

Readings for 6th Annual AP day

First Session

13th Amendment

Section 1.

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

Section 2.

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

14th Amendment

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.

15th Amendment

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.

The War after the War: The Southern Civil War, 1865-1877

Preface

- 1.) New Terms for a New War**
- 2.) The Terror Phase 1865-1867**
- 3.) The Guerilla Phase 1868-1872: The KKK Resisted**
- 4.) The Guerilla Phase 1868-1872: The KKK Triumphant**
- 5.) The Open Paramilitary Phase, 1872-1877**
- 6.) Aftershocks: The War's Legacy of Terror**
- 7.) Conclusion: What Makes a War, a War?**

Preface

Fierce rebel yells filled the air in the hot streets of New Orleans as three thousand Confederates swarmed around Union forces, huddling behind barricades defended by light artillery and Gatling guns. In a rare case of urban warfare in the Civil War era, three thousand Confederates bent on crushing Union forces charged the Unions lines after raking them with well-disciplined volley fire. Union forces who broke and retreated in disorder. Robert E. Lee's second in Command, James Longstreet, was taken prisoner. The casualty count was unclear but estimated at twenty-one dead and an unknown number of wounded for the Confederates, compared to eleven dead and seventy wounded for the Union. The Confederates captured arms and artillery from the state armory, but Union reinforcements arrived and Confederates conceded control of the city of New Orleans, temporarily, but when a larger force of Confederates took to the New Orleans streets two years later, they would win the city.

To Civil War buffs, this battle sounds made up, as New Orleans fell on April 29th, 1861 without street fighting. But, the battle of Liberty Place just described did take place—just not until 1874, more than thirteen years after the city fell in the American Civil War and almost ten years after Lee's surrender at

Appomattox. The September 14th 1874 Battle of Liberty Place involved more troops than Little Bighorn, or San Juan Hill or many of the best-remembered clashes of the American Revolution and War of 1812. Liberty Place also turned out to be a decisive battle as it taught white supremacists that they could take over the state with paramilitary forces and they did by repeating the tactics of Liberty Place two years later in the fall of 1876. Like the war it was part of, the Battle of Liberty Place offered drama, significant casualties, and unlikely heroes.

For example, James Longstreet was fighting courageously with Unionists for civil rights for all southerners---including freedmen---against his old Confederate compatriots. By 1874, they hated Longstreet for commanding the biracial Republican state government forces against their white supremacist agenda. The former Confederates treated Longstreet with abuse after wounding and capturing him at the Battle of Liberty Place and attacked his reputation and war record for generations because he had the audacity to fight for African American civil rights during Reconstruction. Longstreet lost two wars between 1861 and 1877. First, he lost with Confederacy in the American Civil War of 1861-1865 and then he lost the twelve-year war of the Reconstruction Era fighting for democracy and civil rights in the South between 1865 and 1877. The Battle of Liberty Place was just the most dramatic chapter in this long war. What on Earth had happened after 1865, that this battle and others like it almost unknown in the annals of American history? Why is the twelve-year war it was part of---the Southern Civil War of 1865-1877---untaught in schools and colleges and even by Ken Burns? The Southern Civil War killed thousands and shaped the course of southern and national politics for over one hundred years. Why has such a crucial conflict been ignored in historical texts?



This contemporary newspaper account of the Battle of Liberty Place, September 14, 1874, in New Orleans shows the Ex-Confederate charge that won the battle.

The Battle of Liberty Place includes enough the characters and drama for several books, but it was only one of dozens of battles and thousands of violent incidents in a war across the South following the American Civil War. The Southern Civil War of 1865-1877 was fought for control of local and state governments and constituted an Ex-Confederate attempt to control the meaning of the “peace settlement” that was never formalized after the end of the American Civil War. . Ex-Confederate Extremists seized the opportunity afforded to them by that missing settlement to launch a campaign of

violence against the two local symbols of northern victory: white unionist political organizations and African Americans attempting to live free. In a textbook example of modern terror and guerilla warfare, the Ex-Confederate Extremists concentrated on attacking these vulnerable targets and then melted away on the occasions when federal forces arrived. Federal governmental action was largely irrelevant to this war. These tactics guaranteed the military forces of the Ex-Confederate Extremists a persistent local advantage and ensured that intermittent Federal governmental action was largely irrelevant to the overall course of this war. The Federal failure to fully occupy the South threw the burden of local defense onto African Americans and their white unionist allies, who were usually outnumbered, out fought, and out gunned. They faced an opponent with the Confederate weapons, training, experience, and organization gained in the four years of the American Civil War. Between 1865 and 1877 the white supremacists of the South resorted to warfare in all its modern forms: terrorism, guerilla war, paramilitary war, race war, assassination, and political violence. Local African-American and White Unionists—and later democratically elected southern Republican governments—answered this violence, often with classic pitched battles as at the Battle of Liberty Place. By 1877 Ex-Confederate Extremists had retaken every southern state. Despite a few victories for the biracial coalition of unionists (particularly in Arkansas and Texas), the complete triumph of white supremacist military forces in 1877 settled the open issues of the Civil War and reversed the halting peace plans of the North. For all practical purposes, Ex-Confederate Extremists overturned the Thirteenth, Fourteenth, and Fifteenth Amendments in the South by military action.

The history of the United States from 1865-1877 is infamously confused, distorted, and misremembered because the war inside the South rarely takes center stage. It is rarely even called a war, let alone a new phase of the Civil War. The popular narrative of 1861–1865 imagines tidy outcomes where none existed. Likewise, the enormity of the Civil War's death toll of 750,000 and the grandeur of its battlefield pageantry have helped diminish the reality of the more diffuse and episodic Southern Civil

War. But the uncounted dead from these local conflicts exceeds 25,000 by the best modern estimates, and the incomplete catalogue of battles reaches fifty: no small war in the annals of American conflicts.¹ The following analytical and narrative history traces the warfare of the era by examining the one-sided violence of 1865—1867 across the South, before turning to the state-by-state battles of 1867—1877 when unionists controlled and tried to defend local and state governments. Arkansas, Louisiana, Mississippi, Texas, and South Carolina had the most dramatic conflicts and will provide the major examples of the Southern Civil War qua open warfare, but this book looks at the South as a whole and describes a region-wide war. Many recent studies have brilliantly described the “War of Reconstruction” at the state level but none have brought together the military history of the whole era and the region. This is a crucial task for American popular historical memory, the classroom, and the history profession. This book had its genesis in the frustration I experienced teaching Reconstruction in my Civil War and Reconstruction Seminar. No short, accessible book looks at the Reconstruction Era from the perspective of violence on the ground in the South. Very few short, accessible books look at the era as a whole at all.² The story of Reconstruction is too often told from the federal political perspective, which obscures the most telling force in the era—white supremacist warfare at the local level across the South. I decided to write my own study that describes the era for my students. I hope this book advances a crucial thesis for historians and for the general populace as more historians write on this subject. My thesis is simply that Reconstruction was a war.

The War after the War: The Southern Civil War, 1865-1877 is organized into seven chapters. The chapters describe a multi-phase of the war in the South from 1865-1877. The Southern Civil War took

¹ George Rable, *But There Was no Peace: The Role of Violence in the Politics of Reconstruction* (Athens: The University of Georgia Press, 2007), 86, 96, 98, 142. Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America*, (New York: Modern Library, 2002), 49.

² One of the best is Allen C. Guelzo’s *Reconstruction: A Concise History* (New York: Oxford University Press, 2018).

place in three phases: the terror phase 1865-1867, the guerilla phase 1868-1872, and the open paramilitary phase 1872-1877. The Southern Civil War also had many aftershocks in the late Nineteenth and early Twentieth Centuries, when the white supremacist victors in the war continued to use the war's tactics to terrorize African Americans. This holistic approach to the war is an original contribution to the scholarship on Reconstruction and the first description of these phases of the conflict.

Chapter Two explores this first, terror phase, when Ex-Confederates were left in power in the South, because African Americans did not yet vote and consequently unionist whites had little power (except in Tennessee). Ex-Confederate Extremists avoided open warfare with federal forces, instead attacking the supposedly freed African Americans and their white political allies. The terror phase from 1865—1867 was the briefest but bloodiest of the Southern Civil War during which thousands of vulnerable African Americans and their white allies were massacred by Ex-Confederates who controlled local and state governments.

The North had lost the initiative in 1865 by failing to impose a treaty and new political order on the South, and the federal government would never regained the initiative, but northern reaction to this bloodletting brought about the second phase of the war, discussed in Chapters Three and Four. After 1867—too late—Congressional Republicans tried to impose a peace on the Ex-Confederates by passing the Fourteenth and then Fifteenth Amendments to the Constitution and thus organizing new state governments elected by enfranchised African-American voters and their white Republican allies. With a biracial coalition of Republican southerners in charge of every Ex-Confederate state government except Tennessee, Ex-Confederate Extremists took up direct guerilla tactics. They avoided attacking federal troops (except in Texas) and instead used classic hit and run tactics against the new biracial unionist state and local government forces and leaders. The Ku Klux Klan, which had successfully fought the unionist government in Tennessee (the state in which the KKK was born) inspired many localized imitators, and they collectively dominated this phase of war between 1868 and 1872. Ex-Confederate

Extremists hid their identities when attacking local governments and then blended back into the population in prototypical guerilla form. The Ex-Confederate South's powerful commitment to white supremacy defined the whole era but particularly this move to guerilla tactics, which had been only tentatively used against the predominantly white adversaries of the American Civil War, and only at the end of the war in 1864-65. Confederates who had been unwilling to take up guerilla action and protracted war to preserve a new independent southern government—the Confederacy—fought to the bitter end with any tactic to preserve the racial order of the South during Reconstruction (and afterward). Several biracial Republican state governments did successfully fight back and break the KKK and other guerilla groups. These brief biracial coalition triumphs are the subject of Chapter Three. Governor Powell Clayton of Arkansas and Edmund Davis of Texas both cleared their states of KKK-style opponents using martial law and the state militia. In a rare case of federal military activity in the Southern Civil War, President Grant sent in national forces and imposed martial law to rout the KKK in South Carolina. However, martial law and the use of African-American troops against whites shocked white voters who turned Republicans out of office via votes, violence, and fraud in 1872, even in Texas and Arkansas.

Chapter Four examines the rapid Ex-Confederate Extremist guerilla triumphs against the state governments of Georgia, Alabama, North Carolina, and Virginia. Brutal guerilla action in Mississippi, Louisiana, South Carolina, and Florida (the first three of which had African-American majority populations) could not topple those state governments, so those states saw a further escalation of tactics.

In the last phase, discussed in Chapter Five, these guerilla victories further emboldened Ex-Confederate Extremists in the four states remaining in Unionist hands after 1872. In these last states, Ex-Confederate Extremists openly took up arms in paramilitary armies that directly attacked government forces, as at the Battle of Liberty Place. The conventional battles of this last phase ushered in the

complete triumph of Ex-Confederates Extremists in seizing power in these last four states. Ultimately, Ex-Confederate paramilitary triumphs led to the famous Compromise of 1877 in which the North acquiesced to the Ex-Confederate Extremist power and withdrew all forces from the South. This was the real peace settlement of the American Civil War, one that signaled a southern victory.³

As in most civil wars, the victorious side then launched a wave of reprisal killings: —the mass lynching of effectively re-enslaved African Americans in the region. Also typical of the violence following a civil war was the movement of African-American refugees that we refer to as the Great Migration. Chapter Six recounts how the violent warfare of the Southern Civil War could not be turned off in 1877. The warfare in the South during Reconstruction had built up traditions of white paramilitary repression that white supremacists inculcated into the two generations after 1877, and bloody aftershocks of white supremacist paramilitary violence erupted in throughout the late Nineteenth and early Twentieth Centuries. Not just lynching, but organized attacks resulting in the slaughter of entire African-American communities became commonplace in places like Wilmington, North Carolina (1898), New Orleans (1900), Atlanta (1906), Slocum, Texas (1910), Elaine, Arkansas (1919), Tulsa (1921), and Rosewood (1923). The warfare in the South during Reconstruction built up white paramilitary repressive traditions that white supremacists called out in the two generations after 1877 in these mass attacks. One intention behind most of these massacres was the disruption of a complementary Southern Civil War—era tradition in African-American communities. African Americans—used to advocating for and ultimately defending themselves— fought back in all the clashes listed above. Historian George Rable noted that after 1865, "The country miraculously avoided the bloody reprisals that commonly follow civil wars."⁴ However, this violence was merely delayed until it could be carried out by the Ex-

³ *Charleston News And Courier*, September 25, October 11, 12, 1876.

⁴ Rable, *But There Was No Peace*, 1. See also Jay Winik, *April 1865: The Month that Saved America* (New York: Harper Perennial, 2006).

Confederate Extremist victors of the Southern Civil War.

The era of lynching and mass attacks on African–American communities after 1877 looks exactly like the bloody reprisals that victors have carried out in the generations after successful civil wars. The final chapter, Chapter Seven, examines particular parallels between the Southern Civil War and modern civil wars which are fought—with unconventional warfare over protracted periods of time— over peace settlements and occupations. Some of these international examples include the Irish Civil War, the Vietnamese Wars, the Algerian Wars, and the United States occupation of Iraq, among many others. This final chapter highlights how civil wars rarely end with clear peace settlements and have a protracted, on-again off-again nature that can stretch over generations of political violence and guerilla warfare—the precise pattern played out in the American Civil War and the Southern Civil War.



This 1874 Thomas Nast (1840-1902) shows the triumph of Ex-Confederate guerilla-style KKK and open paramilitary forces. The Compromise of 1877 and capitulation of the North in the Southern Civil War would bring similar images that openly recognized a new, and often worse, slavery and betrayal of African Americans during and after Reconstruction. The end of the war in 1877 saw the Thirteenth, Fourteenth, and Fifteenth Amendments overturned in the South.

Reconstruction is the most misremembered and forgotten period in American History. Civil wars usually have a central place in a nation's memory. Reconstruction constituted a well-defined civil war.

The American Civil War of 1861-1865 was fought largely as a conventional battlefield war between

uniformed combatants representing nations. Most civil wars are messier and longer term than the war from 1861-1865. The longer term unconventional and brutal, intimate war of 1865-1877 looks more like the horrific and complex engagements in modern civil wars. This twelve year Southern Civil War fit the international pattern of civil wars; a start and stop war of political, guerilla, and paramilitary violence and brutal personal reprisals. If the United States descends into civil war in the future, it will resemble the Southern Civil War, not the American Civil War.

The military history of Southern Civil War does not fit with Americans' images of themselves and their history. American nationalists cannot extract a progressive or triumphant story from this war along the lines of the narrative of the American Civil War. The Southern Civil War gives the lie to this triumphant narrative, which holds that the Civil War was a heroic and meaningful contribution to the moral and political progress of the nation. When white supremacist Ex-Confederates triumphed in 1877, they reinstated a form of slavery in perhaps a more brutal form. White supremacist southerners, in effect, had a separate political, economic, and cultural region for one hundred years.

Session 2

1st Amendment, Bill of Rights, 1789, (Adopted 1791): “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Virginia Declaration of Rights, 1776. XII “That the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments.”

Constitution of Massachusetts, 1780. Art. 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.”

Commentaries, William Blackstone 1769

The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or enquiry: liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive of the ends of society, is the crime which society corrects.

The Sedition Act, 1798

Sec. 2. And be it further enacted, That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against

the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SCHENCK v. U.S., 1919

Mr. Justice HOLMES delivered the opinion of the Court.

This is an indictment in three counts. The first charges a conspiracy to violate the Espionage Act of June 15, 1917, c. 30, tit. 1, 3, 40 Stat. 217, 219 (Comp. St. 1918, 10212c), by causing and attempting [249 U.S. 47, 49] to cause insubordination, &c., in the military and naval forces of the United States, and to obstruct the recruiting and enlistment service of the United States, when the United States was at war with the German Empire, to-wit, that the defendant wilfully conspired to have printed and circulated to men who had been called and accepted for military service under the Act of May 18, 1917, c. 15, 40 Stat. 76 (Comp. St. 1918, 2044a-2044k), a document set forth and alleged to be calculated to cause such insubordination and obstruction. The count alleges overt acts in pursuance of the conspiracy, ending in the distribution of the document set forth. The second count alleges a conspiracy to commit an offense against the United States, to-wit, to use the mails for the transmission of matter declared to be non-mailable by title 12, 2, of the Act of June 15, 1917 (Comp. St. 1918, 10401b), to-wit, the above mentioned document, with an averment of the same overt acts. The third count charges an unlawful use of the mails for the transmission of the same matter and otherwise as above. The defendants were found guilty on all the counts. They set up the First Amendment to the Constitution forbidding Congress to make any law abridging the freedom of speech, or of the press, and bringing the case here on that ground have argued some other points also of which we must dispose.

It is argued that the evidence, if admissible, was not sufficient to prove that the defendant Schenck was concerned in sending the documents. According to the testimony Schenck said he was general secretary of the Socialist party and had charge of the Socialist headquarters from which the documents were sent. He identified a book found there as the minutes of the Executive Committee of the party. The book showed a resolution of August 13, 1917, that 15,000 leaflets should be printed on the other side of one of them in use, to be mailed to men who had passed exemption boards, and for distribution. Schenck personally attended to the printing. On [249 U.S. 47, 50] August 20 the general secretary's report said 'Obtained new leaflets from printer and started work addressing envelopes' &c.; and there was a resolve that Comrade Schenck be allowed \$125 for sending leaflets through the mail. He said that he had about fifteen or sixteen thousand printed. There were files of the circular in question in the inner office which

he said were printed on the other side of the one sided circular and were there for distribution. Other copies were proved to have been sent through the mails to drafted men. Without going into confirmatory details that were proved, no reasonable man could doubt that the defendant Schenck was largely instrumental in sending the circulars about. As to the defendant Baer there was evidence that she was a member of the Executive Board and that the minutes of its transactions were hers. The argument as to the sufficiency of the evidence that the defendants conspired to send the documents only impairs the seriousness of the real defence.

The document in question upon its first printed side recited the first section of the Thirteenth Amendment, said that the idea embodied in it was violated by the conscription act and that a conscript is little better than a [249 U.S. 47, 51] convict. In impassioned language it intimated that conscription was despotism in its worst form and a monstrous wrong against humanity in the interest of Wall Street's chosen few. It said, 'Do not submit to intimidation,' but in form at least confined itself to peaceful measures such as a petition for the repeal of the act. The other and later printed side of the sheet was headed 'Assert Your Rights.' It stated reasons for alleging that any one violated the Constitution when he refused to recognize 'your right to assert your opposition to the draft,' and went on, 'If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain.' It described the arguments on the other side as coming from cunning politicians and a mercenary capitalist press, and even silent consent to the conscription law as helping to support an infamous conspiracy. It denied the power to send our citizens away to foreign shores to shoot up the people of other lands, and added that words could not express the condemnation such cold-blooded ruthlessness deserves, &c., &c., winding up, 'You must do your share to maintain, support and uphold the rights of the people of this country.' Of course the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out. The defendants do not deny that the jury might find against them on this point.

But it is said, suppose that that was the tendency of this circular, it is protected by the First Amendment to the Constitution. Two of the strongest expressions are said to be quoted respectively from well-known public men. It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the [249 U.S. 47, 52] main purpose, as intimated in *Patterson v. Colorado*, 205 U.S. 454, 462, 27 S. Sup. Ct. 556, 51 L. ed. 879, 10 Ann. Cas. 689. We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. *Aikens v. Wisconsin*, 195 U.S. 194, 205, 206 S., 25 Sup. Ct. 3. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 439, 31 S. Sup. Ct. 492, 55 L. ed. 797, 34 L. R. A. (N. S.) 874. 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 Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in section 4 (Comp. St. 1918 , 10212d) punishes conspiracies to obstruct as well as actual obstruction. If the act, (speaking, or circulating a paper,) its tendency and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime. *Goldman v. United States*, 245 U.S. 474 , 477 38 Sup. Ct. 166, 62 L. ed. 410. Indeed that case might be said to dispose of the present contention if the precedent covers all media concludendi. But as the right to free speech was not referred to specially, we have thought fit to add a few words.

ABRAMS v. U S, 1919

Mr. Justice HOLMES, dissenting

I never have seen any reason to doubt that the questions of law that alone were before this Court in the Cases of *Schenck* (249 U.S. 47 , 29 Sup. Ct. 247) *Frohwerk* (249 U.S. 204 , 39 Sup. Ct. 249), and *Debs* (249 U.S. 211 , 39 Sup. Ct. 252), were rightly decided. I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is [250 U.S. 616, 628] greater in time of war than in time of peace because war opens dangers that do not exist at other times. But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. Publishing those opinions for the very purpose of obstructing, however, might indicate a greater danger and at any rate would have the quality of an attempt. So I assume that the second leaflet if published for the purposes alleged in the fourth count might be punishable. But it seems pretty clear to me that nothing less than that would bring these papers within the scope of this law. An actual intent in the sense that I have explained is necessary to constitute an attempt, where a further act of the same individual is required to complete the substantive crime, for reasons given in *Swift & Co. v. United States*, 196 U.S. 375, 396 , 25 S. Sup. Ct. 276. It is necessary where the success of the attempt depends upon others because if that intent is not present the actor's aim may be accomplished without bringing about the evils sought to be checked. An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged.

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 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 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 system 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 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 (Act July 14, 1798, c. 73, 1 Stat. 596), by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants [250 U.S. 616, 631] 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 conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

GITLOW v. PEOPLE OF STATE OF NEW YORK, (1925)

Mr. Justice SANFORD delivered the opinion of the Court.

Benjamin Gitlow was indicted in the Supreme Court of New York, with three others, for the statutory crime of criminal anarchy. New York Penal Law, 160, 161.1 He was separately tried, convicted, and sentenced to imprisonment. The judgment was affirmed by the Appellate Division and by the Court of Appeals. *People v. Gitlow*, 195 App. Div. 773, 187 N. Y. S. 783; 234 N. Y. 132, 136 N. E. 317; and 234 N. Y. 529, 138 N. E. 438. The case is here on writ of error to the Supreme Court, to which the record was remitted. [260 U.S. 703](#) , 43 S. Ct. 163.

The contention here is that the statute, by its terms and as applied in this case, is repugnant to the due process clause of the Fourteenth Amendment. Its material provisions are:

'Sec. 160. Criminal Anarchy Defined. Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any

of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

'Sec. 161. Advocacy of Criminal Anarchy. Any person who:

'1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

'2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written or printed matter in any [268 U.S. 652, 655] form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means, ...

'Is guilty of a felony and punishable' by imprisonment or fine, or both.

The indictment was in two counts. The first charged that the defendant had advocated, advised and taught the duty, necessity and propriety of overthrowing and overturning organized government by force, violence and unlawful means, by certain writings therein set forth entitled 'The Left Wing Manifesto'; the second that he had printed, published and knowingly circulated and distributed a certain paper called 'The Revolutionary Age,' containing the writings set forth in the first count advocating, advising and teaching the doctrine that organized government should be overthrown by force, violence and unlawful means.

The following facts were established on the trial by undisputed evidence and admissions: The defendant is a member of the Left Wing Section of the Socialist Party, a dissenting branch or faction of that party formed in opposition to its dominant policy of 'moderate Socialism.' Membership in both is open to aliens as well as citizens. The Left Wing Section was organized nationally at a conference in New York City in June, 1919, attended by ninety delegates from twenty different States. The conference elected a National Council, of which the defendant was a member, and left to it the adoption of a 'Manifesto.' This was published in The Revolutionary Age, the official organ of the Left Wing. The defendant was on the board of managers of the paper and was its business manager. He arranged for the printing of the paper and took to the printer the manuscript of the first issue which contained the Left Wing Manifesto, and also a Communist Program and a Program of the Left Wing that had been adopted by the conference. Sixteen thousand [268 U.S. 652, 656] copies were printed, which were delivered at the premises in New York City used as the office of the Revolutionary Age and the head quarters of the Left Wing, and occupied by the defendant and other officials. These copies were paid for by the defendant, as business manager of the paper. Employees at this office wrapped and mailed out copies of the paper under the defendant's direction; and copies were sold from this office. It was admitted that the defendant signed a card subscribing to the Manifesto and Program of the Left Wing, which all applicants were required to sign before being admitted to membership; that he went to different parts of the State to speak to branches of the Socialist Party about the principles of the Left Wing and advocated their adoption; and that he was responsible for the Manifesto as it appeared, that 'he knew of the publication, in a general way and he knew of its publication afterwards, and is responsible for the circulation.'

There was no evidence of any effect resulting from the publication and circulation of the Manifesto.

No witnesses were offered in behalf of the defendant.

Extracts from the Manifesto are set forth in the margin. 2 Coupled with a review of the rise of Socialism, it [268 U.S. 652, 657] condemned the dominant 'moderate Socialism' for its recognition of the necessity of the democratic parliamentary state; repudiated its policy of introducing Socialism by legislative measures; and advocated, in plain and unequivocal language, the necessity of accomplishing the 'Communist Revolution' by a militant and 'revolutionary Socialism,' based on 'the class struggle' and mobilizing [268 U.S. 652, 658] the 'power of the proletariat in action,' through mass industrial revolts developing into mass political strikes and 'revolutionary mass action,' for the purpose of conquering and destroying the parliamentary state and establishing in its place, through a 'revolutionary dictatorship of the proletariat,' the system of Communist Socialism. The then recent strikes in Seattle and Winnepeg³ were cited as instances of a development already verging on revolutionary action and suggestive of proletarian [268 U.S. 652, 659] dictatorship, in which the strike-workers were 'trying to usurp the functions of municipal government'; and revolutionary Socialism, it was urged, must use these mass industrial revolts to broaden the strike, make it general and militant, and develop it into mass political strikes and revolutionary mass action for the annihilation of the parliamentary state. OK

.....

(Doctrine of Incorporation)

For present purposes we may and do assume that freedom of speech and of the press-which are protected by the First Amendment from abridgment by Congress-are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States....

It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. Reasonably limited, it was said by Story in the passage cited, this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic.

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question....

And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press, said Story, supra, does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties. State v. [268 U.S. 652, 668] Holm, supra, p. 275 (166 N. W. 181). It does not protect publications prompting the overthrow of government by force; the punishment

of those who publish articles which tend to destroy organized society being essential to the security of freedom and the stability of the state. *People v. Most*, supra, pp. 431, 432 (64 N. E. 175). And a State may penalize utterances which openly advocate the overthrow of the representative and constitutional form of government of the United States and the several States, by violence or other unlawful means. In short this freedom does not deprive a State of the primary and essential right of self preservation; which, so long as human governments endure, they cannot be denied. *Turner v. Williams*, 194 U.S. 279, 294 , 24 S. Ct. 719. In *Toledo Newspaper Co. v. United States*, 247 U.S. 402, 419 , 38 S. Ct. 560, 564 (62 L. Ed. 1186), it was said:

'The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom, therefore, does not and cannot be held to include the right virtually to destroy such institutions.'

By enacting the present statute the State has determined, through its legislative body, that utterances advocating the overthrow of organized government by force, violence and unlawful means, are so inimical to the general welfare and involve such danger of substantive evil that they may be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute. *Mugler v. Kansas*, 123 U.S. 623, 661 , 8 S. Ct. 273. And the case is to be considered 'in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare'; and that its police 'statutes may only be declared unconstitutional where they are arbitrary or unreasonable [268 U.S. 652, 669] attempts to exercise authority vested in the State in the public interest.' *Great Northern Ry. v. Clara City*, 246 U.S. 434, 439 , 38 S. Ct. 346, 347 (62 L. Ed. 817). That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen. The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the State is acting arbitrarily or unreasonably when in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipiency...

We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the State unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality....

And finding, for the reasons stated, that the statute is not in itself unconstitutional, and that it has not been applied in the present case in derogation of any constitutional right, the judgment of the Court of Appeals is

AFFIRMED.

Mr. Justice HOLMES (dissenting).

Mr. Justice BRANDEIS and I are of opinion that this judgment should be reversed. The 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 Court in *Schenck v. United States*, [249 U.S. 47, 52](#) , 39 S. Ct. 247, 249 (63 L. Ed. 470), 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 [\[268 U.S. 652, 673\]](#) 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*, [250 U.S. 616](#) , 40 S. Ct. 17, 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](#) , 40 S. Ct. 259, have settled the law. If what I think the correct test is applied it is manifest that there was no 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.

Whitney v. California, 1927

Justice Brandeis Concurring This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present, and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgement of free speech and assembly as the means of protection. To reach sound conclusions on these matters, we must bear in mind why a State is, ordinarily, denied the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence. Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should prevail over the arbitrary. They valued liberty both as an end, and as a means. They believed liberty to be the secret of happiness, and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty, and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law -- the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed. Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger, it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated. Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If

there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. [n4] Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it.”

Session 3

Federalist No. 1

General Introduction

Author: Alexander Hamilton

To the People of the State of New York:

AFTER an unequivocal experience of the inefficiency of the subsisting federal government, you are called upon to deliberate on 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 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, 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. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which 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 will add the inducements of philanthropy to those of patriotism, to heighten 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, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished 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 a variety of objects foreign to its merits, and of views, passions and prejudices little favorable 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 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 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 well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor 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 made its appearance, or 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 fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, 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 furnish a lesson of moderation to those who are ever so much persuaded of their being in the right in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced 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 those who oppose the right side of a question. Were there not even these inducements to moderation, 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, however just these sentiments will be allowed to be, we have already sufficient indications that it will happen in this as in all former cases of great national discussion. A 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 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 of despotic 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 pretense and artifice, the stale bait for popularity at the expense of the public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of love, and that the noble enthusiasm of liberty is apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interest 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 forbidden appearance of zeal for the firmness and 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 tyrants.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting 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 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 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.

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 endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your 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.¹ This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. 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 new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining 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 constitute the subject of my next address.

PUBLIUS.

FEDERALIST NO. 10

The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection

Friday, November 23, 1787.

Author: James Madison

To the People of the State of New York:

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest,

adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

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

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

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

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body

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

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

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

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

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

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from

the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

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

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

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

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to

comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

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

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

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

The Conformity of the Plan to Republican Principles

Author: James Madison

To the People of the State of New York:

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.

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 reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable 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 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 constitution of different States, no satisfactory one would ever be 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 same appellation. The government of England, which has one republican branch only, combined with an 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.

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 period, or during good behavior. 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 favored 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 honorable 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 behavior.

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 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 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 constitutional 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 behavior. 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 guaranty 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.

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.

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.

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 have been adopted. 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.

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. The Senate, on the other hand, will derive its powers from the States, as political and coequal 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 them are in a compound ratio, which considers them partly as distinct and coequal 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 coequal bodies politic. From this aspect of the government it appears 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 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 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. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, 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 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 local authorities are subordinate to the supreme; and may be controlled, 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 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 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.

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 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 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, 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.

PUBLIUS.

Federalist No. 51

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

Friday, February 8, 1788.

Author: Alexander Hamilton or James Madison

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I

will hazard a few general observations, which may perhaps 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 preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them. It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different

modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? 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. Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly

recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE.

PUBLIUS.

Federalist No. 78

Author: Alexander Hamilton

To the People of the State of New York:

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.

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

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; 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.

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

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

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

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

ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

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

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

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

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove 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,³ in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

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

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

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

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

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

PUBLIUS.

Session 4

ON BEHALF OF THE WOMAN SUFFRAGE AMENDMENT

Susan B. Anthony

January 23, 1880

FRIENDS AND FELLOW CITIZENS:- I stand before you under indictment for the alleged crime of having voted at the last presidential election, without having a lawful right to vote. It shall be my work this evening to prove to you that in thus doing, I not only committed no crime, but instead simply exercised my citizen's right, guaranteed to me and all United States citizens by the National Constitution beyond the power of any State to deny.

Our democratic-republican government is based on the idea of the natural right of every individual member thereof to a voice and a vote in making and executing the laws. We assert the province of government to be to secure the people in the enjoyment of their inalienable rights. We throw to the winds the old dogma that government can give rights. No one denies that before governments were organized each individual possessed the right to protect his own life, liberty, and property. When 100 or 1,000,000 people enter into a free government, they do not barter away their natural rights; they simply pledge themselves to protect each other in the enjoyment of them through prescribed judicial and- legislative tribunals. They agree to abandon the methods of brute force in the adjustment of their differences and adopt those of civilization. Nor can you find a word in any of the grand documents left us by the fathers which assumes for government the power to create or to confer rights. The Declaration of Independence, the United States Constitution, the constitutions of the several States and the organic laws of the Territories, all alike propose to protect the people in the exercise of their God-given rights. Not one of them pretends to bestow right.

All men are created equal, and endowed by their Creator with certain inalienable rights. Among these are life, liberty and the pursuit of happiness. To secure these, governments are instituted among men, deriving their just powers from the consent of the governed.

Here is no shadow of government authority over rights, or exclusion of any class from their full and equal enjoyment. Here is pronounced the right of all men, and "consequently," as the Quaker preacher said, "of all women." to a voice in the government. And here, in this first paragraph of the Declaration, is the assertion of the natural right of all to the ballot; for how can "the consent of the governed" be given, if the right to vote be denied? Again:

Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Surely the right of the whole people to vote is here clearly implied; for however destructive to their happiness this government might become, a disfranchised class could neither alter nor abolish it, nor institute a new one, except by the old brute force method of insurrection and rebellion. One-half of the people of this nation today are utterly powerless to blot from the statute books an unjust law, or to write there a new and a just one. The women, dissatisfied as they are with this form of government, that enforces taxation without representation—that compels them to obey laws to which they never have given their consent—that imprisons and hangs them without a trial by a jury of their peers—that robs them, in marriage, of the custody of their own persons, wages and children are this half of the people who are left wholly at the mercy of the other half, in direct violation of the spirit and letter of the declarations of the framers of this government, every one of which was based on the immutable principle of equal rights to all. By these declarations, kings, popes, priests, aristocrats, all were alike dethroned and placed on a common level, politically, with the lowliest born subject or serf. By them, too, men, as such, were deprived of their divine right to rule and placed on a political level with women. By the practice of these declarations all class and caste distinctions would be abolished, and slave, serf, plebeian, wife, woman, all alike rise from their subject position to the broader platform of equality.

The preamble of the Federal Constitution says:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

It was we, the people, not we, the white male citizens, nor we, the male citizens; but we, the whole people, who formed this Union. We formed it not to give the blessings of liberty but to secure them; not to the half of ourselves and the half of our posterity, but to the whole people—women as well as men. It is downright mockery to talk to women of their enjoyment of the blessings of liberty while they are denied the only means of securing them provided by this democratic-republican government—the ballot. The early journals of Congress show that, when the committee reported to that body the original articles of confederation, the very first one which became the subject of discussion was that respecting equality of suffrage. Article IV said:

The better to secure and perpetuate mutual friendship and intercourse between the people of the different States of this Union, the free inhabitants of each of the States (paupers, vagabonds and fugitives from justice excepted) shall be entitled to all the privileges and immunities of the free citizens of the several States.

Thus, at the very beginning, did the fathers see the necessity of the universal application of the great principle of equal rights to all, in order to produce the desired result—a harmonious union and a homogeneous people.

Luther Martin, attorney-general of Maryland, in his report to the legislature of that State of the convention which framed the United States Constitution, said:

Those who advocated the equality of suffrage took the matter up on the original principles of government: that the reason why each individual man in forming a State government should have an equal vote, is because each individual, before he enters into government, is equally free and equally independent.

James Madison said:

Under every view of the subject, it seems indispensable that the mass of the citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them... Let it be remembered, finally, that it has ever been the pride and the boast of America that the rights for which she contended were the rights of human nature.

These assertions by the framers of the United States Constitution of the equal and natural right of all the people to a voice in the government, have been affirmed and reaffirmed by the leading states men of the nation throughout the entire history of our government. Thaddeus Stevens, of Pennsylvania, said in 1866: "I have made up my mind that the elective franchise is one of the inalienable rights meant to be secured by the Declaration of Independence." B. Gratz Brown, of Missouri, in the three days' discussion in the United States Senate _in 1866, on Senator Cowan's motion to strike "male" from the District of Columbia suffrage bill, said:

Mr. President, I say here on the floor of the American Senate, I stand for universal suffrage; and as a matter of fundamental principle, do not recognize the right of society to limit it on any ground of race or sex. I will go farther and say that I recognize the right of franchise as being intrinsically a natural right. I do not believe that society is authorized to impose any limitations upon it that do not spring out of the necessities of the social state itself. Sir, I have been shocked, in the course of this debate, to hear senators declare this right only a conventional and political arrangement, a privilege yielded to you and me and others; not a right in any sense, only a concession! Mr. President, I do not hold my liberties by any such tenure. On the contrary. I believe that whenever you establish that doctrine, whenever you crystallize that idea in the public mind of this country, you ring the death-knell of American liberties.

Charles Sumner, in his brave protests against the Fourteenth and Fifteenth Amendments, insisted that so soon as by the Thirteenth Amendment the slaves became free men, the original powers of the United States Constitution guaranteed to them equal rights the right to vote and to be voted for. In closing one of his great speeches he said:

I do not hesitate to say that when the slaves of our country became "citizens" they took their place in the body politic as a component part of the "people," entitled to equal rights and under the protection of these two guardian principles: First, that all just governments stand on the consent of the governed; and second, that taxation without representation is tyranny: and these rights it is the duty of Congress to guarantee as essential to the idea of a republic.

The preamble of the constitution of the State of New York declares the same purpose. It says: 'We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this constitution.' Here is not the slightest intimation either of receiving freedom from the United States Constitution, or of the State's conferring the blessings of liberty upon the people; and the same is true of every other State constitution. Each and all declare rights God-given, and that to secure the people in the enjoyment of their inalienable rights is their one and only object in ordaining and establishing government. All of the State constitutions are equally emphatic in their recognition of the ballot as the means of securing the people in the enjoyment of these rights. Article I of the New York State constitution says:

No member of this State shall be disfranchised or deprived of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

So carefully guarded is the citizen's right to vote, that the constitution makes special mention of all who may be excluded. It says: "Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, larceny or any infamous crime."

In naming the various employments which shall not affect the residence of voters, Section 3, Article II, says "that neither being kept in any almshouse, or other asylum, at public expense, nor being confined in any public prison, shall deprive a person of his residence," and hence of his vote. Thus is the right of voting most sacredly hedged about. The only seeming permission in the New York State constitution for the disfranchisement of women is in Section 1, Article II, which says: "Every male citizen of the age of twenty-one years, etc., shall be entitled to vote."

But I submit that in view of the explicit assertions of the equal right of the whole people, both in the preamble and previous article of the constitution, this omission of the adjective "female" should not be construed into a denial; but instead should be considered as of no effect. Mark the direct prohibition, "No member of this State shall be disfranchised, unless by the law of the land, or the judgment of his peers." "The law of the land" is the United States Constitution; and there is no provision in that document which can be fairly construed into a permission to the States to deprive any class of citizens of their right to vote. Hence New York can get no power from that source to disfranchise one entire half of her members. Nor has "the judgment of their peers" been pronounced against women exercising their right to vote; no disfranchised person is allowed to be judge or juror-and none but disfranchised persons can be women's peers. Nor has the legislature passed laws excluding women as a class on account of idiocy or lunacy; nor have the courts convicted them of bribery, larceny or any infamous crime.

Clearly, then, there is no constitutional ground for the exclusion of women from the ballot-box in the State of New York. No barriers whatever stand today between women and the exercise of their right to vote save those of precedent and prejudice, which refuse to expunge the word "male" from the constitution.

The clauses of the United States Constitution cited by our opponents as giving power to the States to disfranchise any classes of citizens they please, are contained in Sections 2 and 4, Article 1. The second says:

The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

This can not be construed into a concession to the States of the power to destroy the right to become an elector, but simply to prescribe what shall be the qualifications, such as competency of intellect, maturity of age, length of residence, that shall be deemed necessary to enable them to make an intelligent choice of candidates. If, as our opponents assert, it is the duty of the United States to protect citizens in the several States against higher or different qualifications for electors for representatives in Congress than for members of the Assembly, then it must be equally imperative for the national government to interfere with the States, and forbid them from arbitrarily cutting off the right of one-half the people to become electors altogether. Section 4 says:

The times, places and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Here is conceded to the States only the power to prescribe times, places and manner of holding the elections; and even with these Congress may interfere in all excepting the mere place of choosing senators. Thus, you see, there is not the slightest permission for the States to discriminate against the right of any class of citizens to vote. Surely, to regulate can not be to annihilate; to qualify can not be wholly to deprive. To this principle every true Democrat and Republican said amen, when applied to black men by Senator Sumner in his great speeches from 1865 to 1869 for equal rights to all; and when, in 1871, I asked that senator to declare the power of the United States Constitution to protect women in their right to vote-as he had done for black men-he handed me a copy of all his speeches during that reconstruction period, and said:

Put "sex" where I have "race" or "color," and you have here the best and strongest argument I can make for woman. There is not a doubt but women have the constitutional -right to vote, and I will never vote for a Sixteenth Amendment to guarantee it to them. I voted for both the Fourteenth and Fifteenth under protest; would never have done it but for the pressing emergency of that hour; would have insisted that the power of the original Constitution to protect all citizens in the equal enjoyment of their rights should have been

vindicated through the courts. But the newly-made freedmen had neither the intelligence, wealth nor time to await that slow process. Women do possess all these in an eminent degree, and I insist that they shall appeal to the courts, and through them establish the powers of our American magna charta to protect every citizen of the republic.

But, friends, when in accordance with Senator Sumner's counsel I went to the ballot-box, last November, and exercised my citizen's right to vote, the courts did not wait for me to appeal to them—they appealed to me, and indicted me on the charge of having voted illegally. Putting sex where he did color, Senator Sumner would have said:

Qualifications can not be in their nature permanent or insurmountable. Sex can not be a qualification any more than size, race, color or previous condition of servitude. A permanent or insurmountable qualification is equivalent to a deprivation of the suffrage. In other words, it is the tyranny of taxation without representation, against which our Revolutionary mothers, as well as fathers, rebelled.

For any State to make sex a qualification, which must ever result in the disfranchisement of one entire half of the people, is to pass a bill of attainder, an ex post facto law, and is therefore a violation of the supreme law of the land. By it the blessings of liberty are forever withheld from women and their female posterity. For them, this government has no just powers derived from the consent of the governed. For them this government is not a democracy; it is not a republic. It is the most odious aristocracy ever established on the face of the globe. An oligarchy of wealth, where the rich govern the poor; an oligarchy of learning, where the educated govern the ignorant; or even an oligarchy of race, where the Saxon rules the African, might be endured; but this oligarchy of sex which makes father, brothers, husband, sons, the oligarchs over the mother and sisters, the wife and daughters of every household; which ordains all men sovereigns, all women subjects—carries discord and rebellion into every home of the nation. This most odious aristocracy exists, too, in the face of Section 4, Article IV, which says: "The United States shall guarantee to every State in the Union a republican form of government."

What, I ask you, is the distinctive difference between the inhabitants of a monarchical and those of a republican form of government, save that in the monarchical the people are subjects, helpless, powerless, bound to obey laws made by political superiors; while in the republican the people are citizens, individual sovereigns, all clothed with equal power to make and unmake both their laws and law-makers? The moment you deprive a person of his right to a voice in the government, you degrade him from the status of a citizen of the republic to that of a subject. It matters very little to him whether his monarch be an individual tyrant, as is the Czar of Russia, or a 15,000,000 headed monster, as here in the United States; he is a powerless subject, serf or slave; not in any sense a free and independent citizen.

It is urged that the use of the masculine pronouns he, his and him in all the constitutions and laws, is proof that only men were meant to be included in their provisions. If you insist on this version of the letter of the law, we shall insist that you be consistent and accept the other horn of the dilemma, which would compel you to exempt women from taxation for the support

of the government and from penalties for the violation of laws. There is no she or her or hers in the tax laws, and this is equally true of all the criminal laws.

Take for example the civil rights law which I am charged with having violated; not only are all the pronouns in it masculine, but everybody knows that it was intended expressly to hinder the rebel men from voting. It reads, "If any person shall knowingly vote with out his having a lawful right." It was precisely so with all the papers served on me-the United States marshal's warrant, the bail-bond, the petition for habeas corpus, the bill of indictment-not one of them had a feminine pronoun; but to make them applicable to me, the clerk of the court prefixed an "s" to the "he" and made "her" out of "his" and " him;" and I insist if government officials may thus manipulate the pronouns to tax, fine, imprison and hang women, it is their ty to thus change them in order to protect us in our right to vote.

So long as any classes of men were denied this right, the government made a show of consistency by exempting them from taxation. When a property qualification of \$250 was required of black men in New York, they were not compelled to pay taxes so long as they were content to report themselves worth less than that sum; but the moment the black man died and his property fell to his widow or daughter, the black woman's name was put on the assessor's list and she was compelled to pay taxes on this same property. This also is true of ministers in New York. So long as the minister lives, he is exempted from taxation on \$1,500-of property, but the moment the breath leaves his body, his widow's name goes on the assessor's list and she has to pay taxes on the \$1,500. So much for special legislation in favor of women!

In all the penalties and burdens of government (except the military) women are reckoned as citizens, equally with men. Also, in all the privileges and immunities, save those of the jury and the ballot-box, the foundation on which rest all the others. The United States government not only taxes, fines, imprisons and hangs women, but it allows them to pre-empt lands, register ships and take out passports and naturalization papers. Not only does the law permit single women and widows the right of naturalization, but Section 2 says, "A married woman may be naturalized without the concurrence of her husband;" (I wonder the fathers were not afraid of creating discord in the families of foreigners;) and again:

When an alien, having complied with the law and declared his intention to become a citizen, dies before he is actually naturalized, his widow and children shall be considered citizens, entitled to all rights and privileges as such, on taking the required oath.

If a foreign born woman by becoming a naturalized citizen is entitled to all the rights and privileges of citizenship, do not these include the ballot which would have belonged to her husband? If this is true of a naturalized woman, is it not equally true of one who is native born?

The question of the masculine pronouns-yes, and nouns too was settled by the United States Supreme Court, in the case of Silver versus Ladd, December, 1868. The court said:

In construing a benevolent statute of the government, made for the benefit of its own citizens, inviting and encouraging them to settle on its distant public lands, the words "single man" and "unmarried man" may, especially if aided by the context and other parts of the statute, be taken in a generic sense. Held, accordingly, that the Fourth Section of the Act of Congress, of September 27, 1850, granting by way of donation lands in Oregon Territory to every white settler or occupant, American half-breed Indians included, embraced within the term single man an unmarried woman.

Though the words persons, people, inhabitants, electors, citizens, are all used indiscriminately in the national and State constitutions there was always a conflict of opinion, prior to the war, as to whether they were synonymous terms, but whatever room there was for doubt, under the old regime, the adoption of the Fourteenth Amendment settled that question forever in its first sentence:

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.

The second settles the equal status of all citizens:

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, or deny to any person within its jurisdiction the equal protection of the laws.

The only question left to be settled now is: Are women persons? I scarcely believe any of our opponents will have the hardihood to say they are not. Being persons, then, women are citizens, and no State has a right to make any new law, or to enforce any old law, which shall abridge their privileges or immunities. Hence, every discrimination against women in the constitutions and laws of the several States is today null and void, precisely as is every one against negroes.

Is the right to vote one of the privileges or immunities of citizens? I think the disfranchised ex-rebels and ex-State prisoners all will agree that -it is not only one of them, but the one without which all the others are nothing. Seek first the kingdom of the ballot and all things else shall be added, is the political injunction

Webster, Worcester and Bouvier all define citizen to be a person, in the United States, entitled to vote and hold office. Prior to the adoption of the Thirteenth Amendment, by which slavery was forever abolished and black men transformed from property to persons, the judicial opinions of the country had always been in harmony with this definition: In order to be a citizen one must be a voter. Associate-Justice Washington, in defining the privileges and immunities of the citizen, more than fifty years ago, said: "They include all such privileges as are fundamental in their nature; and among them is the right to exercise the elective franchise, and to hold office." Even the Dred Scott decision, pronounced by the Abolitionists and Republicans: infamous because it virtually declared "black men had no rights white men were bound to

respect," gave this true and logical conclusion, that to be one of the people was to be a citizen and a voter.

Chief-Justice Daniels said:

There is not, it is believed, to be found in the theories of writers on government, or in any actual experiment heretofore made, an exposition of the term citizen which has not been considered as conferring the actual possession and enjoyment of an entire equality of privileges, civil and political.

Associate -Justice Taney said:

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.

Thus does Judge Taney's decision, which was so terrible a ban to the black man while he was a slave, now that he is a person and no longer property, pronounce him a citizen, possessed of entire equality of privileges, civil and political; and not only the black man, but the black woman, and all women. It was not until after the abolition of slavery, by which the negroes became free men and hence citizens, that any contrary opinion was rendered. U.S. Attorney-General Bates then said:

The Constitution uses the word "citizen" only to express the political quality, [not equality, mark.] of the individual in his relation to the nation; to declare that he is a member of the body politic, and bound to it by the reciprocal obligations of allegiance on the one side and protection on the other. The phrase, "a citizen of the United States," without addition or qualification, means neither more nor less than a member of the nation.

Then, to be a citizen of this republic is no more than to be a subject of an empire. You and I, and all true and patriotic citizens, must repudiate this base conclusion. We all know that American citizenship, without addition or qualification, means the possession of equal rights, civil and political. We all know that the crowning glory of every citizen of the United States is that he can either give or withhold his vote from every law and every legislator under the government.

Did "I am a Roman citizen" mean nothing more than that I am a "member" of the body politic of the republic of Rome, bound to it by the reciprocal obligations of allegiance on the one side and protection on the other? When you, young man, shall travel abroad, among the monarchies of the old world, and there proudly boast yourself an "American citizen," will you thereby declare yourself neither more nor less than a "member" of the American nation? This opinion of Attorney-General Bates, that a black citizen was not a voter, given merely to suit

the political exigency of the Republican party in that transition hour between emancipation and enfranchisement, was no less infamous, in spirit or purpose, than was the decision of Judge Taney, that a black man was not one of the people, rendered in the interest and at the behest of the old Democratic party in its darkest hour of subjection to the slave power. Nevertheless, all of the adverse arguments, congressional reports and judicial opinions, thus far, have been based on this purely partisan, timeserving decision of General Bates, that the normal condition of the citizen of the United States is that of disfranchisement; that only such classes of citizens as have had special legislative guarantee have a legal right to vote.

If this decision of Attorney-General Bates was infamous, as against black men, but yesterday plantation slaves, what shall we pronounce upon Judge Bingham, in the House of Representatives, and Carpenter, in the Senate of the United States, for citing it against the women of the entire nation, vast numbers of whom are the peers of those honorable gentlemen themselves in morals, intellect, culture, wealth, family, paying taxes on large estates, and contributing equally with them and their sex, in every direction, to the growth, prosperity and wellbeing of the republic? And what shall be said of the judicial opinions of Judges Cartter, Jameson, McKay and Sharswood, all based upon this aristocratic, monarchical idea of the right of one class to govern another?

I am proud to mention the names of the two United States judges who have given opinions honorable to our republican idea, and honorable to themselves—Judge Howe, of Wyoming Territory, and Judge Underwood, of Virginia. The former gave it as his opinion a year ago, when the legislature seemed likely to revoke the law enfranchising the women of that Territory that, in case they succeeded, the women would still possess the right to vote under the Fourteenth Amendment. The latter, in noticing the recent decision of Judge Cartter, of the Supreme Court of the District of Columbia, denying to women the right to vote under the Fourteenth and Fifteenth Amendment, says:

If the people of the United States, by amendment of their Constitution, could expunge, without any explanatory or assisting legislation, an adjective of five letters from all State and local constitutions, and thereby raise millions of our most ignorant fellow-citizens to all of the rights and privileges of electors, why should not the same people, by the same amendment, expunge an adjective of four letters from the same State and local constitutions, and thereby raise other millions of more educated and better informed citizens to equal rights and privileges, without explanatory or assisting legislation ?

If the fourteenth Amendment does not secure to all citizens the right to vote, for what purpose was that grand old charter of the fathers lumbered with its unwieldy proportions? The Republican party, and Judges Howard and Bingham, who drafted the document, pretended it was to do something for black men; and if that something were not to secure them in their right to vote and hold office, what could it have been? For by the Thirteenth Amendment black

men had become people, and hence were entitled to all the privileges and immunities of the government, precisely as were the women of the country and foreign men not naturalized. According to Associate-Justice Washington, they already had:

Protection of the government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject to such restraints as the government may justly prescribe for the general welfare of the whole; the right of a citizen of one State to pass through or to reside in any other State for the purpose of trade, agriculture, professional pursuit, or otherwise; to claim the benefit of the writ of habeas corpus, to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal and an exemption from higher taxes or impositions than are paid by the other citizens of the State.

Thus, you see, those newly-freed men were in possession of every possible right, privilege and immunity of the government, except that of suffrage, and hence needed no constitutional amendment for any other purpose. What right in this country has the Irishman the day after he receives his naturalization papers that he did not possess the day before, save the right to vote and hold office? The Chinamen now crowding our Pacific coast are in precisely the same position. What privilege or immunity has California or Oregon the right to deny them, save that of the ballot? Clearly, then, if the Fourteenth Amendment was not to secure to black men their right to vote it did nothing for them, since they possessed everything else before. But if it was intended to prohibit the States from denying or abridging their right to vote, then it did the same for all persons, white women included, born or naturalized in the United States; for the amendment does not say that all male persons of African descent, but that all persons are citizens.

The second section is simply a threat to punish the States by reducing their representation on the Boor of Congress, should they disfranchise any of their male citizens, and can not be construed into a sanction to disfranchise female citizens, nor does it in any wise weaken or invalidate the universal guarantee of the first section.

However much the doctors of the law may disagree as to whether people and citizens, in the original Constitution. were one and the same, or whether the privileges and immunities in the Fourteenth Amendment include the right of suffrage, the question of the citizen's right to vote is forever settled by the Fifteenth Amendment. "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." How can the State deny or abridge the right of the citizen, if the citizen does not possess it? There is no escape from the conclusion that to vote is the citizen's right, and the specifications of race, color or previous condition of servitude can in no way impair the force of that emphatic assertion that the citizen's right to vote shall not be denied or abridged.

The political strategy of the second section of the Fourteenth Amendment failing to coerce the rebel States into enfranchising their negroes, and the necessities of the Republican party

demanding their votes throughout the South to ensure the re-election of Grant in 1872, that party was compelled to place this positive prohibition of the Fifteenth Amendment upon the United States and all the States thereof.

If once we establish the false principle that United States citizenship does not carry with it the right to vote in every State in this Union, there is no end to the petty tricks and cunning devices which will be attempted to exclude one and another class of citizens from the right of suffrage. It will not always be the men combining to disfranchise all women; native born men combining to abridge the rights of all naturalized citizens, as in Rhode Island. It will not always be the rich and educated who may combine to cut off the poor and ignorant; but we may live to see the hard-working, uncultivated day laborers, foreign and native born, learning the power of the ballot and their vast majority of numbers, combine and amend State constitutions so as to disfranchise the Vanderbilts, the Stewarts, the Conklings and the Fentons. It is a poor rule that won't work more ways than one. Establish this precedent, admit the State's right to deny suffrage, and there is no limit to the confusion, discord and disruption that may await us. There is and can be but one safe principle of government—equal rights to all. Discrimination against any class on account of color, race, nativity, sex, property, culture, can but embitter and disaffect that class, and thereby endanger the safety of the whole people. Clearly, then, the national government not only must define the rights of citizens, but must stretch out its powerful hand and protect them in every State in this Union.

If, however, you will insist that the Fifteenth Amendment's emphatic interdiction against robbing United States citizens of their suffrage "on account of race, color or previous condition of servitude," is a recognition of the right of either the United States or any State to deprive them of the ballot for any or all other reasons, I will prove to you that the class of citizens for whom I now plead are, by all the principles of our government and many of the laws of the States, included under the term "previous condition of servitude."

Consider first married women and their legal status. What is servitude? "The condition of a slave." What is a slave? "A person who is robbed of the proceeds of his labor; a person who is subject to the will of another." By the laws of Georgia, South Carolina and all the States of the South, the negro had no right to the custody and control of his person. He belonged to his master. If he were disobedient, the master had the right to use correction. If the negro did not like the correction and ran away, the master had the right to use coercion to bring him back. By the laws of almost every State in this Union today, North as well as South, the married woman has no right to the custody and control of her person. The wife belongs to the husband; and if she refuse obedience he may use moderate correction, and if she do not like his moderate correction and leave his "bed and board," the husband may use moderate coercion to bring her back. The little word "moderate," you see, is the saving clause for the wife, and would doubtless be overstepped should her offended husband administer his correction with the "cat-o'-nine-tails," or accomplish his coercion with blood-hounds.

Again the slave had no right to the earnings of his hands, they belonged to his master; no right to the custody of his children, they belonged to his master; no right to sue or be sued, or to testify in the courts. If he committed a crime, it was the master who must sue or be sued. In many of the States there has been special legislation, giving married women the right to property inherited or received by bequest, or earned by the pursuit of any avocation outside the home; also giving them the right to sue and be sued in matters pertaining to such separate property; but not a single State of this Union has ever secured the wife in the enjoyment of her right to equal ownership of the joint earnings of the marriage copartnership. And since, in the nature of things, the vast majority of married women never earn a dollar by work outside their families, or inherit a dollar from their fathers, it follows that from the day of their marriage to the day of the death of their husbands not one of them ever has a dollar, except as it shall please her husband to let her have it.

In some of the States, also, laws have been passed giving to the mother a joint right with the father in the guardianship of the children. Twenty-five years ago, when our woman's rights movement commenced, by the laws of all the States the father had the sole custody and control of the children. No matter if he were a brutal, drunken libertine, he had the legal right, without the mother's consent, to apprentice her sons to rumsellers or her daughters to brothel-keepers. He even could will away an unborn child from the mother. In most of the States this law still prevails, and the mothers are utterly powerless.

I doubt if there is, today, a State in this Union where a married woman can sue or be sued for slander of character, and until recently there was not one where she could sue or be sued for injury of person. However damaging to the wife's reputation any slander may be, she is wholly powerless to institute legal proceedings against her accuser unless her husband shall join with her; and how often have we heard of the husband conspiring with some outside barbarian to blast the good name of his wife? A married woman can not testify in courts in cases of joint interest with her husband.

A good farmer's wife in Illinois, who had all the rights she wanted, had had made for herself a full set of false teeth. The dentist pronounced them an admirable fit, and the wife declared it gave her fits to wear them. The dentist sued the husband for his bill; his counsel brought the wife as witness; the judge ruled her off the stand, saying, "A married woman can not be a witness in matters of joint interest between herself and her husband." Think of it, ye good wives, the false teeth in your mouths area joint interest with your husbands, about which you are legally incompetent to speak! If a married woman is injured by accident, in nearly all of the States it is her husband who must sue, and it is to him that the damages will be awarded. In Massachusetts a married woman was severely injured by a defective sidewalk. Her husband sued the corporation and recovered \$13,000 damages, which belong to him absolutely, and whenever that unfortunate wife wishes a dollar of that money she must ask her husband for it; and if he be of a niggardly nature, she will hear him say, every time, "What have you done with the twenty-five cents I gave you yesterday?" Isn't such a position

humiliating enough to be called "servitude?" That husband sued and obtained damages for the loss of the services of his wife, precisely as he would have done had it been his ox, cow or horse; and exactly as the master, under the old regime, would have recovered for the services of his slave.

I submit the question, if the deprivation by law of the ownership of one's own person, wages, property, children, the denial of the right as an individual to sue and be sued and testify in the courts, is not a condition of servitude most bitter and absolute, even though under the sacred name of marriage? Does any lawyer doubt my statement of the legal status of married women? I will remind him of the fact that the common law of England prevails in every State but two in this Union, except where the legislature has enacted special laws annulling it. I am ashamed that not one of the States yet has blotted from its statute books the old law of marriage, which, summed up in the fewest words possible, is in effect "husband and wife are one, and that one the husband."

Thus may all married women and widows, by the laws of the several States, be technically included in the Fifteenth Amendment's specification of "condition of servitude." present or previous. The facts also prove that, by all the great fundamental principles of our free government, not only married women but the entire womanhood of the nation are in a "condition of servitude" as surely as were our Revolutionary fathers when they rebelled against King George. Women are taxed without representation, governed without their consent, tried, convicted and punished without a jury of their peers. Is all this tyranny any less humiliating and degrading to women under our democratic-republican government today than it was to men under their aristocratic, monarchical government one hundred years ago? There is not an utterance of John Adams, John Hancock or Patrick Henry, but finds a living response in the soul of every intelligent, patriotic woman of the nation. Show me a justice-loving woman property-holder, and I will show you one whose soul is fired with all the indignation of 1776 every time the tax-collector presents himself at her door. You will not find one such but feels her condition of servitude as galling as did James Otis when he said:

The very act of taxing exercised over those who are not represented appears to me to be depriving them of one of their most essential rights, and if continued seems to be in effect an entire disfranchisement of every civil right. For what one civil right is worth a rush after a man's property is subject to be taken from him at pleasure without his consent? If a man is not his own assessor in person, or by deputy, his liberty is gone, for he is wholly at the mercy of others.

What was the three-penny tax on tea or the paltry tax on paper and sugar to which our Revolutionary fathers were subjected, when compared with the taxation of the women of this republic? And again, to show that disfranchisement was precisely the slavery of which the fathers complained, allow me to cite Benjamin Franklin, who in those olden times was admitted to be good authority, not merely in domestic but also in political economy:

Every man of the commonalty, except infants, insane persons and criminals, is, of common right and the law of God, a freeman and entitled to the free enjoyment of liberty. That liberty or freedom consists in having an actual share in the appointment of those who are to frame the laws, and who are to be the guardians of every man's life, property and peace. For the all of one man is as dear to him as the all of another, and the poor man has an equal right, but more need, to have representatives in the legislature than the rich one. They who have no voice or vote in the electing of representatives do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives; for to be enslaved is to have governors whom other men have set over us, and to be subject to laws made by the representatives of others, without having had representatives of our own to give consent in our behalf.

Suppose I read it with the feminine gender:

Women who have no voice or vote in the electing of representatives do not enjoy liberty, but are absolutely enslaved to men who have votes and to their representatives; for to be enslaved is to have governors whom men have set over us, and to be subject to the laws made by the representatives of men, without having representatives of our own to give consent in our behalf.

And yet one more authority, that of Thomas Paine, than whom not one of the Revolutionary patriots more ably vindicated the principles upon which our government is founded:

The right of voting for representatives is the primary right by which other rights are protected. To take away this right is to reduce man to a state of slavery; for slavery consists in being subject to the will of another; and he that has not a vote in the election of representatives is in this case. The proposal, therefore, to disfranchise any class of men is as criminal as the proposal to take away property.

Is anything further needed to prove woman's condition of servitude sufficient to entitle her to the guarantees of the Fifteenth Amendment? Is there a man who will not agree with me that to talk of freedom without the ballot is mockery to the women of this republic, precisely as New England's orator, Wendell Phillips, at the close of the late war declared it to be to the newly emancipated black man? I admit that, prior to the rebellion, by common consent, the right to enslave, as well as to disfranchise both native and foreign born persons, was conceded to the States. But the one grand principle settled by the war and the reconstruction legislation, is the supremacy of the national government to protect the citizens of the United States in their right to freedom and the elective franchise, against any and every interference on the part of the several States; and again and again have the American people asserted the triumph of this principle by their overwhelming majorities for Lincoln and Grant.

The one issue of the last two presidential elections was whether the Fourteenth and Fifteenth Amendments should be considered the irrevocable will of the people; and the decision was that they should be, and that it is not only the right, but the duty of the national

government to protect all United States citizens in the full enjoyment and free exercise of their privileges and immunities against the attempt of any State to deny or abridge. In this conclusion Republicans and Democrats alike agree. Senator Frelinghuysen said: "The heresy of State rights has been completely buried in these amendments, and as amended, the Constitution confers not only National but State citizenship upon all persons born or naturalized within our limits."

The call for the National Republican Convention of 1872 said: "Equal suffrage has been engrafted on the National Constitution; the privileges and immunities of American citizenship have become a part of the organic law." The National Republican platform said: "Complete liberty and exact equality in the enjoyment of all civil, political and public rights, should be established and maintained throughout the Union by efficient and appropriate State and Federal legislation." If that means anything it is that Congress should pass a law to protect women in their equal political rights, and that the States should enact laws making it the duty of inspectors of elections to receive the votes of women on precisely the same conditions as they do those of men.

Judge Stanley Matthews, a substantial Ohio Democrat, in his preliminary speech at the Cincinnati Liberal Convention, said most emphatically: "The constitutional amendments have established the political equality of all citizens before the law."

President Grant, in his message to Congress, March 30, 1870, on the adoption of the Fifteenth Amendment, said, "A measure which makes at once four millions of people voters, is indeed measure of greater importance than any act of the kind from the foundation of the government to the present time." How could four million negroes be made voters if two million out of the four were women? The California Republican platform of 1872 said:

Among the many practical and substantial triumphs of the principles achieved by the Republican party during the past twelve years, it enumerates with pride and pleasure the prohibiting of any State from abridging the privileges of any citizen of the republic, the declaring the civil and political equality of every citizen, and the establishing all these principles in the Federal Constitution, by amendments thereto, as the permanent law.

Benjamin F. Butler, in a recent letter to me, said: "I do not believe anybody in Congress doubts that the Constitution authorizes the right of women to vote, precisely as it authorizes trial by jury and many other like rights guaranteed to citizens." It is upon this just interpretation of the United States Constitution that our National Woman Suffrage Association, which celebrates the twenty-fifth anniversary of the woman's rights movement next May in New York City, has based all its arguments and action since the passage of these amendments. We no longer petition legislature or Congress to give us the right to vote, but appeal to women everywhere to exercise their too long neglected "citizen's right." We appeal to the inspectors of election to receive the votes of all United States citizens, as it is their duty to do. We appeal to United States commissioners and marshals to arrest, as is their duty, the inspectors who reject the votes of United States citizens, and leave alone those who perform their duties and accept

these votes. We ask the juries to return verdicts of "not guilty" in the cases of law-abiding United States citizens who cast their votes, and inspectors of election who receive and count them.

We ask the judges to render unprejudiced opinions of the law, and where ever there is room for doubt to give the benefit to the side of liberty and equal rights for women, remembering that, as Sumner says, "The true rule of interpretation under our National Constitution, especially since its amendments, is that anything for human rights is constitutional, everything against human rights unconstitutional." It is on this line that we propose to fight our battle for the ballot-peaceably but nevertheless persistently until we achieve complete triumph and all United States citizens, men and women alike, are recognized as equals in the government.

Portions of this speech was delivered in 1873, after Anthony was arrested, tried and fined \$100 for voting in the 1872 presidential election. Completed on January 23, 1880, this address, in its entirety, was delivered before the Senate Select Committee on Woman Suffrage in 1884.

Source: History's Greatest Speeches, Dover Thrift Edition, Edited by James Daley 2013