

Chapter 2

The Social Contract – Community, Society, and Government**§ 1. The Role of the Social Contract**

Chapter 1 introduced the Social Contract. This treatise claims for it no less a role than this: It is the absolute standard against which every government and every law is to be judged to determine whether or not that government has the right to govern or that law is just or unjust. Here by the word "absolute" is meant "being valid in every respect and without restriction." The standard gauge for evaluation is whether or not that which is judged relative to the Social Contract fulfills or fails to fulfill the terms of the Contract. If it does, it is both *right* and *just*. If it does not, it is unrighteous and unjust. In the former case, the citizen-party to the Social Contract is bound to accept certain things as *duties* under his acceptance of the terms of the Social Contract. In the latter case, the Social Contract is broken. The citizen has neither a duty nor an obligation to follow an unrighteous decree of government or obey an unjust law. Government become chronically unrighteous or law systematically unjust dissolves the association and citizens regain their previously alienated *natural rights* to take whatever steps they deem appropriate and prudent for preserving themselves in their individual freedom.

They also thereby sacrifice the *civil* right to call upon any protection or privilege of law of the former corporation of citizens, of which the former citizens are no longer associates, but are free to join in a new association and form a new body politic. That act is called *rebellion* and the relationship between the rebel and his/her former government and its associates is called the *outlaw* relationship. It should be noted that the outlaw relationship is *mutual*; both parties are equally outlaw with respect to one another. It should be further noted that rebellion is a *natural right* but one that is *alienated* by a citizen so long as the Social Contract to which he/she has consented remains unbroken by the government of the body politic.

To assert that the right to rebel is a natural right is undoubtedly an assertion many people, long accustomed to the privileges and advantages an organized political state offers its citizens, may find shocking or even absurd. People who hold positions in government will, for the most part, doubtlessly be pre-inclined to passionately reject such an assertion. Yet this right is claimed and codified in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to 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. Prudence, indeed, will

dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind is more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such a government, and to provide new guards for their future security.

We have already spoken of the three species of despotism, namely: of the tyrant, of the oligarchy, and of the democracy. The despotisms arise when one, a few, or many members of the body politic pervert the purpose of government and the laws to the service of self-interest, ideology, or beliefs of one group against the self-interest, ideology, or beliefs of another. Factions – political parties and special interest groups – are the breeding grounds of despotism.

The terms *that must be met* by the Social Contract, if it is to stand inviolate, are strict. The body politic must be

"a form of association which will defend and protect with the whole common force the persons and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before."

The purpose, task, and duty of every *rightful* government is, first and foremost, to insure the body politic remains faithful and true to this fundamental condition of the association. It is, of course, the decision and the prerogative of the citizens of that body to define and prescribe *in the original act of the association* the specific and general *civil liberties* for which each citizen voluntarily foregoes his natural rights. It is the definition and prescription of the *formula* of these political rights, and the means of their insurance, that become the lawful objectives of government and the *constitution* of the body politic. Upon granting his/her *personal assent* to this formula of rights, which codifies the *first principles* of the *general will* of the body politic, the citizen

"puts his person and all his power in common under the supreme direction of the general will and, in our corporate capacity, we receive each member as an indivisible part of the whole."

The consequence of the people joining in this act of association is the alienation of certain natural rights and

"in place of the individual personality of each contracting party, this act of association creates a moral and collective body composed of as many members as the assembly contains voters, and receiving from this act its unity, its common identity, its life, and its will."

The "public person" so formed is what is given the name "the body politic" and, when the *sovereignty* of the body politic is held by its citizens and instituted by means of direct and indirect representatives entrusted and charged with *the service of the general will*, it is called a *republic*.

This is the moral foundation and basis for all political rights and for the rule of law. What we must now ask is whether or not it is possible for such a theoretical and abstract idea as a republic to be in

fact and as well a *practical* idea, for if the theoretical idea cannot be put into practice then it is an idea insubstantial and useless, and the concepts of political rights and just laws are vain and empty. Government becomes rule by coercion and force, and laws become decrees of a reigning despotism. If despotic government takes on the trappings of a democracy, it is nonetheless still the rule of the stronger over the weaker. But *might* never creates *right*. Rousseau wrote,

The strongest is never strong enough to always be the master unless he transforms strength into right, and obedience into duty. Hence the right of the strongest, which, though to all seeming meant ironically, is really laid down as a fundamental principle. But are we never to have an explanation of this phrase? Force is a physical power, and I fail to see what moral effect it can have. To yield to force is an act of necessity, not of will – at most, an act of prudence. In what sense can it be a duty?

Suppose for a moment this so-called "*right*" exists. I maintain that the sole result is a mass of inexplicable nonsense. For, if force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate; and, the strongest always being in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails? If we must obey perforce, there is no need to obey because we ought; and if we are not forced to obey, we are under no obligation to do so. Clearly, the word "*right*" adds nothing to force; in this connection, it means absolutely nothing.

If association in a body politic is not practical then there are no rights other than natural rights, no laws that are just, and *justice* is an empty word devoid of all meaning. There can be no such thing as a crime because ***a crime is a deed intentionally contrary to duty***, but natural rights confer no civic duties. Nor does any person possess a natural right to *impose* duty or obligation upon another person because all obligation is free personal commitment. All this is nothing else than life in what is generally called *the state of nature*, where every person must constantly be on guard against the threats posed by every other person. Living is then nothing else than an on-going struggle for survival.

We must, therefore, inquire: is the abstraction called the body politic realizable in practice? and, if so, what are its essential characteristics? That the body politic *is* practical may seem self-evident; the existence of human civilization would by itself seem to settle that question. However, here one must be reminded that the great majority of all human civilizations that have ever existed on earth have been absolute despotisms ruled through force, violence, and bloody slaughter. The subjugated peoples have not been part of the body politic and their condition in relationship to their masters is called slavery. The association of the masters might well be called a body politic of a ruling class, but the nation of subjects in these cases quite clearly cannot be called a body politic. And so we see from the example of the history of civilizations that the fundamental subject of our inquiry in this chapter is addressed and aimed at a more refined question: is a body politic with liberty and justice *for all members of the nation* practical and, therefore, possible? This is a rather more difficult, but also more crucial, question and its answer defines the conditions under which any state may lay claim to the honorable and moral

title of *free country*.

§ 2. Community and Society

With the exception of professional philosophers, each of us presupposes that we know the meaning of such words as "a community" or "a society." Fewer of us likewise understand that both these words are used in more than one way to mean more than one thing that varies by the context of its use. Often these multiple meanings are *homonymous* – that is, the word is used in different ways to mean different things. That this is manifestly true in the English language is proved by simple recourse to a dictionary¹. There we find for "community":

community [L. *communitates*, a community, fellowship, from *communis*, common.]

1. common possession or enjoyment; as, a *community* of goods.
2. a society of people having common rights and privileges, or common interests, civil, political, or ecclesiastical, or living under the same laws and regulations; as, a *community* of farmers.
3. society at large; the public, or people in general; in this sense used with the definite article; as, the good of the *community*.
4. common character; similarity; likeness.
5. commonness, frequency. [Obs.]
6. the people living in the same district, city, etc. under the same laws.
7. the district, city, etc. where they live.
8. a group of animals or plants living together in the same environment.

As is clearly evident, the word community has many distinct and context-dependent meanings. Some of the differences are subtle, some not in the least subtle. When a political writer refers to a community he or she most often means definition (2), (3), (6), or (7). In definitions (2) and (3) we see "community" used as a synonym for "society"; it will not be surprising later when we see "society" used as a synonym for "community." Such a situation produces a circular definition, which reveals that what we have is not a definition at all, but rather is a *usage* of the word.

There is an inherent ambiguity, not merely in this word but in many words in the English language, that opens the door to sophisms and propaganda in political discourse. English, of course, is not alone in this vague quality of language. It is an old trick to use a word, taken out of one context, in a different context in order to stir the passions of the listeners, and then to exploit this passion to sway opinion. Indeed, in *Rhetoric* Aristotle lectured on this as a tactic of a skilled orator. Cicero raised it to a true art form², one still practiced by politicians and lawyers to this day.

When it is one's intent to teach and inform rather than sway and persuade, ambiguity in the use of important words and terms is intolerable. In this treatise this is the case when it comes to ambiguity in what is to be understood by the terms community and society. The dictionary definitions of the word

¹ In this treatise, all dictionary references are drawn from *Webster's New Twentieth Century Dictionary*, unabridged, 2nd edition, Cleveland and New York: The World Publishing Company, 1962.

² One of Cicero's cute little word-play sophisms, directed at an unappreciative Caesar Octavianus, got him killed.

society are:

society [Fr. *société*; L. *societas*, from *socius*, a companion.]

1. partnership; participation; connection. [Obs.]
2. a group of animals or plants living together under the same environment and regarded as constituting a homogeneous unit or entity; especially a group of humans regarded as forming a single community.
3. all people, collectively, regarded as constituting a community of related, interdependent individuals.
4. the system or condition of living together as a community; as, a primitive *society*.
5. company or companionship; as, I do not seek his *society*.
6. one's friends or associates.
7. any organized group of people joined together because of some interest in common.
8. the members of the wealthy, fashionable class.
9. the conduct, standards, activities, etc. of this class.

Before we can employ either the term community or the term society in the contexts of the Social Contract and the possibility of the body politic, we will need to establish our meaning conventions for both terms.

§2.1 The Political Community

"Every state is a community of some kind," wrote Aristotle, and the obvious follow up question is: what kind? We may without prejudice to later consequences say of a state or a nation that it is a **political community** if we understand the adjective "political" to mean "of or concerned with or in relationship to government and the state." A small amount of reflection will show that none of the eight previous definitions of community adequately serve for the concept of a political community. This is because exceptions can be too easily found among existing nations or historical examples that render each of these definitions inapplicable in their case. However, we may arrive at a suitable definition for the term political community if we make a synthesis of definitions (3), (4) and (6) above and define it as *the aggregate of all people who are, in their daily lives, jointly subject to the same governmental authority*.

This definition has the advantage of commonness, which is the root concept in the origin of our word community, since (1) it covers and unites in one the various opposites, e.g.: the willing subject and the unwillingly subjected; the geographically concentrated and the geographically dispersed; the citizen and the non-citizen; the ethnically identical and the ethnically diverse; etc.; and (2) it clearly identifies the common factor by which the aggregate of people minimally share one common attribute. It is as applicable to the United States or the Russian Federation as to a band of Kalahari Bushmen; it is indifferent to whatever name might be placed upon the governmental authority, be it monarch or tribal council; it is as applicable to Prussia or Sparta as to Costa Rica; it serves equally well for Rousseau's "political society" or Plato's *politeía* ("body politic").

In all nations diversities of opposites are found and, because the interactions between such divided groups cannot be ignored in assessing and understanding the character of government (indeed, these opposites often shape the manners and practices of a government or are a source of civil strife), our definition of the political community must be so generally inclusive. It is at once evident that this definition also sets up related characterizations of the political community in terms of popular subsets within the overall aggregate. Because these subsets themselves form identifiable units with characteristics of their own and their members act in concert in political matters, the overall character of the political community cannot be analyzed merely in terms of individual actions but must also take into account the more or less correlated actions of the group dynamics of the smaller political entities within it. For example, both Rousseau and Aristotle agree – for differing reasons and with differing sets of prejudicial presuppositions – that the model of a natural community is the family. By this term, both men mean a group consisting minimally of one father, one mother, and one or more children. We have already seen, in chapter 1, what Rousseau had to say in this regard. Aristotle wrote,

[The] first thing to arise is the family . . . The family is the association established by nature for the supply of men's everyday wants, and the members of it are called by Charondas, "companions of the cupboard," and by Epimenides the Cretan, "companions of the manger." But when several families are united, and the association aims at something more than the supply of the daily needs, the first society to be formed is the village. And the most natural form of the village appears to be that of a colony from the family, comprised of the children and grandchildren, who are said to be "suckled with the same milk."

There is no doubt that for the overwhelming majority of people the closest association in their lives is that of their own family – extending backward in time one or two generations, laterally in time with brothers, sisters, and cousins, and forward in time in the next one, two, or three generations. There is likewise no doubt that for the overwhelming majority of people political matters touching upon or affecting their own families are the most sensitive of all political matters, and the point where political actions ill-considered most easily shred the Social Contract by motivating the withdrawal of one's willing consent to continue in the association. Popular sensitivity to matters touching upon family, understood in this most-popular and traditional sense, is grist for the propaganda mill of present day demagogues in America, whose sophisms are aimed at setting in the minds of the voters the absurdly false impression that only the demagogue's faction "cares about the family" – as if their opponents and those they vilify had been hatched from crocodile eggs. But the lifelong bachelor or spinster, the orphan, and those whose affiliations run counter to the most popular familial form are equally American citizens, and so this demagoguery is destructive of the Union and despotic in base character.

Familial associations are by no means the only type of subset within the political community. Another important identifiable set of diverse groups is delineated by religion, and political matters touching upon matters of religion are scarcely less volatile, nor less subject to despotic demagoguery,

than are matters touching upon family. The white-hot passions and violent aggressions bestirred when one religious group attempts to force its doctrines upon the others, by codifying them into laws, is even more destructive to the Union because this form of despotism by a faction impacts a greater portion of the political community all in the same moment than the despotism of state-sanctioned familial models and prejudices. A third important set of diverse groups is delineated by race; closely related is a fourth set delineated by ethnicity. Gender provides a fifth subgroup, economic condition a sixth. Accidents of geography, such as when a person lives in Peoria or in Potlatch, make up a seventh, and so it goes on and on. Every point of diversity within the political community can be, and often is, a target for demagogues, and in every case successful demagoguery – that is, demagoguery that succeeds in having its interests codified into laws – is counter to the core principle of liberty with justice for all and is, in every single case, a triumph for injustice, a violation of civil liberty, and a deep knife wound inflicted in the body politic.

Furthermore, every individual member of the political community is likewise a member of more than one of the identifiable subgroups. Therefore it is patently absurd to suppose that political matters apparently touching immediately and directly only upon matters characterized as familial, religious, racial, ethnic, gender, economic, or etc. are separable and independent matters. Political matters touching upon one have a way of quickly diffusing into the others with consequences unsought and unprepared for by lawgivers. It was never more truly said than that politics makes strange bedfellows. Not every subgroup within the political community is a body politic; the child does not choose its parents, the person born into poverty did not choose to be born poor, no person chooses his race or his ethnic inheritance. And yet government of the American Republic, to be true to our founding principles, is charged with forging from an inhomogeneous aggregate of intersecting and diverse sub-communities a *single* political community that is not only a body politic but a *republic*, and this is what is justly meant by the noble motto *E Pluribus Unum* – "Out of many, one."

If a people would be governed for the purpose of preserving and protecting liberty with justice for themselves, they are equally bound to see to its preservation and protection for others because even if one belongs to one majority group, considered narrowly along the lines of one subset within the political community, one is no less a member of other groups as well and all are equally vulnerable to having the devil of despotism by faction turn and assault us in one or more of our minorities. When this devil thus rounds upon us, where then can one hide or from whom seek protection and strength if not from the political community as a whole? Lawmaking, therefore, is an activity always fraught with the utmost dangers to liberty with justice for all, and the truth of this wisdom is the seed point of Thoreau's famous motto, *That government is best which governs least*, to which must be added, *and only for the general need of the political community as a whole*. There is no greater nor more fatal

infection of the body politic of the American Republic than a virulent single-issue activist-demagogue whose ideology recognizes only his own subsets within the political community to which he belongs. He is naught but a petty Benedict Arnold of our day, and he is found in every era.

§2.2 The Political Society

Now that we have seen the inhomogeneous makeup of the political community called a nation, we must broaden our perspective and consider what we are to properly mean by the term **political society**. Here the definitional task is more difficult than it was for the political community. The dictionary definitions for society given previously do not provide the seeds for making a synthesis of definition, as they did for the political community, unless what we should wish to end up with is merely another synonym for political community. There is no good reason to desire such a repetitious synonym.

Yet there lies within the inhomogeneous character of the political community an aspect that serves us well as a clue for deducing a proper definition for the political society. Not every political community is a body politic – and fewer still are genuine republics in the context of the Social Contract – but if a political community is a body politic, it is a useful metaphor to regard it as a corporate abstract individual, not as a person but as a People. Furthermore, no political community exists in isolation in the world. Every nation is one among many, and a political community that is also a body politic weighs its own corporate interests in relationship to what it can broadly regard as the corporate interests of at least the governments of other political communities. Thus by means of an analogy we can define a political society as **an aggregation of political communities interacting with one another and similar enough in the cultural aspects of the various sub-communities within each to be usefully regarded as constituting individual instantiations of a common *political species***. What specific cultural aspects we choose to identify as those that ground the species classification need not concern us in detail in this treatise, and can be left as a scholarly topic for study in political science, provided we can be assured here that such cultural aspects do in fact exist to be found. But here the existence of such aspects is easily discerned if we recognize that there are certain cultural *planes* – e.g. economic, religious, and governmental – that share enough measurable features to serve as identifying marks of a political society.

Like the identifiable aspects from which we are able to draw out properties of sub-communities within the political community, these cultural planes serve to differentiate the abstract corporations of each political community within a political society to a sufficient degree, while at the same time providing a common enough basis of comparison to make possible differentiations of other species of political societies. Furthermore, this argument of analogy has more weight than mere convenience or caprice for purposes of classification. It enjoys a second and, at first brush unapparent, advantage of

being conformable with the better understanding of human nature on the basis of lessons from history.

This latter conformability can be credited to the scholarship of British historian Arnold Toynbee. In his most famous work, *A Study of History*, Toynbee wrote,

Historians generally illustrate rather than correct the ideas of the communities within which they live and work, and the development in the last few centuries, and more particularly in the last few generations, of the would-be self-sufficient national sovereign state has led historians to choose nations as the normal fields of historical study. But no single nation or national state of Europe can show a history which is in itself self-explanatory. . .

Is English history, then, intelligible when taken by itself? Can we abstract an internal history of England from her external relations? If we can, shall we find that these residual external relations are of secondary importance? And in analyzing these, again, shall we find that the foreign influences upon England are slight in comparison with the English influences upon other parts of the world? . . . The best way to approach these questions is to direct our thoughts backwards over the course of English history and recall the principal chapters. . .

This glance backwards from the present day over the general course of English history would appear to show that the farther back we look the less evidence we find of self-sufficiency or isolation. . .

Our brief examination of English history, though its result has been negative, has given us a clue. The chapters which caught our eye in our glance backward over the course of English history were real chapters in some story or other, but that story was the history of some society of which Great Britain was only a part, and the experiences were experiences in which other nations besides Great Britain were participants. The 'intelligible field of study' in fact appears to be a society containing a number of communities of the species represented by Great Britain – not only Britain herself but also France and Spain, the Netherlands, the Scandinavian countries and so on – and the passage quoted from Acton³ indicates the relation between these parts and that whole.

The forces in action are not national but proceed from wider causes, which operate upon each of the parts and are not intelligible in their partial operations unless a comprehensive view is taken of their operations throughout the society. Different parts are differently affected by an identical general cause, because they can react, and each contribute, in a different way to the forces which that same cause sets in motion. A society, we may say, is confronted in the course of its life by a succession of problems which each member has to solve for itself as best it may. The presentation of each problem is a challenge to undergo an ordeal, and through this series of ordeals the members of a society progressively differentiate themselves from one another.

Toynbee's "society" and our "political society" can be well enough regarded, to at least an adequate first approximation, as synonyms. Toynbee further found, and presented convincing supporting arguments for his thesis, that every distinguishable political society arose from some common earlier "universal state" that no longer existed but which at one time was itself an identifiable society among others of an earlier age. That state, in its turn, had arisen from an even earlier "universal state" in a chain stretching as far back as the historical record permitted scientific investigation. The discovery of this common historical scheme provides a basis for a systematic and scientific study of history. By accepting this definition for political society, and then recognizing the interrelationships of political

³ "General history naturally depends on the action of forces which are not national but proceed from wider causes." – Lord Acton.

communities within such a society, we likewise can forge a scientific link between the scientific study of history and a more truly scientific study of political science to the benefit of both. This provides for us a holistic approach to better understanding the difficult problems of government, an approach that holds out the promise of a greater potential for effecting our own efforts to perfect real government in accordance with the Idea of the American Republic.

Altogether, Toynbee recognized five political societies in existence in 1946. He named these: Western Christendom; the Orthodox Christian Society; the Islamic Society; the Hindu Society; and the Far-East Society. He refined this list by dividing the Orthodox Christian Society into two parts, the Orthodox Byzantine and Orthodox-Russian Societies, and he divided the Far-East Society into Chinese Society and Korean-Japanese Society. Extending his analysis backward into more remote times, he eventually classified a total of twenty-one political societies in the historical record. In addition to the seven just named, he called his other identified societies by the following names: the Hellenic; Iranic; Arabic; Syriac; Indic; Sinic; Minoan; Sumeric; Hittite; Babylonian; Egyptian; Andean; Mexic; Yucatec; and Mayan societies. He noted that the Iranic and Arabic societies had merged into one, namely the Islamic Society, and this is why he eventually settled on twenty-one recognized societies in the historical record. Historians and anthropologists can debate the adequacy or correctness of Toynbee's classification; for the purposes of this treatise, the raw idea is sufficient.

It is also noteworthy – and necessary for explaining the conspicuous absence of southern Africa in his list – to point out that Toynbee's twenty-one societies were gathered together as members of one general species under a higher genus. He called this general species "civilizations"; the other member he called "primitive societies." A man of his own time and culture, Toynbee did not discuss what his explicit determiner of the difference between civilization and primitive society might be, although he probably went along with the typical differentiators, such as advanced art and science, architectural achievements, and the development of systems of writing. It would be interesting to consider how the Toynbee classification might change if elements of military history – e.g., the semi-oxymoronic concept of "civilized warfare" – were introduced as a differentiator since that would draw closer attention to, for example, the Zulu Empire under Chaka.

One of Toynbee's principal findings – and one that is of direct relevance to the fate of every political community – involves the fall and destruction of the antecedent society and the genesis of new states that succeed it in the historical record. *Civilizations*, Toynbee famously wrote, *fall from within rather than from without*. In the dying stages of a political union there emerges a disaffected element of the population "which in some way is *in* but not *of* any given society." Toynbee calls this element a **proletariat**. He found in every case for which adequate historical records exist that the fall of a civilization progresses through a challenge to that society in which

the principal and essential challenge was a human challenge arising out of their relationship to the society to which they were affiliated. This challenge is implicit in the relation itself, which begins with a differentiation and culminates in a secession. The differentiation takes place within the body of the antecedent civilization, when that civilization begins to lose its creative power through which, in its period of growth, it had at one time inspired a voluntary allegiance in the hearts of the people below its surface or beyond its borders. When this happens, the ailing civilization pays the penalty for its failing vitality by being disintegrated into a dominant minority, which rules with increasing oppressiveness but no longer leads, and a proletariat (internal and external) which responds to this challenge by becoming conscious that it has a soul of its own and by making up its mind to save its soul alive. The dominant minority's will to repress evokes in the proletariat a will to secede; and a conflict between these two wills continues while the declining civilization verges towards its fall, until, when it is *in articulo mortis*⁴, the proletariat at length breaks free from what was once its spiritual home but has now become a prison-house and finally a City of Destruction.

Put into terms of the Social Contract, the historical phenomenon Toynbee describes is the secession of members of the body politic as a consequence of oppression by a dominant minority that has progressively infringed upon precisely those things the members of this Toynbee proletariat sought to safeguard in their original agreement to join the body politic in the first place. They have suffered at the hands of rulership and injustice, been *de facto* subjugated by force wielded by others, and when the moment arrived when the rotting old political community could be brought down, they struck. For a body politic, destruction of the Social Contract's *universal* provision can lead to only two possible ends: either genocide of the disaffected or outright destruction of the body politic itself. Ignorant of the lessons of history, the majority of Americans take it for granted that the only deadly threats to our Union are external threats; this simply is not true. If our Union fails, it will fail from within. A bloody Balkanization of our Union has already happened once before; we call it the Civil War. Those who think it is impossible for such a thing to happen again live in the ignorant bliss of a fool's paradise.

§ 3. Our Inherited Imperfections

There has never been a time from the founding of the American Republic when the Ideal of America has been fully realized. Throughout most of our history, there has been a more or less steady advance toward the Ideal, peppered with retreats and setbacks. We are not perfect now, nor have we ever been perfect in the realization of the American Ideal. That fact, in isolation, is irrelevant. The Founding Fathers knew we were not perfect in our beginning and knew that progress toward the Ideal would be long, hard, contentious, and at times marked by strife. Thomas Jefferson wrote,

We are not to expect to be translated from despotism to liberty in a featherbed.

On another occasion he wrote,

I hold it, that a little rebellion, now and then, is a good thing, and as necessary in the political

⁴ "at the point of death"

world as storms in the physical.

There is and has always been an ingredient of *political* moral fiber all American citizens are called upon to cultivate and that is expected to be practiced in *deeds* by every person for whom *patriotism* is more than an empty word. Henry David Thoreau wrote,

I think that we should be men first and subjects afterward. It is not desirable to cultivate a respect for the law so much as for the right.

The duties of a citizen call for more than mere activism. They call for *educated* activism, always with a clear vision of the Ideal of liberty with justice *for all* before one's eyes and with passions and goals regulated and tempered to that end. Thoreau also wrote,

There are a thousand hacking at the branches of evil to one who is striking at the root.

If we would have in our Union liberty with justice for all, we should well know that want of political moral fiber and commitment dooms the enterprise and, with it, the civil liberty of each person. In *Representative Government* John Stuart Mill wrote,

But there are also cases in which, though not averse to a form of government – possibly even desiring it – a people may be unwilling or unable to fulfill its conditions. They may be incapable of fulfilling such of them as are necessary to keep the government even in nominal existence. Thus, a people may prefer a free government, but if, from indolence, or carelessness, or cowardice, or want of public spirit, they are unequal to the exertions necessary for preserving it; if they will not fight for it when it is directly attacked; if they can be deluded by the artifices used to cheat them out of it; if by momentary discouragement, or temporary panic, or a fit of enthusiasm for an individual, they can be induced to lay their liberties at the feet of even a great man, or trust him with powers which enable him to subvert their institutions; in all these cases they are more or less unfit for liberty; and though it may be for their good to have had it for even a short time, they are unlikely to long enjoy it.

Neither civil liberty nor justice is a natural right, and much less a natural entitlement. It is rather a political expectation universally shared. Government in a republic is neither a game nor a vocation for politicians and lawyers. Let us introspect Lincoln's words at Gettysburg:

It is for us, the living, rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.

If you are an American citizen dedicated to the American Ideal, then know that "government *by* the people" is not an empty phrase but an earnest calling. The government of America is not something alien to your own person; the civil liberty we all contract for comes with a required payment in the form of *civic duty* to be part of government even if you hold no office and *even more especially* if you wish to hold no office.

But if patriotic activism in government is a civic duty, it is one that cannot be well practiced without understanding the imperfections our evolution as a nation is tasked to address in pursuit of the Ideal of liberty with justice for all. Thus, we now outline some of the inherited imperfections with which our forebears had to deal and with which we ourselves face the task of dealing today.

§ 3.1 The Restriction of Suffrage

The word suffrage comes down to us from the Roman republic. The Latin verb *suffragor* meant "to vote in favor." From this came the noun *suffragium*, a vote. In time the word came to have two connotations, the first being the right to vote, the second being approval or support. A *suffragator* was a political supporter. But where we have two distinguishable connotations of the same word and these connotations are not manifestly equivalent, it is good to have two terms in order to keep them separate. Let us term the first *active suffrage* and the latter *passive suffrage*.

In and of itself suffrage neither implies nor grants sovereignty. The word sovereignty means the state or quality of being supreme in power or authority. In the story of civilization "the sovereign" at first meant a single person: a monarch, supreme ruler, king, or absolute dictator. But even the most absolute of absolute rulers could never obtain or keep his sovereignty, not to mention his life, without the aid and support of allies whose on-going approval – called "loyalty" – he could gain and keep. Sargon the Great held power by the might of the army he led. That his underlings *approved* his reign and made it possible by their *willingness* to obey him is passive suffrage because in it is no explicit act of voting but merely the implicit acts of willing obedience and submission, which is "followership."

This was the original and earliest form of suffrage in the story of civilization, but likely not the first in the story of humankind if examples provided by primitive societies in existence today are reliable models for prehistoric societies flourishing before the invention of civilization. Thomas Paine wrote in the opening of *Common Sense*,

In order to gain a clear and just idea of the design and end of government, let us suppose a small number of persons settled in some sequestered part of the earth, unconnected with the rest; they will then represent the first peopling of any country, or of the world. In this state of natural liberty, society will be their first thought. A thousand motives will excite them thereto; the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude, that he is soon obliged to seek assistance and relief of another, who in his turn requires the same. Four or five united would be able to raise a tolerable dwelling in the midst of a wilderness, but *one* man might labor out the common period of life without accomplishing anything . . .

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

Some convenient tree will afford them a State-House, under the branches of which the whole colony may assemble to deliberate on public matters. It is more than probable that their first laws will have the title only of REGULATIONS, and be enforced by no other penalty than public disesteem. In this first parliament every man, by natural right, will have a seat.

But as the colony increases, the public concerns will increase likewise, and the distance at which the members may be separated will render it too inconvenient for all of them to meet on every occasion as at first . . . This will point out the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake as which those who appointed them, and who will act in the same manner as the whole body would act if they were present. . .

Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of moral virtue to govern the world; here, too, is the design and end of government, viz. freedom and security.

It is only a theory, though not an improbable one, that civilizations came into being simultaneously with the invention of armies. The first and best clue of this is simply the fact that no civilization in the historical record has ever been found that did not have an army. In denouncing the idea of hereditary monarchy, Paine wrote,

[As] no man at first could possess any other public honors than were bestowed upon him, so the givers of those honors could have no power to give away the right of posterity, and although they might say, "We choose you for *our* head," they could not, without manifest injustice to their children, say 'that your children and your children's children shall reign over *ours* forever' . . .

This is supposing the present race of kings in the world to have had an honorable origin; whereas it is more than probable, that could we take off the dark covering of antiquity and trace them to their first rise, that we should find the first of them nothing better than the principal ruffian of some restless gang, whose savage manners of pre-eminence in subtlety obtained him the title of chief among plunderers; and who by increasing in power, and extending his depredations, over-awed the quiet and defenseless to purchase their safety by frequent contributions.

In our colonial times, the civilized world at large was still ruled by monarchies and aristocracies. The then radical notion that those who were governed should also *be* sovereign in their state was just beginning to take hold in Europe, fueled and impelled by the Enlightenment. By the early decades of the nineteenth century, this had become a rising tide that inspired French historian and political theorist Alexis de Tocqueville to write in the introduction of his *Democracy in America*,

It is evident to all alike that a great democratic revolution is going on among us, but all do not look on it in the same light. To some it appears to be novel but accidental, and, as such, they hope it may still be checked; to others it seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency that is to be found in history. . .

The gradual development of the principle of equality is, therefore, a providential fact. It has all the chief characteristics of such a fact: it is universal, it is lasting, it completely eludes all human interference, and all events as well as all men contribute to its progress.

Would it, then, be wise to imagine that a social movement the causes of which lie so far back can be checked by the efforts of one generation? Can it be believed that the democracy which has overthrown the feudal system and vanquished kings will retreat before tradesmen and capitalists? Will it stop now that it has grown so strong and its adversaries so weak? . . .

This whole book that is here offered to the public has been written under the influence of a kind of religious awe produced in the author's mind by the view of that irresistible revolution which has advanced for centuries in spite of every obstacle and which is still advancing in the midst of the ruins it has caused. . .

If the men of our time should be convinced, by attentive observation and sincere reflection, that the gradual and progressive development of social equality is at once the past and the future of their history, this discovery alone would confer upon the change the sacred character of a divine decree. To attempt to check democracy would be in that case to resist the will of God[.]

Tocqueville's rhetoric often is over-brimming with Gallic enthusiasm. He conveniently overlooks another historical fact, namely that past experiments in democracy and republicanism fell to resurgent despotisms of tyranny or oligarchy. In his day, as now, the most vigorous of new oligarchs most often arose from that segment of society he called "tradesmen and capitalists" and which people today often politely call "big businessmen" and, occasionally and far less politely, "the captains and the kings of industry." The tidal flow of equality has never been without ebbs to go with its floods, and history can equally well be read as telling us civilization alternates between the rise of equality and the rise of despotism. But in 1848 Tocqueville could afford to be optimistic in his outlook, and he saw America as the best example of "the future of history." He wrote,

In America the principle of the sovereignty of the people is neither barren nor concealed, as it is with some other nations; it is recognized by the customs and proclaimed by the laws; it spreads freely, and arrives without impediment at its most remote consequences. If there is a country in the world where the doctrine of the sovereignty of the people can be fairly appreciated, where it can be studied in its application to the affairs of society, and where its dangers and its advantages may be judged, that country is assuredly America.

Equality and the sovereignty of the people was not nearly as universal as Tocqueville's praise of America might impress. He knew, for example, that what he called universal suffrage was near-universal only for white men; he seems to accept the presumption of his times that suffrage for women was neither practical nor desirable; and he chose to ignore and underplay the stain of slavery that still besmeared the American landscape. It would take bloody civil war to end slavery; women would not gain suffrage until the first half of the twentieth century; suffrage and civil liberty, as real fact rather than papered fiction, for blacks and other ethnic Americans would not be won until the second half of the twentieth century. Even today their old enemies are not eliminated but merely in retreat.

Even so, Tocqueville was right to point out that by 1848 equality and democratic sovereignty had advanced in America from what it was in the first years of independence. The advance was neither uniform nor equally rapid in all quarters of the United States, for the United States was, as Tocqueville correctly noted, "twenty-four small sovereign nations whose agglomeration constitutes the body of the Union." The original thirteen States had been obliged to set up their own state governments while the revolutionary war was being waged and its outcome was still in doubt. Their Union was forced upon them by necessities attending open warfare with what was then the most powerful nation on earth, but

neither the Declaration nor the Articles of Confederation cast a shadow of doubt that before they were united the states of the United States were precisely that: independent sovereign states.

The one point in common among the thirteen states was a commitment to republican government. But of what precise form? No two states came up with precisely the same constitution for their government, and the process was marked at times by acrimony and great contention. Historian John Alden writes,

The Patriots also developed praiseworthy methods both for the making and for the adoption of such constitutions. The first of those instruments contrived by the Patriots were drawn by Revolutionary gatherings in hurry, in troubled times, even in the shadow of advancing British armies. They were prepared and put into effect by men much engaged in raising money, collecting troops, repressing Tories, and carrying on the everyday business of government. Late in 1775 the Continental Congress urged that no Revolutionary body undertake to draft a constitution unless that body was chosen by "a full and free representation" of the people in an election in which constitution-making was an issue. Most of the Revolutionary assemblies were authorized by Patriot voters to make constitutions. However, some constitutions were drawn by men not specifically permitted to act. In no state was the handiwork of the Revolutionary legislature submitted to voters for approval or disapproval. Soon there was a public outcry against such procedures.

A public outcry indeed. In Massachusetts the voters of Concord in 1776 sturdily protested against the imposition of a political system they had had no voice or vote in drafting or adopting. Had the men of Concord, they cried, taken up their muskets in 1775 merely to replace British masters by American ones? Other townships joined with Concord and eventually the Massachusetts constitution was drafted by a convention chosen specially for just that purpose.

In no state was suffrage universal even among all white adult men. In Maryland suffrage was limited to men who owned at least 50 acres of land or property worth at least £30. Members of Maryland's legislature had to own property worth at least £400 to be elected to the lower house and at least £1000 to be elected to the senate. These were vast sums of money in those days, and Maryland was a state where sovereignty, while republican, was firmly in the hands of an aristocratic oligarchy. By contrast, suffrage in Georgia was extended to all men owning property worth at least £10 and a fine of £5 was leveled against any qualified man who failed to use his franchise. Election to the Georgia assembly was restricted to men who owned at least 250 acres of land or £250. Clergymen were barred from the legislature. Even so, Georgia did have majority rule for some years, until its government temporarily vanished as a result of the conquest of the state by the British. In the main, the state constitutions provided governments more responsive to the people than the colonial regimes had been, but every state required that voters possess property or pay taxes, and most white voters could qualify for the ballot in most states. But no state was then the model democracy Tocqueville saw when he came to visit America in 1831.

By the time Tocqueville arrived here the United States had greatly expanded westwards and a new

generation of Americans was growing up who held to ideals first promoted by Thomas Jefferson's Democratic-Republican Party, but grown to a social force of hurricane proportions under the sway of the new Democratic Party that had coalesced around the leadership of Andrew Jackson. By 1824 every white man had been extended the right to vote in all but six states. The expansion of the franchise and the political climate change that empowered it came to be known as the era of Jacksonian Democracy (1824-1854). Although this "universal" suffrage for white men only would last until into the twentieth century, the spread of democracy between 1775 and 1835 was dramatic enough to more than explain Tocqueville's enthusiastic appraisal of the "irresistible revolution" of which he wrote. Even so, old ideas and even popular suppositions that suffrage and franchise needed to be restricted for the purpose of stable government, and to safeguard the sovereignty of those already granted suffrage, would persist for many years and is not yet eradicated from the political landscape. "Who shall be a citizen and who among the citizens shall be allowed to vote?" is still debated and contested today. The last major change in suffrage in the United States came in 1971 when the right to vote was lowered from age twenty-one to age eighteen in the midst of what was in essence a civil war in America then being fought, violently at times, over the issues of the war in Vietnam and the civil rights movement.

§ 3.2 The Centralization of Power

As slow and irregular as it was, the expansion of suffrage does represent progress in the perfection of the Idea of the American Republic. It has, however and rather paradoxically, walked side by side with a growing and now very mature imperfection in our Republic. This is the redistribution of power in government. The reader might at this point assume I am speaking of the present-day debate over the balance of power between the executive and legislative branches of the general government, but I am not. The imperfection is much more widespread and its center lies not in Washington DC but rather in the state capitals. It is as rooted in the state constitutions as much, and perhaps even more so, as it is in the U.S. Constitution. It is a quiet malaise out of the eye of the public and out of earshot of public debate.

To understand the nature of this malaise, it is necessary to ask a question rarely asked: how did the principle of the republic ever come to take its firm hold in America in the first place? Recall the earlier Madison quote from *The Federalist*, no. 39:

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 American people; 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.

Why was this "evident" to the Founding Fathers? In our more cynical age, one might be tempted to

dismiss Madison's words as those of a mere politician wooing the voters by flattery and appeal to the ego of the common man. But to so dismiss it is to let the egocentrism of our own time fog the past. The words were written in earnest and read in earnest. Why?

It takes the eyes of an outsider to let us see and understand this. With the benefit of hindsight in comparing the French Revolution to the American one, Tocqueville was led to ask: why, after the American Revolution, did no new aristocracy take hold or even offer any sort of struggle in the new United States? This was the character of the United States that was the most astounding to the ancient powers of Europe and was as well a source of puzzlement and wonder in post-revolutionary France. Tocqueville sought his answer to the question of this "genius of the American people" and found it where one might least expect, namely in the small townships of colonial America:

I have already observed that, from their origin, the sovereignty of the people was the fundamental principle of most of the British colonies in America. It was far, however, from then exercising as much influence on the government of society as it now does. Two obstacles, the one external, the other internal, checked its invasive progress.

It could not ostensibly disclose itself in the laws of the colonies which were still forced to obey the mother country; it was therefore obliged to rule secretly in the provincial assemblies, and especially in the townships. . .

The American Revolution broke out, and the doctrine of the sovereignty of the people came out of the townships and took possession of the state. Every class was enlisted in its cause; battles were fought and victories obtained for it; it became the law of laws. . .

As soon as this effect of the laws and of the Revolution became apparent to every eye, victory was irrevocably pronounced in favor of the democratic cause. All power was, in fact, in its hands, and resistance was no longer possible. The higher powers submitted without a murmur and without a struggle to an evil that was thenceforth inevitable. The ordinary fate of falling powers awaited them: each of their members followed his own interest; and as it was impossible to wring the power from the hands of a people they did not detest sufficiently to brave, their only aim was to secure its goodwill at any price. The most democratic laws were consequently voted by the very men whose interests they impaired: and thus, although the higher classes did not excite the passions of the people against their order, they themselves accelerated the triumph of the new state of things; so that by a singular change, the democratic impulse was found to be most irresistible in the very states where the aristocracy had the firmest hold. The state of Maryland, which had been founded by men of rank, was the first to proclaim universal suffrage and to introduce the most democratic forms into the whole of its government.

Americans, Tocqueville concluded, had been governing themselves democratically in secret and out of sight of the eyes of their British masters long before the Revolution began. They were, therefore, already accustomed to, familiar with, and devoted to the principle of the body politic of the Social Contract before ever the first breath of friction with the mother country was felt. The center of this, and the source of the civic activism of the Americans, was nowhere else than in their self-governance of their own small villages and hamlets. This, Tocqueville concluded, was where the backbone of the Revolution originated, and this was why the goal of republican government was from the very start the true foundation of the Revolution. Tocqueville found his most illuminating example

in the townships of New England, which he regarded as the purest and most advanced example of the general spirit of American independence.

The Crown government of Great Britain was, of course, the "external obstacle" to this sovereignty; the "internal obstacle" was the presence of a local American aristocracy. This is who he means above in referring to the "higher powers" who "submitted without a murmur and without a struggle" to the democratic tide when it came. Many of the members of the Continental Congress had been members of this aristocratic class; so also were many of the members of the state legislatures. Many of these men deeply distrusted and feared "mob rule" and the provisions of the Constitution were by no means adopted and accepted without great controversy. But nonetheless, that the core sovereignty of the American people was the foundation of the Revolution was recognized as an established fact, and for that reason the transition of the structure of power from Crown government to republican form was without violence once the Revolution had been won.

Born in Paris during the reign of Napoleon, child witness to the aftermath of the defeat at Waterloo and the restoration of the Bourbon monarchy, Tocqueville was in a unique position to appreciate this contrast between America and France. He wrote,

In no country in Europe has the great social revolution that I have just described made such rapid progress as in France; but it has always advanced without guidance. The heads of the state have made no preparation for it, and it has advanced without their consent or without their knowledge. The most powerful, the most intelligent, and the most moral classes of the nation have never attempted to control it in order to guide it. Democracy has consequently been abandoned to its wild instincts, and it has grown up like those children who have no parental guidance, who receive their education in the public streets, and who are acquainted only with the vices and wretchedness of society. Its existence was seemingly unknown when suddenly it acquired supreme power. All then servilely submitted to its caprices; it was worshipped as the idol of strength; and when afterwards it was enfeebled by its own excesses, the legislator conceived the rash project of destroying it, instead of instructing it and correcting its vices. No attempt was made to fit it to govern, but all were bent on excluding it from the government.

If democracy in France had grown up a street urchin, in America the situation was far different. Here, and especially in New England,

In this part of the Union political life had its origin in the townships; and it may almost be said that each of them originally formed an independent nation. When the kings of England afterwards asserted their supremacy, they were content to assume the central power of the state. They left the townships where they were before; and although they were now subject to the state, they were not at first, or were hardly so. They did not receive their powers from the central authority, but, on the contrary, they gave up a portion of their independence to the state. This is an important distinction and one that the reader must constantly recollect. The townships are generally subordinate to the state only in those interests which I shall term *social*, as they are common to all the others. They are independent in all that concerns themselves alone; and among the inhabitants of New England I believe that not a man is to be found who would acknowledge that the state has any right to interfere in their town affairs.

This, Tocqueville believed, really was the crucial factor: namely that widespread suffrage, and the

sovereignty that arises from it, began on the very small scale. In the colonial New England townships there existed a somewhat Athenian-like, although considerably less raucous, direct democracy. This was less so in other parts of the country, and it became less and less so the further one ventured south. But in no colony was it ever completely extinct. As a consequence,

When a nation begins to modify the elective qualifications, it may easily be foreseen that, sooner or later, that qualification will be entirely abolished. There is no more invariable rule in the history of society: the further electoral rights are extended, the greater is the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength. The ambition of those who are below the appointed rate is irritated in exact proportion to the great number of those who are above it. The exception at last becomes the rule, concession follows concession, and no stop can be made short of universal suffrage. — *Democracy in America*

Suffrage is never really universal, of course, nor even necessarily equally granted among those holding the political right of franchise. The best example is the case of children. No country has ever permitted citizens below some specified age to vote. The presumption has always been that children lack the maturity, the experience, and the judgment to be trusted with participation in the exercise of sovereignty. At most, in some places and from time to time, schools may hold "mock elections" and report the outcome to the press, which usually treats the story with a mixture of amused affection and some comment or other speculating on whether the children's vote might predict how their parents will vote on election day. Democracy for children is confined to organizations of their own peers in various schools and clubs, and, more so, among the informal groups they self-establish with their own peers.

What was the civic character of sovereignty in the New England townships of the Revolutionary era? Tocqueville described it thusly:

In America not only do municipal bodies exist, but they are kept alive and supported by town spirit. The township of New England possesses two advantages which strongly incite the interest of mankind: namely, independence and authority. Its sphere is limited, indeed; but within that sphere its action is unrestrained. This independence alone gives it a real importance, which its extent and population would not ensure.

It is to be remembered, too, that the affections of men generally turn towards power. Patriotism is not durable in a conquered nation. The New Englander is attached to his township not so much because he was born in it, but because it is a free and strong community, of which he is a member, and which deserves the care spent in managing it. In Europe the absence of local public spirit is a frequent subject of regret to those who are in power; everyone agrees there is no surer guarantee of order and tranquility, and yet nothing is more difficult to create. If the municipal bodies were made powerful and independent, it is feared that they would become too strong and expose the state to anarchy. Yet without power and independence a town may contain good subjects, but it can have no active citizens.

Tocqueville's remarks concerning local public spirit and the activity of the citizenry were in many ways quite prescient. In *Representative Government*, published in 1861, John Stuart Mill wrote,

[It] is also to be borne in mind that political machinery does not act of itself. As it is first made, so it has to be worked by men, and even by ordinary men. It needs not their simple acquiescence

but their active participation and must be adjusted to the capacities and qualities of such men as are available. This implies three conditions. The people for whom the form of government is intended must be willing to accept it; or at least not so unwilling as to oppose an insurmountable obstacle to its establishment. They must be willing and able to do what is necessary to keep it standing. And they must be willing and able to do what it requires of them to enable it to fulfill its purposes. The word "do" is to be understood as including forbearances as well as acts. They must be capable of fulfilling the conditions of action and the conditions of self-restraint, which are necessary either for keeping the established polity in existence, or for enabling it to achieve its ends, its conduciveness to which forms its recommendations.

The failure of any of these conditions renders a form of government, whatever favorable promise it may otherwise hold out, unsuitable to the particular case.

The first obstacle, the repugnance of the people to the particular form of government, needs little illustration . . . Again, a people may be unwilling or unable to fulfill the duties which a particular form of government requires of them. . . Again, a people must be considered unfit for more than a limited and qualified freedom who will not cooperate actively with the law and the public authorities . . . These deplorable states of feeling . . . are, no doubt, usually the consequence of previous bad government, which has taught them to regard the law as made for other ends than their good, and its administrators as worse enemies than those who openly violate it. But however little blame may be due to those in whom these mental habits have grown up, and however the habits may be ultimately conquerable by better government, yet while they exist a people so disposed cannot be governed with as little power exercised over them as a people whose sympathies are on the side of the law, and who are willing to give active assistance in its enforcement. Again, representative institutions are of little value, and may be a mere instrument of tyranny or intrigue, when the generality of the electors are not sufficiently interested in their own government to give their vote or, if they vote at all, do not bestow their suffrages on the public grounds . . . Popular elections thus practiced, instead of a security against misgovernment, is but an additional wheel in its machinery.

Things often are hidden in plain sight. To the Framers of the Constitution, and to the framers of the state constitutions as well, the sovereignty and civic spirit of the townships was such a common fact of life that these framers took it entirely for granted and gave their efforts over to constituting the state and general governments. Nowhere were any constitutional mechanisms set down to guarantee and insure that local sovereignty would retain a powerful voice in affairs of the larger political community. Today no political entity more decries "the ills of big government" than the officials in the state capital. But the states have themselves become, through the pervasive and corrupting influence of statewide and national political parties, big governments that subjugate their townships in ever increasing degrees. If big government is truly the enemy of liberty, then the state governments have themselves become the enemies against whom they rail. If they, as they usually do, proclaim their devotion to the sovereignty of the towns and counties, this devotion most frequently is only put on display for rhetorical purposes during election years or when the state government does not wish to assist the townships in the areas of public education, infrastructure, or public health and safety.

Today the township is not a political power and has no political role in either state or general government. In the Constitution of the United States this is codified in the Tenth Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the

States, are reserved to the States respectively or to the people.

In practice, the state governments decide the manner in which power "reserved to the people" is to be governed. Generally this takes the forms of statewide referendums or initiatives and the township is given utterly no role whatsoever. Some state constitutions have provisions affecting county and township governance, but these generally reserve to the state government powers the legislature can dictate to the counties and townships. To take one specific example, the Constitution of the State of Idaho specifies in its Article VII, § 15,

The legislature shall provide by law such a system of county finance as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that whenever any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners, in addition to other taxes provided by law, shall levy a special tax, not to exceed ten (10) mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax, all warrants issued before such levy shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expense, shall be transferred to said redemption fund.

Elsewhere, in Article XVIII, § 5, it states

The legislature shall establish, subject to the provisions of this article, a system of county governments which shall be uniform throughout the state; and by general laws shall provide for township or precinct organization.

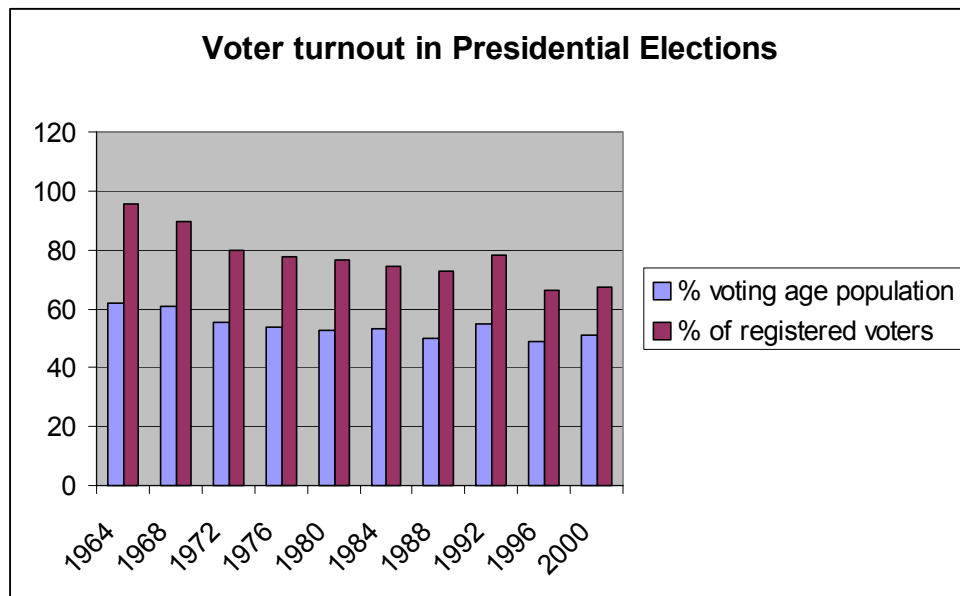
The township, originally the well-spring of sovereignty in the body politic of the thirteen colonies, is utterly subjugated to the state legislature in Idaho and in many other states as well. In Idaho the state government rules with an iron hand, everywhere restricting and limiting the sovereignty of local assemblies, particularly the townships, and imposing its will across the spectrum from financial and tax matters to religious laws concerning marriage, gambling, liquor, and whatever else it decides to take a hand in. The state constitution is a liquid document, altered more times than the Constitution of the United States has been amended, and in almost every case these alterations have favored the centralization of power in the state government. The townships have no power to resist the despotism of special interests, who need only sway the majority party of the legislature or the executive office of the governor to effect and exert rulership over the citizens of the state.

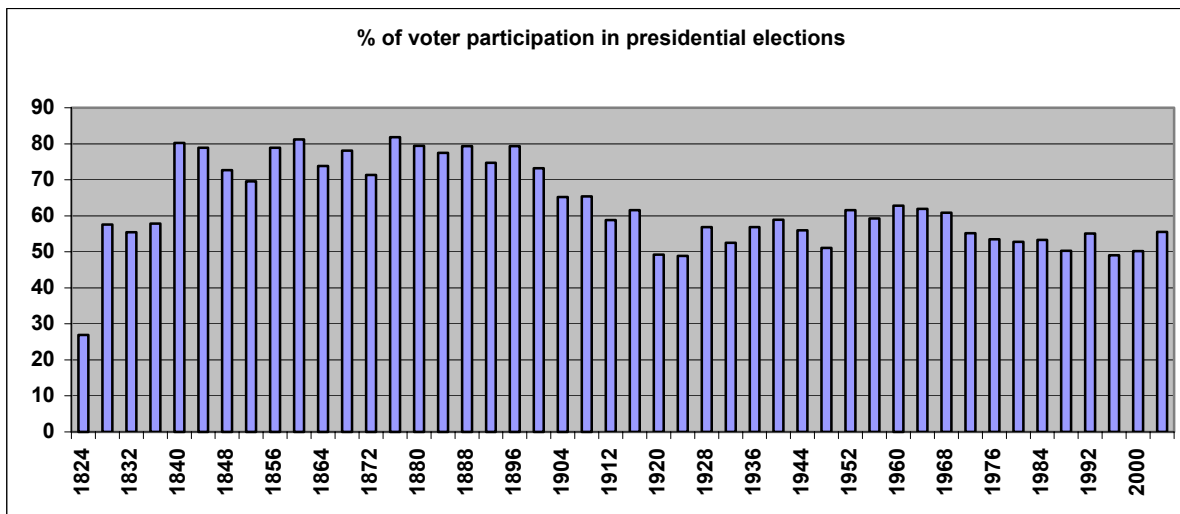
§ 3.3 The Despotism of Factions

Walking hand in hand with the pervasive centralization of power just discussed is the ever more dominant and increasingly despotic rule of powerful factions in America. The disenfranchisement of the political community of the township was institutionalized in the formation and constitution of the state governments, which was driven and largely determined by a few powerful political parties from the beginning of the republic. Much has been written extolling the virtues of the two-party system in

America. These are but valentines to the self-serving interests of these factions. A fundamental precept appearing again and again throughout *The Federalist*, as well as in the writings of other political theorists such as Mill and John Locke, is the vital necessity of forming mechanisms of government by which the representatives of the people are chosen from among the best and most qualified persons morally committed to preserving liberty and justice for all citizens of the nation. Today the voters are offered slim choice; candidates for office are selected by the political parties – in most cases through primary elections restricted to participation only by declared party members – and the majority of voters have no means of assessing the character or qualifications of the strangers whose names appear on the ballot.

This is a formula for rule by a plurality disguising itself in the form of a tyranny of the majority. It is a system that shreds the Social Contract, and one need look no farther than the statistics of participation by the citizens in elections at all levels to see proof of the effect of this usurpation of sovereignty by bands of oligarchs. The chart below illustrates the percentage of turnout from the voting age population of the United States and the percentage turnout among registered voters in Presidential election years from 1964 to 2000 according to statistics from the Federal Election Commission. Registered voter statistics prior to 1964 are not available, but turnout of the voting age population from 1928 to 1960 ranged from a low of 51.1% in 1948 to a high of 63.1% in 1960 with an average turnout rate of 56.8%. The same average from 1964 to 2000 is 54.3%. Barely more than half of the citizens permitted to vote do vote and this rate is declining. Even, and perhaps especially, among registered voters the declining trend is clear and unmistakable. In close presidential elections, the winning man receives the votes of only roughly one-quarter of American citizens.





Beginning with the election of Andrew Jackson in 1828, the percentage of eligible voters participating in presidential elections climbed enormously and was significantly higher throughout the remainder of the nineteenth century than in the twentieth century. This is illustrated in the chart above. It is not difficult to see the effect of the "age of Jacksonian democracy" in these figures. It is more difficult to explain the sudden decline at the onset of the twentieth century, although it is interesting to note that the trends here match in reverse the growth and declines of membership in U.S. labor unions throughout the period from 1900 to the New Deal in 1934. Union membership is not a quantitative predictor of the declines and gains in voter participation statistics (the American Federation of Labor peaked at a membership of only 5 million in 1920 and suffered large a decline beginning in 1921), but both trends could implicate a common state of civic conditions affecting both. It is also noteworthy that this period coincides with liberalization of corporate laws that relaxed restrictions on the practices of large corporations and promoted growth in their number. We will discuss the inherited problem of legally sanctioned outlawism for large corporations in the next section.

Voter participation more or less tracks the growth in union membership under the union-friendly laws passed during the Roosevelt administration until the 1950s, when union membership reached 16 million workers. The post-war peak years of the 1960s coincides in time with the political activism of the Kennedy years, the civil rights movement, and the often violent civil strife in the U.S. during the Vietnam war, all of which were civil factors that could be reasonably expected to affect voter participation.

From 1932 to 2004, in those years where there is a significantly notable upsurge in participation of eligible voters in presidential elections over the previous election, there is in every case a candidate for president who is perceived by the public as either a charismatic leader or as representing a definitive change of political direction. We see this in 1936 with Roosevelt's second term (56.8%), in 1952 with

Eisenhower's first term (61.6%), in 1960 with Kennedy (63%, the highest turnout in this period), in 1992 with Clinton's first term (55.1%), and in the 2004 Bush vs. Kerry election (55.5%). One possible interpretation of this turnout record is that U.S. citizens are not *disinterested* in politics and government; if this is true, the corollary would be that lower turnout years reflect not contentment or discontentment but, rather, *disaffection*. If a person believes his/her side is going to lose no matter who wins, that one's voice will not be heard, why would that person bother to vote at all? This, indeed, is precisely what is to be expected when a segment of the political community feels itself to be outcast into what Toynbee called the proletariat through violations of its civil liberties under the Social Contract.

We have here not merely an imperfection but an outright *defect* in the mechanism of governance in America, and one that is inimical to the preservation of a republican system of government. When Madison wrote of the dangers of faction in *The Federalist*, no. 10, he was not writing of some theoretical danger that might arise. Even before the Declaration, political affiliations were already established in the Colonies, although at the time these groups were not called Parties. The three principal ones were: the Conservatives; the Radicals (also known as the democrats); and the Liberals (also known as the moderates). Today's descendents are called by different names, although the present day conservatives are still in most regards quite similar to their forebears. The descendents of the Radicals are now called liberals, while the descendents of the Liberals are now a disunited amalgam made up of those called independents, moderate Democrats, and moderate Republicans.

Like all labels, the labels Conservatives, Radicals, and Liberals tends to obscure the presence of various degrees of conservatism, radicalism, and liberalism that, from the beginning, existed within these earliest American political affiliations. There were relatively moderate and relatively extreme Conservatives as well as relatively moderate and relatively extreme Radicals. John Adams and George Washington were moderate Conservatives, while Alexander Hamilton was a much more extreme Conservative. Patrick Henry and Thomas Paine were Radicals. Thomas Jefferson and James Madison were Liberals.

Nor were these affiliations yet sufficiently organized and cohesive to exert influences that crossed state boundaries. They were driving factors in the individual constitutions of the state governments but had little national force. In the first presidential election, in 1789, neither Washington nor Adams were affiliated with any political party. However, by the 1792 election the first organized political parties in America had been formed: the Federalists and the Anti-Federalists. Washington was re-elected under the banner of the Federalist party. The Federalists remained a major party through the election of 1816, but the Anti-Federalists party collapsed after the 1792 election, to be succeeded by Jefferson's party, the Democratic-Republicans. The Democratic-Republicans remained a potent political party up

through the election of James Monroe in 1820.

Then between 1820 and 1828 there was a peculiar interlude in which the national character of political parties vanished for a brief time. Parties still existed, but for the most part they were fragmented by state and their influences did not extend significantly beyond the state boundaries. The 1824 election took on the character of a raucous political fistfight that culminated in Andrew Jackson winning a plurality, but not a majority, of Electoral College votes and the presidency went to John Quincy Adams by a vote in the House of Representatives. A new national party, the Democratic Party, formed around Jackson, while a weaker party called the National-Republican Party arose, formed nominally around Adams. The Democratic Party is still with us today, but the National-Republican Party was short-lived and gave way to yet another new party, the Whigs. The Whigs lasted through the election of 1852 before dying out and being replaced by yet another new party, the Republican Party. The Republican Party, backing candidate James Fremont, lost the 1856 election to Democrat James Buchanan, then won the 1860 election with Abraham Lincoln.

In the one hundred fifty years since that time, the Democratic Party and the Republican Party have been the over-dominant national political parties in America. There have been other factions – small, unsuccessful at the polls, and ephemeral – since that time: the Antimasonic Party, the American Party (also known as the Know-Nothing Party), the Liberal Republican Party, the Greenback Party, the Prohibition Party, the Union Labor Party, the People's Party (also called the Populists), the Social Democratic Party, the Socialist Party, the Progressive Party, the American Independent Party, and the not-quite-a-party faction called the Independent Party. But the Republican Party and the Democratic Party have been the sole two omnipotent political factions in America since 1860.

At the time of the Constitutional Convention, the delegates could not imagine or foresee how new technology would soon erase natural barriers to communication and travel over long distances, the two principal barriers to the formation of potent national political parties. Their world of experience was one of stubborn, squabbling sovereign States barely able to agree with each other over anything other than their common cause in the Revolution against Great Britain. Madison and the other Founding Fathers therefore believed that a Union comprised of independent sovereign States provided a natural and sufficient safeguard against the despotism of factions under a republican form of government. Indeed, the Constitution relied upon factionalism to defeat factions and built this into the structure of the general government and the Electoral College. In *The Federalist*, no. 10, Madison wrote,

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 form 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 alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

Here Madison has succinctly stated the problem and the danger. When the faction is a minority of the political community, its selfish interests can indeed be defeated by the majority provided that this majority is united against allowing the ruling of the faction to prevail. This comes merely from the inability of the faction to garner a majority of votes needed. But what if there are only two voting factions? Then one will assuredly be the minority, but the other is then the majority. And what if both factions represent only a minority of the political community as a whole and the remainder of that community is excluded from voting on the matter at hand by the mechanism that placed the voting power in the hands of two minority factions alone? This is the great inherent danger of the two-party system. Madison goes on to say,

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 co-existent passion or interest, must be rendered, by their number and their 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.

Let us emphasize Madison's point that the passion of a majority *must be rendered unable to concert and carry into effect schemes of oppression*. The great questions that attend this principle are: can this be accomplished? and, if so, how? The first cannot be answered with surety because attaining such surety presumes a god-like prescience to foresee and forestall the innumerable fruits of genius people can devise to circumvent restraining measures. But, to the extent to which the accomplishment can be practically approached, Madison did see a key factor; he presented this in *The Federalist*, no. 51:

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 very improbable, if not impracticable. . . . 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 the country and the number of people comprehended under the same government. . . . 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 that will protect all parties, the weaker as well as the more powerful.

Now, this is nothing else than a more detailed statement of the goal in forming the body politic of the republic and a restatement of the underlying reason for individuals making among themselves the compact of the Social Contract itself. But how is this division, this "comprehending in the society so many separate descriptions of citizens," to be accomplished such that the self interests of individuals are driven to common cause in mutual defense against powerful factions by common dread of the threat such factions pose to liberty with justice for all? This is *the* crucial question for representative government. In chapter 1 we took a first look at Madison's prescription in *The Federalist*, no. 10, and now we must look at it again in some more detail:

The two great points of difference between a democracy and a republic are: first, the delegation of 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 interests 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 representatives of the people, will be more consonant with the public good than if pronounced by the people themselves, convened for that 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 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 people composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plan 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 act in unison with each other.

By "extending the sphere" Madison was talking primarily about the coming westward expansion of the United States into the interior of the continent. At the time, the existing thirteen states had their designs upon new lands to the west and, because the acquisition of new territory by one state denied that same territory to another, the pitting of state factions against one another did indeed lead to the

territory system as it later developed and, in addition, to the addition of *new states* rather than the expansion of the existing ones. The states themselves were the principal factions of the time, and by multiplying the number of states, the design to likewise multiply the number of "distinct parties and interests" was achieved.

To further increase the difficulty for coalitions of states to unite in Congress through machinations of party populism, the Constitution provided for senators to be appointed by the states rather than be directly elected by the people. This ensured that the corporate interests of the state governments would remain a nucleus for contention making the formation of cabals more difficult. This was a subtle yet very important reason why originally the makeup of the Senate was given into the hands of the states rather than left to the risks of populist democracy. This important safeguard was dealt an ill-considered death blow by the populist-driven ratification of the Seventeenth Amendment in 1913,

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

In one stroke, one of Madison's "filters" for checking the unstable passions of democracy was eliminated, with a concomitant increased threat to the Social Contract. The 62nd Congress, which was the body in office at the time the Seventeenth Amendment was passed by Congress and ratified by the states, was comprised in the Senate of 49 Republicans, 42 Democrats, and one seat was vacant. The House of Representatives was comprised of a 58% majority of 228 Democrats vs. 162 Republicans with one lone congressman unaffiliated with either of these parties. Passage of the Seventeenth Amendment was a bipartisan action, subscribed to by both political parties.

The *direct* power of the states to check the actions of the general government, one of the key safeguards in the Constitution, was destroyed by this one move because political power was by this amendment transferred from their hands into the hands of the national political parties. Americans today, acclimated as we have become to the noble-sounding but specious odes praising the fictitious perfect good of unlimited democracy, may be shocked by your author's next statement: **the Seventeenth Amendment is in fact an instrument of despotism and it should be repealed.**

Why, then, did the necessary three-quarters of the states accede in ratifying the Seventeenth Amendment? Certainly it was not in the self-interests of the state legislatures, *as representative bodies of the people*, to do so. But here there is no real mystery because the two-party system was by then also firmly entrenched in the power structures of the states, *and the parties saw their private advantage* served by the amendment. In the march of U.S. history, faction despotism was first institutionalized within the individual states, through the disempowerment of the townships, and only later extended itself to the general government.

The Seventeenth Amendment was not the first successful usurpation of national political power, to the detriment of the safeguards for the Social Contract, that party factions accomplished. The first was the corruption of the appointment of electors for presidential elections in the Electoral College. The Electoral College receives scant public attention except in those elections where the outcome is close and especially when the elected President of the United States receives a minority of popular votes cast while receiving a majority of Electoral College votes. The normal and predictable reaction to this from the losing faction is to denounce the Electoral College as an anachronism and call for its abolition. Nothing would be more immediately destructive to safeguarding the Social Contract.

The great and misleading myth of today is that the Electoral College was established "due to the communications constrictions of the times and the lack of formal political party organization" at the time of the Constitutional Convention. It is argued that today's technology, enabling as it does the most rapid compilation of the results of the popular vote, removes the need and justification of the Electoral College. The College is painted as a quaint and archaic practical convenience peculiar to the age before the industrial revolution. This propaganda is perniciously specious and could not more misrepresent the constitutional purpose of the Electoral College. The Electoral College was intended to be a safeguard of liberty with justice and a barrier to tyranny. Alexander Hamilton explained its purpose in *The Federalist*, no. 68:

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

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

It was also peculiarly desirable, to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate who was to have so important an agency in the administration of the government. . . The choice of *several*, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements than the choice of *one*, who was himself to be the final object of the public wishes. . .

Nothing was more to be desired, than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. . . But the [constitutional] convention have guarded against all dangers of this sort, with the most provident and judicious attention. They have not made the appointment of the president to depend on preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust all those who from situation might be suspected of too great devotion to the president in office. No senator, representative, or other person holding a place of trust or profit under the United States can be of the number of electors.

Hamilton did err in believing the Framers had "guarded against all dangers" in this matter, and history has unveiled where the chink in the constitutional armor existed. The Constitution left the details of establishing the structure and form of each state's Electoral College in the hands of the various state legislatures. Some state legislatures simply appointed the electors from their states; there was *no* popular vote for president at all in these states. As late as 1824, one-quarter or more of the state legislatures selected electors in this way.

Other legislatures did follow the letter of the Constitution, although not its spirit and intent, and voters cast ballots for candidates for the Electoral College. But political parties at the state level corrupted this process by restricting the choice of candidates for elector. Nomination for candidacy to elector was based, not on the trust and judgment of the citizens of the various townships, but by either membership in and allegiance to the party itself or by the specification of the presidential candidates themselves. Not themselves officers of the government, these political appointees are nonetheless members of "a preexisting body of men" whose allegiance and "too great devotion to the president in office" is much more than a mere matter of suspicion. This corruption of the intent of the Electoral College went hand in hand with the disempowerment of the townships and the concentration of power in the hands of the state governments.

Nor did it stop with this. By the middle of the nineteenth century, most states were using the so-called "winner take all" system, in which whatever presidential candidate receives the majority of popular votes in the state receives *all* of that state's Electoral College votes. Simply put, the votes of the people were subverted from being votes for the presidential candidate to being de facto votes for the political party to which he belonged. This destroys completely the safeguard intended by the Framers of the Constitution and placed the party system cabal entirely in control of the electoral process. Voters are lulled by a false belief that they are voting for a president instead of for a party.

It has become a fact, so sanctioned by the history of American politics that its acceptance is taken for granted, that the President of the United States is the recognized head of his political party. This was *never* the intent of the Framers of the Constitution. The intent was that the people should choose from among their own ranks electors whose character they knew, and whose judgment they trusted, to represent them in the selection of the president. Instead, the corrupting power of the party system betrays a fundamental principle of the Republic and the minority is disenfranchised. The party system is an oligarchy, the single most dangerous threat to liberty with justice for all, and it is destructive of the Social Contract.

§ 3.4 The Myth of the Corporation: Economic Despotism

When the Constitutional Convention was held, the industrial revolution had not yet come across the

Atlantic and was less than a century old in Britain and France. America was a primarily agricultural nation with an accompanying commerce in various small businesses and no significant manufacturing industry. The sciences of economics and political science were in their immature youth. The first great scholarly treatise on economics, Adam Smith's *An Inquiry Into the Nature and Causes of the Wealth of Nations*, had been published in 1776. It is hardly surprising that this work did not captivate the attention of the Patriots when it appeared, engaged as they were in a violent revolution against the greatest military power on earth at the time.

The nature of commerce in America was not yet much changed from the colonial days at the time of Tocqueville's visit. He recorded his impressions of this culture in *Democracy in America*:

It is not only the fortunes of men that are equal in America; even their acquirements partake in some degree of the same uniformity. I do not believe that there is a country in the world where, in proportion to the population, there are so few ignorant and at the same time so few learned individuals. Primary instruction is within the reach of everybody; superior instruction is scarcely to be obtained by any. This is not surprising; it is, in fact, the necessary consequence of what I have advanced above. Almost all the Americans are in easy circumstances and can therefore obtain the first elements of human knowledge.

In America there are but a few wealthy persons; nearly all Americans have to take a profession. Now, every profession requires an apprenticeship. The Americans can devote to general education only the early years of life. At fifteen they enter upon their calling, and thus their education generally ends at the age when ours begins. If it is continued beyond that point, it aims only towards a particular specialized and profitable purpose; one studies science as one takes up a business; and one takes up only those applications whose immediate practicality is recognized.

In America most of the rich men were formerly poor; most of those who now enjoy leisure were absorbed in business during their youths; the consequence of this is that when they might have a taste for study, they had no time for it, and when the time is at their disposal, they have no longer the inclination.

There is no class, then, in America in which the taste for intellectual pleasures is transmitted with hereditary fortune and leisure and by which the labors of the intellect are held in honor. Accordingly, there is an equal want of the desire and the power of application to these objects.

In this nation of shopkeepers, tradesmen, farmers, plantation owners, and shippers one omnipresent factor in today's modern culture was totally absent: the large commercial corporation. This factor in the commercial landscape would not appear in America until well into the nineteenth century. Although by the time of the Revolution the underlying idea of the incorporated for-profit stock company was an old idea in Great Britain, even there corporations were not yet evolved to the form we know today. By the beginning of the American colonial period, it had become an established principle of English law that associations of individuals could become incorporated if, but only if, they obtained a grant of corporate powers from the king or from parliament. Incorporation made a group of persons a single legal "person" for the purpose of their group activity. They could hold property as a single person, add new members to their association without changing the legal status of the group, and,

unless some statute provided otherwise, make contracts in their corporate capacity without assuming personal liability for corporate debts.

However, these first corporations in England were principally formed for the purposes of local government, charitable and educational foundations, religious purposes, and for foreign trade and colonization. After the Revolution, by 1819, the power to grant corporate status was vested in Congress and in the state legislatures. Little use of this power was made by Congress except in the field of banking. State-created corporations fell into three broad categories: (1) public corporations such as cities; (2) private non-business corporations such as churches, schools, charities, and social clubs; and (3) business corporations, including stock companies, mutual savings banks, and mutual insurance companies. Until the middle of the nineteenth century, the laws of nearly all states required persons who desired incorporation to petition the legislatures for enactment of a statute incorporating their particular enterprise.

The evolution of the idea of corporations in America that led to what we know today took place in the latter half of the nineteenth century and the early quarter of the twentieth. It was a slow-paced change, not marked by any particularly radical re-thinking of a concept that had originated from the English class-system idea of the "master" of a business and was modeled on a caricature of a shopkeeper employing laborers. Corporations were conceived as models of business metaphors for oligarchic governments. Rarely did the notion that corporations were in fact merely a new form of economic community enter into the thinking of either the organizers of a corporation or the lawmakers who wrote the laws pertaining to incorporation. The result was predictable. In time the now commonplace social division between "management" and "labor" developed, eventually leading to conditions imposed upon the workforce that stimulated the formation of labor unions and culminated in bloody and violent strikes. In this history, unions arose as metaphors of what one might call a legal "labor person" and in intent, if not in civility, were an effort to restore the more equal balance of what had been, in the earlier, simpler commercial community, the type of civic relationship of mutual self-interests that had been common between a small business proprietor and his employees.

That relationship has never been restored in the general community of commerce. There have been a very few isolated cases where enlightened founders of what eventually grew to become large and successful corporations recognized the community nature of its enterprise. Probably the best example of this is provided by William Hewlett and David Packard, founders of the Hewlett-Packard Company. Hewlett and Packard formalized the nature of the commercial-social contract of their company in the form of a system of "management by objectives" and codified it in a set of corporate objectives. It is instructive to look at their Corporate Objectives, which long served as a kind of constitution for the management of the corporation:

1. *Profit*: To recognize that profit is the best single measure of our contributions to society and the ultimate source of our corporate strength. We should attempt to achieve the maximum possible profit consistent with our other objectives.
2. *Customers*: To strive for continued improvement in the quality, usefulness, and value of the products and services we offer our customers.
3. *Field of Interest*: To concentrate our efforts, continually seeking new opportunities for growth but limiting our involvement to fields in which we have a capability and can make a contribution.
4. *Growth*: To emphasize growth as a measure of strength and a requirement for survival.
5. *Employees*: To provide employment opportunities for HP people that include the opportunity to share in the company's success, which they help make possible. To provide for them job security based on performance, and to provide the opportunity for personal satisfaction that comes from a sense of accomplishment in their work.
6. *Organization*: To maintain an organizational environment that fosters individual motivation, initiative and creativity, and a wide latitude of freedom in working toward established objectives and goals.
7. *Citizenship*: To meet the obligations of good citizenship by making contributions to the community and to the institutions in our society which generate the environment in which we operate.

In our cynical times, a skeptic might dismiss these seven objectives as empty rhetoric or soothing propaganda. To this, your author feels it is not out of place to say that he worked for the Hewlett-Packard Company early in his career and knew both Hewlett and Packard personally. He can attest that these seven objectives were real facts of life at all levels of what was, by the time he came to work for this corporation, a billion-dollar-a-year company with eighty thousand employees. While Hewlett and Packard were at the head of the company, it was the most civic business enterprise any rational person could have ever hoped to be part of. Had these two men been immortal, your author would most probably be happily working with them still and you would not be reading this treatise.

Unfortunately, cases such as this are extraordinarily rare in the commercial community. The most common case by far is an oligarchic organization that frequently tends to despotic treatment of its workforce and flaunts the unalloyed self-interests of its high officers and directors. These corporations are commercial communities little different in nature than the feudal despotism of the noble over his serfs. Historically, the party-dominated legislatures of America have largely sided with the legal fiction that this commercial enterprise is a corporate "person" personified solely by its stockholders and directors.

Propagandists who promote this view, and the economic despotism that goes with it, have made it a long-standing habit to hold up Smith's *Wealth of Nations* as what some have dubbed "the capitalists' Bible." According to this propaganda, every facet of "free enterprise" – which usually is intended to mean "freedom from all regulation, oversight, or constraint by the civil government" – is utterly sanctioned by Smith's economic theory. Most probably these apologists for commercial despotism are

likely to believe every word of their own propaganda to be true. If so, one can deeply doubt if they have ever actually read and studied *Wealth of Nations*, because nothing could be further from the truth.

When Smith published his epic work, economics and political science were not the distinct and separate silos of academic autism they are today. Rather, they were fused tightly together. Propagandists and demagogues employing the bell-ringing slogan of "free enterprise" also push a slogan that whatever is good for business is good for society. Calvin Coolidge immortalized this slogan with his famous one-liner, "The chief business of the American people is business." In point of fact, what Smith wrote was just the opposite: what is good for society *produces* what is good for business and wealth *follows* from what serves the good of society. Without ever using Rousseau's words, *Wealth of Nations* is, from first to last, economic theory wrapped inseparably in context with the Social Contract. Smith wrote,

In civilized society [every man] stands at all times in need of the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons. In almost every other race of animals each, when it is grown to maturity, is entirely independent and in its natural state has occasion for the assistance of no other living creature. But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favor, and show them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages. Nobody but a beggar chooses to depend chiefly upon the benevolence of his fellow-citizens. Even a beggar does not depend on it entirely.

This is nothing else than Rousseau's Social Contract put into economic terms. Smith's most fundamental economic finding in *Wealth of Nations* was that the wealth of every nation depends upon and is determined by the possible of divisions of labor within its political community:

It is the great multiplication of the productions of all the different arts, in consequence of the division of labor, which occasions, in a well-governed society, that universal opulence which extends itself to the lowest ranks of the people. Every workman has a great quantity of his own work to dispose of beyond what he himself has occasion for; and every other workman being in exactly the same situation, he is enabled to exchange a great quantity of his own goods for a great quantity, or, what comes to the same thing, for the price of a great quantity of theirs. He supplies them abundantly with what they have occasion for, and they accommodate him as amply with what he has occasion for, and a general plenty diffuses itself through all the different ranks of society.

This is indeed the character of Tocqueville's observation quoted earlier. But the possibility of the division of labor is based on what Smith calls *the* fundamental principle "which gives occasion for the division of labor." This principle is none other than the economics of the Social Contract:

As it is by treaty, by barter, and by purchase that we obtain from one another the greater part of those mutual and good offices which we stand in need of, so it is this same trucking disposition which originally gives occasion to the division of labor. – *Adam Smith, Wealth of Nations*

Lest we mistake Smith's meaning by presuming his word "labor" refers only to the employee and does not likewise encompass the business owner, let us put that possible misperception at once to rest. When Smith says "labor" he means *everyone*. Whatever a person's work or commercial occupation is, that is his "labor." It matters not if that person is Chairman of the Board of Wells Fargo Bank or the night janitor. The vile and despotic demagoguery of Marx and Engels have left in their wake the common misunderstanding that there exists an economic distinction between "capitalists" and "labor." This is false. Smith uses the word "stock" to mean "stock of goods," and this stock includes whatever *knowledge* he possesses of the craft or service he performs in his occupation. Smith writes,

When the stock which a man possesses is no more than sufficient to maintain him for a few days or a few weeks, he seldom thinks of deriving any revenue from it. He consumes it as sparingly as he can, and endeavors by his labor to acquire something which may supply its place before it is consumed altogether. His revenue is, in this case, derived from his labor only. This is the state of the greater part of the laboring poor in all countries.

But when he possesses stock sufficient to maintain him for months or years, he naturally endeavors to derive a revenue from the greater part of it; reserving only so much for his immediate consumption as may maintain him till this revenue begins to come in. His whole stock, therefore, is distinguished into two parts. That part which, he expects, is to afford him this revenue is called his capital. The other is that which supplies his immediate consumption; and which consists either, first, in that portion of his whole stock which was originally reserved for this purpose; or, secondly, in his revenue, from whatever source derived, as it gradually comes in; or, thirdly, in such things as had been purchased by either of these in former years, and which are not yet entirely consumed . . . In one, or the other, or all of these three articles consists the stock which men commonly reserve for their own immediate consumption.

A ten-year-old paperboy who deposits 25¢ in his savings account at a bank each week is as much a capitalist as the richest investment banker. We are, all of us, capitalists or potential capitalists. To hold otherwise is to accept the specious and corrupted pseudo-economics of *Das Kapital* and to hold that some small measure of truth subsists somewhere within the despotic demagoguery of *The Communist Manifesto*. As a political label, "capitalist" labels no one and to so use the word is demagoguery.

And so the political propaganda holding up the facade of false rights and imaginary justice used to exempt the corporation from the duties and constrictions of the Social Contract is revealed for the demagoguery it is. We have inherited an institutionalized virus in our body politic, one that today claims for itself the right to disregard and trample all civil liberties of the corporation's employees. As its proponents use the term, "free enterprise" is enterprise free *only in the context of the state of nature* and not at all in the context of the Social Contract. It is the body politic that grants the special privileges enjoyed by corporations in America, but that which does despotic violence to the Social Contract by claiming the prerogatives of oligarchy *sacrifices* all civil liberties and protections. The

Social Contract does not grant *uncivic* free enterprise to any but it does grant *civic liberty of enterprise* to everyone within the compact of our common bond of union. We will have more to say in regard to the commercial community within a free republic in later chapters when we discuss the proper and only objectives of government.

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