Protection Clause	

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to our understanding of late twentieth century government and politics.

Plessy v. Ferguson

Brown v. Board of Education

"I Have a Dream," Martin Luther King Jr.

"Letter from Birmingham Jail," Martin Luther King Jr.

Port Huron Statement, Students for a Democratic Society

"Repressive Tolerance," Herbert Marcuse

A Theory of Justice, John Rawls

Roe v. Wade

Planned Parenthood v. Casey, "Mystery of Life" passage

Commencement address at Howard University, Lyndon Johnson

Regents of the University of California v. Bakke

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | The Civil Rights Movement

- ☐ What was the civil rights movement?
- ☐ How did Justice Thurgood Marshall's opinion in *Brown v. Board of Education* depart from Justice John Marshall Harlan's dissent in *Plessy v. Ferguson*?
- ☐ How did Martin Luther King Jr. justify the civil rights movement with the Declaration of Independence and the principles of the American founding?
- ☐ What did King mean by the "promissory note"?
- ☐ In what ways and by what means did the civil rights movement seek to change laws?
- ☐ In what ways and by what means did the civil rights movement seek to change the private consciences of individuals?
- ☐ Against which forms of discrimination did the early civil rights movement work?
- ☐ What were the differences between the early and late stages of the civil rights movement?
- ☐ How does the issue of public accommodation enter into the blurred area between public and private realms?

Lesson 2 | New Progressive Movements

- ☐ What were the various late 20th century movements that may broadly be considered Progressive?
- ☐ What are the chief characteristics of each late 20th century Progressive movement:
 - in academia
 - in moral and political philosophy
 - student activism
 - against traditional cultural norms
 - feminism
 - environmentalism
- ☐ In what sense do these movements change the ends of government compared to the Founders and previous Progressives?
- ☐ To what extent did these various movements make up what came to be called the New Left?
- ☐ What is the connection between personal fulfillment and acceptance in society?
- ☐ How are objective moral judgments considered impediments to personal fulfillment and, therefore, violations of rights?
- ☐ Which segment of the United States population had traditionally held moral standards and the principles of the American founding?
- ☐ To what extent did Marxist thought inform these new Progressive movements?
- ☐ What is the relationship between the class conflict of Marxism and the cultural conflict adopted by some of these Progressive movements?
- ☐ What government policies did some Progressive movements support in order to bring about cultural change, liberation, and personal fulfillment?
- ☐ What are participatory democracy and social democracy?
- ☐ In which ways did new Progressive movements adopt socialist economic policies?

- ☐ What is the significance of protest movements? How did these manifest themselves in the 1960s?
- ☐ What roles did pacifism and environmentalism play in the 1960s and in the decades since?

Lesson 3 | Major Supreme Court Decisions

- ☐ How did the Supreme Court change the focus of the kinds of cases it would consider in the late twentieth century?
- ☐ What is the difference between originalism and a living Constitution?
- ☐ How has the Supreme Court utilized the incorporation doctrine to use the Bill of Rights and 14th Amendment to change laws in individual states?
- ☐ What was the relationship between cultural and moral changes and the Supreme Court's review, discovery, and incorporation of rights?
- ☐ How did family structure and supports change with the culture during the 1960s and 1970s?
- ☐ On what basis were rights to privacy and to abortion asserted by the Supreme Court?
- ☐ What is feminism?
- ☐ What have been the arguments and motivations for the liberalization of immigration policy?
- ☐ How has freedom of religion been both curtailed and protected by recent Supreme Court decisions?
- ☐ How have freedom of speech and freedom of the press been both curtailed and protected by recent Supreme Court decisions?

Lesson 4 | Recent Debates about Equality

- ☐ How has Supreme Court jurisprudence changed since Justice John Marshall Harlan's dissent in *Plessy v. Ferguson*?
- ☐ What is the concept of political correctness?
- ☐ What is hate speech? How is it defined? Who defines it?
- ☐ Do political correctness and attempts to define and outlaw hate speech conflict with the natural right to freedom of speech? Why or why not?
- ☐ What is meant by "social justice"? How does it depart from the views of the Founders?
- ☐ What is the difference between equality of opportunity and equality of result(s) (or equity)? Which one did the Founders intend?
- ☐ What is affirmative action?
- ☐ How does affirmative action and equity differ from "all men are created equal"?
- ☐ What is critical race theory? How does it reject the principles of the American founding? To what extent is it compatible with the civil rights movement?
- ☐ How does government making policies based on claims of identity politics or picking and choosing which racial or ethnic groups to favor over others contradict the principles of the founding?
- ☐ What is identity politics? What are its origins and aims?
- ☐ What is the role of government action in identity politics and "anti-racism"? What does this mean for the relationship between government power and individual Americans?
- ☐ What risks to freedom and equality are inherent in critical race theory?
- ☐ How are critical race theory and "anti-racism" discriminatory?

Name_____

Date_____

Test — Late 20th Century Government and Politics

Unit 8

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. discrimination
2. separate but equal
3. civil rights
4. promissory note
5. color-blind
6. Marxism
7. culture conflict
8. political correctness
9. equity
10. affirmative action
11. relativism
12. social justice

13. critical race theory

14. antiracism

PRIMARY SOURCES

Explain the main arguments in each of the following sources and the significance of each to understanding late twentieth century government and politics.

15. *Brown v. Board of Education*

16. “I Have a Dream,” Martin Luther King Jr.

17. *Planned Parenthood v. Casey*, “Mystery of Life” passage

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

18. How did Justice Thurgood Marshall's opinion in *Brown v. Board of Education* depart from Justice John Marshall Harlan's dissent in *Plessy v. Ferguson*?
19. Against what forms of discrimination did the early civil rights movement work?
20. How did Martin Luther King Jr. justify the civil rights movement with the Declaration of Independence and the principles of the American founding?
21. In what ways and by what means did the civil rights movement seek to change laws?
22. In what ways and by what means did the civil rights movement seek to change the private consciences of individuals?
23. What is the connection between personal fulfillment and acceptance in society for the New Left?
24. How are objective moral judgments impediments to personal fulfillment and, therefore, violations of rights?
25. What segment of the United States population has traditionally held to objective moral standards and the principles of the American founding?
26. What is the relationship between the class conflict of Marxism and the cultural conflict adopted by some of these Progressive movements?

27. What is the difference between originalism and a living Constitution?
28. What was the relationship between cultural and moral changes and the Supreme Court's review, discovery, and incorporation of rights?
29. On what basis were rights to privacy and to abortion asserted by the Supreme Court?
30. What is hate speech? How is it defined?
31. Do political correctness and attempts to define and outlaw hate speech conflict with the natural right to freedom of speech? Why or why not?
32. How does affirmative action and equity differ from "all men are created equal"?
33. What risks to freedom and equality are inherent in critical race theory?
34. What is identity politics? What are its origins and aims?
35. What is the role of government action in identity politics, critical race theory, and "anti-racism"? What does this mean for the relationship between government power and individual Americans?

Writing Assignment — Late 20th Century Government and Politics

Unit 8

Due on

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question:

In what ways did the original civil rights movement abide by the founding principles of America, and to what extent did subsequent Progressive movements adhere to or depart from these principles?

APPENDIX B

Primary Sources

The United States Supreme Court

Martin Luther King Jr.

Students for a Democratic Society

Herbert Marcuse

John Rawls

Oliver Wendell Holmes Jr.

Lyndon Johnson

JUSTICE HENRY BILLINGS BROWN AND JUSTICE JOHN MARSHALL HARLAN

Homer A. Plessy v. John H. Ferguson

U.S. SUPREME COURT MAJORITY AND DISSENTING OPINIONS EXCERPTS

May 18, 1896

Supreme Court | Washington, D.C.

BACKGROUND

A majority of the Supreme Court delivered this ruling on a Louisiana law requiring separate railroad cars for African Americans. Justice John Marshall Harlan offered is dissenting view.

GUIDING QUESTIONS

1. On what two constitutional grounds is the law being challenged, and why does the Court say that neither applies?
2. How does Justice Brown respond to the charge that enforced separation "stamps the colored race with a badge of inferiority"?
3. According to Justice Harlan's dissent, what is the relationship between civil rights and race under the Constitution?
4. According to Harlan, what was the original purpose of the Louisiana statute in question?
5. What is the standing of the white race in America, as Harlan sees it?
6. Why is "equal accommodation" of citizens of different races ultimately problematic for Harlan, in terms of freedom?

Plessy v. Ferguson, 163 U.S. 537 (1896).

JUSTICE BROWN delivers the opinion of the Court.

- [Homer Plessy] was a citizen of the United States and a resident of the State of Louisiana, of mixed descent, in the proportion of seven eighths Caucasian and one eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled
- 5 to every recognition, right, privilege and immunity secured to the citizens of the United States of the white race by its Constitution and laws; that, on June 7, 1892, he engaged and paid for a first class passage on the East Louisiana Railway from New Orleans to Covington, in the same State, and thereupon entered a passenger train, and took possession of a vacant seat in a coach where passengers of the white race were accommodated; that such railroad
- 10 company was incorporated by the laws of Louisiana as a common carrier, and was not authorized to distinguish between citizens according to their race. But, notwithstanding this, [Plessy] was required by the conductor, under penalty of ejection from said train and imprisonment, to vacate said coach and occupy another seat in a coach assigned by said company for persons not of the white race, and for no other reason than that petitioner was of
- 15 the colored race; that, upon petitioner's refusal to comply with such order, he was, with the aid of a police officer, forcibly ejected from said coach and hurried off to and imprisoned in the parish jail of New Orleans, and there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the General Assembly of the State, approved July 10, 1890,^{[11](#)} in such case made and provided.
- 20 [Plessy] was subsequently brought before the recorder of the city for preliminary examination and committed for trial to the criminal District Court for the parish of Orleans, where an information was filed against him in the matter above set forth, for a violation of the above act, which act [Plessy] affirmed to be null and void, because in conflict with the Constitution of the United States
- 25 The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the States.

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1. That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. Slavery implies involuntary servitude—a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and
5 the absence of a legal right to the disposal of his own person, property and services. . . .

A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by
10 the plaintiff in error in this connection.

2. By the Fourteenth Amendment, all persons born or naturalized in the United States and subject to the jurisdiction thereof are made citizens of the United States and of the State wherein they reside, and the States are forbidden from making or enforcing any law which
15 shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws. . . .

The object of the 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
20 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
25 exercise of their police power.^[2] The most common instance of this is connected with the establishment of separate schools for white and colored children, which has 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. . . .

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... [W]e think the enforced separation of the races, as applied to the internal commerce of the State, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws within the meaning of the Fourteenth Amendment. . . .

5 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
10 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
15 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. As was said by the Court of Appeals of New York in *People v. Gallagher*, 93 N. Y. 438, 448, "this end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are de-
20 signed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed."

Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon
25 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. . . .

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... The judgment of the court below is, therefore, *Affirmed*.

JUSTICE HARLAN, dissenting.

... [W]e have before us a state enactment that compels, under penalties, the separation of
5 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.

10 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
15 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
20 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
25 in this country. This court has so adjudged. But that amendment having been found inad-
equate to the protection of the rights of those who had been in slavery, it was followed by

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the Fourteenth Amendment, which added greatly to the dignity and glory of American citizenship and to the security of personal liberty by declaring that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,” and that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. Finally, and to the end that no citizen should be denied, on account of his race, the privilege of participating in the political control of his country, it was declared by the Fifteenth Amendment that “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.”

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.” . . . 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

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discrimination among whites in the matter of accommodation 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. . . .

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 streetcars or in open vehicles on a public road or street? Why may it not require sheriffs to assign whites to one side of a courtroom and blacks to the other? And why may it not also prohibit the comingling 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 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

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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.

5 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*. It was adjudged in that case that the descendants of Africans who were imported into this country and sold as slaves were not included nor intended to be included under the word “citizens” in the Constitution, and could not claim any of the rights and privileges which that instrument provided
10 for and secured to citizens of the United States; that, at the time of the adoption of the Constitution, they were “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.”

15 The recent amendments of the Constitution, it was supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the States, a dominant race—a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the
20 admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are
25 forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust

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between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens. That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.

- 5 The sure guarantee of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, National and State, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States, without regard to race. State enactments regulating the enjoyment of civil rights upon the basis of race, and cunningly devised to defeat legitimate results of the war under the pretense of
- 10 recognizing equality of rights, can have no other result than to render permanent peace impossible and to keep alive a conflict of races the continuance of which must do harm to all concerned. This question is not met by the suggestion that social equality cannot exist between the white and black races in this country. That argument, if it can be properly regarded as one, is scarcely worthy of consideration, for social equality no more exists be-
- 15 tween two races when traveling in a passenger coach or a public highway than when members of the same races sit by each other in a street car or in the jury box, or stand or sit with each other in a political assembly, or when they use in common the street of a city or town, or when they are in the same room for the purpose of having their names placed on the registry of voters, or when they approach the ballot box in order to exercise the high privi-
- 20 lege of voting.

- There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But, by the statute in ques-
- 25 tion, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public

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coach occupied by citizens of the white race. It is scarcely just to say that a colored citizen should not object to occupying a public coach assigned to his own race. He does not object, nor, perhaps, would he object to separate coaches for his race if his rights under the law were recognized. But he [is] objecting, and ought never to cease objecting, to the proposition that citizens of the white and black race can be adjudged criminals because they sit, or claim the right to sit, in the same public coach on a public highway.

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 grounds.

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. . . .

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom to regulate civil rights, common to all citizens, upon the basis of race, and to place in a condition of legal inferiority a large body of American citizens now constituting a part of the political community called the People of the United States, for whom and by whom, through representatives, our government is administered. Such a sys-

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tem is inconsistent with the guarantee given by the Constitution to each State of a republican form of government, and may be stricken down by Congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

- 5 For the reasons stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

CHIEF JUSTICE EARL WARREN

Oliver Brown, et al. v.

Board of Education of Topeka, et al.

U.S. SUPREME COURT MAJORITY OPINION

May 17, 1954

Supreme Court | Washington, D.C.

BACKGROUND

This case was the consolidation of cases arising in Kansas, South Carolina, Virginia, Delaware, and Washington, D.C. relating to the segregation of public schools on the basis of race. In each of the cases, African American students had been denied admittance to certain public schools based on laws allowing public education to be racially segregated. Chief Justice Earl Warren penned this opinion to the Court's ruling.

GUIDING QUESTIONS

1. What effect do separate schools have on students, according to the decision?
2. What does the court ultimately hold?
3. On what bases does the Court make its decision?

Brown v. Board of Education, 347 US 483 (1954).

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APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware.

- 5 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
10 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*, 163 U. S. 537. Under that
15 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
20 "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
25 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

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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.

An additional reason for the inconclusive nature of the Amendment's history with respect to segregated schools is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences, as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states, and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

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

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the field of public education. In *Cumming v. County Board of Education*, 175 U. S. 528, and *Gong Lum v. Rice*, 275 U. S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school

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- 5 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*, 305 U. S. 337; *Sipuel v. Oklahoma*, 332 U. S. 631; *Sweatt v. Painter*, 339 U. S. 629; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637. 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,
- 10 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,
- 15 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.
- 20

- 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
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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: ". . . his 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

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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. Any language in *Plessy v.*

5 *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
10 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
15 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
20 Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

25 It is so ordered.

MARTIN LUTHER KING, JR.

At the March on Washington

SPEECH

August 28, 1963

Lincoln Memorial | Washington, D.C.

I Have a Dream Speech

BACKGROUND

Martin Luther King, Jr., delivered this address at the March on Washington from the steps of the Lincoln Memorial.

GUIDING QUESTIONS

1. What historical documents does King refer to in his speech?
2. What is the “promissory note”?
3. What is King’s dream?
4. What is the significance of King's ending the speech quoting “My Country Tis of Thee”?

Martin Luther King, Jr., “I Have A Dream,” in *I Have A Dream: Writings and Speeches that Changed the World* (San Francisco: Harper, 1986).

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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 one hundred years later, the Negro still is not free; one hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination; one hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity; one hundred 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 a 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 the 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. And so we have 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.

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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 summer of the Negro's legitimate discontent will not pass until there is an invigorating autumn of freedom and equality. Nineteen sixty-three is not an end, but a beginning. And 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 there is something that I must say to my people, who stand on the worn 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 plane 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 that their destiny is tied up with our destiny. And they have come to 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.

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There are those who are 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 Negro’s 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 the Negro in Mississippi cannot vote, and the Negro in New York believes he has nothing for which to vote.

10 No! 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 unearned suffering is redemptive.

20 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 friends, 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.

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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 equal.”

I have a dream that one day on the red hills of Georgia, sons of former slaves and the sons of former slaveowners will be able to sit down together at the table of brotherhood.

- 5 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 their skin but by the content of their character.

- 10 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.

- 15 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 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.”

- 20 This is our hope. This is the 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 brother-hood. 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.

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And 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 father died, land of the pilgrim's pride, from every mountainside, let freedom ring." And if America is to be a
5 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.

10 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 mole hill of Mississippi. "From every mountainside, let freedom ring."

And when this happens, and when we allow freedom to ring, when we let it ring from every
15 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 Catholics, 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."

MARTIN LUTHER KING, JR.

Letter from Birmingham Jail

OPEN LETTER

April 16, 1963

Birmingham Jail | Birmingham, Alabama

BACKGROUND

While in prison, Martin Luther King, Jr., began this open response to an article by clergymen entitled "A Call For Unity" that had denounced King's methods in the civil rights movement.

GUIDING QUESTIONS

1. What, according to King, are the four basic steps of a nonviolent campaign?
2. What references does King make to religion and philosophy?
3. How does King differentiate between a just and unjust law?
4. What examples does King give defending extremists?
5. Why is King unable to commend the police? What change does he want to see?

Martin Luther King, Jr., "Letter from Birmingham Jail," in *Milestone Documents in American History: Exploring the Primary Sources that Shaped America*, Vol. 4, ed. Paul Finkelman (Dallas: Schlager Group Inc., 2008), 1719-26.

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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
5 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 statement 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
10 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 af-
15 filiates. 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
20 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
25 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 an-

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ywhere 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,

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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.

5 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
10 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 mayoral 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
15 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.

20 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
25 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

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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, so must 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 in 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."

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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 still 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 darts 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 county 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 are forever 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 seg-

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regation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: "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 distorts 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 sinful. Paul Tillich has 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

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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?

- 5 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.
- 10 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
- 15 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

20 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

25 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.

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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 Council 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 fail 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 all 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

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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: "All 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 irrational 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 I 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

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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

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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 extremists 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.

I had hoped that the white moderate would see this need. Perhaps I was too optimistic; perhaps I expected too much. I suppose I should have realized that few members of the oppressor race can understand the deep groans and passionate yearnings of the oppressed race, and still fewer have the vision to see that injustice must be rooted out by strong, persistent and determined action. I am thankful, however, that some of our white brothers in

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the South have grasped the meaning of this social revolution and committed themselves to it. They are still all too few in quantity, but they are big in quality. Some -such as Ralph McGill, Lillian Smith, Harry Golden, James McBride Dabbs, Ann Braden and Sarah Patton Boyle--have written about our struggle in eloquent and prophetic terms. Others have
5 marched with us down nameless streets of the South. They have languished in filthy, roach infested jails, suffering the abuse and brutality of policemen who view them as "dirty nigger-lovers." Unlike so many of their moderate brothers and sisters, they have recognized the urgency of the moment and sensed the need for powerful "action" antidotes to combat the disease of segregation. Let me take note of my other major disappointment. I have been
10 so greatly disappointed with the white church and its leadership. Of course, there are some notable exceptions. I am not unmindful of the fact that each of you has taken some significant stands on this issue. I commend you, Reverend Stallings, for your Christian stand on this past Sunday, in welcoming Negroes to your worship service on a nonsegregated basis. I commend the Catholic leaders of this state for integrating Spring Hill College several years
15 ago.

But despite these notable exceptions, I must honestly reiterate that I have been disappointed with the church. I do not say this as one of those negative critics who can always find something wrong with the church. I say this as a minister of the gospel, who loves the church; who was nurtured in its bosom; who has been sustained by its spiritual blessings
20 and who will remain true to it as long as the cord of life shall lengthen.

When I was suddenly catapulted into the leadership of the bus protest in Montgomery, Alabama, a few years ago, I felt we would be supported by the white church. I felt that the white ministers, priests and rabbis of the South would be among our strongest allies. Instead, some have been outright opponents, refusing to understand the freedom movement
25 and misrepresenting its leaders; all too many others have been more cautious than courageous and have remained silent behind the anesthetizing security of stained glass windows.

In spite of my shattered dreams, I came to Birmingham with the hope that the white religious leadership of this community would see the justice of our cause and, with deep moral

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concern, would serve as the channel through which our just grievances could reach the power structure. I had hoped that each of you would understand. But again I have been disappointed.

5 I have heard numerous southern religious leaders admonish their worshipers to comply with a desegregation decision because it is the law, but I have longed to hear white ministers declare: "Follow this decree because integration is morally right and because the Negro is your brother." In the midst of blatant injustices inflicted upon the Negro, I have watched white churchmen stand on the sideline and mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our nation of racial and economic injustice, I have heard many ministers say: "Those are social issues, with which the gospel has
10 no real concern." And I have watched many churches commit themselves to a completely other worldly religion which makes a strange, un-Biblical distinction between body and soul, between the sacred and the secular.

15 I have traveled the length and breadth of Alabama, Mississippi and all the other southern states. On sweltering summer days and crisp autumn mornings I have looked at the South's beautiful churches with their lofty spires pointing heavenward. I have beheld the impressive outlines of her massive religious education buildings. Over and over I have found myself asking: "What kind of people worship here? Who is their God? Where were their voices when the lips of Governor Barnett dripped with words of interposition and nullification?
20 Where were they when Governor Wallace gave a clarion call for defiance and hatred? Where were their voices of support when bruised and weary Negro men and women decided to rise from the dark dungeons of complacency to the bright hills of creative protest?"

Yes, these questions are still in my mind. In deep disappointment I have wept over the laxity of the church. But be assured that my tears have been tears of love. There can be no
25 deep disappointment where there is not deep love. Yes, I love the church. How could I do otherwise? I am in the rather unique position of being the son, the grandson and the great grandson of preachers. Yes, I see the church as the body of Christ. But, oh! How we have

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blemished and scarred that body through social neglect and through fear of being nonconformists.

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
5 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
10 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
15 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
20 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
25 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

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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.

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It is true that the police have exercised a degree of discipline in handling 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
5 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. Perhaps Mr. Connor and his policemen have been rather nonviolent in public, as was Chief Pritchett in Albany, Georgia, but they have used the moral means of nonviolence to maintain the immoral end of racial injustice. As T. S.
10 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
15 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
20 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
25 best in the American dream and for the most sacred values in our Judaeo 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.

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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?

- 5 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.

- 10 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.

- 15 Yours for the cause of Peace and Brotherhood, Martin Luther King, Jr.

STUDENTS FOR A DEMOCRATIC SOCIETY

The Port Huron Statement

MANIFESTO EXCERPTS

June 15, 1962

United Auto Workers Summer Retreat | Port Huron, Michigan

BACKGROUND

Members of the college student activist group, Students for a Democratic Society (SDS), drafted this political manifesto during a meeting in Port Huron, Michigan. SDS member Tom Hayden was its principal author.

GUIDING QUESTIONS

1. Who are the authors of the Port Huron Statement and why are they critical of contemporary American society?
2. Why do the authors find little moral guidance from universities and political leaders?
3. Why do the authors say their generation is "plagued by program without vision"?
4. What are the political principles of participatory democracy, according to the authors?
5. What are the economic principles of participatory democracy, according to the authors?
6. What is the agenda the authors set forth for the New Left?

Students for a Democratic Society, *The Port Huron Statement* (New York: The Student Department of the League for Industrial Democracy, 1964).

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We are people of this generation, bred in at least modest comfort, housed now in universities, looking uncomfortably to the world we inherit.

When we were kids the United States was the wealthiest and strongest country in the world; the only one with the atom bomb, the least scarred by modern war, an initiator of the United Nations that we thought would distribute Western influence throughout the world. Freedom and equality for each individual, government of, by, and for the people – these American values we found good, principles by which we could live as men. Many of us began maturing in complacency.

As we grew, however, our comfort was penetrated by events too troubling to dismiss. First, the permeating and victimizing fact of human degradation, symbolized by the Southern struggle against racial bigotry, compelled most of us from silence to activism. Second, the enclosing fact of the Cold War, symbolized by the presence of the Bomb, brought awareness that we ourselves, and our friends, and millions of abstract “others” we knew more directly because of our common peril, might die at any time. We might deliberately ignore, or avoid, or fail to feel all other human problems, but not these two, for these were too immediate and crushing in their impact, too challenging in the demand that we as individuals take the responsibility for encounter and resolution.

While these and other problems either directly oppressed us or rankled our consciences and became our own subjective concerns, we began to see complicated and disturbing paradoxes in our surrounding America. The declaration “all men are created equal . . .” rang hollow before the facts of Negro life in the South and the big cities of the North. The proclaimed peaceful intentions of the United States contradicted its economic and military investments in the Cold War status quo. . . .

Some would have us believe that Americans feel contentment amidst prosperity – but might it not better be called a glaze above deeply felt anxieties about their role in the new world? And if these anxieties produce a developed indifference to human affairs, do they not as well produce a yearning to believe there is an alternative to the present, that some-

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thing can be done to change circumstances in the school, the workplaces, the bureaucracies, the government? It is to this latter yearning, at once the spark and engine of change, that we direct our present appeal. The search for truly democratic alternatives to the present, and a commitment to social experimentation with them, is a worthy and fulfilling human enterprise, one which moves us and, we hope, others today....

Making values explicit--an initial task in establishing alternatives--is an activity that has been devalued and corrupted. The conventional moral terms of the age, the politician moralities--"free world," "people's democracies"--reflect realities poorly, if at all, and seem to function more as ruling myths than as descriptive principles. But neither has our experience in the universities brought us moral enlightenment. Our professors and administrators sacrifice controversy to public relations; their curriculums change more slowly than the living events of the world; their skills and silence are purchased by investors in the arms race; passion is called unscholastic. The questions we might want raised--what is really important? can we live in a different and better way? if we wanted to change society, how would we do it?--are not thought to be questions of a "fruitful, empirical nature," and thus are brushed aside.

Unlike youth in other countries we are used to moral leadership being exercised and moral dimensions being clarified by our elders. But today, for us, not even the liberal and socialist preachments of the past seem adequate to the forms of the present. Consider the old slogans: Capitalism Cannot Reform Itself, United Front Against Fascism, General Strike, All Out on May Day. Or, more recently, No Cooperation with Commies and Fellow Travelers, Ideologies Are Exhausted, Bipartisanship, No Utopias. These are incomplete, and there are few new prophets. It has been said that our liberal and socialist predecessors were plagued by vision without program, while our own generation is plagued by program without vision. All around us there is astute grasp of method, technique--the committee, the ad hoc group, the lobbyist, the hard and soft sell, the make, the projected image--but, if pressed critically, such expertise is incompetent to explain its implicit ideals. It is highly fashionable

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to identify oneself by old categories, or by naming a respected political figure, or by explaining "how we would vote" on various issues.

5 Theoretic chaos has replaced the idealistic thinking of old--and, unable to reconstitute theoretic order, men have condemned idealism itself. Doubt has replaced hopefulness--and men act out a defeatism that is labeled realistic. The decline of utopia and hope is in fact one of the defining features of social life today. The reasons are various: the dreams of the older left were perverted by Stalinism and never re-created; the congressional stalemate makes men narrow their view of the possible; the specialization of human activity leaves little room for sweeping thought; the horrors of the twentieth century symbolized in the
10 gas ovens and concentration camps and atom bombs, have blasted hopefulness. To be idealistic is to be considered apocalyptic, deluded. To have no serious aspirations, on the contrary, is to be "tough-minded."

In suggesting social goals and values, therefore, we are aware of entering a sphere of some disrepute. Perhaps matured by the past, we have no formulas, no closed theories--but that
15 does not mean values are beyond discussion and tentative determination. A first task of any social movement is to convince people that the search for orienting theories and the creation of human values is complex but worthwhile. We are aware that to avoid platitudes we must analyze the concrete conditions of social order. But to direct such an analysis we must use the guideposts of basic principles. Our own social values involve conceptions of
20 human beings, human relationships, and social systems.

We regard men as infinitely precious and possessed of unfulfilled capacities for reason, freedom, and love. In affirming these principles we are aware of countering perhaps the dominant conceptions of man in the twentieth century: that he is a thing to be manipulated, and that he is inherently incapable of directing his own affairs. We oppose the depersonal-
25 ization that reduces human being to the status of things--if anything, the brutalities of the twentieth century teach that means and ends are intimately related, that vague appeals to "posterity" cannot justify the mutilations of the present. We oppose, too, the doctrine of human incompetence because it rests essentially on the modern fact that men have been

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"competently" manipulated into incompetence--we see little reason why men cannot meet with increasing the skill the complexities and responsibilities of their situation, if society is organized not for minority, but for majority, participation in decision-making.

Men have unrealized potential for self-cultivation, self-direction, self-understanding, and creativity. It is this potential that we regard as crucial and to which we appeal, not to the human potentiality for violence, unreason, and submission to authority. The goal of man and society should be human independence: a concern not with image of popularity but with finding a meaning in life that is personally authentic; a quality of mind not compulsively driven by a sense of powerlessness, nor one which unthinkingly adopts status values, nor one which represses all threats to its habits, but one which has full, spontaneous access to present and past experiences, one which easily unites the fragmented parts of personal history, one which openly faces problems which are troubling and unresolved; one with an intuitive awareness of possibilities, an active sense of curiosity, an ability and willingness to learn.

This kind of independence does not mean egotistic individualism--the object is not to have one's way so much as it is to have a way that is one's own. Nor do we deify man--we merely have faith in his potential.

Human relationships should involve fraternity and honesty. Human interdependence is contemporary fact; human brotherhood must be willed, however, as a condition of future survival and as the most appropriate form of social relations. Personal links between man and man are needed, especially to go beyond the partial and fragmentary bonds of function that bind men only as worker to worker, employer to employee, teacher to student, American to Russian.

Loneliness, estrangement, isolation describe the vast distance between man and man today. These dominant tendencies cannot be overcome by better personnel management, nor by improved gadgets, but only when a love of man overcomes the idolatrous worship of things by man. As the individualism we affirm is not egoism, the selflessness we affirm is not self-elimination. On the contrary, we believe in generosity of a kind that imprints one's unique

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individual qualities in the relation to other men, and to all human activity. Further, to dislike isolation is not to favor the abolition of privacy; the latter differs from isolation in that it occurs or is abolished according to individual will.

We would replace power rooted in possession, privilege, or circumstance by power and uniqueness rooted in love, reflectiveness, reason, and creativity. As a social system we seek the establishment of a democracy of individual participation, governed by two central aims: that the individual share in those social decisions determining the quality and direction of his life; that society be organized to encourage independence in men and provide the media for their common participation.

10 In a participatory democracy, the political life would be based in several root principles: that decision-making of basic social consequence be carried on by public groupings;

that politics be seen positively, as the art of collectively creating an acceptable pattern of social relations;

that politics has the function of bringing people out of isolation and into community, thus
15 being a necessary, though not sufficient, means of finding meaning in personal life;

that the political order should serve to clarify problems in a way instrumental to their solution; it should provide outlets for the expression of personal grievance and aspiration; opposing views should be organized so as to illuminate choices and facilitate the attainment of goals; channels should be commonly available to relate men to knowledge and to power
20 so that private problems--from bad recreation facilities to personal alienation--are formulated as general issues.

The economic sphere would have as its basis the principles:

that work should involve incentives worthier than money or survival. It should be educative, not stultifying; creative, not mechanical; self-directed, not manipulated, encouraging
25 independence, a respect for others, a sense of dignity, and a willingness to accept social responsibility, since it is this experience that has crucial influence on habits, perceptions

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and individual ethics; that the economic experience is so personally decisive that the individual must share in its full determination;

that the economy itself is of such social importance that its major resources and means of production should be open to democratic participation and subject to democratic social regulation.

Like the political and economic ones, major social institutions--cultural, educational, rehabilitative, and others--should be generally organized with the well-being and dignity of man as the essential measure of success.

In social change or interchange, we find violence to be abhorrent because it requires generally the transformation of the target, be it a human being or a community of people, into a depersonalized object of hate. It is imperative that the means of violence be abolished and the institutions--local, national, international--that encourage non-violence as a condition of conflict be developed.

These are our central values, in skeletal form. It remains vital to understand their denial or attainment in the context of the modern world.

1. Any new left in America must be, in large measure, a left with real intellectual skills, committed to deliberativeness, honesty, reflection as working tools. The university permits the political life to be an adjunct to the academic one, and action to be informed by reason.
2. A new left must be distributed in significant social roles throughout the country. The universities are distributed in such a manner.
3. A new left must consist of younger people who matured in the postwar world, and partially be directed to the recruitment of younger people. The university is an obvious beginning point.

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4. A new left must include liberals and socialists, the former for their relevance, the latter for their sense of thoroughgoing reforms in the system. The university is a more sensible place than a political party for these two traditions to begin to discuss their differences and look for political synthesis.
- 5 5. A new left must start controversy across the land, if national policies and national apathy are to be reversed. The ideal university is a community of controversy, within itself and in its effects on communities beyond.
- 10 6. A new left must transform modern complexity into issues that can be understood and felt close up by every human being. It must give form to the feelings of helplessness and indifference, so that people may see the political, social, and economic sources of their private troubles, and organize to change society. In a time of supposed prosperity, moral complacency, and political manipulation, a new left cannot rely on only aching stomachs to be the engine force of social reform. The case for change, for alternatives that will involve uncomfortable personal efforts, must
- 15 be argued as never before. The university is a relevant place for all of these activities.

HERBERT MARCUSE

“Repressive Tolerance”

CHAPTER EXCERPTS FROM *A CRITIQUE OF PURE TOLERANCE*

1965, 1968

BACKGROUND

University of California San Diego professor Herbert Marcuse, a German-American who subscribed to the Frankfurt School of critical theory, contributed this chapter essay to the book *A Critique of Pure Tolerance*.

GUIDING QUESTIONS

1. How does Marcuse define tolerance?
2. Why does true tolerance not exist in modern democracy, according to Marcuse?
3. How does Marcuse distinguish between false and true or liberating tolerance?
4. Are there any real differences between modern democracies and modern dictatorships, according to Marcuse?
5. What does Marcuse think is necessary to establish the conditions necessary for a free society?

Herbert Marcuse, “Repressive Tolerance,” in *A Critique of Pure Tolerance*, by Robert Paul Wolff, Barrington Moore, Jr., and Herbert Marcuse (Boston: Beacon Press, 1969), 95-137.

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Tolerance is an end in itself. The elimination of violence, and the reduction of suppression to the extent required for protecting man and animals from cruelty and aggression are pre-conditions for the creation of a humane society. Such a society does not yet exist; progress toward it is perhaps more than before arrested by violence and suppression on a global scale. As deterrents against nuclear war, as police action against subversion, as technical aid in the fight against imperialism and communism, as methods of pacification in neo-colonial massacres, violence and suppression are promulgated, practiced, and defended by democratic and authoritarian governments alike, and the people subjected to these governments are educated to sustain such practices as necessary for the preservation of the status quo. Tolerance is extended to policies, conditions, and modes of behavior which should not be tolerated because they are impeding, if not destroying, the chances of creating an existence without fear and misery....

In the Contemporary period, the democratic argument for abstract tolerance tends to be invalidated by the invalidation of the democratic process itself. The liberating force of democracy was the chance it gave to effective dissent, on the individual as well as social scale, its openness to qualitatively different forms of government, of culture, education, work — of the human existence in general. The toleration of free discussion and the equal right of opposites was to define and clarify the different forms of dissent: their direction, content, prospect. But with the concentration of economic and political power and the integration of opposites in a society which uses technology as an instrument of domination, effective dissent is blocked where it could freely emerge: in the formation of opinion, in information and communication, in speech and assembly. Under the rule of monopolistic media — themselves the mere instruments of economic and political power — a mentality is created for which right and wrong, true and false are predefined wherever they affect the vital interests of the society. This is, prior to all expression and communication, a matter of semantics: the blocking of effective dissent, of the recognition of that which is not of the Establishment which begins in the language that is publicized and administered. The meaning of words is rigidly stabilized. Rational persuasion, persuasion to the opposite is all but precluded. The avenues of entrance are closed to the meaning of words and ideas other than

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the established one — established by the publicity of the powers that be, and verified in their practices. Other words can be spoken and heard, other ideas can be expressed, but, at the massive scale of the conservative majority (outside such enclaves as the intelligentsia), they are immediately “evaluated” (i.e., automatically understood) in terms of the public language — a language which determines a priori the direction in which the thought process moves. Thus the process of reflection ends where it started: in the given conditions and relations. Self-validating, the argument of the discussion repels the contradiction because the antithesis is redefined in terms of the thesis. For example, thesis: we work for peace; antithesis: we prepare for war (or even: we wage war); unification of opposites: preparing for war is working for peace. Peace is redefined as necessarily, in the prevailing situation, including preparation for war (or even war) and in this Orwellian form, the meaning of the word “peace” is stabilized. Thus, the basic vocabulary of the Orwellian language operates as a priori categories of understanding: preforming all content. These conditions invalidate the logic of tolerance which involves the rational development of meaning and precludes the closing of meaning. Consequently, persuasion through discussion and the equal presentation of opposites (even where it is really equal) easily lose their liberating force as factors of understanding and learning; they are far more likely to strengthen the established thesis and to repel the alternatives....

The factual barriers which totalitarian democracy erects against the efficacy of qualitative dissent are weak and pleasant enough compared with the practices of a dictatorship which claims to educate the people in the truth. With all its limitations and distortions, democratic tolerance is under all circumstances more humane than an institutionalized intolerance which sacrifices the rights and liberties of the living generations for the sake of future generations. The question is whether this is the only alternative. I shall presently try to suggest the direction in which an answer may be sought. In any case, the contrast is not between democracy in the abstract and dictatorship in the abstract.

Democracy is a form of government which fits very different types of society (this holds true even for a democracy with universal suffrage and equality before the law), and the human costs of a democracy are always and everywhere those exacted by the society whose

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government it is. Their range extends all the way from normal exploitation, poverty, and insecurity to the victims of wars, police actions, military aid, etc., in which the society is engaged — and not only to the victims within its own frontiers. These considerations can never justify the exacting of different sacrifices and different victims on behalf of a future better society, but they do allow weighing the costs involved in the perpetuation of an existing society against the risk of promoting alternatives which offer a reasonable chance of pacification and liberation. Surely, no government can be expected to foster its own subversion, but in a democracy such a right is vested in the people (i.e., in the majority of the people). This means that the ways should not be blocked on which a subversive majority could develop, and if they are blocked by organized repression and indoctrination, their reopening may require apparently undemocratic means. They would include the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism, discrimination on the grounds of race and religion, or which oppose the extension of public services, social security, medical care, etc. Moreover, the restoration of freedom of thought may necessitate new and rigid restrictions on teachings and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior — thereby precluding a priori a rational evaluation of the alternatives. And to the degree to which freedom of thought involves the struggle against inhumanity, restoration of such freedom would also imply intolerance toward scientific research in the interest of deadly “deterrents,” of abnormal human endurance under inhuman conditions, etc....

The very notion of false tolerance, and the distinction between right and wrong limitations on tolerance, between progressive and regressive indoctrination, revolutionary and reactionary violence demand the statement of criteria for its validity. These standards must be prior to whatever constitutional and legal criteria are set up and applied in an existing society (such as “clear and present danger,” and other established definitions of civil rights and liberties), for such definitions themselves presuppose standards of freedom and repression as applicable or not applicable in the respective society: they are specifications of more general concepts. By whom, and according to what standards, can the political distinction

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between true and false, progressive and regressive (for in this sphere, these pairs are equivalent) be made and its validity be justified? At the outset, I propose that the question cannot be answered in terms of the alternative between democracy and dictatorship, according to which, in the latter, one individual or group, without any effective control from below, arrogate to themselves the decision. Historically, even in the most democratic democracies, the vital and final decisions affecting the society as a whole have been made, constitutionally or in fact, by one or several groups without effective control by the people themselves. The ironical question: who educates the educators (i.e. the political leaders) also applies to democracy. The only authentic alternative and negation of dictatorship (with respect to this question) would be a society in which “the people” have become autonomous individuals, freed from the repressive requirements of a struggle for existence in the interest of domination, and as such human beings choosing their government and determining their life. Such a society does not yet exist anywhere. In the meantime, the question must be treated *in abstracto* — abstraction, not from the historical possibilities but from the realities of the prevailing societies.

I suggested that the distinction between true and false tolerance, between progress and regression can be made rationally on empirical grounds. The real possibilities of human freedom are relative to the attained stage of civilization. They depend on the material and intellectual resources available at the respective stage, and they are quantifiable and calculable to a high degree. So are, at the stage of advanced industrial society, the most rational ways of using these resources and distributing the social product with priority on the satisfaction of vital needs and with a minimum of toil and injustice. In other words, it is possible to define the direction in which prevailing institutions, policies, opinions would have to be changed in order to improve the chance of a peace which is not identical with cold war and a little hot war, and a satisfaction of needs which does not feed on poverty, oppression, and exploitation. Consequently, it is also possible to identify policies, opinions, movements which would promote this chance, and those which would do the opposite. Suppression of the regressive ones is a prerequisite for the strengthening of the progressive ones....

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Liberating tolerance, then, would mean intolerance against movements from the Right, and toleration of movements from the Left. As to the scope of this tolerance and intolerance: . . . it would extend to the stage of action as well as of discussion and propaganda, of deed as well as of word. [...] Such extreme suspension of the right of free speech and free assembly is indeed justified only if the whole of society is in extreme danger. I maintain that our society is in such an emergency situation, and that it has become the normal state of affairs. Different opinions and “philosophies” can no longer compete peacefully for adherence and persuasion on rational grounds: the “marketplace of ideas” is organized and delimited by those who determine the national and the individual interest. In this society, for which the ideologists have proclaimed the “end of ideology,” the false consciousness has become the general consciousness — from the government down to its last objects. The small and powerless minorities which struggle against the false consciousness and its beneficiaries must be helped: their continued existence is more important than the preservation of abused rights and liberties which grant constitutional powers to those who oppress these minorities. It should be evident by now that the exercise of civil rights by those who don’t have them presupposes the withdrawal of civil rights from those who prevent their exercise, and that liberation of the Damned of the Earth presupposes suppression not only of their old but also of their new masters.

Withdrawal of tolerance from regressive movements before they can become active; intolerance even toward thought, opinion, and word, and finally, intolerance in the opposite direction, that is, toward the self-styled conservatives, to the political Right — these anti-democratic notions respond to the actual development of the democratic society which has destroyed the basis for universal tolerance. The conditions under which tolerance can again become a liberating and humanizing force have still to be created. When tolerance mainly serves the protection and preservation of a repressive society, when it serves to neutralize opposition and to render men immune against other and better forms of life, then tolerance has been perverted. And when this perversion starts in the mind of the individual, in his consciousness, his needs, when heteronomous interests occupy him before he can experience his servitude, then the efforts to counteract his dehumanization must begin at the

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place of entrance, there where the false consciousness takes form (or rather: is systematically formed) — it must begin with stopping the words and images which feed this consciousness. To be sure, this is censorship, even precensorship, but openly directed against the more or less hidden censorship that permeates the free media. Where the false consciousness has become prevalent in national and popular behavior, it translates itself almost immediately into practice: the safe distance between ideology and reality, repressive thought and repressive action, between the word of destruction and the deed of destruction is dangerously shortened. Thus, the break through the false consciousness may provide the Archimedean point for a larger emancipation — at an infinitesimally small spot, to be sure, but it is on the enlargement of such small spots that the chance of change depends.

Postscript, 1968

Under the conditions prevailing in this country, tolerance does not, and cannot, fulfill the civilizing function attributed to it by the liberal protagonists of democracy, namely, protection of dissent. The progressive historical force of tolerance lies in its extension to those modes and forms of dissent which are not committed to the status quo of society, and not confined to the institutional framework of the established society. Consequently, the idea of tolerance implies the necessity, for the dissenting group or individuals, to become illegitimate if and when the established legitimacy prevents and counteracts the development of dissent. This would be the case not only in a totalitarian society, under a dictatorship, in one-party states, but also in a democracy (representative, parliamentary, or "direct") where the majority does not result from the development of independent thought and opinion but rather from the monopolistic or oligopolistic administration of public opinion, without terror and (normally) without censorship. In such cases, the majority is self-perpetuating while perpetuating the vested interests which made it a majority. In its very structure this majority is "closed," petrified; it repels "a priori" any change other than changes within the system. But this means that the majority is no longer justified in claiming the democratic title of the best guardian of the common interest. And such a majority is all but the opposite of Rousseau's "general will": it is composed, not of individuals who, in their political functions, have made effective "abstraction" from their private interests, but, on the contrary, of

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individuals who have effectively identified their private interests with their political functions. And the representatives of this majority, in ascertaining and executing its will, ascertain and execute the will of the vested interests which have formed the majority. The ideology of democracy hides its lack of substance.

- 5 In the United States, this tendency goes hand in hand with the monopolistic or oligopolistic concentration of capital in the formation of public opinion, i.e., of the majority. The chance of influencing, in any effective way, this majority is at a price, in dollars, totally out of reach of the radical opposition. Here too, free competition and exchange of ideas have become a farce. The Left has no equal voice, no equal access to the mass media and their public facilities – not because a conspiracy excludes it, but because, in good old capitalist fashion, it does not have the required purchasing power. And the Left does not have the purchasing power because it is the Left. These conditions impose upon the radical minorities a strategy which is in essence a refusal to allow the continuous functioning of allegedly indiscriminate but in fact discriminate tolerance, for example, a strategy of protesting against the alternate matching of a spokesman for the Right (or Center) with one for the Left. Not "equal" but more representation of the Left would be equalization of the prevailing inequality.

- Within the solid framework of preestablished inequality and power, tolerance is practiced indeed. Even outrageous opinions are expressed, outrageous incidents are televised; and the critics of established policies are interrupted by the same number of commercials as the conservative advocates. Are these interludes supposed to counteract the sheer weight, magnitude, and continuity of system-publicity, indoctrination which operates playfully through the endless commercials as well as through the entertainment?

- Given this situation, I suggested in "Repressive Tolerance" the practice of discriminating tolerance in an inverse direction, as a means of shifting the balance between Right and Left by restraining the liberty of the Right, thus counteracting the pervasive inequality of freedom (unequal opportunity of access to the means of democratic persuasion) and strengthening the oppressed against the oppressors. Tolerance would be restricted with respect to

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movements of a demonstrably aggressive or destructive character (destructive of the prospects for peace, justice, and freedom for all). Such discrimination would also be applied to movements opposing the extension of social legislation to the poor, weak, disabled. As against the virulent denunciations that such a policy would do away with the sacred liberalistic principle of equality for "the other side," I maintain that there are issues where either there is no "other side" in any more than a formalistic sense, or where "the other side" is demonstrably "regressive" and impedes possible improvement of the human condition. To tolerate propaganda for inhumanity vitiates the goals not only of liberalism but of every progressive political philosophy.

- 10 I presupposed the existence of demonstrable criteria for aggressive, regressive, destructive forces. If the final democratic criterion of the declared opinion of the majority no longer (or rather not yet) prevails, if vital ideas, values, and ends of human progress no longer (or rather not yet) enter, as competing equals, the formation of public opinion, if the people are no longer (or rather not yet) sovereign but “made” by the real sovereign powers – is there any alternative other than the dictatorship of an “elite” over the people? For the opinion of people (usually designated as The People) who are unfree in the very faculties in which liberalism saw the roots of freedom: independent thought and independent speech, can carry no overriding validity and authority - even if The People constitute the overwhelming majority.
- 20 If the choice were between genuine democracy and dictatorship, democracy would certainly be preferable. But democracy does not prevail. The radical critics of the existing political process are thus readily denounced as advocating an "elitism," a dictatorship of intellectuals as an alternative. What we have in fact is government, representative government by a non-intellectual minority of politicians, generals, and businessmen. The record of this "elite" is not very promising, and political prerogatives for the intelligentsia may not necessarily be worse for the society as a whole....

However, the alternative to the established semi-democratic process is not a dictatorship or elite, no matter how intellectual and intelligent, but the struggle for a real democracy.

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Part of this struggle is the fight against an ideology of tolerance which, in reality, favors and fortifies the conservation of the status quo of inequality and discrimination. For this struggle, I proposed the practice of discriminating tolerance. To be sure, this practice already presupposes the radical goal which it seeks to achieve. I committed this *petitio principia* in order to combat the pernicious ideology that tolerance is already institutionalized in this society. The tolerance which is the life element, the token of a free society, will never be the gift of the powers that be; it can, under the prevailing conditions of tyranny by the majority, only be won in the sustained effort of radical minorities, willing to break this tyranny and to work for the emergence of a free and sovereign majority – minorities intolerant,, militantly intolerant and disobedient to the rules of behavior which tolerate destruction and suppression.

JOHN RAWLS

A Theory of Justice

BOOK EXCERPTS

1971

BACKGROUND

American political philosopher and Harvard University professor John Rawls outlined his new ideas on freedom and equality in his 1971 book *A Theory of Justice*.

GUIDING QUESTIONS

1. What are Rawls's two principles of justice, and why does the first necessarily precede the second, according to his logic?
2. What is the role of distribution in Rawls's general conceptions of justice and injustice?
3. What is the "difference principle," and how does it relate to the "principle of redress"?
4. What is the role of self-respect in Rawls's conception of justice?

John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

Chapter 11: Two Principles of Justice

I shall now state in a provisional form the two principles of justice that I believe would be chosen in the original position. In this section I wish to make only the most general comments, and therefore the first formulation of these principles is tentative. As we go on I shall run through several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

The first statement of the two principles reads as follows.

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

There are two ambiguous phrases in the second principle, namely "everyone's advantage" and "open to all." Determining their sense more exactly will lead to a second formulation of the principle in § 13. The final version of the two principles is given in § 46; § 39 considers the rendering of the first principle.

By way of general comment, these principles primarily apply, as I have said, to the basic structure of society. They are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages. As their formulation suggests, these principles presuppose that the social structure can be divided into two more or less distinct parts, the first principle applying to the one, the second to the other. They distinguish between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property;

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and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.

5 The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility, or chains of command. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and offices of command must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic
10 inequalities so that everyone benefits.

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages. The distribution of wealth and income, and the hierarchies of authority,
15 must be consistent with both the liberties of equal citizenship and equality of opportunity.

It is clear that these principles are rather specific in their content, and their acceptance rests on certain assumptions that I must eventually try to explain and justify. A theory of justice depends upon a theory of society in ways that will become evident as we proceed. For the present, it should be observed that the two principles (and this holds for all formulations)
20 are a special case of a more general conception of justice that can be expressed as follows.

All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation.
25

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a

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use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth. (Later on in Part Three the primary good of self-respect has a central place.) These are the social primary goods. Other primary goods such as health and vigor,
5 intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and or-
10 ganizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissi-
15 ble; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that men forego certain political rights when the economic returns are significant and their capacity to influence the course of policy by the exercise of these rights would be marginal in any case. It is this kind of exchange which the two principles as stated rule out; being arranged in serial order
20 they do not permit exchanges between basic liberties and economic and social gains. The serial ordering of principles expresses and underlying preference among primary social goods. When this preference is rational so likewise is the choice of these principles in this order.

In developing justice as fairness I shall, for the most part, leave aside the general conception
25 of justice and examine instead the special case of the two principles in serial order. The advantage of this procedure is that from the first the matter of priorities is recognized and an effort made to find principles to deal with it. One is led to attend throughout to the conditions under which the acknowledgment of the absolute weight of liberty with respect to social and economic advantages, as defined by the lexical order of the two principles,

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would be reasonable. Offhand, this ranking appears extreme and too special a case to be of much interest; but there is more justification for it than would appear at first sight. Or at any rate, so I shall maintain (§ 82). Furthermore, the distinction between fundamental rights and liberties and economic and social benefits marks a difference among primary social goods that one should try to exploit. It suggests an important division in the social system. Of course, the distinctions drawn and the ordering proposed are bound to be at best only approximations. There are surely circumstances in which they fail. But it is essential to depict clearly the main lines of a reasonable conception of justice; and under many conditions anyway, the two principles in serial order may serve well enough. When necessary we can fall back on the more general conception...

Chapter 17: The Tendency to Equality

I wish to conclude this discussion of the two principles by explaining the sense in which they express an egalitarian conception of justice. Also I should like to forestall the objection to the principle of fair opportunity that it leads to a callous meritocratic society. In order to prepare the way for doing this, I note several aspects of the conception of justice I have set out.

First we may observe that the difference principle gives some weight to the considerations singled out by the principle of redress. This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for. Thus the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those fewer native assets and to those born into the less favorable social positions. The idea is to redress the bias of contingencies in the direction of equality. In pursuit of this principle greater resources might be spent on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school.

Now the principle of redress has not to my knowledge been proposed as the sole criterion of justice, as the single aim of the social order. It is plausible as most such principles are only as a *prima facie* principle, one that is to be weighed in the balance with others. For

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example, we are to weight it against the principle to improve the average standard of life, or to advance the common good. But whatever other principles we hold, the claims of redress are to be taken into account. It is thought to represent one of the elements in our conception of justice. Now the difference principle is not of course the principle of redress.

- 5 It does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race. But the difference principle would allocate resources in education, say, so as to improve the long-term expectation of the least favored. If this end is attained by giving more attention to the better endowed, it is permissible; otherwise not. And in making this decision, the value of education should not be assessed solely in terms
- 10 of economic efficiency and social welfare. Equally if not more important is the role of education in enabling a person to enjoy the culture of his society and to take part in its affairs, and in this way to provide for each individual a secure sense of his own worth.

- Thus although the difference principle is not the same as that of redress, it does achieve some of the intent of the latter principle. It transforms the aims of the basic structure so
- 15 that the total scheme of institutions no longer emphasizes social efficiency and technocratic values. We see then that the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation
- 20 of those who have lost out...

Chapter 29: Main Grounds for the Two Principles

- ...Furthermore, the public recognition of the two principles gives greater support to men's self-respect and this in turn increases the effectiveness of social cooperation. Both effects are reasons for choosing these principles. It is clearly rational for men to secure their self-
- 25 respect. A sense of their own worth is necessary if they are to pursue their conception of the good with zest and to delight in its fulfillment. Self-respect is not so much a part of any rational plan of life as the sense that one's plan is worth carrying out. Now our self-respect

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normally depends upon the respect of others. Unless we feel that our endeavors are honored by them, it is difficult if not impossible for us to maintain the conviction that our ends are worth advancing (§ 67). Hence for this reason the parties would accept the natural duty of mutual respect which asks them to treat one another civilly and to be willing to explain the grounds of their actions, especially when the claims of others are overruled (§ 51). Moreover, one may assume that those who respect themselves are more likely to respect each other and conversely. Self-contempt leads to contempt of others and threatens their good as much as envy does. Self-respect is reciprocally self-supporting.

Thus a desirable feature of a conception of justice is that it should publicly express men's respect for one another. In this way they insure a sense of their own value. Now the two principles achieve this end. For when society follows these principles, everyone's good is included in a scheme of mutual benefit and this public affirmation in institutions of each man's endeavors supports men's self-esteem. The establishment of equal liberty and the operation of the difference principle are bound to have this effect. The two principles are equivalent, as I have remarked, to an undertaking to regard the distribution of natural abilities as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out. I do not say that the parties are moved by the ethical propriety of this idea. But there are reasons for them to accept this principle. For by arranging inequalities for reciprocal advantage and by abstaining from the exploitation of the contingencies of nature and social circumstance within a framework of equal liberty, persons express their respect for one another in the very constitution of their society. In this way they insure their self-esteem as it is rational for them to do...

JUSTICE HARRY BLACKMUN

*Jane Roe, et al. v. Henry Wade,
District Attorney of Dallas County*

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

January 22, 1973
Supreme Court | Washington, D.C.

BACKGROUND

Jane Roe (Norma McCorvey) sought an abortion in Texas, which Texas law held as illegal at the time. The Supreme Court handed down this ruling on the constitutionality of states to prohibit abortions within their boundaries.

GUIDING QUESTIONS

1. Why does the court argue that states should have an interest in making abortion legal?
2. How does the court locate the right to privacy within the Constitution?
3. In what ways does the court take into account the life of the baby and the life of the mother?
4. How does the court limit abortion in its opinion?
5. Why does the court argue it need not determine when human life begins?

Roe v. Wade, 410 U.S. 113 (1973).

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

...When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. This was particularly true prior to the development of antisepsis. Antiseptic techniques, of course, were based on discoveries by Lister, Pasteur, and others first
5 announced in 1867, but were not generally accepted and employed until about the turn of the century. Abortion mortality was high. Even after 1900, and perhaps until as late as the development of antibiotics in the 1940's, standard modern techniques such as dilation and curettage were not nearly so safe as they are today. Thus, it has been argued that a State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that
10 is, to restrain her from submitting to a procedure that placed her life in serious jeopardy.

Modern medical techniques have altered this situation. Appellants and various amici refer to medical data indicating that abortion in early pregnancy, that is, prior to the end of the first trimester, although not without its risk, is now relatively safe. Mortality rates for women undergoing early abortions, where the procedure is legal, appear to be as low as or
15 lower than the rates for normal childbirth. Consequently, any interest of the State in protecting the woman from an inherently hazardous procedure, except when it would be equally dangerous for her to forgo it, has largely disappeared. Of course, important state interests in the areas of health and medical standards do remain. The State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under
20 circumstances that insure maximum safety for the patient. This interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that might arise. The prevalence of high mortality rates at illegal "abortion mills" strengthens, rather than weakens, the State's interest in regulating the conditions under which abortions are
25 performed. Moreover, the risk to the woman increases as her pregnancy continues. Thus, the State retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy.

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The third reason is the State's interest - some phrase it in terms of duty - in protecting prenatal life. Some of the argument for this justification rests on the theory that a new human life is present from the moment of conception. The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail. Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least potential life is involved, the State may assert interests beyond the protection of the pregnant woman alone....

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however...the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right...in the penumbras of the Bill of Rights, *Griswold v. Connecticut*...or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see *Meyer v. Nebraska*. These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," *Palko v. Connecticut*, are included in this guarantee of personal privacy....

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable,

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psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. *Jacobson v. Massachusetts*, (vaccination); *Buck v. Bell*, (sterilization).

We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation....

In the recent abortion cases, cited above, courts have recognized these principles. Those striking down state laws have generally scrutinized the State's interests in protecting health and potential life, and have concluded that neither interest justified broad limitations on the reasons for which a physician and his pregnant patient might decide that she should have an abortion in the early stages of pregnancy. Courts sustaining state laws have held

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that the State's determinations to protect health or prenatal life are dominant and constitutionally justifiable.

The Constitution does not define "person" in so many words. Section 1 of the Fourteenth Amendment contains three references to "person." The first, in defining "citizens," speaks of "persons born or naturalized in the United States." The word also appears both in the Due Process Clause and in the Equal Protection Clause. "Person" is used in other places in the Constitution... None indicates, with any assurance, that it has any possible pre-natal application.

All this, together with our observation, *supra*, that throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn...

The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus... The situation therefore is inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education... As we have intimated above, it is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly.

Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

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It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question....

In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does
5 have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a nonresident who seeks medical consultation and treatment there, and that it has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy,
10 nancy, each becomes "compelling."

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact...that until
15 the end of the first trimester mortality in abortion may be less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is,
20 whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like.

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should
25 be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of

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meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.

- 5 Measured against these standards, Art. 1196 of the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore,
- 10 cannot survive the constitutional attack made upon it here....

Our conclusion that Art. 1196 is unconstitutional means, of course, that the Texas abortion statutes, as a unit, must fall. The exception of Art. 1196 cannot be struck down separately, for then the State would be left with a statute proscribing all abortion procedures no matter how medically urgent the case.

JUSTICE ANTHONY KENNEDY

Planned Parenthood of Southeastern Pennsylvania, et al. v. Robert P. Casey, et al.

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

June 29, 1992

Supreme Court | Washington, D.C.

BACKGROUND

The Supreme Court ruled that a Pennsylvania law requiring parental consent for a minor to abort her baby was constitutional but that its requirement that a wife notify her husband before aborting their baby was unconstitutional. In his opinion for the majority, Justice Anthony Kennedy offered his view on liberty and the mystery of life.

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Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. *Carey v. Population Services International*, 431 U. S., at 685. Our cases recognize "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird*, supra, at 453 (emphasis in original). Our precedents "have respected the private realm of family life which the state cannot enter." *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944). These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Planned Parenthood v. Casey, 505 US 833 (1992).

JUSTICE WILLIAM O. DOUGLAS

Estelle T. Griswold and C. Lee Buxton v. Connecticut

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

June 7, 1965

Supreme Court | Washington, D.C.

BACKGROUND

“The Executive Director of the Planned Parenthood League of Connecticut, and its medical director, a licensed physician, were convicted as accessories for giving married persons information and medical advice on how to prevent conception.... A Connecticut statute makes it a crime for any person to use any drug or article to prevent conception. Appellants claimed that the accessory statute, as applied, violated the Fourteenth Amendment. An intermediate appellate court and the State's highest court affirmed the judgment....” The Supreme Court issued this ruling on the case.

GUIDING QUESTIONS

1. What right does the Court claim protects the use of contraceptives by married couples?
2. Where in the Bill of Rights does the Court say this right is protected?

Griswold v. Connecticut, 381 US 479 (1965).

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MR. JUSTICE DOUGLAS delivered the opinion of the Court.

...Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment....We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice -- whether public or private or parochial -- is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

By *Pierce v. Society of Sisters*, supra, the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer v. Nebraska*, supra, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (*Martin v. Struthers*, 319 U. S. 141, 319 U. S. 143) and freedom of inquiry, freedom of thought, and freedom to teach (see *Wiemann v. Updegraff*, 344 U. S. 183, 344 U. S. 195) -- indeed, the freedom of the entire university community.... Without those peripheral rights, the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

In *NAACP v. Alabama*, 357 U. S. 449, 357 U. S. 462 we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association."

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Ibid. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense, but pertain to the social, legal, and economic benefit of the members. *NAACP v. Button*, 371 U. S. 415, 371 U. S. 430-431. In *Schwartz v. Board of Bar Examiners*, 353 U. S. 232, we held it not permissible to bar a lawyer from practice because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (id. at 353 U. S. 244), and was not action of a kind proving bad moral character. Id. at 353 U. S. 245-246.

Those cases involved more than the "right of assembly" -- a right that extends to all, irrespective of their race or ideology. *De Jonge v. Oregon*, 299 U. S. 353. The right of "association," like the right of belief (*Board of Education v. Barnette*, 319 U. S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion, and, while it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See *Poe v. Ullman*, 367 U. S. 497, 367 U. S. 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

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The Fourth and Fifth Amendments were described in *Boyd v. United States*, 116 U. S. 616, 116 U. S. 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." We recently referred in *Mapp v. Ohio*, 367 U. S. 643, 367 U. S. 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people."

We have had many controversies over these penumbral rights of "privacy and repose." These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

NAACP v. Alabama, 377 U. S. 288, 377 U. S. 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights -- older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

JUSTICE OLIVER WENDELL HOLMES, JR.**Dissents**IN *ABRAMS V. UNITED STATES* AND *GITLOW V. NEW YORK*

1919 and 1925

Supreme Court | Washington, D.C.

BACKGROUND

Just Oliver Wendell Holmes wrote these dissents in two cases involving speech against the government.

ANNOTATIONS**NOTES & QUESTIONS*****Jacob Abrams, et al. v. United States***

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition

5 by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade

10 in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our sys-

15 tem, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an

Abrams v. United States, 250 US 616 (1919); *Gitlow v. New York*, 268 US 652 (1925).

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immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States, through many years, had shown its repentance for the Sedition Act of 1798, by repaying
5 fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law...abridging the freedom of speech." Of course, I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that, in their con-
10 viction upon this indictment, the defendants were deprived of their rights under the Constitution of the United States.

Benjamin Gitlow v. People of the State of New York

MR. JUSTICE BRANDEIS and I are of opinion that this judgment should be reversed. The
15 general principle of free speech, it seems to me, must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word "liberty" as there used, although perhaps it may be accepted with a somewhat larger latitude of interpretation than is allowed to Congress by the sweeping language that governs or ought to govern the laws of the United States. If I am right, then I think that the criterion sanctioned by the full
20 Court in *Schenck v. United States*, 249 U. S. 47, 249 U. S. 52, applies.

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that [the State] has a right to prevent."

It is true that, in my opinion, this criterion was departed from in *Abrams v. United States*,
25 250 U. S. 616, but the convictions that I expressed in that case are too deep for it to be possible for me as yet to believe that it and *Schaefer v. United States*, 251 U. S. 466, have settled the law. If what I think the correct test is applied, it is manifest that there was no

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present danger of an attempt to overthrow the government by force on the part of the admittedly small minority who shared the defendant's views. It is said that this manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration. If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

If the publication of this document had been laid as an attempt to induce an uprising against government at once, and not at some indefinite time in the future, it would have presented a different question. The object would have been one with which the law might deal, subject to the doubt whether there was any danger that the publication could produce any result, or in other words, whether it was not futile and too remote from possible consequences. But the indictment alleges the publication, and nothing more.

JUSTICE HARLAN FISKE STONE*United States v. Carolene Products Co.,***Footnote 4**

U.S. SUPREME COURT MAJORITY OPINION EXCERPT

April 25, 1938

Supreme Court | Washington, D.C.

BACKGROUND

Justice Harlan Fiske Stone offered this preview of the direction the Supreme Court would like to take future cases in the footnote to his majority opinion in *U.S. v. Carolene Products Co.*

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There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth....

- 5 It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation....

- 10 Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious...or national...or racial minorities...: whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry....

United States v. Carolina Product Company, 304 US 144 (1938).

U.S. SUPREME COURT

Clarence Brandenburg v. State of Ohio

UNSIGNED OPINION EXCERPTS

June 9, 1969

Supreme Court | Washington, D.C.

BACKGROUND

The Supreme Court offered this unsigned opinion in response to Clarence Brandenburg, who appealed his conviction under an Ohio law that prohibited speech encouraging of criminal actions, arguing that the law violated his First Amendment rights.

GUIDING QUESTIONS

1. What type of speech did Ohio make illegal?
2. What did the Court rule on the Ohio law? Why?

Branden v. Ohio, 395 US 444 (1969).

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The appellant, a leader of a Ku Klux Klan group, was convicted under the Ohio Criminal Syndicalism statute for 'advocat(ing) * * * the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform' and for 'voluntarily assembl(ing) with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.' Ohio Rev. Code Ann. § 2923.13. He was fined \$1,000 and sentenced to one to 10 years' imprisonment. The appellant challenged the constitutionality of the criminal syndicalism statute under the First and Fourteenth Amendments to the United States Constitution, but the intermediate appellate court of Ohio affirmed his conviction without opinion. The Supreme Court of Ohio dismissed his appeal, sua sponte, 'for the reason that no substantial constitutional question exists herein.' It did not file an opinion or explain its conclusions. Appeal was taken to this Court, and we noted probable jurisdiction. 393 U.S. 948, 89 S.Ct. 377, 21 L.Ed.2d 360 (1968). We reverse....

The Ohio Criminal Syndicalism Statute was enacted in 1919. From 1917 to 1920, identical or quite similar laws were adopted by 20 States and two territories. E. Dowell, *A History of Criminal Syndicalism Legislation in the United States* 21 (1939). In 1927, this Court sustained the constitutionality of California's Criminal Syndicalism Act, Cal. Penal Code §§ 11400—11402, the text of which is quite similar to that of the laws of *Ohio*. *Whitney v. California*, 274 U.S. 357, 47 S.Ct. 641, 71 L.Ed. 1095 (1927). The Court upheld the statute on the ground that, without more, 'advocating' violent means to effect political and economic change involves such danger to the security of the State that the State may outlaw it. Cf. *Fiske v. Kansas*, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108 (1927). But *Whitney* has been thoroughly discredited by later decisions. See *Dennis v. United States*, 341 U.S. 494, at 507, 71 S.Ct. 857, at 866, 95 L.Ed. 1137 (1951). These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.² As we said in *Noto v. United States*, 367 U.S. 290, 297—298, 81 S.Ct. 1517, 1520—1521, 6 L.Ed.2d 836 (1961), 'the mere abstract teaching * * * of the moral

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propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.' See also *Herndon v. Lowry*, 301 U.S. 242, 259—261, 57 S.Ct. 732, 739—740, 81 L.Ed. 1066 (1937); *Bond v. Floyd*, 385 U.S. 116, 134, 87 S.Ct. 339, 348, 17 L.Ed.2d 235 (1966). A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from governmental control....

Measured by this test, Ohio's Criminal Syndicalism Act cannot be sustained. The Act punishes persons who 'advocate or teach the duty, necessity, or propriety' of violence 'as a means of accomplishing industrial or political reform'; or who publish or circulate or display any book or paper containing such advocacy; or who 'justify' the commission of violent acts 'with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism'; or who 'voluntarily assemble' with a group formed 'to teach or advocate the doctrines of criminal syndicalism.' Neither the indictment nor the trial judge's instructions to the jury in any way refined the statute's bald definition of the crime in terms of mere advocacy not distinguished from incitement to imminent lawless action.

Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments. The contrary teaching of *Whitney v. California*, supra, cannot be supported, and that decision is therefore overruled.

Mr. Justice BLACK, concurring.

JUSTICE HUGO BLACK*Arch R. Everson v. Board of Education of the Township of Ewing, et al.*

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

February 10, 1947

Supreme Court | Washington, D.C.

BACKGROUND

The Supreme Court made this ruling on the relationship between religion and government support thereof.

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The “establishment of religion” clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect “a wall of separation between church and State.”

...The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.

Everson v. Board of Education, 330 U.S. 1 (1947).

JUSTICE HUGO BLACK*Steven I. Engel, et al. v.
William J. Vitale, Jr., et al.*

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

June 6, 1962

Supreme Court | Washington, D.C.

BACKGROUND

Justice Hugo Black delivered this opinion concerning the government's relationship with religion.

ANNOTATIONS**NOTES & QUESTIONS**

The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say--that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

There can be no doubt that New York's state prayer program officially establishes the religious beliefs embodied in the Regents' prayer. The respondents' argument to the contrary, which is largely based upon the contention that the Regents' prayer is "nondenominational" and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer, but permits those who wish to do so to remain silent or be

Engel v. Vitale, 370 U.S. 421 (1962).

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excused from the room, ignores the essential nature of the program's constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may, in certain instances, overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion.

JUSTICE JOHN MARSHALL HARLAN

Paul Robert Cohen v. State of California

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

June 7, 1971

Supreme Court | Washington, D.C.

BACKGROUND

Paul Cohen was charged under a California statute that prohibited offensive conduct for wearing a jacket emblazoned with profanity while inside a county courthouse. He was found guilty and sentenced to 30 days in jail. Cohen argued that California's statute violated a right to free expression protected by the First Amendment. The Court ruled on his appeal in this decision.

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[T]he principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

- 10 Additionally, we cannot overlook the fact, because it is well illustrated by the episode involved here, that much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive func-
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Cohen v. California, 403 US 15 (1971).

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tion which, practically speaking, may often be the more important element of the overall message sought to be communicated. Indeed, as Mr. Justice Frankfurter has said, “[o]ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation....”

Finally, and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views. We have been able, as noted above, to discern little social benefit that might result from running the risk of opening the door to such grave results.

U.S. SUPREME COURT

James L. Buckley, et al. v. Francis R. Valeo, Secretary of the United States Senate, et al.

UNSIGNED OPINION EXCERPTS

January 30, 1976
Supreme Court | Washington, D.C.

BACKGROUND

Congress attempted to amend the Campaign Finance Act of 1971 to impose contribution and expenditure restrictions, and the Court delivered this opinion on the constitutionality of the changes by Congress.

GUIDING QUESTIONS

1. What Constitutional amendment did the Court hold that the limits on expenditures violated?
2. Why did the Court determine that the individual contribution limits were constitutional?

Buckley v. Valeo, 424 U.S. 1 (1976).

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The Federal Election Campaign Act of 1971 (Act), as amended in 1974, (a) limits political contributions to candidates for federal elective office by an individual or a group to \$1,000 and by a political committee to \$5,000 to any single candidate per election, with an over-all annual limitation of \$25,000 by an individual contributor; (b) limits expenditures by individuals or groups "relative to a clearly identified candidate" to \$1,000 per candidate per election, and by a candidate from his personal or family funds to various specified annual amounts depending upon the federal office sought, and restricts over-all general election and primary campaign expenditures by candidates to various specified amounts, again depending upon the federal office sought; (c) requires political committees to keep detailed records of contributions and expenditures, including the name and address of each individual contributing in excess of \$10, and his occupation and principal place of business if his contribution exceeds \$100, and to file quarterly reports with the Federal Election Commission disclosing the source of every contribution exceeding \$100 and the recipient and purpose of every expenditure over \$100, and also requires every individual or group, other than a candidate or political committee, making contributions or expenditures exceeding \$100 "other than by contribution to a political committee or candidate" to file a statement with the Commission; and (d) creates the eight-member Commission as the administering agency with recordkeeping, disclosure, and investigatory functions and extensive rulemaking, adjudicatory, and enforcement powers, and consisting of two members appointed by the President pro tempore of the Senate, two by the Speaker of the House, and two by the President (all subject to confirmation by both Houses of Congress), and the Secretary of the Senate and the Clerk of the House as ex officio nonvoting members. Subtitle H of the Internal Revenue Code of 1954 (IRC), as amended in 1974, provides for public financing of Presidential nominating conventions and general election and primary campaigns from general revenues and allocates such funding to conventions and general election campaigns by establishing three categories: (1) "major" parties (those whose candidate received 25% or more of the vote in the most recent election), which receive full funding; (2) "minor" parties (those whose candidate received at least 5% but less than 25% of the votes at the last election), which receive only a percentage of the funds to which the major parties are entitled; and (3) "new" parties (all other parties), which are limited to receipt of post-election

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5 funds or are not entitled to any funds if their candidate receives less than 5% of the vote. A primary candidate for the Presidential nomination by a political party who receives more than \$5,000 from private sources (counting only the first \$250 of each contribution) in each of at least 20 States is eligible for matching public funds. Appellants (various federal office-holders and candidates, supporting political organizations, and others) brought suit against appellees (the Secretary of the Senate, Clerk of the House, Comptroller General, Attorney General, and the Commission) seeking declaratory and injunctive relief against the above statutory provisions on various constitutional grounds. The Court of Appeals, on certified questions from the District Court, upheld all but one of the statutory provisions. A three-judge District Court upheld the constitutionality of Subtitle H....

The Act's contribution provisions are constitutional, but the expenditure provisions violate the First Amendment.

15 (a) The contribution provisions, along with those covering disclosure, are appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and the ceilings imposed accordingly serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.

20 A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.¹⁸ This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.

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(b) The First Amendment requires the invalidation of the Act's independent expenditure ceiling, its limitation on a candidate's expenditures from his own personal funds, and its ceilings on overall campaign expenditures, since those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate....

The expenditure limitations contained in the Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech. The \$1,000 ceiling on spending "relative to a clearly identified candidate," 18 U.S.C. § 608(e)(1) (1970 ed., Supp. IV), would appear to exclude all citizens and groups except candidates, political parties, and the institutional press¹⁹ from any significant use of the most effective modes of communication.²⁰ Although the Act's limitations on expenditures by campaign organizations and political parties provide substantially greater room for discussion and debate, they would have required restrictions in the scope of a number of past congressional and Presidential campaigns²¹ and would operate to constrain campaigning by candidates who raise sums in excess of the spending ceiling.

By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate.²² A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if

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spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations.²³ The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

The Act's contribution and expenditure limitations also impinge on protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy. By contrast, the Act's \$1,000 limitation on independent expenditures "relative to a clearly identified candidate" precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association.

JUSTICE ANTONIN SCALIA

District of Columbia, et al.

v. Dick Anthony Heller

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

June 26, 2008

Supreme Court | Washington, D.C.

BACKGROUND

Provisions of the District of Columbia Code made it illegal to carry an unregistered firearm and prohibited the registration of handguns, though the chief of police could issue one-year licenses for handguns. The Code also contained provisions that required owners of lawfully registered firearms to keep them unloaded and disassembled or bound by a trigger lock or other similar device unless the firearms were located in a place of business or being used for legal recreational activities. The Court delivered its opinion on the constitutionality of these restrictions in the following decision.

GUIDING QUESTIONS

1. What are the clauses into which Scalia divides the 2nd Amendment?
2. What was meant by "arms" during the founding, according to Scalia?
3. How do the clauses of the amendment stand in relation to each other?
4. What does the Court rule and why?

DC v. Heller, 554 US 570 (2008).

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...We turn first to the meaning of the Second Amendment.

The Second Amendment provides: “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.” In interpreting this text, we are guided by the principle that “[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *United States v. Sprague*, 282 U. S. 716, 731 (1931); see also *Gibbons v. Ogden*, 9 Wheat. 1, 188 (1824). Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

10 The two sides in this case have set out very different interpretations of the Amendment. Petitioners and today’s dissenting Justices believe that it protects only the right to possess and carry a firearm in connection with militia service. See Brief for Petitioners 11–12; post, at 1 (Stevens, J., dissenting). Respondent argues that it protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally
15 lawful purposes, such as self-defense within the home. See Brief for Respondent 2–4.

The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, “Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not
20 be infringed.” See J. Tiffany, *A Treatise on Government and Constitutional Law* §585, p. 394 (1867); Brief for Professors of Linguistics and English as Amici Curiae 3 (hereinafter *Linguists’ Brief*). Although this structure of the Second Amendment is unique in our Constitution, other legal documents of the founding era, particularly individual-rights provisions of state constitutions, commonly included a prefatory statement of purpose. See generally Volokh, *The Commonplace Second Amendment*, 73 N. Y. U. L. Rev. 793, 814–821
25 (1998).

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Logic demands that there be a link between the stated purpose and the command. The Second Amendment would be nonsensical if it read, “A well regulated Militia, being necessary to the security of a free State, the right of the people to petition for redress of grievances shall not be infringed.” That requirement of logical connection may cause a prefatory clause to resolve an ambiguity in the operative clause (“The separation of church and state being an important objective, the teachings of canons shall have no place in our jurisprudence.” The preface makes clear that the operative clause refers not to canons of interpretation but to clergymen.) But apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause. See F. Darrar, A General Treatise on Statutes 268–269 (P. Potter ed. 1871) (hereinafter Darrar); T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 42–45 (2d ed. 1874). “ ‘It is nothing unusual in acts ... for the enacting part to go beyond the preamble; the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law.’ ” J. Bishop, Commentaries on Written Laws and Their Interpretation §51, p. 49 (1882) (quoting *Rex v. Marks*, 3 East, 157, 165 (K. B. 1802)). Therefore, while we will begin our textual analysis with the operative clause, we will return to the prefatory clause to ensure that our reading of the operative clause is consistent with the announced purpose.

1. Operative Clause.

a. “Right of the People.” The first salient feature of the operative clause is that it codifies a “right of the people.” The unamended Constitution and the Bill of Rights use the phrase “right of the people” two other times, in the First Amendment’s Assembly-and-Petition Clause and in the Fourth Amendment’s Search-and-Seizure Clause. The Ninth Amendment uses very similar terminology (“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”). All three of these instances unambiguously refer to individual rights, not “collective” rights, or rights that may be exercised only through participation in some corporate body.

Three provisions of the Constitution refer to “the people” in a context other than “rights”—the famous preamble (“We the people”), §2 of Article I (providing that “the people” will

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choose members of the House), and the Tenth Amendment (providing that those powers not given the Federal Government remain with “the States” or “the people”). Those provisions arguably refer to “the people” acting collectively—but they deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does a “right” attributed to “the people” refer to anything other than an individual right.

What is more, in all six other provisions of the Constitution that mention “the people,” the term unambiguously refers to all members of the political community, not an unspecified subset. As we said in *United States v. Verdugo-Urquidez*, 494 U. S. 259, 265 (1990):

“ ‘[T]he people’ seems to have been a term of art employed in select parts of the Constitution... . [Its uses] sugges[t] that ‘the people’ protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.”

This contrasts markedly with the phrase “the militia” in the prefatory clause. As we will describe below, the “militia” in colonial America consisted of a subset of “the people”—those who were male, able bodied, and within a certain age range. Reading the Second Amendment as protecting only the right to “keep and bear Arms” in an organized militia therefore fits poorly with the operative clause’s description of the holder of that right as “the people.”

We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.

b. “Keep and bear Arms.” We move now from the holder of the right—“the people”—to the substance of the right: “to keep and bear Arms.”

Before addressing the verbs “keep” and “bear,” we interpret their object: “Arms.” The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel John-

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son's dictionary defined "arms" as "weapons of offence, or armour of defence." 1 Dictionary of the English Language 107 (4th ed.) (hereinafter Johnson). Timothy Cunningham's important 1771 legal dictionary defined "arms" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." 1 A New and Complete Law Dictionary (1771); see also N. Webster, American Dictionary of the English Language (1828) (reprinted 1989) (hereinafter Webster) (similar).

The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity. For instance, Cunningham's legal dictionary gave as an example of usage: "Servants and labourers shall use bows and arrows on Sundays, &c. and not bear other arms." See also, e.g., An Act for the trial of Negroes, 1797 Del. Laws ch. XLIII, §6, p. 104, in 1 First Laws of the State of Delaware 102, 104 (J. Cushing ed. 1981 (pt. 1)); see generally *State v. Duke*, 42 Tex. 455, 458 (1874) (citing decisions of state courts construing "arms"). Although one founding-era thesaurus limited "arms" (as opposed to "weapons") to "instruments of offence generally made use of in war," even that source stated that all firearms constituted "arms." 1 J. Trusler, The Distinction Between Words Esteemed Synonymous in the English Language 37 (1794) (emphasis added).

Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, e.g., *Reno v. American Civil Liberties Union*, 521 U. S. 844, 849 (1997), and the Fourth Amendment applies to modern forms of search, e.g., *Kyllo v. United States*, 533 U. S. 27, 35–36 (2001), the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.

We turn to the phrases "keep arms" and "bear arms." Johnson defined "keep" as, most relevantly, "[t]o retain; not to lose," and "[t]o have in custody." Johnson 1095. Webster defined it as "[t]o hold; to retain in one's power or possession." No party has apprised us of

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an idiomatic meaning of “keep Arms.” Thus, the most natural reading of “keep Arms” in the Second Amendment is to “have weapons.”

5 The phrase “keep arms” was not prevalent in the written documents of the founding period that we have found, but there are a few examples, all of which favor viewing the right to “keep Arms” as an individual right unconnected with militia service. William Blackstone, for example, wrote that Catholics convicted of not attending service in the Church of Eng-
land suffered certain penalties, one of which was that they were not permitted to “keep
arms in their houses.” 4 Commentaries on the Laws of England 55 (1769) (hereinafter
Blackstone); see also 1 W. & M., c. 15, §4, in 3 Eng. Stat. at Large 422 (1689) (“[N]o Papist
10 ... shall or may have or keep in his House ... any Arms ... ”); 1 Hawkins, Treatise on the
Pleas of the Crown 26 (1771) (similar). Petitioners point to militia laws of the founding
period that required militia members to “keep” arms in connection with militia service,
and they conclude from this that the phrase “keep Arms” has a militia-related connotation.
See Brief for Petitioners 16–17 (citing laws of Delaware, New Jersey, and Virginia). This is
15 rather like saying that, since there are many statutes that authorize aggrieved employees to
“file complaints” with federal agencies, the phrase “file complaints” has an employment-
related connotation. “Keep arms” was simply a common way of referring to possessing
arms, for militiamen and everyone else.

At the time of the founding, as now, to “bear” meant to “carry.” See Johnson 161; Webster;
20 T. Sheridan, A Complete Dictionary of the English Language (1796); 2 Oxford English Dic-
tionary 20 (2d ed. 1989) (hereinafter Oxford). When used with “arms,” however, the term
has a meaning that refers to carrying for a particular purpose—confrontation. In *Musca-
rello v. United States*, 524 U. S. 125 (1998), in the course of analyzing the meaning of “carries
a firearm” in a federal criminal statute, Justice Ginsburg wrote that “[s]urely a most familiar
25 meaning is, as the Constitution’s Second Amendment ... indicate[s]: ‘wear, bear, or carry
... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and
ready for offensive or defensive action in a case of conflict with another person.’ ” Id., at
143 (dissenting opinion) (quoting Black’s Law Dictionary 214 (6th ed. 1998)). We think
that Justice Ginsburg accurately captured the natural meaning of “bear arms.” Although

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the phrase implies that the carrying of the weapon is for the purpose of “offensive or defensive action,” it in no way connotes participation in a structured military organization.

From our review of founding-era sources, we conclude that this natural meaning was also the meaning that “bear arms” had in the 18th century. In numerous instances, “bear arms”
5 was unambiguously used to refer to the carrying of weapons outside of an organized militia.

The most prominent examples are those most relevant to the Second Amendment: Nine state constitutional provisions written in the 18th century or the first two decades of the 19th, which enshrined a right of citizens to “bear arms in defense of themselves and the state” or “bear arms in defense of himself and the state.” It is clear from those formulations

10 that “bear arms” did not refer only to carrying a weapon in an organized military unit.

Justice James Wilson interpreted the Pennsylvania Constitution’s arms-bearing right, for example, as a recognition of the natural right of defense “of one’s person or house”—what he called the law of “self preservation.” 2 *Collected Works of James Wilson* 1142, and n. x

(K. Hall & M. Hall eds. 2007) (citing Pa. Const., Art. IX, §21 (1790)); see also T. Walker, Introduction to American Law 198 (1837) (“Thus the right of self-defence [is] guaranteed
15 by the [Ohio] constitution”); see also *id.*, at 157 (equating Second Amendment with that provision of the Ohio Constitution). That was also the interpretation of those state constitutional provisions adopted by pre-Civil War state courts. These provisions demonstrate—

again, in the most analogous linguistic context—that “bear arms” was not limited to the carrying of arms in a militia.

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The phrase “bear Arms” also had at the time of the founding an idiomatic meaning that was significantly different from its natural meaning: “to serve as a soldier, do military service, fight” or “to wage war.” See *Linguists’ Brief* 18; *post*, at 11 (Stevens, J., dissenting). But it unequivocally bore that idiomatic meaning only when followed by the preposition

25 “against,” which was in turn followed by the target of the hostilities. See 2 *Oxford* 21. (That is how, for example, our Declaration of Independence ¶28, used the phrase: “He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country”) Every example given by petitioners’ amici for the idiomatic meaning of “bear

arms” from the founding period either includes the preposition “against” or is not clearly

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idiomatic. See Linguists’ Brief 18–23. Without the preposition, “bear arms” normally meant (as it continues to mean today) what Justice Ginsburg’s opinion in *Muscarello* said....

5 c. Meaning of the Operative Clause. Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and de-
10 clares only that it “shall not be infringed.” As we said in *United States v. Cruikshank*, 92 U. S. 542, 553 (1876), “[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second amendment declares that it shall not be infringed” ...

15 There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment’s right of free speech was not, see, e.g., *United States v. Williams*, 553 U. S. ____ (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose. Before turning
20 to limitations upon the individual right, however, we must determine whether the prefatory clause of the Second Amendment comports with our interpretation of the operative clause.

2. Prefatory Clause.

The prefatory clause reads: “A well regulated Militia, being necessary to the security of a free State”

25 a. “Well-Regulated Militia.” In *United States v. Miller*, 307 U. S. 174, 179 (1939), we explained that “the Militia comprised all males physically capable of acting in concert for the common defense.” That definition comports with founding-era sources. See, e.g., Webster

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(“The militia of a country are the able bodied men organized into companies, regiments and brigades ... and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations”); *The Federalist* No. 46, pp. 329, 334 (B. Wright ed. 1961) (J. Madison) (“near half a million of citizens with arms in their hands”); Letter to Destutt de Tracy (Jan. 26, 1811), in *The Portable Thomas Jefferson* 520, 524 (M. Peterson ed. 1975) (“[T]he militia of the State, that is to say, of every man in it able to bear arms”).

Petitioners take a seemingly narrower view of the militia, stating that “[m]ilitias are the state- and congressionally-regulated military forces described in the Militia Clauses (art. I, §8, cls. 15–16).” Brief for Petitioners 12. Although we agree with petitioners’ interpretive assumption that “militia” means the same thing in Article I and the Second Amendment, we believe that petitioners identify the wrong thing, namely, the organized militia. Unlike armies and navies, which Congress is given the power to create (“to raise ... Armies”; “to provide ... a Navy,” Art. I, §8, cls. 12–13), the militia is assumed by Article I already to be in existence. Congress is given the power to “provide for calling forth the militia,” §8, cl. 15; and the power not to create, but to “organiz[e]” it—and not to organize “a” militia, which is what one would expect if the militia were to be a federal creation, but to organize “the” militia, connoting a body already in existence, *ibid.*, cl. 16. This is fully consistent with the ordinary definition of the militia as all able-bodied men. From that pool, Congress has plenary power to organize the units that will make up an effective fighting force. That is what Congress did in the first militia Act, which specified that “each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia.” Act of May 8, 1792, 1 Stat. 271. To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in Article I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men, the federally organized militia may consist of a subset of them.

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Finally, the adjective “well-regulated” implies nothing more than the imposition of proper discipline and training. See Johnson 1619 (“Regulate”: “To adjust by rule or method”); Rawle 121–122; cf. Va. Declaration of Rights §13 (1776), in 7 Thorpe 3812, 3814 (referring to “a well-regulated militia, composed of the body of the people, trained to arms”).

- 5 b. “Security of a Free State.” The phrase “security of a free state” meant “security of a free polity,” not security of each of the several States as the dissent below argued, see 478 F. 3d, at 405, and n. 10. Joseph Story wrote in his treatise on the Constitution that “the word ‘state’ is used in various senses [and in] its most enlarged sense, it means the people composing a particular nation or community.” 1 Story §208; see also 3 id., §1890 (in reference to the
- 10 Second Amendment’s prefatory clause: “The militia is the natural defence of a free country”). It is true that the term “State” elsewhere in the Constitution refers to individual States, but the phrase “security of a free state” and close variations seem to have been terms of art in 18th-century political discourse, meaning a “‘free country’ ” or free polity. See Volokh, “Necessary to the Security of a Free State,” 83 Notre Dame L. Rev. 1, 5 (2007); see, e.g., 4
- 15 Blackstone 151 (1769); Brutus Essay III (Nov. 15, 1787), in *The Essential Antifederalist* 251, 253 (W. Allen & G. Lloyd eds., 2d ed. 2002). Moreover, the other instances of “state” in the Constitution are typically accompanied by modifiers making clear that the reference is to the several States—“each state,” “several states,” “any state,” “that state,” “particular states,” “one state,” “no state.” And the presence of the term “foreign state” in Article I and Article
- 20 III shows that the word “state” did not have a single meaning in the Constitution.

There are many reasons why the militia was thought to be “necessary to the security of a free state.” See 3 Story §1890. First, of course, it is useful in repelling invasions and suppressing insurrections. Second, it renders large standing armies unnecessary—an argument that Alexander Hamilton made in favor of federal control over the militia. The Federalist

25 No. 29, pp. 226, 227 (B. Wright ed. 1961) (A. Hamilton). Third, when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.

3. Relationship between Prefatory Clause and Operative Clause

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We reach the question, then: Does the preface fit with an operative clause that creates an individual right to keep and bear arms? It fits perfectly, once one knows the history that the founding generation knew and that we have described above. That history showed that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents. This is what had occurred in England that prompted codification of the right to have arms in the English Bill of Rights.

The debate with respect to the right to keep and bear arms, as with other guarantees in the Bill of Rights, was not over whether it was desirable (all agreed that it was) but over whether it needed to be codified in the Constitution. During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric. See, e.g., Letters from The Federal Farmer III (Oct. 10, 1787), in 2 *The Complete Anti-Federalist* 234, 242 (H. Storing ed. 1981). John Smilie, for example, worried not only that Congress's "command of the militia" could be used to create a "select militia," or to have "no militia at all," but also, as a separate concern, that "[w]hen a select militia is formed; the people in general may be disarmed." 2 *Documentary History of the Ratification of the Constitution* 508–509 (M. Jensen ed. 1976) (hereinafter *Documentary Hist.*). Federalists responded that because Congress was given no power to abridge the ancient right of individuals to keep and bear arms, such a force could never oppress the people. See, e.g., A Pennsylvanian III (Feb. 20, 1788), in *The Origin of the Second Amendment* 275, 276 (D. Young ed., 2d ed. 2001) (hereinafter *Young*); White, To the Citizens of Virginia, Feb. 22, 1788, in *id.*, at 280, 281; A Citizen of America, (Oct. 10, 1787) in *id.*, at 38, 40; Remarks on the Amendments to the federal Constitution, Nov. 7, 1788, in *id.*, at 556. It was understood across the political spectrum that the right helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down.

It is therefore entirely sensible that the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia. The prefatory clause does not suggest that preserving the militia was the only reason Americans

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valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting. But the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right—unlike some other English rights—was codified in a written Constitution. Justice Breyer's assertion that individual self-defense is merely a "subsidiary interest" of the right to keep and bear arms, see post, at 36, is profoundly mistaken. He bases that assertion solely upon the prologue—but that can only show that self-defense had little to do with the right's codification; it was the central component of the right itself...

IV

10 We turn finally to the law at issue here. As we have said, the law totally bans handgun possession in the home. It also requires that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable.

As the quotations earlier in this opinion demonstrate, the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," 15 478 F. 3d, at 400, would fail constitutional muster.

Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down. In *Nunn v. State*, the Georgia Supreme Court struck down a prohibition on carrying pistols openly (even though it upheld a prohibition on carrying concealed weapons). See 1 Ga., at 251. In *Andrews v. State*, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol "publicly or privately, without regard to time or place, or circumstances," 25 Tenn., at 187, violated the state constitutional provision (which the court equated with the Second Amendment). That was so even though the statute did not restrict the carrying of

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long guns. Ibid. See also *State v. Reid*, 1 Ala. 612, 616–617 (1840) (“A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional”).

- 5 It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e., long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: It is easier to store in a location that is readily accessible in an
- 10 emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police. Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.
- 15 We must also address the District’s requirement (as applied to respondent’s handgun) that firearms in the home be rendered and kept inoperable at all times. This makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional. The District argues that we should interpret this element of the statute to contain an exception for self-defense. See Brief for Petitioners 56–57. But we think that is precluded
- 20 by the unequivocal text, and by the presence of certain other enumerated exceptions: “Except for law enforcement personnel ... , each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.” D. C. Code §7–2507.02. The nonexistence of a self-defense exception is also suggested by the D. C. Court of Appeals’ statement that the statute
- 25 forbids residents to use firearms to stop intruders, see *McIntosh v. Washington*, 395 A. 2d 744, 755–756 (1978).

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Apart from his challenge to the handgun ban and the trigger-lock requirement respondent asked the District Court to enjoin petitioners from enforcing the separate licensing requirement “in such a manner as to forbid the carrying of a firearm within one’s home or possessed land without a license.” App. 59a. The Court of Appeals did not invalidate the licensing requirement, but held only that the District “may not prevent [a handgun] from
5 being moved throughout one’s house.” 478 F. 3d, at 400. It then ordered the District Court to enter summary judgment “consistent with [respondent’s] prayer for relief.” Id., at 401. Before this Court petitioners have stated that “if the handgun ban is struck down and respondent registers a handgun, he could obtain a license, assuming he is not otherwise disqualified,” by which they apparently mean if he is not a felon and is not insane. Brief for
10 Petitioners 58. Respondent conceded at oral argument that he does not “have a problem with ... licensing” and that the District’s law is permissible so long as it is “not enforced in an arbitrary and capricious manner.” Tr. of Oral Arg. 74–75. We therefore assume that petitioners’ issuance of a license will satisfy respondent’s prayer for relief and do not address the licensing requirement....
15

In sum, we hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to
20 register his handgun and must issue him a license to carry it in the home.

PRESIDENT LYNDON B. JOHNSON (D)

Commencement Address at Howard University

SPEECH

June 4, 1965

Howard University | Washington, D.C.

BACKGROUND

President Lyndon Johnson delivered the commencement address to the 1965 class at Howard University.

GUIDING QUESTIONS

1. What is Johnson's definition of freedom?
2. Why does Johnson argue that this freedom is insufficient?
3. What role does nature or nurture play in Johnson's account of inequality?
4. Johnson speaks of "true equality"; what does he mean by this?
5. What does Johnson deem the most important cause of poverty among African Americans?
6. What does Johnson declare to be his chief goal for his next term?

Lyndon Johnson, *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965*, Vol. 2 (Washington, D.C.: Government Printing Office, 1966), 635-40.

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Dr. Nabrit, my fellow Americans:

I am delighted at the chance to speak at this important and this historic institution. Howard has long been an outstanding center for the education of Negro Americans. Its students are of every race and color and they come from many countries of the world. It is truly a working example of democratic excellence.

Our earth is the home of revolution. In every corner of every continent men charged with hope contend with ancient ways in the pursuit of justice. They reach for the newest of weapons to realize the oldest of dreams, that each may walk in freedom and pride, stretching his talents, enjoying the fruits of the earth.

Our enemies may occasionally seize the day of change, but it is the banner of our revolution they take. And our own future is linked to this process of swift and turbulent change in many lands in the world. But nothing in any country touches us more profoundly, and nothing is more freighted with meaning for our own destiny than the revolution of the Negro American.

In far too many ways American Negroes have been another nation: deprived of freedom, crippled by hatred, the doors of opportunity closed to hope.

In our time change has come to this Nation, too. The American Negro, acting with impressive restraint, has peacefully protested and marched, entered the courtrooms and the seats of government, demanding a justice that has long been denied. The voice of the Negro was the call to action. But it is a tribute to America that, once aroused, the courts and the Congress, the President and most of the people, have been the allies of progress.

Thus we have seen the high court of the country declare that discrimination based on race was repugnant to the Constitution, and therefore void. We have seen in 1957, and 1960, and again in 1964, the first civil rights legislation in this Nation in almost an entire century.

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As majority leader of the United States Senate, I helped to guide two of these bills through the Senate. And, as your President, I was proud to sign the third. And now very soon we will have the fourth—a new law guaranteeing every American the right to vote.

5 No act of my entire administration will give me greater satisfaction than the day when my signature makes this bill, too, the law of this land.

The voting rights bill will be the latest, and among the most important, in a long series of victories. But this victory—as Winston Churchill said of another triumph for freedom—"is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

10 That beginning is freedom; and the barriers to that freedom are tumbling down. Freedom is the right to share, share fully and equally, in American society—to vote, to hold a job, to enter a public place, to go to school. It is the right to be treated in every part of our national life as a person equal in dignity and promise to all others.

15 But freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please.

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe that you have been completely fair.

20 Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates.

This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.

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For the task is to give twenty million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental and spiritual, and to pursue their individual happiness.

To this end equal opportunity is essential, but not enough, not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man.

- 10 This graduating class at Howard University is witness to the indomitable determination of the Negro American to win his way in American life.

- The number of Negroes in schools of higher learning has almost doubled in fifteen years. The number of non-white professional workers has more than doubled in ten years. The median income of Negro college women tonight exceeds that of white college women. And there are also the enormous accomplishments of distinguished individual Negroes—many of them graduates of this institution, and one of them the first lady ambassador in the history of the United States.

- 20 These are proud and impressive achievements. But they tell only the story of a growing middle class minority, steadily narrowing the gap between them and their white counterparts.

But for the great majority of Negro Americans—the poor, the unemployed, the uprooted, and the dispossessed—there is a much grimmer story. They still, as we meet here tonight, are another nation. Despite the court orders and the laws, despite the legislative victories and the speeches, for them the walls are rising and the gulf is widening.

- 25 Here are some of the facts of this American failure.

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Thirty-five years ago the rate of unemployment for Negroes and whites was about the same. Tonight the Negro rate is twice as high.

In 1948 the eight percent unemployment rate for Negro teenage boys was actually less than that of whites. By last year that rate had grown to twenty-three percent, as against thirteen
5 percent for whites unemployed.

Between 1949 and 1959, the income of Negro men relative to white men declined in every section of this country. From 1952 to 1963 the median income of Negro families compared to white actually dropped from fifty-seven percent to fifty-three percent.

In the years 1955 through 1957, twenty-two percent of experienced Negro workers were
10 out of work at some time during the year. In 1961 through 1963 that proportion had soared to twenty-nine percent.

Since 1947 the number of white families living in poverty has decreased twenty-seven percent while the number of poorer nonwhite families decreased only three percent.

The infant mortality of nonwhites in 1940 was seventy percent greater than whites. Twenty-
15 two years later it was ninety percent greater.

Moreover, the isolation of Negro from white communities is increasing, rather than decreasing as Negroes crowd into the central cities and become a city within a city.

Of course Negro Americans as well as white Americans have shared in our rising national abundance. But the harsh fact of the matter is that in the battle for true equality too many—
20 far too many—are losing ground every day.

We are not completely sure why this is. We know the causes are complex and subtle. But we do know the two broad basic reasons. And we do know that we have to act.

First, Negroes are trapped—as many whites are trapped—in inherited, gateless poverty. They lack training and skills. They are shut in, in slums, without decent medical care. Private and public poverty combine to cripple their capacities.
25

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We are trying to attack these evils through our poverty program, through our education program, through our medical care and our other health programs, and a dozen more of the Great Society programs that are aimed at the root causes of this poverty.

5 We will increase, and we will accelerate, and we will broaden this attack in years to come until this most enduring of foes finally yields to our unyielding will.

But there is a second cause—much more difficult to explain, more deeply grounded, more desperate in its force. It is the devastating heritage of long years of slavery; and a century of oppression, hatred, and injustice.

10 For Negro poverty is not white poverty. Many of its causes and many of its cures are the same. But there are differences—deep, corrosive, obstinate differences—radiating painful roots into the community, and into the family, and the nature of the individual.

15 These differences are not racial differences. They are solely and simply the consequence of ancient brutality, past injustice, and present prejudice. They are anguishing to observe. For the Negro they are a constant reminder of oppression. For the white they are a constant reminder of guilt. But they must be faced and they must be dealt with and they must be overcome, if we are ever to reach the time when the only difference between Negroes and whites is the color of their skin.

Nor can we find a complete answer in the experience of other American minorities. They made a valiant and a largely successful effort to emerge from poverty and prejudice.

20 The Negro, like these others, will have to rely mostly upon his own efforts. But he just can not do it alone. For they did not have the heritage of centuries to overcome, and they did not have a cultural tradition which had been twisted and battered by endless years of hatred and hopelessness, nor were they excluded—these others—because of race or color—a feeling whose dark intensity is matched by no other prejudice in our society.

25 Nor can these differences be understood as isolated infirmities. They are a seamless web. They cause each other. They result from each other. They reinforce each other.

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Much of the Negro community is buried under a blanket of history and circumstance. It is not a lasting solution to lift just one corner of that blanket. We must stand on all sides and we must raise the entire cover if we are to liberate our fellow citizens.

One of the differences is the increased concentration of Negroes in our cities. More than
5 seventy-three percent of all Negroes live in urban areas compared with less than seventy percent of the whites. Most of these Negroes live in slums. Most of these Negroes live together—a separated people.

Men are shaped by their world. When it is a world of decay, ringed by an invisible wall, when escape is arduous and uncertain, and the saving pressures of a more hopeful society
10 are unknown, it can cripple the youth and it can desolate the men.

There is also the burden that a dark skin can add to the search for a productive place in our society. Unemployment strikes most swiftly and broadly at the Negro, and this burden erodes hope. Blighted hope breeds despair. Despair brings indifferences to the learning which offers a way out. And despair, coupled with indifferences, is often the source of de-
15 structive rebellion against the fabric of society.

There is also the lacerating hurt of early collision with white hatred or prejudice, distaste or condescension. Other groups have felt similar intolerance. But success and achievement could wipe it away. They do not change the color of a man's skin. I have seen this uncom-
prehending pain in the eyes of the little, young Mexican-American schoolchildren that I
20 taught many years ago. But it can be overcome. But, for many, the wounds are always open.

Perhaps most important—its influence radiating to every part of life—is the breakdown of the Negro family structure. For this, most of all, white America must accept responsibility. It flows from centuries of oppression and persecution of the Negro man. It flows from the long years of degradation and discrimination, which have attacked his dignity and as-
25 sailed his ability to produce for his family.

This, too, is not pleasant to look upon. But it must be faced by those whose serious intent is to improve the life of all Americans.

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Only a minority—less than half—of all Negro children reach the age of eighteen having lived all their lives with both of their parents. At this moment, tonight, little less than two-thirds are at home with both of their parents. Probably a majority of all Negro children receive federally-aided public assistance sometime during their childhood.

- 5 The family is the cornerstone of our society. More than any other force it shapes the attitude, the hopes, the ambitions, and the values of the child. And when the family collapses it is the children that are usually damaged. When it happens on a massive scale the community itself is crippled.

- 10 So, unless we work to strengthen the family, to create conditions under which most parents will stay together—all the rest: schools, and playgrounds, and public assistance, and private concern, will never be enough to cut completely the circle of despair and deprivation.

There is no single easy answer to all of these problems.

Jobs are part of the answer. They bring the income which permits a man to provide for his family.

- 15 Decent homes in decent surroundings and a chance to learn—an equal chance to learn—are part of the answer.

Welfare and social programs better designed to hold families together are part of the answer.

Care for the sick is part of the answer.

- 20 An understanding heart by all Americans is another big part of the answer.

And to all of these fronts—and a dozen more—I will dedicate the expanding efforts of the Johnson administration.

But there are other answers that are still to be found. Nor do we fully understand even all of the problems. Therefore, I want to announce tonight that this fall I intend to call a White

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House conference of scholars, and experts, and outstanding Negro leaders—men of both races—and officials of Government at every level.

This White House conference's theme and title will be "To Fulfill These Rights."

5 Its object will be to help the American Negro fulfill the rights which, after the long time of injustice, he is finally about to secure.

To move beyond opportunity to achievement.

To shatter forever not only the barriers of law and public practice, but the walls which bound the condition of many by the color of his skin.

10 To dissolve, as best we can, the antique enmities of the heart which diminish the holder, divide the great democracy, and do wrong—great wrong—to the children of God.

And I pledge you tonight that this will be a chief goal of my administration, and of my program next year, and in the years to come. And I hope, and I pray, and I believe, it will be a part of the program of all America.

For what is justice?

15 It is to fulfill the fair expectations of man.

20 Thus, American justice is a very special thing. For, from the first, this has been a land of towering expectations. It was to be a nation where each man could be ruled by the common consent of all—enshrined in law, given life by institutions, guided by men themselves subject to its rule. And all—all of every station and origin—would be touched equally in obligation and in liberty.

Beyond the law lay the land. It was a rich land, glowing with more abundant promise than man had ever seen. Here, unlike any place yet known, all were to share the harvest.

And beyond this was the dignity of man. Each could become whatever his qualities of mind and spirit would permit—to strive, to seek, and, if he could, to find his happiness.

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This is American justice. We have pursued it faithfully to the edge of our imperfections, and we have failed to find it for the American Negro.

5 So, it is the glorious opportunity of this generation to end the one huge wrong of the American Nation and, in so doing, to find America for ourselves, with the same immense thrill of discovery which gripped those who first began to realize that here, at last, was a home for freedom.

All it will take is for all of us to understand what this country is and what this country must become.

10 The Scripture promises: "I shall light a candle of understanding in thine heart, which shall not be put out."

Together, and with millions more, we can light that candle of understanding in the heart of all America.

And, once lit, it will never again go out.

JUSTICE LEWIS POWELL

Regents of the University of California v. Allan Bakke

U.S. SUPREME COURT MAJORITY OPINION EXCERPTS

June 28, 1978

Supreme Court | Washington, D.C.

BACKGROUND

The Supreme Court issued this ruling on universities using a student's race in determining whether they would admit him or her.

GUIDING QUESTIONS

1. What are the four reasons Powell gives arguing against the idea of preference programs?
2. Why does Powell use Harvard's diversity program as a favorable example?
3. How does Powell propose to reconcile the unconstitutionality of racial quotas with the professed benefits of factoring a student's race into deciding to admit the student?

Regents of University of California v. Allan Bakke, 438 U.S. 265 (1978).

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Justice POWELL delivered the opinion of the Court.

For the reasons stated in the following opinion, I believe that so much of the judgment of the California court as holds petitioner's special admissions program unlawful and directs that respondent be admitted to the Medical School must be affirmed. For the reasons expressed in a separate opinion, my Brothers THE CHIEF JUSTICE, MR. JUSTICE STEWART, MR. JUSTICE REHNQUIST, and MR. JUSTICE STEVENS concur in this judgment.

I also conclude for the reasons stated in the following opinion that the portion of the court's judgment enjoining petitioner from according any consideration to race in its admissions process must be reversed. For reasons expressed in separate opinions, my Brothers MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN concur in this judgment.

Affirmed in part and reversed in part....

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." It is settled beyond question that the "rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights," *Shelley v. Kraemer, supra*, at 22. Accord, *Missouri ex rel. Gaines v. Canada, supra*, at 351; *McCabe v. Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 161-162 (1914). The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal....

The Court has never questioned the validity of those pronouncements. Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.

Moreover, there are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is in fact benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order

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to advance the group's general interest. See *United Jewish Organizations v. Carey*, 430 U. S., at 172-173 (BRENNAN, J., concurring in part). Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve suc-
5 cess without special protection based on a factor having no relationship to individual worth. See *DeFunis v. Odegaard*, 416 U. S. 312, 343 (1974) (Douglas, J., dissenting). Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making....

10 Nor would the state interest in genuine diversity be served by expanding petitioner's two-track system into a multitrack program with a prescribed number of seats set aside for each identifiable category of applicants. Indeed, it is inconceivable that a university would thus pursue the logic of petitioner's two-track program to the illogical end of insulating each category of applicants with certain desired qualifications from competition with all other
15 applicants.

The experience of other university admissions programs, which take race into account in achieving the educational diversity valued by the First Amendment, demonstrates that the assignment of a fixed number of places to a minority group is not a necessary means toward that end. An illuminating example is found in the Harvard College program:

20 In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students....

In practice, this new definition of diversity has meant that race has been a factor in some
25 admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are 'admissible' and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can

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bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer....

5 In such an admissions program, race or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service
10 experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important. In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily
15 according them the same weight. Indeed, the weight attributed to a particular quality may vary from year to year depending upon the "mix" both of the student body and the applicants for the incoming class.

This kind of program treats each applicant as an individual in the admissions process. The applicant who loses out on the last available seat to another candidate receiving a "plus" on
20 the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname. It would mean only that his combined qualifications, which may have included similar nonobjective factors, did not outweigh those of the other applicant. His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment....
25

CAPSTONE CONVERSATION

The Meaning of America

45-50-minute classes | 4-5 classes

UNIT PREVIEW**Structure**

LESSON 1	What Is America?	1-2 classes	p. 5
LESSON 2	Challenges to America's Principles	1-2 classes	p. 6
LESSON 3	For Love of Country	1-2 classes	p. 7
WRITING ASSIGNMENT			p. 9

Why Teach the Meaning of America

The American Government and Politics class should conclude with a class-wide conversation based on texts that seek to provide an overview of America's principles and their role in American history. Fortunately, such a text exists. The commissioning of a study, by the president of the United States, of the principles of America's founding was a remarkable moment in American history. It brought together both those who have sworn oaths as representatives of the American people to uphold the Constitution that defends their freedoms as well as those who have committed their lives to studying those freedoms and the Constitution that protects them. The report that the President's 1776 Commission published on Martin Luther King Jr. Day in January 2021 is worthy of every American's reading and, and the very least, honest consideration. This is equally if not especially true of young American citizens on the verge of assuming the full rights and responsibilities of free people in the freest country in human history.

What Teachers Should Consider

The reading and study of *The 1776 Report* should consist of two principal activities. First, students should read and annotate the prescribed sections of the report. Second, teachers should lead students through seminar conversations on each collection of readings. During these conversations, students should seek first to understand the text of the report, then to connect the text to what they have learned both in this class and from American history, and lastly to debate fully and respectfully in pursuit of the truth. The key to these lessons is that students engage in free, open, honest, respectful, and logical conversation about the ideas and realities found in the country to which they will soon bring their own ideas, characters, and choices.

LESSONS

Lesson 1 — What is America?

1-2 classes

LESSON OBJECTIVE

Students read, consider, and converse about what makes America, America.

ONLINE COURSES FOR TEACHERS | Online.Hillsdale.edu

<i>Introduction to the Constitution</i>	Lectures 1, 2, 3, 4, 5, 6, 7, 8, 9
<i>Constitution 101</i>	Lecture 1
<i>Civil Rights in American History</i>	Lecture 1

STUDENT TEXT

<i>The 1776 Report</i>	
Chapter I	Introduction
Chapter II	The Meaning of the Declaration
Appendix I	The Declaration of Independence
Appendix II	Faith and America's Principles
Chapter III	A Constitution of Principles

Lesson 2 — Challenges to America's Principles

1-2 classes

LESSON OBJECTIVE

Students read, consider, and converse about the various challenges to America's principles in history.

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<i>Civil Rights in American History</i>	Lectures 3, 4, 5, 7, 8, 9
<i>Constitution 101</i>	Lectures 6, 7, 8, 9, 10
<i>Introduction to the Constitution</i>	Lectures 11 and 12
<i>Constitution 201</i>	Lectures 1 and 4

STUDENT TEXT

<i>The 1776 Report</i>	
Chapter IV	Challenges to America's Principles
Appendix III	Created Equal or Identity Politics?

Lesson 3 — For Love of Country

1-2 classes

LESSON OBJECTIVE

Students read, consider, and converse about what America's principles mean for the American citizen today.

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<i>Constitution 101</i>	Lecture 12
<i>Constitution 201</i>	Lecture 10
<i>The Great American Story</i>	Lecture 1
<i>Civil Rights in American History</i>	Lectures 6 and 7
<i>Congress</i>	Lecture 11
<i>The Presidency in the Constitution</i>	Lecture 10
<i>The U.S. Supreme Court</i>	Lecture 10

STUDENT TEXT

<i>The 1776 Report</i>	
Chapter V	The Task of National Renewal
Appendix IV	Teaching Americans About Their Country

WRITING ASSIGNMENT

Writing Assignment – The Capstone Conversation

Concluding Unit

Due on _____

DIRECTIONS

Citing primary sources and conversations from the entire course in your argument (not *The 1776 Report* itself), write a 1,000–1,200 word essay answering the questions.

What are America's principles, and why is this the case? What ideas or practices have challenged these principles, and why and how did they do so? What do these principles and these challenges mean for each individual American exercising their responsibilities of citizenship today?

OPTIONAL CIVICS ACTIVITIES

Fostering Civic Responsibility

Structure

ACTIVITIES BY UNIT	p. 3
CIVICS CLUB IDEAS	p. 6
VOLUNTEERISM AND VIRTUE FORMATION IDEAS	p. 7

Encouraging Appropriate Civic Responsibility

Content knowledge and understanding through in-class conversations is the chief way that students learn of the rights and responsibilities of citizenship. Their relationships, moreover, with their teachers and classmates provide the first formation in the qualities that make for responsible and dutiful citizens. For schools that require some form of activity to adjoin civics instruction, however, we have curated a handful of sound activities through which students may practice citizenship following a unit test, for extra-credit, in a club, or simply as part of their lives outside of school at their and their parents' discretion. It should be noted, however, that political activism, action civics, "new civics," et al., have no place in formal education, especially in taxpayer-funded schools, and that the risk of bias on the part of the teacher even in these activities must be assiduously guarded against. Still, we do recognize that the following activities, mock civics, clubs, community service, and genuine apolitical volunteerism may be encouraged and prudently administered.

In concert with sound learning, rational thinking, and virtuous character, civic participation by each person upholds the American republic of self-government. Affording extracurricular opportunities to practice civic participation without politics or activism may be an appropriate part of an American student's civic education.

Optional Extracurricular Civics Activities by Unit

UNIT 1 | THE PRINCIPLES OF AMERICA

Arrange with teachers of younger students, either at the same school or at a neighboring school, to have high school government students visit their classrooms and teach the younger students about America's principles as studied in this unit. Students may adapt the lessons they have learned to the younger audience, adapt existing teacher materials, lead an activity, or read aloud a trade book story that conveys the principles of America to younger students at the appropriate grade level.

UNIT 2 | A CONSTITUTION OF PRINCIPLES

Have groups of students conduct research into certain issues in the political affairs of other countries that are or have recently been in the news. Have students apply the principles of the Constitution to the form of government that their researched country has and explain how the principles of the Constitution are present or absent in that government. Students should explain how the principles of the Constitution may be able to prevent or resolve the issue in the researched country. Remind students that as important as the form of government is to political liberty and justice, a people must also be practiced in self-government for it to be successful. Have students present their arguments briefly as a group.

UNIT 3 | GOVERNING IN THE CONSTITUTION

Set up a mock government among the students, assigning at random students to be representatives, states (representing legislatures and/or governors), local governments, senators, president, vice president, cabinet members, generals, Supreme Court justices, presidential electors, and voters. Based on the original structure, processes, and intentions of the Constitution, walk through the acts of governing that students learned in this unit and the principles they learned in the previous. Ask students plenty of comprehension questions about their requirements or roles given their office along the way.

UNIT 4 | EQUALITY IN AMERICA

Engage the class in mock political challenges aimed at abolishing and restricting slavery, the slave trade, and discrimination. Choose some or all of the efforts named below to abolish or restrict slavery. For each effort, explain to students that their goal is the same as those who attempted to abolish or restrict slavery at the time. As they propose ideas on how to do so in each situation, play devil's advocate by positing the political reality or philosophical principle that was encountered at the time. Students should be able to see some paths forward, ranging from complete success to the more common partial victories, but they should also learn of how challenging and unlikely these efforts would be without a conversion in the hearts and minds of many slaveholders and the adherence to certain founding principles by the opponents of slavery—obstacles the Founders and Abraham Lincoln well understood. Students should feel free to cite the actions or words of these historical figures in the process. Students should compare what they have been able to accomplish with what the anti-slavery figures were or were not able to achieve, being mindful that they are operating in a situation far removed from the actual circumstances in which these efforts were attempted. Teachers should be aware that this activity will require the students to acquire a deeper understanding of

the issues and politics surrounding these efforts; the Hillsdale College Online Courses can assist teachers in this.

Efforts to abolish or restrict slavery, the slave trade, and/or discrimination that students can attempt to navigate may include any of the following:

- in the colonies (compare to each colony prior to 1776)
- at the time of declaring independence (compare to the Declaration of Independence, both drafts)
- in drafting the Constitution (compare to the Constitution)
- in the Northwest Territory (compare to the Northwest Ordinance)
- in the Louisiana Territory (compare to the Missouri Compromise)
- in lands annexed following the Mexican-American War (compare to the Compromise of 1850)
- in the wake of the Kansas-Nebraska Act, arguments for popular sovereignty, and *Dred Scott v. Sandford* (compare to Lincoln's speeches and the efforts of abolitionists Garrison, Douglass, and Stowe)
- from Lincoln's election through the first months of the Civil War (compare to the secession of Southern states, Lincoln's first inaugural address, and the retention of the border states)
- during the Civil War (compare to the Emancipation Proclamation)
- during Reconstruction (compare to the Reconstruction acts and amendments)
- after Reconstruction (compare to the Compromise of 1877)

UNIT 5 | PROGRESSIVISM AND THE STATE

Review with students how governing worked in the Constitution during the last mock government. This time, set up a mock government among the students that reflects the Progressive ideas of politics and administration. Assign at random students to be representatives, states (representing legislatures and/or governors), local governments, senators, president, cabinet members, Supreme Court justices, and voters. Add the new offices of civil employees/bureaucrats/experts who often will have had a prior career in a certain business sector. Based on the Progressive structure, processes, and intentions regarding government, walk through the acts of governing that students learned in this unit and connect them to the Progressive ideas behind them. Ask students plenty of comprehension questions about their requirements or roles given their office along the way, drawing distinctions between politics and administration, and between the Progressive and founding ideas and processes of governance.

UNIT 6 | INSTITUTIONS AND POLICY

Have students attend, watch virtually on their own, or visit as a field trip any one of a variety of government meetings, sessions, hearings, etc. Students should attempt to find out what each gathering intends to address and conduct some research on the topic if possible beforehand. Students should then write or present brief reports of the meetings and connect the governing body or official to what they have learned in this unit. If the student is attending in person apart from a school field trip, have the student receive the signature of an official as proof that the student did indeed attend.

Potential meetings may include:

- Township Trustee Meeting
- County Commissioner Meeting
- School Board Meeting
- City Council Meeting
- State Legislature Session or Hearing
- U.S. House of Representatives Session or Hearing
- U.S. Senate Session or Hearing
- Court Hearing

Alternatively, teachers may invite certain officials to visit their classrooms for a presentation. In addition to representatives from the abovementioned civic bodies, other guests may include a law enforcement officer, firefighter, EMS worker, etc.

UNIT 7 | POLITICS IN PRACTICE

Have students choose and research an issue connected to America's founding principles as studied in class. Each student may write a letter about the issue to some person or organization in a related field of government and public policy. The letter should not advocate for the student's position, but rather should ask for the recipient's own stance on the issue and their reasons for their stance. Students should explain that they are students and kindly ask for a response to their questions. The goal is not to be confrontational but rather to cultivate the habit of engaging in civil dialogue and civic participation in a respectful and constructive manner.

Recipients may include the following:

- a local or state political party
- an elected official
- a journalist or reporter
- an interest group or lobbying firm
- a newspaper or other news outlet (this may take the form of a letter to the editor, in which case questions would be rhetorical)

UNIT 8 | LATE 20TH CENTURY GOVERNMENT AND POLITICS

Assign to each student specific sections from the first two and final paragraphs of the Declaration of Independence, the Preamble to the Constitution, the Gettysburg Address, Abraham Lincoln's second inaugural address, the 13th Amendment, and the "I Have a Dream" speech by Martin Luther King Jr. Each student should learn by heart his or her assigned part. On a specific day, have students recite their parts in this order. When finished, show students the entire video of King's speech on the steps of the Lincoln Memorial. By completing this exercise, students should see the efficacious arc of America's founding principles at work through American history.

Civics Club Ideas

- Debate/Forensics
- Historical Documentary/Movie Club
- History Club
- Mock Trial
- Political Thought Club
- School Newspaper
- Student Ambassador Program
- Student Government

Optional Volunteerism and Virtue Formation Ideas

- Adopt an American sister school
- Ask questions and listen to those with whom you disagree
- Assist neighbors, especially the elderly or those who could most use assistance, with lawn care, errands, etc.
- Care for parents and siblings
- Clean up litter when you see it
- Coach a sports team for younger children or lead a club for younger students
- Conduct a community cleanup of a park, waterway, street, etc.
- Contribute to a club, civic association, or religious association
- Create care packages for deployed service members, local law enforcement, EMS, medical staff, firefighters, prisoners, etc.
- Hold open the door for someone
- Hold an apprenticeship in a trade, starter job, or internship
- Lead and contribute to a food, clothing, backpack, coat, school supplies, toiletries, or baby supplies drive
- Let someone in while driving
- Recycle and be a generally good steward of water, electricity, etc.
- Shop and work at thrift stores and companies that respect the human dignity of their workers and freedom generally, as reflected in America's founding documents and the 1st Amendment
- Save some money to keep on hand for when asked for a donation
- Say "Please" and "Thank you"
- Serve in the Junior Reserve Officer Training Corps (JROTC), as a firefighter auxiliary, as a police auxiliary, EMS auxiliary (depending on age requirements)
- Use time intentionally
- Tutor younger students
- Visit the lonely
- Volunteer at a local food bank, homeless shelter, medical facility, family center, historical site, or museum
- Volunteer at a camp, after-school, or vulnerable youth program

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