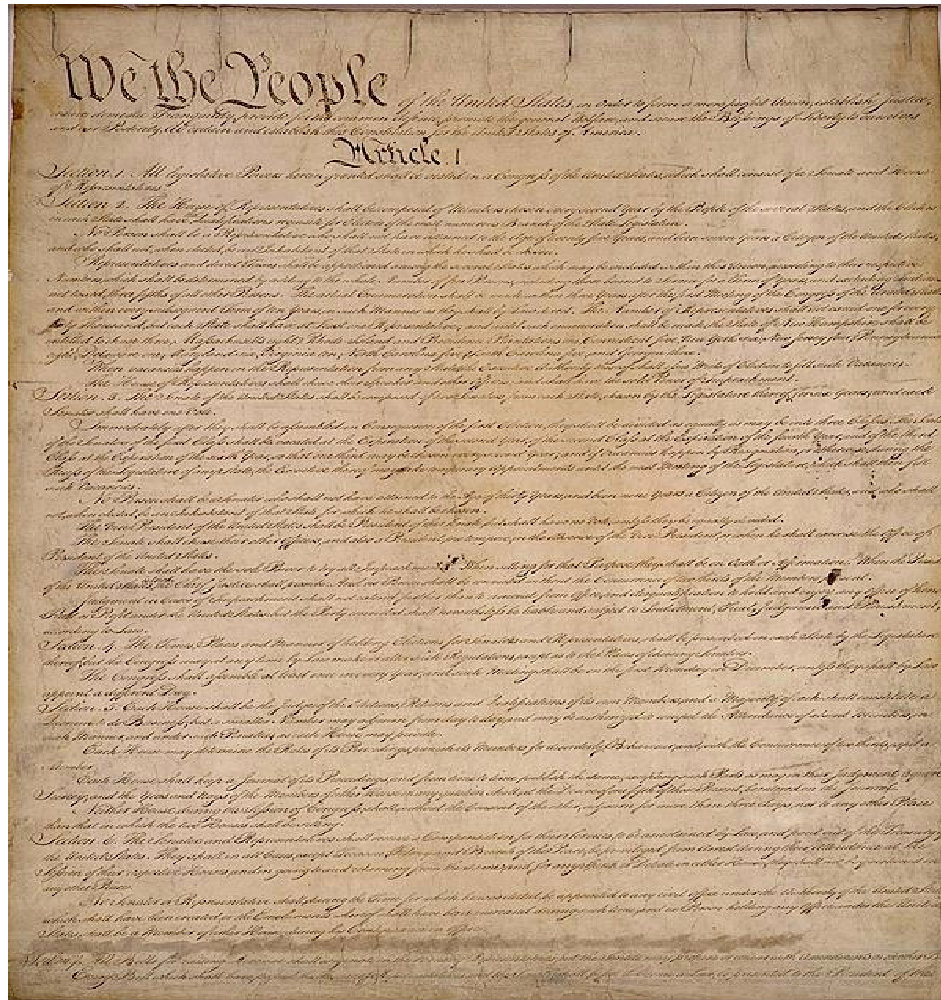


# The Evolving Constitution:

## A Documentary Reader



## America's Republic:

## The Ongoing Story of Our Founding Documents



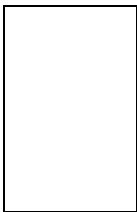
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# **The Evolving Constitution: A Documentary Reader**

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**“We must never forget that it is a constitution we are expounding”**

**Justice John Marshall, *McCulloch v. Maryland*, 1819**

**“The layman’s constitutional view is that what he likes is  
constitutional and that which he doesn’t like is unconstitutional.”**

**Justice Hugo L. Black, *New York Times*, Feb. 26, 1971**



*The Declaration of Independence* by John Trumbull.

**1.** Despite having organized an Army under the command of General George Washington to repeal the British army and issuing paper money to pay these troops, the Continental Congress repeatedly denied that they sought independence from Great Britain. Yet British belligerence and the overwhelming reception to Thomas Paine's *Common Sense* led Radicals in Congress such as Virginia's Richard Henry Lee to offer a resolution which stated "that these United Colonies are, and of right ought to be, free and independent States... and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." A final vote on Lee's resolution was postponed until July 1776 because opposition lingered among some of the delegates and a committee appointed to draft a declaration of independence, consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston, still needed time to complete its work. Agreed to and signed on July 4, the Declaration of Independence invoked the "self-evident truths" of human equality and "unalienable rights" to "life, liberty, and the pursuit of happiness." These rights were "endowed" to all persons "by their Creator," not by government. The Declaration served notice that Americans no longer viewed themselves as English, affirmed that government originated in the consent of the governed, and upheld the right of the people to overthrow monarchical rule.

### Declaration of Independence

In Congress, July 4, 1776.

The Unanimous Declaration of the Thirteen United States of America,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For Quartering large bodies of armed troops among us:

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

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

For imposing Taxes on us without our Consent:

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

For transporting us beyond Seas to be tried for pretended offences

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

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

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

all cases whatsoever.

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

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

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

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

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

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

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

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

Georgia: Button Gwinnett; Lyman Hall; George Walton

North Carolina: William Hooper; Joseph Hewes; John Penn

South Carolina: Edward Rutledge; Thomas Heyward, Jr.; Thomas Lynch, Jr.; Arthur Middle

Massachusetts: John Hancock

Maryland: Samuel Chase; William Paca; Thomas Stone; Charles Carroll of Carrollton

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

Pennsylvania: Robert Morris; Benjamin Rush; Benjamin Franklin; John Morton; George Clymer; James Smith; George Taylor; James Wilson; George Ross

Delaware: Caesar Rodney; George Read; Thomas McKean

New York: William Floyd; Philip Livingston; Francis Lewis; Lewis Morris

New Jersey: Richard Stockton; John Witherspoon; Francis Hopkinson; John Hart; Abraham Clark

New Hampshire: Josiah Bartlett; William Whipple

Massachusetts: Samuel Adams; John Adams; Robert Treat Paine; Elbridge Gerry

Rhode Island: Stephen Hopkins; William Ellery

Connecticut: Roger Sherman; Samuel Huntington; William Williams; Oliver Wolcott

New Hampshire: Matthew Thornton

**2.** The Articles of Confederation constituted the first effort of Americans to solve the problem of imperial rule by adopting a plan of union. The Continental Congress, responding to the public's distrust of a powerful central government, created a national government that recognized the sovereignty of each state and limited the powers of Congress to conducting wars and foreign relations and appropriating, borrowing, and issuing money. However, Congress did not have the authority to regulate trade, draft soldiers, and levy taxes. To accomplish any one of these tasks, formal requests were to be made to each state legislature, which often refused them. The Articles' provisions that required each state accede to any amendment frustrated the efforts of "Continentalists," who pressed the states to delegate more power to Congress. The Confederation existed from 1781 until 1789, a period in which Congress lacked adequate powers to handle interstate issues and enforce its authority on the states. Despite its failures, the government created by the Articles did achieve some significant accomplishments such as negotiating a peace treaty to end the war with Great Britain, settling land disputes with various Indian tribes, and establishing a far-reaching policy, such as the Northwest Ordinance, for the settlement and incorporation of western lands.

### Articles of Confederation

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

**Article I.** The Stile of this Confederacy shall be "The United States of America".

**Article II.** Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

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

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

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

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

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

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

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

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

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

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

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

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

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

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United



States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

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

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

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

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

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

judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

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

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

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

The United States, in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

**Article X.** The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.

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

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

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

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

In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

**3.** By the late 1780s, many Americans had grown weary of the Articles of Confederation. Its lack of powers to deal effectively with the nation's economic problems and Shays's Rebellion caused a few of the Confederation's leading young political figures to reconsider the decision a decade earlier to deliberately avoid creating a strong central government. In May 1787, fifty-five delegates, representing each of the thirteen states with the exception of Rhode Island, met in convention in the Philadelphia State House. Though instructions from Congress and the states clearly stated that the sole purpose of the convention was to revise the Articles, the delegates exceeded their power and produced a completely different form of government.

The delegates sought to preserve a balance between the federal government and the states (dual-federalism). The Constitution and the national government it created were to be the "supreme law" of the land; no state would have the authority to defy it. But at the same time, however, important powers were left in the hands of the states. The most distinctive feature of the Constitution was its "separation of powers" within the national government. "Checks

and Balances” were instituted among the legislative, executive, and judicial branches. The structure of the government, created by the Constitution’s primary architect James Madison, was designed not only to protect the nation from the kind of despotism that Americans believed had emerged in Great Britain, but also safeguard the nation from an internal form of despotism: the tyranny of the people.

On September 17, 1787, thirty-nine of the convention’s original fifty-five delegates signed the Constitution. Benjamin Franklin expressed feelings perhaps shared by many when he said, “Thus I consent, Sir, to this Constitution, because I expect no better, and because I am not sure that it is not the best.”

New rules were implemented to better secure ratification of the Constitution. Instead of requiring all thirteen state legislatures to ratify the document as stipulated by the Articles, the convention proposed that the new government come into being when nine of the thirteen states ratified the Constitution in state conventions. A contentious debate among the “Federalists,” those who supported the Constitution and a strong centralized government, and the “Antifederalists,” those who maintained that they were the defenders of the Revolution’s true principles played out between the fall of 1787 and the summer of 1788. Distinguished Antifederalist leaders such as Patrick Henry and Samuel Adams proclaimed that the Constitution and its authors betrayed the nation by establishing a strong, potentially tyrannical, central power in the new national government that would not, without a bill of rights, protect the liberties of its citizens. Despite the national debate, ratification of the Constitution proceeded much faster than the ratification of the Articles of Confederation. New Hampshire became the ninth state to ratify the document in June 1788, making the Constitution the supreme law of the land.

### **The Constitution of the United States**

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

#### **Article I**

**Section 1:** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**Section 2:** The House of Representatives shall be composed of Members chosen every second Year by the people of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

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

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

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

**Section 3:** The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

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

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

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

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

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

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

**Section 4:** The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

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

**Section 5:** Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

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

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

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

**Section 6:** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

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

**Section 7:** All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

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

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

**Section 8:** The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

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

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

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

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

To establish Post Offices and Post roads;

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

To constitute Tribunals inferior to the Supreme Court;

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

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

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

To provide and maintain a Navy;

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

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

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

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

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

**Section 9:** The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

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

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

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

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

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

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

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

**Section 10:** No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

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

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

## Article II

**Section 1:** The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

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

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

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

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



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

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

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

**Section 2:** The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

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

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

**Section 3:** He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

**Section 4:** The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### Article III

**Section 1:** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

**Section 2:** The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or

more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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

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

**Section 3:** Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open court.

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

## Article IV

**Section 1:** Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

**Section 2:** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

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

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

**Section 3:** New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

**Section 4:** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## Article V

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

## Article VI

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

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

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

## Article VII

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

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

George Washington, President and deputy from Virginia.

New Hampshire:	John Langdon, Nicholas Gilman.
Massachusetts:	Nathaniel Gorham, Rufus King.
Connecticut:	William Samuel Johnson, Roger Sherman.
New York:	Alexander Hamilton.
New Jersey:	William Livingston, David Brearley, William Paterson, Jonathan Dayton.
Pennsylvania:	Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons.

	Jared Ingersoll, James Wilson, Gouverneur Morris.
Delaware:	George Read, Gunning Bedford Jr., John Dickinson, Richard Bassett, Jacob Broom.
Maryland:	James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.
Virginia:	John Blair, James Madison Jr.
North Carolina:	William Blount, Richard Dobbs Spraight, Hugh Williamson.
South Carolina:	John Rutledge, Charles C. Pinckney, Pierce Butler.
Georgia:	William Few, Abraham Baldwin.

[The language of the original Constitution, not including the Amendments, was adopted by a convention of the states on September 17, 1787, and was subsequently ratified by the states on the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788. Ratification was completed on June 21, 1788. The Constitution subsequently was ratified by Virginia, June 25, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790; and Vermont, January 10, 1791.]

## **Amendments to the Constitution**

### **Amendment I**

(First Ten Amendments ratified December 15, 1791)

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

### **Amendment II**

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

### **Amendment III**

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

#### **Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### **Amendment V**

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

#### **Amendment VI**

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

#### **Amendment VII**

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

#### **Amendment VIII**

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

#### **Amendment IX**

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

#### **Amendment X**

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

#### **Amendment XI**

(Ratified February 7, 1795)

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

## Amendment XII

(Ratified June 15, 1804)

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.— The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

## Amendment XIII

(Ratified December 6, 1865)

**Section 1:** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

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

## Amendment XIV

(Ratified July 9, 1868)

**Section 1:** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2:** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be

reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3:** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4:** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5:** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

#### **Amendment XV**

(Ratified February 3, 1870)

**Section 1:** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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

#### **Amendment XVI**

(Ratified February 3, 1913)

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

#### **Amendment XVII**

(Ratified April 8, 1913)

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

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

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

#### **Amendment XVIII**

(Ratified January 16, 1919)

**Section 1:** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

**Section 2:** The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

**Section 3:** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## **Amendment XIX**

(Ratified August 18, 1920)

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

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

## **Amendment XX**

(Ratified January 23, 1933)

**Section 1:** The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

**Section 2:** The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

**Section 3:** If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

**Section 4:** The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

**Section 5:** Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

**Section 6:** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.



## **Amendment XXI**

(Ratified December 5, 1933)

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

**Section 2:** The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

**Section 3:** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## **Amendment XXII**

(Ratified February 27, 1951)

**Section 1:** No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

**Section 2:** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

## **Amendment XXIII**

(Ratified March 29, 1961)

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

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

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

## **Amendment XXIV**

(Ratified January 23, 1964)

**Section 1:** The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

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

### **Amendment XXV**

(Ratified February 10, 1967)

**Section 1:** In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

**Section 2:** Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

**Section 3:** Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

**Section 4:** Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

### **Amendment XXVI**

(Ratified July 1, 1971)

**Section 1:** The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any State on account of age.

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

### **Amendment XXVII**

(Ratified May 7, 1992)

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

**4.** The following documents capture the struggle between the nation's founders over the issue of state-supported churches. Thomas Jefferson was not only the primary author of the Declaration of Independence but also the principle architect of the disestablishment of religion in the United States. When Patrick Henry and his supporters introduced a bill in 1784 to assess taxes in the state of Virginia to assist Christian teachers, Jefferson and James Madison collaborated with one another to obstruct their plans. Jefferson and Madison rejected the notion of, as in the case of the Church of England in Britain, a state sponsored church. Both Jefferson and Madison articulated their argument for religious freedom in the following selections from the *Notes on the State of Virginia*, the Virginia Act for Establishing Religious Freedom, and the "Memorial and Remonstrance against Religious Assessments." The often-quoted term "separation of church and state" is derived from an 1802 letter written by Jefferson to a group identifying themselves as the Danbury Baptists in which he affirmed his commitment to "building a wall of separation between church and state."

### Patrick Henry, A Bill Establishing A Provision for Teachers of the Christian Religion

1784

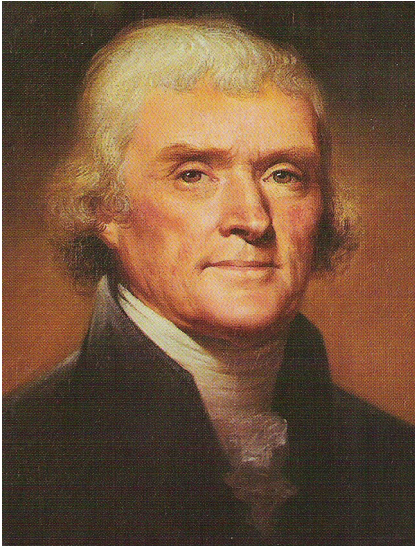
Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of preeminence amongst the different societies or communities of Christians;

Be it therefore enacted by the General Assembly, That for the support of Christian teachers, per centum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State.

And be it enacted, That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. The Sheriff of every County, shall, . . . return to the Court, upon oath, two alphabetical lists of the payments to him made, distinguishing in columns opposite to the names of the persons who shall have paid the same, the society to which the money so paid was by them appropriated; and one column for the names where no appropriation shall be made. One of which lists, after being recorded in a book to be kept for that purpose, shall be filed by the Clerk in his office; the other shall by the Sheriff be fixed up in the Court-house, there to remain for the inspection of all concerned. And the Sheriff, after deducting five per centum for the collection, shall forthwith pay to such person or persons as shall be appointed to receive the same by the Vestry, Elders, or Directors, however denominated of each such society, the sum so stated to be due to that society....

And be it further enacted, That the money to be raised by virtue of this Act, shall be by the Vestries, Elders, or Directors of each religious society, appropriated to a provision for a Minister or Teacher of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever; except in the denominations of Quakers and Menonists, who may receive what is collected from their members, and place it in their general fund, to be disposed of in a manner which they shall think best calculated to promote their particular mode of worship.

And be it enacted, That all sums which at the time of payment to the Sheriff or Collector may not be appropriated by the person paying the same, shall be accounted for with the Court in manner as by this Act is directed; and after deducting for his collection, the Sheriff shall pay the amount thereof (upon account certified by the Court to the Auditors of Public Accounts, and by them to the Treasurer) into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever.



Thomas Jefferson



James Madison

**Thomas Jefferson, *Notes on the State of Virginia*: Query XVII: Religion**

1785

The present state of our laws on the subject of religion is this. The convention of May 1776, in their declaration of rights, declared it to be a truth, and a natural right, that the exercise of religion should be free; but when they proceeded to form on that declaration the ordinance of government, instead of taking up every principle declared in the bill of rights, and guarding it by legislative sanction, they passed over that which asserted our religious rights, leaving them as they found them. The same convention, however, when they met as a member of the general assembly in October 1776, repealed all acts of parliament which had rendered criminal the maintaining any opinions in matters of religion, the forbearing to repair to church, and the exercising any mode of worship; and suspended the laws giving salaries to the clergy, which suspension was made perpetual in October 1779. Statutory oppressions in religion being thus wiped away, we remain at present under those only imposed by the common law, or by our own acts of assembly. At the common law, heresy was a capital offence, punishable by burning. Its definition was left to the ecclesiastical judges, before whom the conviction was, till the statute of the 1 El. c. 1. circumscribed it, by declaring, that nothing should be deemed heresy, but what had been so determined by authority of the canonical scriptures, or by one of the four first general councils, or by some other council having for the grounds of their declaration the express and plain words of the scriptures. Heresy, thus circumscribed, being an offence at the common law, our act of assembly of October 1777, c. 17. gives cognizance of it to the general court, by declaring, that the jurisdiction of that court shall be general in all matters at the common law. The execution is by the writ *De haeretico comburendo*. By our own act of assembly of 1705, c. 30, if a person brought up in the Christian religion denies the being of a God, or the Trinity, or asserts there are more Gods than one, or denies the Christian religion to be true, or the scriptures to be of divine authority, he is punishable on the first offence by incapacity to hold any office or employment ecclesiastical, civil, or military; on the second by disability to sue, to take any gift or legacy, to be guardian, executor, or administrator, and by three years imprisonment, without bail. A father's right to the custody of his own children being founded in law on his right of guardianship, this being taken away, they may of course be severed from him, and put, by the authority of

a court, into more orthodox hands. This is a summary view of that religious slavery, under which a people have been willing to remain, who have lavished their lives and fortunes for the establishment of their civil freedom.

The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg. If it be said, his testimony in a court of justice cannot be relied on, reject it then, and be the stigma on him. Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free enquiry are the only effectual agents against error. Give a loose to them, they will support the true religion, by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only. Had not the Roman government permitted free enquiry, Christianity could never have been introduced. Had not free enquiry been indulged, at the area of the reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged. Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, and the potatoe as an article of food. Government is just as infallible too when it fixes systems in physics. Galileo was sent to the inquisition for affirming that the earth was a sphere: the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error however at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established, on the basis of reason, than it would be were the government to step in, and to make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. Introduce the bed of Procrustes then, and as there is danger that the large men may beat the small, make us all of a size, by lopping the former and stretching the latter. Difference of opinion is advantageous in religion. The several sects perform the office of a Censor morum over each other. Is uniformity attainable? Millions of innocent men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. Let us reflect that it is inhabited by a thousand millions of people. That these profess probably a thousand different systems of religion. That ours is but one of that thousand. That if there be but one right, and ours that one, we should wish to see the 999 wandering sects gathered into the fold of truth. But against such a majority we cannot effect this by force. Reason and persuasion are the only practicable instruments. To make way for these, free enquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves. But every state, says an inquisitor, has established some religion. No two, say I, have established the same. Is this a proof of the infallibility of establishments? Our sister states of Pennsylvania and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely. Religion is well supported; of various kinds, indeed, but all good enough; all sufficient to preserve peace and order: or if a sect arises, whose tenets would subvert morals, good sense has fair play, and reasons and laughs it out of doors, without suffering the state to be troubled with it. They do not hang more malefactors than we do. They are not more disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them. Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. It is true, we are as yet secured against them by the spirit of the times. I doubt whether the people of this country would suffer an execution for heresy, or a three years imprisonment for not comprehending the mysteries of the Trinity. But is the spirit of the people an infallible, a permanent reliance? Is it government? Is this the kind of protection we receive in return for the rights we give up? Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. A single zealot may commence persecutor, and better men be his victims. It can never be too often

repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.

**James Madison, “Memorial and Remonstrance against Religious Assessments”**

**June 20, 1785**

To the Honorable the General Assembly of the Commonwealth of Virginia

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

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

2. Because Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

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

4. Because the Bill violates the equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent," all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of Conscience." Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their Religions unnecessary and unwarrantable? can their piety alone be entrusted with the care of public worship? Ought their Religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet pre-eminences over their fellow citizens or that they will be seduced by them from the common opposition to the measure.

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

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

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

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

9. Because the proposed establishment is a departure from the generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his Troubles.

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

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

12. Because the policy of the Bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the Region of it; and countenances by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of Levelling as far as possible, every obstacle to the victorious progress of Truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defence against the encroachments of error.

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

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

15. Because finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the "Declaration of those rights which pertain to the good people of Virginia, as the basis and foundation of Government," it is enumerated with



equal solemnity, or rather studied emphasis. Either the, we must say, that the Will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may controul the freedom of the press, may abolish the Trial by Jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly or, we must say, that they have no authority to enact into the law the Bill under consideration.

We the Subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their Councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his blessing, may redound to their own praise, and may establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.

### **The Virginia Act For Establishing Religious Freedom**

**1786**

Well aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to the offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

Be it therefore enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall

be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities.

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

### **Thomas Jefferson to the Danbury, Connecticut Baptist Association**

**January 1, 1802**

Gentlemen,

The affectionate sentiments of esteem and approbation which you are so good as to express towards me, on behalf of the Danbury Baptist Association, give me the highest satisfaction. My duties dictate a faithful and zealous pursuit of the interests of my constituents, and in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing.

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

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

**5. The enactment of the Northwest Ordinance of 1787 by Congress represents the single most important legislation of the Confederation period. The Ordinance provided the means by which new states would be created out of the western lands and then admitted into the Union. A single Northwest Territory was established from property north of the Ohio River. According to the law, this territory north of the Ohio River could be divided subsequently into between three and five territories. The Ordinance specified a population of 60,000 as a minimum for statehood, guaranteed freedom of religion, the right to trial by jury to residents of the Northwest, and prohibited slavery throughout the territory. The Northwest Ordinance would, with minor adjustments, establish a pattern that remained the guiding policy for the organization of the western territories for centuries to come: the grid.**

### **Northwest Ordinance**

**July 13, 1787**

An Ordinance for the government of the territory of the United States northwest of the river Ohio

Sec. 1. Be it ordained by the United States in Congress assembled, That the said Territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Sec. 2. Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their

deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Sec. 3. Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Sec. 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Sec. 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Sec. 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Sec. 7. Previous to the organization of the general assembly the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Sec. 8. For the prevention of crimes, and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Sec. 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: Provided also, That a free-hold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

Sec. 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

Sec. 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the Council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

Sec. 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

Sec. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

Sec. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

## Article I

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.

## **Article II**

The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishment shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

## **Article III**

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

## **Article IV**

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall nonresident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

## **Article V**

There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio,

Pennsylvania, and the said territorial line: Provided, however, And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

## Article VI

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

**6. Alexander Hamilton, James Madison and John Jay anonymously authored 85 essays in New York newspapers with the pen name “Publius” as part of a campaign to ratify the proposed Constitution. In response to their Antifederalist critics, Hamilton, Madison, and Jay demonstrated that the Constitution was both coherent and republican. They explained that the Constitution contained an inherent constitutionalism, which gave a purpose to the document and each of its parts. *The Federalist Papers* remain one of the most recognized and influential statements of the political philosophy of the Constitution. James Madison’s notable essay entitled *Federalist No. 10*, reversing conventional thought, argued that a large republic was more likely to solve the problems posed by factions than a small one.**

### *Federalist No. 10*

**November 22, 1787**

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. . . . Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. . . .

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

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

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

It could never be more truly said than of the first remedy, that it was worse than the disease. . . .

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

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. . . . But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government. . . .

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

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

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. . . . 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. . . .

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. . . .

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no

cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. . . .

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

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

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

[I]f the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

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

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

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic, -- is enjoyed by the Union over the States composing it. . . .

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



Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

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

PUBLIUS

**7. Treasury Secretary Alexander Hamilton proposed creating a national bank as part of his plan to fund the national debt and promote economic development. Hamilton's privately owned national bank would receive the deposits of the United States government, creating a pool of capital to be lent for commercial purposes. The national bank would then be authorized to establish branches throughout the country.**

Fearful that the bank proposed by Hamilton might become a source of corruption that may undermine republican virtue by promoting materialism and a taste for luxury, as well as tying the interests of its clients to the government's politicians, Thomas Jefferson argued against the constitutionality of establishing a national bank. Jefferson's opinion, which he delivered to President George Washington, is a clear illustration of his view of strict construction of federal power.

Washington then asked Hamilton to respond to Jefferson's argument. Hamilton delivered a powerful rebuttal that pressed for broad construction of federal power. After weighing both arguments, Washington sided with Hamilton and Congress passed a bill establishing the first Bank of the United States in 1791.

### Thomas Jefferson, Opinion Against the Constitutionality of a National Bank

February 15, 1791

... I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

I. They are not among the powers specially enumerated....

II. Nor are they within either of the general phrases, which are the two following: —

1. To lay taxes to provide for the general welfare of the United States." ... The [Congress] are not *to do anything they please* to provide for the general welfare, but only to *lay taxes* for that purpose.... It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States.... Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect....

2. The second general phrase is, "to make all laws *necessary* and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not *necessary*, and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes, Suppose this were true: yet the Constitution allows only the means which are "*necessary*," not those which are merely "*convenient*" for effecting the enumerated powers....

Can it be thought that the Constitution intended that for a shade or two of *convenience*, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against Mortmain, the laws of Alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means, can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence.



Alexander Hamilton

### Alexander Hamilton, Opinion Sustaining the Constitutionality of a National Bank

1791

It is conceded that implied powers are to be considered as delegated equally with express ones. Then it follows, that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an instrument of means of carrying into execution any of the specified powers, as any other instrument or mean whatever....

It is objected that none but necessary and proper means are to be employed; and the Secretary of State maintains that no means are to be considered as necessary but those without which the grant of the power would be nugatory....

It is certain that neither the grammatical nor popular sense of the term requires that construction. According to both, necessary often means no more than needful, requisite, incidental, useful, or conducive....

If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority....

A bank has a natural relation to the power of collecting taxes—to that of regulating trade—to that of providing for the common defense.... [Therefore] the incorporation of a bank is a constitutional measure....

**8.** The unofficial naval conflict with France—the so-called Quasi-War—enabled the Federalists, which exploited the crisis, to increase their majorities in Congress. With war fever running high, the Federalists enlarged the army and navy in preparations for a larger war. In the summer of 1798, Federalist leaders moved to silence the Jeffersonian-Republican opposition to their plans. Perhaps some of the most controversial legislation ever passed in American history, Congress enacted several measures known as the Alien and Sedition Acts. Strengthening the powers of the executive, the Alien Act, though never used, authorized the president to arrest and deport without trial dangerous

aliens suspected of treason. Even more controversial was the Sedition Act, which levied heavy fines and even imprisonment for writing, speaking, or publishing anything of a “false, scandalous, and malicious” nature against the federal government or any officer of the government. Convicted and imprisoned Jeffersonian-Republican newspaper editors insisted that such censorship violated the First Amendment’s guarantees of freedom of speech and the press.

In response to the escalating crisis, the Republican controlled legislatures of Virginia and Kentucky each passed their own set of resolutions. Madison and Jefferson collaborated once more as the former wrote the resolutions for Virginia and the latter for Kentucky. The Virginia and Kentucky resolutions laid the foundations for two related state-oriented theories of federalism. First, was the theory of state sovereignty, which suggested that the states retained ultimate sovereignty in the federal system. Second, was the theory of state rights, which posited a basic equality between the state and federal government—dual-federalism—both of which were sovereign. The Kentucky Resolutions demonstrate Jefferson’s idea that the Constitution was a compact between sovereign states, that the federal government had been delegated strictly limited powers, and that states had the right to interpose their authority when the government exceeded those powers and threatened its citizens’ liberties.

Historians and even Thomas Jefferson himself have referred to the Election of 1800 as the Revolution of 1800. In fact, the revolutionary aspect of the 1800 election is that it ended the period of constitutional formation and inaugurated an era of Republican constitutionalism. The election is noted as one of the ugliest in American history as President John Adams’s Federalist supporters clashed bitterly with Jefferson’s Republican supporters. Sweeping to victory at both the local and state level, the Republicans won the presidency and control of both houses of Congress for the first time. Only the judiciary remained in the hands of the Federalists. In his inaugural address, Jefferson articulated the basic tenets of his Republican party.

### **Alien and Sedition Acts**

**1798**

#### **An Act Respecting Alien Enemies**

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

Sec. 2. And be it further enacted, That after any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state, having criminal jurisdiction, and of the several judges and justices of the courts of the United States, and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States shall and may establish in the premises, to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice;

and after a full examination and hearing on such complaint; and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed.

Sec. 3. And be it further enacted, That it shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any court, judge or justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President of the United States, or of the court, judge or justice ordering the same, as the case may be.

APPROVED, July 6, 1798.

**An Act in Addition to the Act, Entitled "An Act for the Punishment of Certain Crimes Against the United States."**

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty, and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

Sec. 2. And be it farther enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the Constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

Sec. 3. And be it further enacted and declared, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in Republication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

Sec. 4. And be it further enacted, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: Provided, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, July 14, 1798.

## **The Kentucky Resolutions of 1798 and 1799**

### **1. Kentucky House of Representatives, November 10, 1798**

1. Resolved, That the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whomsoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress....

3. Resolved, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitutions, that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”; and that, no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States, or to the people; that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech, and of the press, may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use, should be tolerated, rather than the use be destroyed; ... and that, in addition to this general principle and express declaration, another and more special provision, has been made by one of the amendments to the Constitution, which expressly declares, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press,” thereby guarding, in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others,—and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That therefore the act of Congress of the United States, passed on the 14th of July, 1798, entitled “An Act in addition to the Act entitled ‘An Act for the punishment of certain Crimes against the United States,’” which does abridge the freedom of the press, is not law, but is altogether void, and of no force....

6. Resolved, That the imprisonment of a person under the protection of the laws of this commonwealth, on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by said act, entitled, “An Act concerning Aliens,” is contrary to the Constitution, one amendment in which has provided, that “no person shall be deprived of liberty without due process of law”; and that another having provided, “that, in all criminal prosecutions, the accused shall enjoy the right to public trial by an impartial jury, to be informed as to the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence,” the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without hearing witnesses in his favor, without defense, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void, and of no force....

8th. Resolved, ... This commonwealth ... considers union, for specified national purposes, and particularly to those specified in their late federal compact, to be friendly, to the peace, happiness and prosperity of all the States: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government, without

regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness or prosperity of these States; and that therefore this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them....

9. Resolved, lastly, ... That this commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the federal compact; ... and that the co-States, recurring to their natural rights not made federal, will concur in declaring these acts void and of no force, and will each unite with this commonwealth in requesting their appeal at the next session of Congress.

## **2. Kentucky House of Representatives, November 17, 1799**

Resolved, ... That the several states who formed [the Constitution], being sovereign and independent, have the unquestionable right to judge of the infraction; and, That a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy: That this commonwealth does, under the most deliberate reconsideration, declare, that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution;... That, although this commonwealth, as a party to the federal compact, will bow to the laws of the Union, yet it does, at the same time, declare, that it will not now, or ever hereafter, cease to oppose, in a constitutional manner, every attempt, at what quarter soever offered, to violate that compact: And finally, in order that no pretext or arguments may be drawn from a supposed acquiescence, on the part of this commonwealth, in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the federal compact, this commonwealth does now enter against them its solemn PROTEST.

## **Thomas Jefferson First Inaugural Address**

**March 4, 1801**

Friends and Fellow-Citizens,

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

During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to

speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the Constitution, all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good. All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things. And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long-lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others, and should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know, indeed, that some honest men fear that a republican government can not be strong, that this Government is not strong enough; but would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm on the theoretic and visionary fear that this Government, the world's best hope, may by possibility want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth. I believe it the only one where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said that man can not be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question.

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

About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a jealous care of the right of election by the people—a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a

well-disciplined militia, our best reliance in peace and for the first moments of war till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burthened; the honest payment of our debts and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of the public reason; freedom of religion; freedom of the press, and freedom of person under the protection of the habeas corpus, and trial by juries impartially selected. These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.

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

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

**9. Despite the success of the Jeffersonian-Republicans in the election of 1800, the Federalists managed to maintain a firm grasp on the judiciary branch when John Adams, the outgoing president, made numerous last-minute appointments of federal judges. The Republicans referred to these men as the “Midnight Judges,” their appointments signed by Adams only hours before Thomas Jefferson assumed the presidency. Both Jefferson and James Madison were suspicious that the Federalists in the judiciary branch were moving to expound on the meaning of the Constitution by expanding its power and limiting the powers of the legislative and executive branches. The Federalists insisted that the judiciary branch possessed the authority to nullify acts of Congress. Supreme Court Chief Justice John Marshall, a leading Federalist who had served as secretary of state for Adams, seized the opportunity to issue a firm statement on the theory of judicial review in *Marbury v. Madison*.**

The case arose out of William Marbury's attempt to assume his seat as justice of the peace for the District of Columbia. As one of the “Midnight Judges” appointed by Adams, Marbury's commission had been signed and sealed but not delivered when Jefferson took office. Jefferson ordered Madison, his secretary of state, to withhold the commission. Marbury appealed to the Supreme Court to direct Madison to perform his duty. The justices ruled that while Marbury had a right to his commission, the Court had no authority to compel Madison to deliver it. It appeared on the surface to be a clear victory for the Jeffersonian-Republicans; however, Marshall's reasoning for his opinion proved that though the judiciary could not force the delivery of a commission, it had the authority to declare legislation unconstitutional. Marshall ruled that if Section 13 of the Judiciary Act of 1789, which authorized the Court to issue writs of mandamus, was constitutional then the Court would force Madison to deliver the commission. But Marshall argued that Congress had exceeded its authority, that the Constitution defined the powers of the judiciary, and that the legislative branch had no right to expand them. Therefore, the law empowering the Court to issue writs was unconstitutional. Though it seemed to deny its own authority, Marshall's ruling radically expanded the powers of the judiciary. Marshall argued that it was “*emphatically the province and duty of the judicial*



department to say what the law is.”

Following the Court’s decision in *Marbury v. Madison*, the justices claimed the right of the judiciary branch to nullify both legislative acts and judicial decisions issued at the state level. As states’ rights advocates challenged the Court’s right to void state laws and rulings, Marshall continued to affirm the constitutionality of judicial review. In *McCulloch v. Maryland*, Marshall upheld, as Alexander Hamilton had done so nearly thirty years before, the constitutionality of the Second Bank of the United States. Opposed to the idea of a national bank, states’ rights advocates in the legislatures of several states attempted to prevent the opening of bank branches within their state boundaries. Maryland’s legislature imposed a stiff tax on banks not chartered by the state. The chief officer of the U.S. bank’s Maryland branch refused to pay the tax and appealed to the Court. Echoing Jefferson’s arguments against the constitutionality of a national bank, Maryland insisted that the state had the sovereign power to levy a tax on any property within its boundaries. Marshall ruled that the Constitution gave Congress the power to make all “necessary and proper” laws to carry out its delegated powers; therefore, if Congress maintained that a national bank would enable it to meet its constitutional responsibilities then a national bank was constitutional. Having expanded the powers of the judiciary branch with *Marbury v. Madison*, Marshall had now expanded the powers of the legislative branch and thus federal power to an extraordinary degree. Marshall’s tenure on the bench resulted in the strengthening of the judicial branch at the expense of the executive and legislative branches, increasing the power of the federal government at the expense of the states, and advancing the interests of the propertied and commercial classes. As Marshall explained in his decision that “we must never forget that it is a constitution we are expounding.”



John Marshall by Henry Inman, 1834

### *Marbury v. Madison*

1803

Mr. Chief Justice MARSHALL delivered the opinion of the court.

The peculiar delicacy of this case, the novelty of some of its circumstances, and the real difficulty attending the points which occur in it require a complete exposition of the principles on which the opinion to be given by the court is founded. . . .

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

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

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

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

The first object of inquiry is,

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

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

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

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

This brings us to the second inquiry; which is,

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

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case. . . .

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

In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. . . .

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

It is, then, the opinion of the Court,

1st. That by signing the commission of Mr. Marbury, the President of the United States appointed him a justice of peace for the county of Washington, in the District of Columbia; and that the seal of the United States, affixed thereto by the Secretary of State, is conclusive testimony of the verity of the signature, and of the

completion of the appointment, and that the appointment conferred on him a legal right to the office for the space of five years.

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

It remains to be inquired whether,

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

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

2d. The power of this court. . . .

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

Whether it can issue from this court.

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

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

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

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

If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested. The subsequent part of the section is mere surplusage, is entirely without meaning, if such is to be the construction. If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original, and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance.

Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them, or they have no operation at all.

It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible unless the words require it. . . .

The authority, therefore, given to the Supreme Court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution and it becomes necessary to inquire whether a jurisdiction so conferred can be exercised.

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

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

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

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

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

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

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

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

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

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

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or

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

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

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which according to the principles and theory of our government is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be given to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power to say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

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

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

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

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

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

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

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

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

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as, according to the best of my abilities and understanding agreeably to the constitution and laws of the United States." Why does a judge swear to discharge his duties agreeably to the constitution of the United States if that constitution forms no rule for his government?—if it is closed upon him, and cannot be inspected by him?

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

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

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

The rule must be discharged. [Mandamus denied.]

### *McCulloch v. Maryland*

**1819**

Chief Justice Marshall delivered the opinion of the Court.

In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that State. The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. . . .

The first question made in the cause is, has Congress power to incorporate a bank? . . .

In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign; and must be exercised in subordination to the States, who alone possess supreme dominion.

It would be difficult to sustain this proposition. The Convention which framed the constitution was indeed elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. . . . [T]he instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in convention. It is true, they assembled in their several States—and where else

should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. . . .

From these conventions the constitution derives its whole authority. . . .

To the formation of a league, such as was the confederation, the State sovereignties were certainly competent. But when, "in order to form a more perfect union," it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers, and acting directly to the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all. . . .

The government of the Union, then, (Whatever may be the influence of this fact on the case), is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This government is acknowledged by all to be one of enumerated powers. . . . That principle [is] now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist. . . .

In discussing these questions, the conflicting powers of the general and State governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled. . . .

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, "and anything in the constitution or laws of any State to the contrary notwithstanding."

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word "expressly," and declares only that the powers "not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people"; thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument. . . . A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. . . . In considering this question, then, we must never forget that it is a constitution we are expounding.

Although, among the enumerated powers of government, we do not find the word "bank," or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government. . . . [A] government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. . . .

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

The counsel for the State of Maryland have urged various arguments, to prove that this clause, though in terms a grant of power, is not so in effect; but is really restrictive of the general right, which might otherwise be implied, of selecting means for executing the enumerated powers. . . .

The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. . . .

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. . . .

Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power. . . .

It being the opinion of the Court, that the act incorporating the bank is constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire--

## 2. Whether the State of Maryland may, without violating the constitution, tax that branch?

That the power of taxation is one of vital importance; that it is retained by the States; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments: are truths which have never been denied. But, such is the paramount character of the constitution, that its capacity to withdraw any subject from the action of even this power, is admitted. . . .

[T]he constitution and the laws made in pursuance thereof are supreme; . . . they control the constitution and laws of the respective States, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are, 1st. that a power to



create implies a power to preserve. 2nd. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve. 3d. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. . . .

The power of Congress to create, and of course to continue, the bank, was the subject of the preceding part of this opinion; and is no longer to be considered as questionable.

That the power of taxing it by the States may be exercised so as to destroy it, is too obvious to be denied. . . .

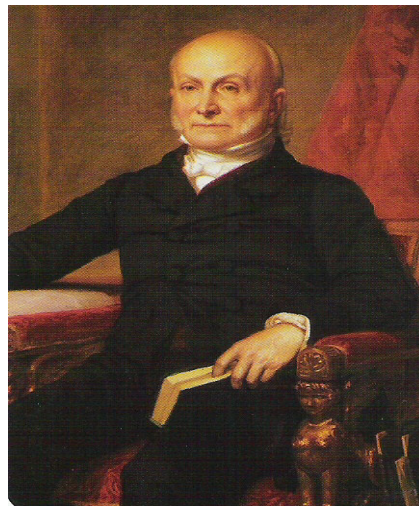
The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

**10.** In the summer of 1823, George Canning, the British Foreign Minister, proposed that the United States and Britain issue a joint statement disavowing any expansionist claims to territory in the Americas, particularly Latin America. President James Monroe's Secretary of State, John Quincy Adams, urged the president not to make any pledge against acquiring additional territory in the future, particularly in Texas, Mexico, and the Caribbean. On December 2, 1823, Monroe included what has become known as the Monroe Doctrine in his Annual Message to Congress. Monroe put the world powers on notice that the Americas were no longer open to colonization by any nation. Any intervention in the Western Hemisphere would be considered a hostile act. Monroe pledged that the United States would not intervene in European wars or internal affairs in return for Europe's pledge to stay out of American affairs. European nations criticized the President's policy as an American argument for unilateral intervention over Western Hemisphere nations. The Doctrine represented the culmination of the quest for American independence and sovereignty.



James Monroe



John Quincy Adams

Monroe Doctrine

December 2, 1823

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal has been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . .

It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the results have been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintain it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none of them more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every power, submitting to injuries from none. But in regard to those continents circumstances are eminently and conspicuously different.

It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and

those new Governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in hope that other powers will pursue the same course. . . .

**11.** As most southerners came to view federal tariff acts as responsible for the stagnation of their states' economies and an indication of an expanding federal government, some of the region's leaders began to consider secession as a remedy. President Andrew Jackson's Vice President, John C. Calhoun, labored to develop a moderate alternative to secession. Calhoun drew from the ideas of Jefferson and Madison, as expressed in the Kentucky and Virginia Resolutions, to create his theory of nullification. Calhoun argued that the Union was a compact between sovereign states. Therefore, the people of each state, acting in specially elected conventions, had a legal right to nullify any federal law that exceeded the boundaries of power granted to Congress under the Constitution. Once a state nullified congressional legislation that law would become null and void in that particular state.

In the Senate, a debate ensued between Massachusetts Senator Daniel Webster and South Carolina Senator Robert Hayne over Calhoun's theory of nullification. In his rebuttal to a speech made by Hayne, in which the Senator from South Carolina reiterated Calhoun's theory, Webster took to the Senate floor and delivered a classic statement of constitutional nationalism. He argued that the people, not the states, had created the Constitution. Webster insisted that the federal government did not merely act as an agent of the states but had sovereign powers in those areas where it had been delegated responsibility. Webster concluded with a quote that northerners would revere for years to come: "Liberty and Union, now and for ever, one and inseparable!"

In the winter of 1832-33 South Carolina employed Calhoun's doctrine of nullification to challenge the Tariffs of 1828 and 1832. The tariffs, South Carolinians argued, failed to provide any relief because it set import duties so high. Opponents of the federal legislation termed the legislation the "Tariff of Abominations." The South Carolina state legislature convened a state convention and passed an ordinance of nullification declaring the law null and void.

Despite Andrew Jackson's policies, which promoted reducing the power of the federal government, he believed in asserting forceful presidential leadership to preserve the Union in the face of a potent challenge. Jackson warned the South Carolinians that nullification was an act of treason and those that implemented it were traitors. In his Proclamation on nullification, Jackson insisted that the Union was perpetual and that according to the Constitution, no state had the right to secede. To reinforce his authority to enforce the tariffs acts, Congress passed the Force Bill, reaffirming the president's military powers under the Constitution. However, Jackson, the skillful politician, requested Congress to reduce the tariff rates and promised key southern states that he would help them gain control of Native American lands. With no other states willing to join South Carolina, Calhoun and his supporters worked with Kentucky's Henry Clay to iron out a compromise tariff in 1833. When emotions had cooled, South Carolina's convention repealed the nullification ordinance and the crisis of 1832-33 came to an end.

### Daniel Webster Reply to Robert Hayne

1830

The people ... erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States or the people. But, Sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? ... [T]he very chief end, the main design, for which the whole Constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of State discretion and State construction? ...

[T]he people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of Constitutional law. There are in the Constitution grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution has itself pointed out, ordained, and established that authority.

How has it accomplished this great and essential end? By declaring, ... that “the Constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding.”

This ... was the first great step. By this the supremacy of the Constitution and laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This ... the Constitution itself decides also, by declaring, “that the judicial power shall extend to all cases arising under the Constitution and laws of the United States.” These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government; without them it is a confederation....

When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic ... not a stripe erased or polluted, nor a single star obscured, bearing for its motto, no such miserable interrogatory as “What is all this worth?” nor those other words of delusion and folly, “Liberty first and Union afterwards”; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart,— Liberty and Union, now and for ever, one and inseparable!

### **South Carolina Ordinance of Nullification**

**November 24, 1832**

Whereas the Congress of the United States by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, ... hath exceeded its just powers under the Constitution ... and hath violated the true meaning and intent of the constitution, which provides for equality in imposing the burdens of taxation upon the several States and portions of the confederacy.

We, therefore, the people of the State of South Carolina, in convention assembled, do declare and ordain, ... that the several acts and parts of acts of ... Congress ... purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities ... are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof and are null, void, and no law, nor binding upon this State, its officers or citizens....

And it is further ordained, that it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this State; but it shall be the duty of the legislature to adopt such measures and pass such acts as may be necessary to give full effect to this ordinance, and to prevent the enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States within the limits of this State....

And we, the people of South Carolina, ....do further declare that we will not submit to the application of force on the part of the federal government, to reduce this State to obedience, but that we will consider ... any ... act on the part of the Federal Government, to coerce the State, shut up her ports, destroy or harass her commerce or to enforce the acts hereby declared to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union; and that the people of this State will henceforth hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other States.

**Andrew Jackson, Proclamation to the People of South Carolina**

**December 10, 1832**

...The ordinance is founded, not on the indefeasible right of resisting acts which are plainly unconstitutional, and too oppressive to be endured, but on the strange position that any one State may not only declare an act of Congress void, but prohibit its execution- that they may do this consistently with the Constitution-that the true construction of that instrument permits a State to retain its place in the Union, and yet be bound by no other of its laws than those it may choose to consider as constitutional. It is true they add, that to justify this abrogation of a law, it must be palpably contrary to the Constitution, but it is evident, that to give the right of resisting laws of that description, coupled with the uncontrolled right to decide what laws deserve that character, is to give the power of resisting all laws. For, as by the theory, there is no appeal, the reasons alleged by the State, good or bad, must prevail.... There are two appeals from an unconstitutional act passed by Congress—one to the judiciary, the other to the people and the States.... [O]ur social compact, in express terms, declares that the laws of the United States, its Constitution, and treaties made under it, are the supreme law of the land; and for greater caution adds, "that the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." And it may be asserted, without fear of refutation that no federative government could exist without a similar provision....

I consider, then, the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which It was founded, and destructive of the great object for which it was formed....

The Constitution declares that the judicial powers of the United States extend to cases arising under the laws of the United States, and that such laws, the Constitution and treaties, shall be paramount to the State constitutions and laws. The judiciary act prescribes the mode by which the case may be brought before a court of the United States, by appeal, when a State tribunal shall decide against this provision of the Constitution. The ordinance declares there shall be no appeal—makes the State law paramount to the Constitution and laws of the United States; forces judges and jurors to swear that they will disregard their provisions; and even makes it penal in a suitor to attempt relief by appeal. It further declares that it shall not be lawful for the authorities of the United States, or of that State, to enforce the payment of duties imposed by the revenue laws within its limits.

Here is a law of the United States, not even pretended to be unconstitutional, repealed by the authority of a small majority of the voters of a single State. Here is a provision of the Constitution which is solemnly abrogated by the same authority.

On such expositions and reasonings, the ordinance grounds not only an assertion of the right to annul the laws of which it complains, but to enforce it by a threat of seceding from the Union if any attempt is made to execute them.

This right to secede is deduced from the nature of the Constitution, which they say is a compact between sovereign States who have preserved their whole sovereignty, and therefore are subject to no superior; that because they made the compact, they can break it when in their opinion it has been departed from by the other States....

The Constitution of the United States ... forms a government, not a league; and whether it be formed by compact between the States, or in any other manner, its character is the same. It is a government in which all the people are represented, which operates directly on the people individually, not upon the States; they retained all the power they did not grant. But each State having expressly parted with so many powers as to constitute jointly with the other States a single nation, cannot from that period possess any right to secede, because such secession does not break a league, but destroys the unity of a nation, and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offense against the whole Union. To say that any State may at pleasure secede from the Union, is to say that the United States are not a nation, because it would be a solecism to contend that any part of a nation might dissolve its connection with the other parts, to their injury or ruin, without committing any offense....

**12. The Constitution failed to define a place for Indian tribes within the American political system. Therefore, when the state of Georgia attempted to regulate access by U.S. citizens to Cherokee country, Supreme Court Chief Justice John Marshall seized the opportunity to issue a statement on the nature of Indian tribes that also had implications on the further movement to consolidate federal authority over the states. The Cherokees appealed to the Supreme Court in an attempt to block the state of Georgia from seizing their lands. Marshall ruled that the Indian tribes were sovereign entities in much the same way Georgia was a sovereign entity. He**

stated that these tribes were “distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.” Defending the power of the federal government, Marshall’s decision also expanded the rights of the tribes, who possessed basic property rights, to remain free from the authority of state government. President Andrew Jackson reportedly responded to the news of Marshall’s ruling with a contemptuous statement: “John Marshall has made his decision. Now let him enforce it.” In the following years, virtually all of the Five Civilized Tribes—the Cherokee, Creek, Seminole, Chickasaw, and Choctaw—were expelled from the southern states and forced by the United States Army, acting under the orders of Jackson, to travel westward along their own Trail of Tears.

*Worcester v. Georgia*

1832

Mr. Chief Justice MARSHALL delivered the opinion of the Court.

This cause, in every point of view in which it can be placed, is of the deepest interest.

The defendant is a State, a member of the Union, which has exercised the powers of government over a people who deny its jurisdiction, and are under the protection of the United States.

The plaintiff is a citizen of the state of Vermont, condemned to hard labor for four years in the penitentiary of Georgia; under color of an act which he alleges to be repugnant to the constitution, laws, and treaties of the United States.

The legislative power of a State, the controlling power of the Constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful people, the personal liberty of a citizen, are all involved in the subject now to be considered. . . .

The indictment charges the plaintiff in error, and others, being white persons, with the offence of 'residing within the limits of the Cherokee nation without a license,' and 'without having taken the oath to support and defend the constitution and laws of the state of Georgia.' . . .

It is, then, we think, too clear for controversy, that the act of congress, by which this court is constituted, has given it the power, and of course imposed on it the duty, of exercising jurisdiction in this case. This duty, however unpleasant, cannot be avoided. Those who fill the judicial department have no discretion in selecting the subjects to be brought before them. We must examine the defence set up in this plea. We must inquire and decide whether the act of the legislature of Georgia, under which the plaintiff in error has been prosecuted and condemned, be consistent with, or repugnant to, the constitution, laws and treaties of the United States.

It has been said at the bar, that the acts of the legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighboring counties of the state, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts that 'all white persons, residing within the limits of the Cherokee nation on the 1st day of March next, or at any time thereafter, without a license or permit from his excellency the governor . . . and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labor, for a term not less than four years.'

The extraterritorial power of every legislature being limited in its action, to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee nation, and of the rights and powers consequent on jurisdiction.

The first step, then, in the inquiry, which the constitution and laws impose on this court, is an examination of the rightfulness of this claim. . . .

From the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States. . . .

The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.

The act of the state of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity. . . . The Acts of Georgia are repugnant to the constitution, laws, and treaties of the United States.

They interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, are committed exclusively to the government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of congress for regulating this intercourse, and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the nation with its permission, any by authority of the president of the United States, is also a violation of the acts which authorize the chief magistrate to exercise this authority. . . .

It is the opinion of this court that the judgment of the superior court for the county of Gwinnett, in the state of Georgia, condemning Samuel A. Worcester to hard labor, in the penitentiary of the state of Georgia, for four years, was pronounced by that court under color of a law which is void, as being repugnant to the constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.

**13.** President Andrew Jackson's political and constitutional views were not very well known when he assumed office in 1828, but it was generally understood that he did not concur with the constitutional nationalism of his predecessor, John Quincy Adams, and of Chief Justice John Marshall. Jackson's views became clearer after he vetoed the Maysville Road bill for exceeding the powers of Congress and sided with the southern states to remove Indian tribes from their lands in defiance of Marshall's opinion in *Worcester v. Georgia*. Jackson's veto of the bill rechartering the Second Bank of the United States and the Supreme Court's decision in *Charles River Bridge v. Warren Bridge* crystallized Jacksonian political and constitutional philosophy.

Seeking to restore the constitutional restraints that the founding fathers intended, Jacksonian Democrats questioned both the market economy and the federal government's endorsement of constitutional nationalism that

had expanded as a consequence of Marshall's tenure on the bench. Jackson's Bank Veto Message and the Court's opinion in *Charles River Bridge v. Warren Bridge* delivered by Chief Justice Roger B. Taney, Marshall's successor, illustrate the Jacksonian commitment to the preservation of a laissez-faire society and economy. They opposed class-based governance and legislation, that is, the use of the federal government to advance one class of persons or interests at the expense of the general welfare. Attacking the monopolistic features of the Bank bill, its infringement of state rights, and particularly its violation of the principle of equal rights, Jackson declared that "Distinctions in society will always exist under every just government.... There are no necessary evils in government. Its evils exist only in its abuses." He insisted that it was not only the duty of Congress and the Supreme Court, but also the president to act on their own understanding of the Constitution. Though some have argued that Jackson dangerously expanded executive power in his effort to determine the constitutionality of congressional legislation, he was simply stating the standard republican belief in the independence of the three branches of government.

Once Jackson had managed to check constitutional nationalism, he moved, with the assistance of Roger B. Taney, who succeeded Marshall as Chief Justice, against economic nationalism. The opportunity came when the case *Charles River Bridge v. Warren Bridge* reached the Supreme Court. The case involved the modernization of transportation in the Boston area and the rules governing corporate charters. When the Massachusetts state legislature incorporated the Warren Bridge Company to build a second bridge across the Charles River, which was to collect tolls long enough to recoup costs and make a reasonable profit before the state maintained it as a free bridge, the Charles River Bridge Company sued. As the owners of the first bridge built across the Charles River, and granted the right by the state legislature to collect tolls for seventy years, the company argued that the law incorporating the Warren Bridge Company violated the Constitution's Obligation of Contracts Clause (Article 1, Section 10). In a narrow 4 to 3 vote, the growing influence of Jacksonian Democrat jurists on the bench tipped the scale to rule in favor of the Warren Bridge Company. Taney warned that interpreting corporate charters broadly to include implicit promises not to incorporate competitors would arrest economic development, therefore, giving corporations monopolistic powers in violation of the principle of equal rights. Taney argued that "the object and end of all government is to promote the happiness and prosperity of the community by which it is established, and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created." By the late 1830s, anti-class legislation assumptions were prevalent among a majority of constitutional, political, and judicial Jacksonian intellectuals.

### Andrew Jackson's Bank of the United States Veto Message

July 10, 1832

A Bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution combining all its advantages and obviating these objections. I sincerely regret that in the act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country.

The present corporate body . . . enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of the stock far above its par value, operated as a gratuity of many millions to the stockholders. . . .

The act before me proposes another gratuity to the holders of the same stock, and in many cases to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands it is conceded that its passage will increase at least so or 30 per cent more the market price of the stock, subject to the payment of the annuity of \$200,000 per year secured by the act, thus adding in a moment one-fourth to its par value. . . .

Every monopoly and all exclusive privileges are granted at the expense of the public, which ought to receive a fair equivalent. . . .



It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock and thus secure to the people the full market value of the privileges granted? . . .

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

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? . . .

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

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. . . .

But in the case relied upon the Supreme Court have not decided that all the features of this corporation are compatible with the Constitution. It is true that the court have said that the law incorporating the bank is a constitutional exercise of power by Congress; but taking into view the whole opinion of the court and the reasoning by which they have come to that conclusion, I understand them to have decided that inasmuch as a bank is an appropriate means for carrying into effect the enumerated powers of the General Government, therefore the law incorporating it is in accordance with that provision of the Constitution which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying those powers into execution." . . .

Under the decision of the Supreme Court, therefore, it is the exclusive province of Congress and the President to decide whether the particular features of this act are necessary and proper in order to enable the bank to perform conveniently and efficiently the public duties assigned to it as a fiscal agent, and therefore constitutional, or unnecessary and improper, and therefore unconstitutional. . . .

[L]et us examine the details of this act in accordance with the rule of legislative action which they have laid down. It will be found that many of the powers and privileges conferred on it can not be supposed necessary for the purpose for which it is proposed to be created, and are not, therefore, means necessary to attain the end in view, and consequently not justified by the Constitution. . . .

On two subjects only does the Constitution recognize in Congress the power to grant exclusive privileges or monopolies. It declares that "Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Out of this express delegation of power have grown our laws of patents and copyrights. As the Constitution expressly delegates to Congress the power to grant exclusive privileges in these cases as the means

of executing the substantive power "to promote the progress of science and useful arts," it is consistent with the fair rules of construction to conclude that such a power was not intended to be granted as a means of accomplishing any other end. On every other subject which comes within the scope of Congressional power there is an ever-living discretion in the use of proper means, which can not be restricted or abolished without an amendment of the Constitution. Every act of Congress, therefore, which attempts by grants of monopolies or sale of exclusive privileges for a limited time, or a time without limit, to restrict or extinguish its own discretion in the choice of means to execute its delegated powers is equivalent to a legislative amendment of the Constitution, and palpably unconstitutional. . . .

The several States reserved the power at the formation of the Constitution to regulate and control titles and transfers of real property, and most, if not all, of them have laws disqualifying aliens from acquiring or holding lands within their limits. But this act . . . gives to aliens stockholders in this bank an interest and title, as members of the corporation, to all the real property it may acquire within any of the States of this Union. This privilege granted to aliens is not "necessary" to enable the bank to perform its public duties, nor in any sense "proper," because it is vitally subversive of the rights of the States. . . .

By its silence, considered in connection with the decision of the Supreme Court in the case of *McCulloch* against the State of Maryland, this act takes from the States the power to tax a portion of the banking business carried on within their limits, in subversion of one of the strongest barriers which secured them against Federal encroachments. . . .

Upon the formation of the Constitution the States guarded their taxing power with peculiar jealousy. . . . Nothing comes more fully within it than banks and the business of banking, by whomsoever instituted and carried on. Over this whole subject-matter it is just as absolute, unlimited, and uncontrollable as if the Constitution had never been adopted, because in the formation of that instrument it was reserved without qualification. . . .

It can not be necessary to the character of the bank as a fiscal agent of the Government that its private business should be exempted from that taxation to which all the State banks are liable, nor can I conceive it "proper" that the substantive and most essential powers reserved by the States shall be thus attacked and annihilated as a means of executing the powers delegated to the General Government. . . .

If our power over means is so absolute that the Supreme Court will not call in question the constitutionality of an act of Congress the subject of which "is not prohibited, and is really calculated to effect any of the objects entrusted to the Government," although, as in the case before me, it takes away powers expressly granted to Congress and rights scrupulously reserved to the States, it becomes us to proceed in our legislation with the utmost caution. Though not directly, our own powers and the rights of the States may be indirectly legislated away in the use of means to execute substantive powers. . . .

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power,

but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each to move unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we can not at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy. . . .

ANDREW JACKSON.

*Charles River Bridge vs. Warren Bridge*

1837

TANEY, Ch. J., delivered the opinion of the court....

Borrowing, as we have done, our system of jurisprudence from the English law, and having adopted, in every other case, civil and criminal, its rules for the construction of statutes, is there anything in our local situation or in the nature of our political institutions which should lead us to depart from the principle where corporations are concerned? ... We think not; and it would present a singular spectacle, if, while the courts in England are restraining, within the strictest limits, the spirit of monopoly, and exclusive privileges in nature of monopolies, and confining corporations to the privileges plainly given to them in their charter; the courts of this country should be found enlarging these privileges by implication; and construing a statute more unfavorably to the public, and to the rights of community, than would be done in a like case in an English court of justice.

But we are not now left to determine for the first time the rules by which public grants are to be construed in this country. The subject has already been considered in this Court, and the rule of construction above stated fully established....

[T]he object and end of all government is to promote the happiness and prosperity of the community by which it is established, and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created. And in a country like ours, free, active and enterprising, continually advancing in numbers and wealth, new channels of communication are daily found necessary, both for travel and trade, and are essential to the comfort, convenience and prosperity of the people. A State ought never to be presumed to surrender this power, because ... the whole community have an interest in preserving it undiminished.... No one will question that the interests of the great body of the people of the state would, in this instance, be affected by the surrender of this great line of travel to a single corporation, with the right to exact toll and exclude competition for seventy years. While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and wellbeing of every citizen depends on their faithful preservation.

Adopting the rule of construction above stated as the settled one, we proceed to apply it to the charter of 1785, to the proprietors of the Charles River Bridge. This act of incorporation ... confers on them the ordinary faculties of a corporation for the purpose of building the bridge, and establishes certain rates of toll which the company are authorized to take; this is the whole grant. There is no exclusive privilege given to them over the waters of Charles River, above or below their bridge....

None of the faculties or franchises granted to that corporation has been revoked by the Legislature, and its right to take the tolls granted by the charter remains unaltered. In short, all the franchises and rights of property enumerated in the charter and there mentioned to have been granted to it remain unimpaired. But its income is destroyed by the Warren Bridge; which, being free, draws off the passengers and property which would have gone over it and renders their franchise of no value. This is the gist of the complaint.... In order, then, to entitle themselves to relief, it is necessary to show that the Legislature contracted not to do the act of which they complain, and that they impaired, or, in other words, violated, that contract by the erection of the Warren Bridge.

The inquiry then is, does the charter contain such a contract on the part of the state? Is there any such stipulation to be found in that instrument? It must be admitted on all hands that there is none—no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be by implication; and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question....

Indeed, the practice and usage of almost every State in the Union old enough to have commenced the work of internal improvement is opposed to the doctrine contended for on the part of the plaintiffs in error. Turnpike roads have been made in succession, on the same line of travel, the later ones interfering materially with the profits of the first. These corporations have, in some instances, been utterly ruined by the introduction of newer and better modes of transportation and traveling. In some cases, railroads have rendered the turnpike roads on the same line of travel so entirely useless that the franchise of the turnpike corporation is not worth preserving. Yet in none of these cases have the corporation supposed that their privileges were invaded, or any contract violated on the part of the state....

And what would be the fruits of this doctrine of implied contracts on the part of the states and of property in a line of travel by a corporation if it would now be sanctioned by this Court? To what results would it lead us? ... Let it once be understood that such charters carry with them these implied contracts, and give this unknown and undefined property in a line of traveling, and you will soon find the old turnpike corporations awakening from their sleep, and calling upon this Court to put down the improvements which have taken their place. The millions of property which have been invested in railroads and canals upon lines of travel which had been before occupied by turnpike corporations will be put in jeopardy. We shall be thrown back to the improvements of the last century, and obliged to stand still until the claims of the old turnpike corporations shall be satisfied and they shall consent to permit these States to avail themselves of the lights of modern science, and to partake of the benefit of those improvements which are now adding to the wealth and prosperity, and the convenience and comfort, of every other part of the civilized world....

The judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts dismissing the plaintiffs' bill must, therefore be affirmed, with costs.

**14.** Ever since the Puritans' declaration to build a "city on a hill," many Americans have maintained that their country has a special, even divine mission. The burgeoning pride of American nationalism and the idealistic vision of social perfection that fueled reform during the Antebellum era rested on the doctrine of "Manifest Destiny"—the idea that American was destined by God and by history to expand not only its boundaries but also its system of democracy over a vast area. By the late 1830s, the idea of Manifest Destiny began to spread throughout the nation by the "penny press" and the rhetoric of nationalist politicians.

The following two documents are indicative of how quickly the move westward was fanned by newspapers and political leaders. John L. O'Sullivan, the editor of the *Democratic Review*, struck a responsive chord in his paper as he announced that it had become the United States' "manifest destiny to overspread the continent allotted by Providence for the free development of our yearly multiplying millions." The following document is taken from an 1839 editorial that appeared in the *Democratic Review*. The second document is taken from President James K. Polk's 1845 Inaugural Address. To those who criticized the push to acquire Texas and the Oregon territories, which included the present states of Oregon, Washington, and Idaho, parts of Montana and Wyoming, and half of British Columbia, as threatening the nation's stability and motivated by the intention to expand slavery, Polk claimed that acquisition of western lands would make the Union stronger.

**John L. O'Sullivan "Manifest Destiny"**

1839

The American people having derived their origin from many other nations, and the Declaration of National Independence being entirely based on the great principle of human equality, these facts demonstrate at once our disconnected position as regards any other nation; that we have, in reality, but little connection with the past history of any of them, and still less with all antiquity, its glories, or its crimes. On the contrary, our national birth was the beginning of a new history, the formation and progress of an untried political system, which separates us from the past and connects us with the future only; and so far as regards the entire development of the natural rights of man, in moral, political, and national life, we may confidently assume that our country is destined to be the great nation of futurity.

It is so destined, because the principle upon which a nation is organized fixes its destiny, and that of equality is perfect, is universal. It presides in all the operations of the physical world, and it is also the conscious law of the soul—the self-evident dictates of morality, which accurately defines the duty of man to man, and consequently man's rights as man. Besides, the truthful annals of any nation furnish abundant evidence, that its happiness, its greatness, its duration, were always proportionate to the democratic equality in its system of government. . . .

What friend of human liberty, civilization, and refinement, can cast his view over the past history of the monarchies and aristocracies of antiquity, and not deplore that they ever existed? What philanthropist can contemplate the oppressions, the cruelties, and injustice inflicted by them on the masses of mankind, and not turn with moral horror from the retrospect?

America is destined for better deeds. It is our unparalleled glory that we have no reminiscences of battlefields, but in defence of humanity, of the oppressed of all nations, of the rights of conscience, the rights of personal enfranchisement. Our annals describe no scenes of horrid carnage, where men were led on by hundreds of thousands to slay one another, dupes and victims to emperors, kings, nobles, demons in the human form called heroes. We have had patriots to defend our homes, our liberties, but no aspirants to crowns or thrones; nor have the American people ever suffered themselves to be led on by wicked ambition to depopulate the land, to spread desolation far and wide, that a human being might be placed on a seat of supremacy.

We have no interest in the scenes of antiquity, only as lessons of avoidance of nearly all their examples. The expansive future is our arena, and for our history. We are entering on its untrodden space, with the truths of God in our minds, beneficent objects in our hearts, and with a clear conscience unsullied by the past. We are the nation of human progress, and who will, what can, set limits to our onward march? Providence is with us, and no earthly power can. We point to the everlasting truth on the first page of our national declaration, and we proclaim to the millions of other lands, that "the gates of hell"—the powers of aristocracy and monarchy—"shall not prevail against it."

The far-reaching, the boundless future will be the era of American greatness. In its magnificent domain of space and time, the nation of many nations is destined to manifest to mankind the excellence of divine principles; to establish on earth the noblest temple ever dedicated to the worship of the Most High—the Sacred and the True. Its floor shall be a hemisphere—its roof the firmament of the star-studded heavens, and its congregation an Union of many Republics, comprising hundreds of happy millions, calling, owning no man master, but governed by God's natural and moral law of equality, the law of brotherhood—of "peace and good will amongst men". . .

Yes, we are the nation of progress, of individual freedom, of universal enfranchisement. Equality of rights is the cynosure of our union of States, the grand exemplar of the correlative equality of individuals; and while truth sheds its effulgence, we cannot retrograde, without dissolving the one and subverting the other. We must onward to the fulfillment of our mission—to the entire development of the principle of our organization—freedom of conscience, freedom of person, freedom of trade and business pursuits, universality of freedom and equality. This is our high destiny, and in nature's eternal, inevitable decree of cause and effect we must accomplish it. All this will be our future history, to establish on earth the moral dignity and salvation of man—the

immutable truth and beneficence of God. For this blessed mission to the nations of the world, which are shut out from the life-giving light of truth, has America been chosen; and her high example shall smite unto death the tyranny of kings, hierarchs, and oligarchs, and carry the glad tidings of peace and good will where myriads now endure an existence scarcely more enviable than that of beasts of the field. Who, then, can doubt that our country is destined to be the great nation of futurity?



**James K. Polk**

### **James K. Polk, “Texas and Oregon”**

**March 4, 1845**

The Republic of Texas has made known her desire to come into our Union, to form a part of our Confederacy and enjoy with us the blessings of liberty secured and guaranteed by our Constitution. Texas was once a part of our country—was unwisely ceded away to a foreign power—is now independent, and possesses an undoubted right to dispose of a part or the whole of her territory and to merge her sovereignty as a separate and independent state in ours. I congratulate my country that by an act of the late Congress of the United States the assent of this Government has been given to the reunion, and it only remains for the two countries to agree upon the terms to consummate an object so important to both.

I regard the question of annexation as belonging exclusively to the United States and Texas. They are independent powers competent to contract, and foreign nations have no right to interfere with them or to take exceptions to their reunion. Foreign powers do not seem to appreciate the true character of our Government. Our Union is a confederation of independent States, whose policy is peace with each other and all the world. To enlarge its limits is to extend the dominions of peace over additional territories and increasing millions. The world has nothing to fear from military ambition in our Government. While the Chief Magistrate and the popular branch of Congress are elected for short terms by the suffrages of those millions who must in their own persons bear all the burdens and miseries of war, our Government can not be otherwise than pacific. Foreign powers should therefore look on the annexation of Texas to the United States not as the conquest of a nation seeking to extend her dominions by arms and violence, but as the peaceful acquisition of a territory once her own, by adding another member to our confederation, with the consent of that member, thereby diminishing the chances of war and opening to them new and ever-increasing markets for their products.

To Texas the reunion is important, because the strong protecting arm of our Government would be extended over her, and the vast resources of her fertile soil and genial climate would be speedily developed, while the safety of New Orleans and of our whole southwestern frontier against hostile aggression, as well as the interests of the whole Union, would be promoted by it.

In the earlier stages of our national existence the opinion prevailed with some that our system of confederated States could not operate successfully over an extended territory, and serious objections have at different times been made to the enlargement of our boundaries. These objections were earnestly urged when we acquired Louisiana. Experience has shown that they were not well founded. The title of numerous Indian tribes to vast tracts of country has been extinguished; new States have been admitted into the Union; new Territories have been created and our jurisdiction and laws extended over them. As our population has expanded, the Union has been cemented and strengthened. As our boundaries have been enlarged and our agricultural population has been spread over a large surface, our federative system has acquired additional strength and security. It may well be doubted whether it would not be in greater danger of overthrow if our present population were confined to the comparatively narrow limits of the original thirteen States than it is now that they are sparsely settled over a more expanded territory. It is confidently believed that our system may be safely extended to the utmost bounds of our territorial limits, and that as it shall be extended the bonds of our Union, so far from being weakened, will become stronger.

None can fail to see the danger to our safety and future peace if Texas remains an independent state or becomes an ally or dependency of some foreign nation more powerful than herself. Is there one among our citizens who would not prefer perpetual peace with Texas to occasional wars, which so often occur between bordering independent nations? Is there one who would not prefer free intercourse with her to high duties on all our products and manufactures which enter her ports or cross her frontiers? Is there one who would not prefer an unrestricted communication with her citizens to the frontier obstructions which must occur if she remains out of the Union? Whatever is good or evil in the local institutions of Texas will remain her own whether annexed to the United States or not. None of the present States will be responsible for them any more than they are for the local institutions of each other. They have confederated together for certain specified objects. Upon the same principle that they would refuse to form a perpetual union with Texas because of her local institutions our forefathers would have been prevented from forming our present Union. Perceiving no valid objection to the measure and many reasons for its adoption vitally affecting the peace, the safety, and the prosperity of both countries, I shall on the broad principle which formed the basis and produced the adoption of our Constitution, and not in any narrow spirit of sectional policy, endeavor by all Constitutional, honorable, and appropriate means to consummate the expressed will of the people and Government of the United States by the reannexation of Texas to our Union at the earliest practicable period.

Nor will it become in a less degree my duty to assert and maintain by all Constitutional means the right of the United States to that portion of our territory which lies beyond the Rocky Mountains. Our title to the country of the Oregon is "clear and unquestionable," and already are our people preparing to perfect that title by occupying it with their wives and children. But eighty years ago our population was confined on the west by the ridge of the Alleghanies. Within that period—within the lifetime, I might say, of some of my hearers—our people, increasing to many millions, have filled the eastern valley of the Mississippi, adventurously ascended the Missouri to its headsprings, and are already engaged in establishing the blessings of self-government in valleys of which the rivers flow to the Pacific. The world beholds the peaceful triumphs of the industry of our emigrants. To us belongs the duty of protecting them adequately wherever they may be upon our soil. The jurisdiction of our laws and the benefits of our republican institutions should be extended over them in the distant regions which they have selected for their homes. The increasing facilities of intercourse will easily bring the States, of which the formation in that part of our territory can not be long delayed, within the sphere of our federative Union. In the meantime every obligation imposed by treaty or conventional stipulations should be sacredly respected. . . .

**15.** As the United States expanded both geographically and economically in the mid-nineteenth century, many Americans reacted with ambiguity in the face of such rapid and fundamental change. They were excited by the new wave of prosperity but fearful of the dislocations created by such change. Challenges to traditional values and institutions, social injustice and instability, and uncertainty about the future of the nation fueled the emergence of reform movements. These movements rested on two basic impulses. First, reformers possessed an optimistic faith in human nature, a belief that each individual's spirit was basically good and that society should seek to unleash that good. Second, with traditional values and institutions being challenged, reformers desired order and control as they created new institutions of social control. Antebellum reform movements took many forms—abolition, temperance, rehabilitation, education, women's rights—and could be found spread throughout the nation.

In Massachusetts, Dorothea Dix launched a national movement to find new methods of treating the mentally ill. Her efforts sought not only to create asylums for social deviants but also to reform and rehabilitate the inmates.

One of the most important reform movements of the era was the push to produce a system of universal public education. As of 1830, no state had such a system, although some were supporting limited versions. Horace Mann, perhaps the greatest of the educational reformers during the mid-nineteenth century, led Massachusetts to adopt a minimum-length school year of six months, provide adequate training for teachers, double teachers' salaries (although disparities remained between male and female teachers), and expanded the curriculum offered to include subjects such as history, geography, and various applied skills. By the 1850s, the principle of tax-supported elementary schools was established in almost every state.

In the 1830s and 1840s, many of the women involved in various reform movements began to resent the social and legal restrictions that limited their participation. Early feminist leaders included Sarah and Angelina Grimke, who, under attacks from men that claimed their activism was inappropriate to their gender, proudly proclaimed that both sexes were created equal. Other women's rights advocates included Catharine Beecher, Harriet Beecher Stowe, Lucretia Mott, Elizabeth Cady Stanton, and Dorothea Dix. When a group of American women in 1840 were turned away from an antislavery convention in London, they began to draw parallels between the plight of women and slaves. In 1848, Mott, Stanton, and others organized a convention to discuss women's rights in Seneca Falls, New York. Out of the meeting came the "Declaration of Sentiments and Resolutions," patterned on the Declaration of Independence, which stated that "all men and women are created equal." The Seneca Falls document is important for its rejection of the whole notion that men and women were assigned separate spheres in society.

### Dorothea Dix, Memorial to the Massachusetts Legislature

1843

About two years since leisure afforded opportunity and duty prompted me to visit several prisons and almshouses in the vicinity of this metropolis. I found, near Boston, in the Jails and Asylums for the poor, a numerous class brought into unsuitable connection with criminals and the general mass of Paupers. I refer to Idiots and Insane persons, dwelling in circumstances not only adverse to their own physical and moral improvement, but productive of extreme disadvantages to all other persons brought into association with them. I applied myself diligently to trace the causes of these evils, and sought to supply remedies. As one obstacle was surmounted, fresh difficulties appeared. Every new investigation has given depth to the conviction that it is only by decided, prompt, and vigorous legislation the evils to which I refer, and which I shall proceed more fully to illustrate, can be remedied. I shall be obliged to speak with great plainness, and to reveal many things revolting to the taste, and from which my woman's nature shrinks with peculiar sensitiveness. But truth is the highest consideration. *I tell what I have seen*—painful and shocking as the details often are—that from them you may feel more deeply the imperative obligation which lies upon you to prevent the possibility of a repetition or continuance of such outrages upon humanity. . . .

I come to present the strong claims of suffering humanity. I come to place before the Legislature of Massachusetts the condition of the miserable, the desolate, the outcast. I come as the advocate of helpless, forgotten, insane, and idiotic men and women; of beings sunk to a condition from which the most unconcerned would start with real horror; of beings wretched in our Prisons, and more wretched in our Alms-Houses. . . .

I proceed, gentlemen, briefly to call your attention to the *present* state of Insane Persons confined within this Commonwealth, in *cages, closets, cellars, stalls, pens! Chained, naked, beaten with rods, and lashed into obedience.* . . .

It is the Commonwealth, not its integral parts, that is accountable for most of the abuses which have lately and do still exist. I repeat it, it is defective legislation which perpetuates and multiplies these abuses. In illustration of my subject, I offer the following extracts from my Note-Book and Journal:

*Springfield.* In the jail, one lunatic woman, furiously mad, a State pauper, improperly situated, both in regard to the prisoners, the keepers, and herself. It is a case of extreme self-forgetfulness and oblivion to all the decencies of life, to describe which would be to repeat only the grossest scenes. She is much worse since leaving Worcester. In the almshouse of the same town is a woman apparently only needing judicious care, and some well-chosen employment, to make it unnecessary to confine her in solitude, in a dreary unfurnished room. Her appeals for employment and companionship are most touching, but the mistress replied, "she had no time to attend to her." . . .

*Lincoln.* A woman in a cage.

*Medford.* One idiotic subject chained, and one in a close stall for seventeen years.



*Pepperell.* One often doubly chained, hand and foot; another violent; several peaceable now.

*Brookfield.* One man caged, comfortable.

*Granville.* One often closely confined; now losing the use of his limbs from want of exercise.

*Charlemont.* One man caged.

*Savoy.* One man caged.

*Lenox.* Two in the jail, against whose unfit condition there the jailer protests.

*Dedham.* The insane disadvantageously placed in the jail. In the almshouse, two females in stalls, situated in the main building; lie in wooden bunks filled with straw; always shut up. One of these subjects is supposed curable. The overseers of the poor have declined giving her a trial at the hospital, as I was informed, on account of expense...

Besides the above, I have seen many who, part of the year, are chained or caged. The use of cages all but universal. Hardly a town but can refer to some not distant period of using them; chains are less common; negligences frequent; willful abuse less frequent than sufferings proceeding from ignorance, or want of consideration. I encountered during the last three months many poor creatures wandering reckless and unprotected through the country. . . . But I cannot particularize; in traversing the State, I have found hundreds of insane persons in every variety of circumstance and condition, many whose situation could not and need not be improved; a less number, but that very large, whose lives are the saddest pictures of human suffering and degradation. . . .

Men of Massachusetts, I beg, I implore, I demand, pity and protection, for these of my suffering, outraged sex! Fathers, Husbands, Brothers, I would supplicate you for this boon—but what do I say? I dishonor you, divest you at once of Christianity and humanity—does this appeal imply distrust. If it comes burdened with a doubt of your righteousness in this Legislation, then blot it out; while I declare confidence in your honor, not less than your humanity. Here you will put away the cold, calculating spirit of selfishness and self-seeking; lay off the armor of local strife and political opposition; here and now, for once, forgetful of the earthly and perishable, come up to these halls and consecrate them with one heart and one mind to works of righteousness and just judgment. Become the benefactors of your race, the just guardians of the solemn rights you hold in trust. Raise up the fallen, succor the desolate, restore the outcast, defend the helpless; and for your eternal and great reward receive the benediction, "Well done, good and faithful servants, become rulers over many things!" . . .

Injustice is also done to the convicts: it is certainly very wrong that they should be doomed day after day and night after night to listen to the ravings of madmen and madwomen. This is a kind of punishment that is not recognized by our statutes, and is what the criminal ought not to be called upon to undergo. The confinement of the criminal and of the insane in the same building is subversive of that good order and discipline which should be observed in every well-regulated prison. I do most sincerely hope that more permanent provision will be made for the pauper insane by the State, either to restore Worcester Insane Asylum to what it was originally designed to be or else make some just appropriation for the benefit of this very unfortunate class of our "fellow-beings." Gentlemen, I commit to you this sacred cause. Your action upon this subject will affect the present and future condition of hundreds and of thousands. In this legislation, as in all things, may you exercise that "wisdom which is the breath of the power of God."

### **Horace Mann, "Tenth Annual Report"**

**1846**

The Pilgrim Fathers amid all their privations and dangers conceived the magnificent idea, not only of a universal, but of a free education for the whole people. To find the time and the means to reduce this grand conception to practice, they stinted themselves, amid all their poverty, to a still scantier pittance; amid all their toils, they imposed upon themselves still more burdensome labors; and amid all their perils, they braved still greater dangers. Two divine ideas filled their great hearts,—their duty to God and society. For the one they built the church, for the other they opened the school. Religion and knowledge,—two attributes of the same glorious and eternal truth, and that truth the only one on which immortal or mortal happiness can be securely founded!

It is impossible for us adequately to conceive the boldness of the measure which aimed at universal education through the establishment of free schools. As a fact, it had no precedent in the world's history; and, as a theory, it could have been refuted and silenced by a more formidable array of argument and experience than was

ever marshaled against any other institution of human origin. But time has ratified its soundness. Two centuries of successful operation now proclaim it to be as wise as it was courageous, and as beneficent as it was disinterested. Every community in the civilized world awards it the need of praise; and states at home and nations abroad, in the order of their intelligence, are copying the bright example. What we call the enlightened nations of Christendom are approaching, by slow degrees, to the moral elevation which our ancestors reached at a single bound. . . .

Again, the expediency of free schools is sometimes advocated on grounds of political economy. An educated people is always a more industrious and productive people. Intelligence is a primary ingredient in the wealth of nations. . . . And yet, notwithstanding these views have been presented a thousand times with irrefutable logic, and with a divine eloquence of truth which it would seem that nothing but combined stolidity and depravity could resist, there is not at the present time, with the exception of the States of New England and a few small communities elsewhere, a country or a state in Christendom which maintains a system of free schools for the education of its children. . . .

I believe in the existence of a great, immortal, immutable principle of natural law, or natural ethics,—a principle antecedent to all human institutions, and incapable of being abrogated by any ordinance of man,—a principle of divine origin, clearly legible in the ways of Providence as those ways are manifested in the order of nature and in the history of the race, which proves the absolute right to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all.

In regard to the application of this principle of natural law,—that is, in regard to the extent of the education to be provided for all at the public expense,—some difference of opinion may fairly exist under different political organizations; but, under our republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge,—such an education as teaches the individual the great laws of bodily health, as qualifies for the fulfillment of parental duties, as is indispensable for the civil functions of a witness or a juror, as is necessary for the voter in municipal and in national affairs, and, finally, as is requisite for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great republic. . . .

All moralists agree, nay, all moralists maintain, that a man is as responsible for his omissions as for his commissions; that he is as guilty of the wrong which he could have prevented, but did not, as for that which his own hand has perpetrated. They, then, who knowingly withhold sustenance from a new-born child, and he dies, are guilty of infanticide. And, by the same reason, they who refuse to enlighten the intellect of the rising generation are guilty of degrading the human race. They who refuse to train up children in the way they should go are training up incendiaries and madmen to destroy property and life, and to invade and pollute the sanctuaries of society. In a word, if the mind is as real and substantive a part of human existence as the body, then mental attributes, during the period of infancy and childhood, demand provision at least as imperatively as bodily appetites. The time when these respective obligations attach corresponds with the periods when the nurture, whether physical or mental, is needed. As the right of sustenance is of equal date with birth, so the right of intellectual and moral training begins at least as early as when children are ordinarily sent to school. At that time, then, by the irrepealable law of Nature, every child succeeds to so much more of the property of the community as is necessary for his education. He is to receive this, not in the form of lands, or of gold and silver, but in the form of knowledge and a training to good habits. This is one of the steps in the transfer of property from a present to a succeeding generation. Human sagacity may be at fault in fixing the amount of property to be transferred or the time when the transfer should be made to a dollar or to an hour; but certainly, in a republican government, the obligation of the predecessors, and the right of the successors, extend to and embrace the means of such an amount of education as will prepare each individual to perform all the duties which devolve upon him as a man and a citizen. It may go farther than this point: certainly, it cannot fall short of it.

Under our political organization the places and the processes where this transfer is to be provided for, and its amount determined, are the district school meeting, the town meeting, legislative halls, and conventions for establishing or revising the fundamental laws of the State. If it be not done there, society is false to its high trusts;

and any community, whether national or state, that ventures to organize a government, or to administer a government already organized, without making provision for the free education of all its children, dares the certain vengeance of Heaven; and in the squalid forms of poverty and destitution, in the scourges of violence and misdebauchery, and in political profligacy and legalized perfidy, in all the blended and mutually aggravated crimes of civilization and barbarism, will be sure to feel the terrible retributions of its delinquency. . . .

In obedience to the laws of God and to the laws of all civilized communities, society is bound to protect the natural life of children; and this natural life cannot be protected without the appropriation and use of a portion of the property which society possesses. We prohibit infanticide under penalty of death. We practice a refinement in this particular. The life of an infant is inviolable, even before he is born; and he who feloniously takes it, even before birth, is as subject to the extreme penalty of the law as though he had struck down manhood in its vigor, or taken away a mother by violence from the sanctuary of home where she blesses her offspring. But why preserve the natural life of a child, why preserve unborn embryos of life, if we do not intend to watch over and to protect them, and to expand their subsequent existence into usefulness and happiness? As individuals, or as an organized community, we have no natural right, we can derive no authority or countenance from reason, we can cite no attribute or purpose of the divining nature, for giving birth to any human being, and then inflicting upon that being the curse of ignorance, of poverty, and of vice, with all their attendant calamities. We are brought, then, to this startling but inevitable alternative,—the natural life of an infant should be extinguished as soon as it is born, or the means should be provided to save that life from being a curse to its possessor; and, therefore, every State is morally bound to enact a code of laws legalizing and enforcing infanticide or a code of laws establishing free schools.

The three following propositions, then, describe the broad and ever during foundation on which the common school system of Massachusetts reposes:—

1. The successive generations of men, taken collectively, constitute one great commonwealth.
2. The property of this commonwealth is pledged for the education of all its youth, up to such a point as will save them from poverty and vice, and prepare them for the adequate performance of their social and civil duties.
3. The successive holders of this property are trustees, bound to the faithful execution of their trust by the most sacred obligations, and embezzlement and pillage from children and descendants have not less of criminality, and have more of meanness, than the same offences when perpetrated against contemporaries.

Recognizing these eternal principles of natural ethics, the Constitution of Massachusetts, the fundamental law of the State, after declaring (among other things) in the preamble to the first section of the fifth chapter that "the encouragement of arts and sciences and all good literature tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America," proceeds, in the second section of the same chapter, to set forth the duties of all future legislators and magistrates in the following noble and impressive language:—

"Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country and among the different orders of the people, it shall be the duty of legislatures and magistrates in all future periods of this Commonwealth to cherish the interests of literature and the sciences, and all seminaries of them, especially the university of Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trade, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments among the people."

Massachusetts is parental in her government. . . . The State not only commands that the means of education shall be provided for all, but she denounces penalties against all individuals, and all towns and cities, however, populous or powerful they may be, that presume to stand between her bounty and its recipients. In her

righteous code the interception of knowledge is a crime; and, if parents are unable to supply their children with books, she becomes a parent, and supplies them.....

When we witness the mighty achievements of art,—the locomotive, taking up its burden of a hundred tons, and transporting it for hundreds of miles between the rising and the setting sun; the steamboat, cleaving its rapid way, triumphant over wind and tide; the power-loom, yielding products of greater richness and abundance in a single day than all the inhabitants of Tyre could have manufactured in years; the printing press which could have replaced the Alexandrian Library within a week after it was burnt; the lightning, not only domesticated in the laboratories of the useful arts, but employed as a messenger between distant cities; and galleries of beautiful paintings, quickened into life by the sunbeams,—when we see all these marvels of power and of celerity, we are prone to conclude that it is to them we are indebted for the increase of our wealth and for the progress of our society. But were there any statistics to show the aggregate value of all the thrifty and gainful habits of the people at large, the greater productiveness of the educated than the brutified laborer, the increased power of the intelligent hand and the broad survey and deep intuition of the intelligent eye; could we see a ledger account of the profits which come from forethought, order, and system as they preside over all our farms, in all our workshops, and emphatically in all the labors of our households,—we should then know how rapidly their gathered units swell into millions upon millions. The skill that strikes the nail's head instead of the fingers' ends, the care that mends a fence and saves a cornfield, that drives a horseshoe nail and secures both rider and horse, that extinguishes a light and saves a house, the prudence that cuts the coat according to the cloth, that lays by something for a rainy day and that postpones marriage until reasonably sure of a livelihood, the forethought that sees the end from the beginning, and reaches it by the direct route of an hour instead of the circuitous gropings of a day, the exact remembrance impressed upon childhood to do the errand as it was bidden, and, more than all, the economy of virtue over vice, of restrained over pampered desires,—these things are not set down in the works of political economy; but they have far more to do with the wealth of nations than any laws which aim to regulate the balance of trade, or any speculations on capital and labor, or any of the great achievements of art. That vast variety of ways in which an intelligent people surpass a stupid one, and an exemplary people an immoral one, has infinitely more to do with the well-being of a nation than soil or climate, or even than government itself, excepting so far as government may prove to be a patron of intelligence and virtue.

From her earliest colonial history the policy of Massachusetts has been to develop the minds of all her people, and to imbue them with the principles of duty. To do this work most effectually, she has begun it with the young. If she would continue to mount higher and higher toward the summit of prosperity, she must continue the means by which her present elevation has been gained. In doing this, she will not only exercise the noblest prerogative of government, but will cooperate with the Almighty in one of his sublimest works.

### **Seneca Falls Declaration**

**July 19, 1848**

When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, but one to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes that impel them to such a course.

We hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of those who suffer from it to refuse allegiance to it, and to insist upon the institution of a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they were accustomed. But when a long train of abuses and

usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of the women under this government, and such is now the necessity which constrains them to demand the equal station to which they are entitled.

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world.

He has never permitted her to exercise her inalienable right to the elective franchise.

He has compelled her to submit to laws, in the formation of which she had no voice.

He has withheld from her rights which are given to the most ignorant and degraded men—both natives and foreigners.

Having deprived her of this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.

He has made her, if married, in the eye of the law, civilly dead.

He has taken from her all right in property, even to the wages she earns.

He has made her, morally, an irresponsible being, as she can commit many crimes with impunity, provided they be done in the presence of her husband. In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming to all intents and purposes, her master--the law giving him power to deprive her of her liberty, and to administer chastisement.

He has so framed the laws of divorce, as to what shall be the proper causes, and in case of separation, to whom the guardianship of the children shall be given, as to be wholly regardless of the happiness of women--the law, in all cases, going upon a false supposition of the supremacy of man, and giving all power into his hands.

After depriving her of all rights as a married woman, if single, and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it.

He has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration. He closes against her all the avenues to wealth and distinction which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known.

He has denied her the facilities for obtaining a thorough education, all colleges being closed against her.

He allows her in Church, as well as State, but a subordinate position, claiming Apostolic authority for her exclusion from the ministry, and, with some exceptions, from any public participation in the affairs of the Church.

He has created a false public sentiment by giving to the world a different code of morals for men and women, by which moral delinquencies which exclude women from society, are not only tolerated, but deemed of little account in man.

He has usurped the prerogative of Jehovah himself, claiming it as his right to assign for her a sphere of action, when that belongs to her conscience and to her God.

He has endeavored, in every way that he could, to destroy her confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life.

Now, in view of this entire disfranchisement of one-half the people of this country, their social and religious degradation--in view of the unjust laws above mentioned, and because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of the United States.

In entering upon the great work before us, we anticipate no small amount of misconception, misrepresentation, and ridicule; but we shall use every instrumentality within our power to effect our object. We shall employ agents, circulate tracts, petition the State and National legislatures, and endeavor to enlist the pulpit and the press in our behalf. We hope this Convention will be followed by a series of Conventions embracing every part of the country.

**16.** By the late 1840s, changes in culture, society, and economy produced an increasing degree of national uniformity and integration. At the same time geographical and territorial expansion enlarged the size of the nation. As the cultures of northerners and southerners interacted more closely with one another, it became apparent that sectional tensions over the issue of slavery were escalating to a fever pitch. The existence of slavery in the American republic created an internal contradiction that eventually threatened not only the existence of the United States, but also constitutionalism and the rule of law.

The very foundation upon which the Constitution rested was built on compromise. America's political leaders had managed to avert a crisis over the issue of slavery by reaching compromises. When the issue of slavery threatened the Union in 1850, Senator Henry Clay of Kentucky, an aging Whig whose presidential ambitions had been thwarted by John Quincy Adams, Andrew Jackson, William Henry Harrison, James K. Polk, and Zachary Taylor, assumed his role on the great stage of the Senate floor to keep the nation stitched together. In 1850, when the Senate debated the issues of the admission of California, the organization of western territories, the drawing of the border between Texas and New Mexico, the abolishment of District of Columbia slave trade, and the passage of a stronger fugitive slave law, Clay made several impassioned pleas to northern and southern politicians to work together to preserve the Union.

As a critical component of the Compromise of 1850, the Fugitive Slave Act was designed to settle slavery issues arising out of the acquisition of Mexican territory from the United States-Mexican War. For decades southern slave owners complained that northern state authorities failed to meet their obligation to return runaway slaves according to Article IV, Section 2 of the United States Constitution. Southerners pointed to the Supreme Court's 1842 decision in *Prigg v. Pennsylvania*, which sustained the constitutionality of the Fugitive Slave Act of 1793. The passage of the Fugitive Slave Act of 1850, designed to cool the sectional tensions over slavery, led to bitter resentment that contributed to the formation of the antislavery Republican Party in 1854.

The legal effect of Chief Justice Roger B. Taney's decision in *Dred Scott v. Sanford* was profound (The Supreme Court misspelled Sanford's name in its decision as Sandford). The case's origins began when John Emerson took his slave Dred Scott to the free state of Illinois in 1834 and then onto Fort Snelling in Wisconsin Territory in 1836. But when Emerson eventually returned with Scott to Missouri and died shortly thereafter, the title to Scott transferred to John F. A. Sanford of New York. In 1846 Scott brought suit in a Missouri court for his freedom, arguing that he had been emancipated as a result of living in free territory. Sanford proclaimed that Scott was an African American and a slave, therefore he was not a citizen of Missouri and could not bring suit.

Scott, losing in the Missouri courts, instituted a suit in the federal courts as a citizen of Missouri. As the case reached the Supreme Court, *Dred Scott v. Sanford* promised to settle forever the constitutional issue of slavery. Two questions were before the Court: whether an African American was a citizen who could bring a diversity-of-citizenship case in federal courts and whether Congress could ban slavery from the territories. Taney's ruling reflected the state rights, dual-federalist orientation of Jacksonian jurists as the decision separated state citizenship from United States citizenship. Taney argued that African Americans were not citizens of the United States, even if they were recognized as citizens in the states where they resided. States could grant citizenship to whomever they wished. United States citizenship was fixed by the Constitution and required an act of Congress to modify. The Court also ruled unconstitutional any law barring slavery from the territories. Taney pointed out that Article IV's delegation of power over the territories to Congress referred only to those territories held at the formation of the United States. Thus, the Missouri Compromise, in the eyes of the Court, was and had always been unconstitutional.

Territories acquired since 1789 had to be administered for the benefit of all states equally, therefore, sanctioning the state-sovereignty view that the federal government had to act as the agent of all states. Furthermore, the Court ruled that a law barring slavery in the territories deprived slaveholders of property, which violated the Due Process Clause of the Fifth Amendment.

In 1858, few people outside Illinois knew anything about Abraham Lincoln. Although Lincoln was unsuccessful in his run for the Senate that year against Stephen Douglas, his impressive performance in the Lincoln-Douglas Debates marked him as a possible presidential contender for 1860. In his June 16, 1858 address upon accepting the Republican nomination for the United States Senate delivered in Springfield, Illinois, Lincoln created an enduring portrait of the danger of disunion because of slavery. Lincoln, referring to a verse from the Bible, proclaimed, “A house divided against itself cannot stand.” Though Lincoln’s Gettysburg and Second Inaugural Addresses have become the best-known speeches of his career, it was his House Divided Speech that rallied northern Republicans in the 1858 and 1860 elections.

On October 25, 1858, New York Senator William Seward delivered what has become known as the “Irrepressible Conflict Speech” in Rochester, New York. Echoing Lincoln and other prominent Republican’s views, Seward predicted an irrepressible conflict between the forces of slavery and freedom.



Henry Clay Speaking in Support of the Compromise of 1850, National Portrait Gallery

### Henry Clay Speech on Preserving the Union

1850

Mr. President, I have said that I want to know whether we are bound together by a rope of sand or an effective capable government competent to enforce the powers therein vested by the Constitution of the United States. And what is this doctrine of Nullification, set up again, revived, resuscitated, neither enlarged nor improved, nor expanded in this new edition of it, that when a single state shall undertake to say that a law passed by the twenty-nine states is unconstitutional and void, she may raise the standards of resistance and defy the twenty-nine. Sir, I denied that doctrine twenty years ago—I deny it now—I will die denying it. There is no such principle. . . .

The Honorable Senator speaks of Virginia being my country. This Union is my country. The thirty states is my country. Kentucky is my country. And Virginia no more than any of the other states of this Union. She has created on my part obligations and feelings and duties toward her in my private character which nothing upon earth could induce me to forfeit or violate. But even if it were my own state—if my own state, contrary to her duty, should raise the standard of disunion against the residue of the Union, I would go against her, I would go against Kentucky in that contingency as much as I love her.

Nor am I to be alarmed or dissuaded from any such course by intimations of the spilling of blood. If blood is to be spilt by whose fault is it to be spilt. Upon the supposition, I maintain it would be the fault of those who raised the standard of disunion and endeavored to prostrate this government, and, Sir, when that is done, as long as it please God to give me voice to express my sentiments, or an arm, weak and enfeebled as it may be by age, that voice and that arm will be on the side of my country, for the support of the general authority, and for the maintenance of the power of this Union.

## **Fugitive Slave Act**

**1850**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,...*

### **Section 3**

[T]he Circuit Courts of the United States shall from time to time enlarge the number of the commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

### **Section 4**

And be it further enacted, That the commissioners above named shall have concurrent jurisdiction with the judges of the Circuit and District Courts of the United States,... and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

### **Section 5**

And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act,... and after arrest of such fugitive ... should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive...: and the better to enable the said commissioners, ... to execute their duties faithfully and efficiently, ... they are hereby authorized ... to appoint, in writing ... any ... suitable persons, from time to time, to execute all such warrants ... as may be issued by them in the lawful performance of their respective duties; with authority ... to summon and call to their aid the bystanders, or posse comitatus of the proper county, when necessary ... and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose....

### **Section 6**

And be it further enacted, That when a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the .... persons to whom such service or labor may be due, or ... their agent or attorney, duly authorized, by power of attorney, ... may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, ... or by seizing and arresting such fugitive, where the same can be done without process, and by taking, ... such person ... forthwith



before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; ... and with proof, ... by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, ... to make out and deliver to such claimant, ... a certificate ... with authority to such claimant ... to use such reasonable force and restraint as may be necessary, ... to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates ... shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped....

## Section 8

And be it further enacted, That the marshals, their deputies, and the clerks of the said District and Territorial Courts, shall be paid, for their services, the like fees as may be allowed for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in whole by such claimant, his or her agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery....

Approved, September 18, 1850.

### *Dred Scott v. Sanford*

1857

#### **Mr. Chief Justice TANEY delivered the opinion of the court....**

The question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States....

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: Can a negro, whose ancestors were imported into this country and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution?...

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, ... had no rights or privileges but such as those who held the power and the Government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to ... those who formed the sovereignty and framed the Constitution. The duty of the court is to interpret the instrument they have framed with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or anyone it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them....

[N]o State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country or who might afterwards be imported, who had then or should afterwards be made free in any State, and to put it in the power of a single State to make him a citizen of the United States and endue [endow?] him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts....

[E]very person, and every class and description of persons who were, at the time of the adoption of the Constitution, recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else....

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument....

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit....

We refer to ... historical facts for the purpose of showing the fixed opinions concerning that race upon which the statesmen of that day spoke and acted. It is necessary to do this in order to determine whether the general terms used in the Constitution of the United States as to the rights of man and the rights of the people was intended to include them, or to give to them or their posterity the benefit of any of its provisions.

The language of the Declaration of Independence is equally conclusive:

It begins by declaring that,

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

It then proceeds to say:

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 them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed.

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration, for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted, and instead of the sympathy of mankind to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men -- high in literary acquirements, high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others, and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language....

[T]here are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808 if it thinks proper.... And by the other provision the States pledge themselves to each other to maintain the right of property of the master by delivering up to him any slave who may have escaped from his service, and be found within their respective territories.... [T]hese two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution....

It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to them....

And we may here again refer in support of this proposition to the plain and unequivocal language of the laws of the several States, some passed after the Declaration of Independence and before the Constitution was adopted and some since the Government went into operation.

We need not refer, on this point, particularly to the laws of the present slaveholding States.... They have continued to treat them as an inferior class, and to subject them to strict police regulations, drawing a broad line of distinction between the citizen and the slave races, and legislating in relation to them upon the same principle which prevailed at the time of the Declaration of Independence....

And if we turn to the legislation of the States where slavery had worn out, or measures taken for its speedy abolition, we shall find the same opinions and principles equally fixed and equally acted upon.

Thus, Massachusetts, in 1786, passed a law [that] ... forbids the marriage of any white person with any negro, Indian, or mulatto, and inflicts a penalty of fifty pounds upon anyone who shall join them in marriage, and declares all such marriage absolutely null and void, and degrades thus the unhappy issue of the marriage by fixing upon it the stain of bastardy. And this mark of degradation was renewed, and again impressed upon the race, in the careful and deliberate preparation of their revised code published in 1836...

So, too, in Connecticut....

By the laws of New Hampshire, collected and finally passed in 1815, no one was permitted to be enrolled in the militia of the State but free white citizens; and the same provision is found in a subsequent collection of the laws made in 1855. Nothing could more strongly mark the entire repudiation of the African race....

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States, to suppose

that they regarded at that time, as fellow citizens and members of the sovereignty, a class of beings whom they had thus stigmatized;...

To all this mass of proof we have still to add, that Congress has repeatedly legislated upon the same construction of the Constitution that we have given....

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom....

The act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution...

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;" but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more....

Consequently, the power which Congress may have lawfully exercised in this Territory, while it remained under a Territorial Government, and which may have been sanctioned by judicial decision, can furnish no justification and no argument to support a similar exercise of power over territory afterwards acquired by the Federal Government....

This brings us to examine by what provision of the Constitution the present Federal Government, under its delegated and restricted powers, is authorized to acquire territory outside of the original limits of the United States, and what powers it may exercise therein over the person or property of a citizen of the United States while it remains a Territory and until it shall be admitted as one of the States of the Union.

There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States....

The power to expand the territory of the United States by the admission of new States is plainly given; and ... this power ... has been held to authorize the acquisition of territory not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority.... [A]s there is no express regulation in the Constitution defining the power which the General Government may exercise over the person or property of a citizen in a Territory thus acquired, the court must necessarily look to the provisions and principles of the Constitution and its distribution of powers for the rules and principles by which its decision must be governed.

Taking this rule to guide us, it may be safely assumed that citizens of the United States who migrate to a Territory belonging to the people of the United States cannot be ruled as mere colonists, dependent upon the will of the General Government and to be governed by any laws it may think proper to impose. The principle upon which our Governments rest ... is the union of States, sovereign and independent within their own limits in their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers delegated to it by the people of the several States, and exercising supreme authority within the scope of the powers granted to it throughout the dominion of the United States. A power, therefore, in the General Government to obtain and hold colonies and dependent territories over which they might legislate without restriction would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several States who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted.

At the time when the Territory in question was obtained by cession from France, it contained no population fit to be associated together and admitted as a State, and it therefore was absolutely necessary to hold possession of it, as a Territory belonging to the United States, until it was settled and inhabited by a civilized community capable of self-government, and in a condition to be admitted on equal terms with the other States as a member of the Union....

But, until that time arrives, it is undoubtedly necessary that some Government should be established, in order to organize society, and to protect the inhabitants in their persons and property....

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself.... The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out, and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved....

[T]he rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law....

It seems, however, to be supposed that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States.

But ... if the Constitution recognises the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now, ... the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guarantied to the citizens of the United States in every State that might desire it for twenty years. And the Government in express terms is pledged to protect it in all future time if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory, even if they had been carried there by the owner with the intention of becoming a permanent resident....

Upon the whole, therefore, it is the judgment of this court that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.

#### **Mr. Justice McLEAN dissenting....**

He [Scott] is averred to have had a negro ancestry, but this does not show that he is not a citizen of Missouri, within the meaning of the act of Congress authorizing him to sue in the Circuit Court. It has never been held necessary, to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federal courts, and so may any individual who has a permanent domicile in the State under whose laws his rights are protected, and to which he owes allegiance.

Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and appropriate definition of the term citizen is "a freeman." Being a freeman, and having his domicile in a State different from that of the defendant, he is a citizen within the act of Congress, and the courts of the Union are open to him....

In the discussion of the power of Congress to govern a Territory, in the case of the Atlantic Insurance Company v. Canter, 1 Peters 511, 7 Curtis 685, Chief Justice Marshall, speaking for the court, said, "...the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable

consequence of the right to acquire territory, whichever may be the source whence the power is derived, the possession of it is unquestioned.”...

If Congress may establish a Territorial Government in the exercise of its discretion, it is a clear principle that a court cannot control that discretion. This being the case, I do not see on what ground the act is held to be void. It did not purport to forfeit property, or take it for public purposes. It only prohibited slavery, in doing which it followed the Ordinance of 1787....

Now if a slave abscond, he may be reclaimed; but if he accompany his master into a State or Territory where slavery is prohibited, such slave cannot be said to have left the service of his master where his services were legalized. And if slavery be limited to the range of the territorial laws, how can the slave be coerced to serve in a State or Territory; not only without the authority of law, but against its express provisions? What gives the master the right to control the will of his slave? The local law, which exists in some form. But where there is no such law, can the master control the will of the slave by force? Where no slavery exists, the presumption, without regard to color, is in favor of freedom. Under such a jurisdiction, may the colored man be levied on as the property of his master by a creditor? On the decease of the master, does the slave descend to his heirs as property? Can the master sell him? Any one or all of these acts may be done to the slave where he is legally held to service. But where the law does not confer this power, it cannot be exercised....

Does the master carry with him the law of the State from which he removes into the Territory?, and does that enable him to coerce his slave in the Territory? Let us test this theory. If this may be done by a master from one slave State, it may be done by a master from every other slave State. This right is supposed to be connected with the person of the master, by virtue of the local law. Is it transferable? May it be negotiated, as a promissory note or bill of exchange? If it be assigned to a man from a free State, may he coerce the slave by virtue of it? What shall this thing be denominated? Is it personal or real property? Or is it an indefinable fragment of sovereignty which every person carries with him from his late domicile? One thing is certain -- that its origin has been very recent, and it is unknown to the laws of any civilized country....

In every decision of a slave case prior to that of *Dred Scott v. Emerson*, the Supreme Court of Missouri considered it as turning upon the Constitution of Illinois, the Ordinance of 1787, or the Missouri Compromise Act of 1820. The court treated these acts as in force, and held itself bound to execute them by declaring the slave to be free who had acquired a domicile under them with the consent of his master.

The late decision reversed this whole line of adjudication, and held that neither the Constitution and laws of the States nor acts of Congress in relation to Territories could be judicially noticed by the Supreme Court of Missouri....

The Supreme Court of Missouri refused to notice the act of Congress or the Constitution of Illinois under which *Dred Scott*, his wife, and children claimed that they are entitled to freedom.

This being rejected by the Missouri court, there was no case before it, or least it was a case with only one side. And this is the case which, in the opinion of this court, we are bound to follow. The Missouri court disregards the express provisions of an act of Congress and the Constitution of a sovereign State, both of which laws for twenty-eight years it had not only regarded, but carried into effect.

If a State court may do this, on a question involving the liberty of a human being, what protection do the laws afford? So far from this being a Missouri question, it is a question, as it would seem, within the twenty-fifth section of the Judiciary Act, where a right to freedom being set up under the act of Congress, and the decision being against such right, it may be brought for revision before this court, from the Supreme Court of Missouri. I think the judgment of the court below should be reversed.

### **"House Divided" Speech**

**June 16, 1858**

If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object, and confident promise, of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease, until a crisis shall have been reached and passed. “A house divided against itself cannot stand.” I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest

the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or its advocates will push it forward, till it shall become alike lawful in all the States, old as well as new—North as well as South....

### **William Seward, “An Irrepressible Conflict”**

**October 25, 1858**

Our country is a theater which exhibits in full operation two radically different political systems: the one resting on the basis of servile labor, the other on the basis of voluntary labor of free men.... Hitherto the two systems have existed in different States, but side by side within the American Union. This has happened because the Union is a confederation of States. But in another aspect the United States constitutes only one nation. Increase of population, which is filling the States out of their very borders, together with a new and extended network of railroads and other avenues, and an internal commerce which daily becomes more intimate, is rapidly bringing the States into a higher and more perfect social unity or consolidation. Thus, these antagonistic systems are continually coming into closer contact, and collision results.

Shall I tell you what this collision means? They who think it is accidental, unnecessary, the work of interested or fanatical agitators, and therefore ephemeral, mistake the case altogether. It is an irrepressible conflict between opposing and enduring forces, and it means that the United States must and will sooner or later become either entirely a slave-holding nation or entirely a free-labor nation.

**17.** Almost as soon as the news of Abraham Lincoln’s election reached the South, the region’s militant leaders began to implement its plans to sever their state’s relation from the Union. In a short period of time during the winter of 1860-61, which has become known as “the secession winter,” a number of southern state legislatures passed secession ordinances. Prior to South Carolina becoming the first state to secede from the Union in December 1860, Mississippi’s state legislature issued a strong statement in their resolutions on secession that explained their justification for secession. According to the Mississippi state legislature, the northern states, as parties to the original constitutional compact, violated the commitment to protect slavery that was incorporated in the Constitution as the very basis of Union. Soon thereafter, other southern state legislatures followed Mississippi’s course as they each justified their act of secession over the issue of slavery.

President James Buchanan’s Annual Message to Congress afforded him an opportunity to deescalate the secession crisis. He delivered his message to Congress on December 4, 1860, two weeks prior to South Carolina’s act of secession. Buchanan’s administration was involved in a paralyzing dilemma. If the administration did nothing to check the secessionist movement, then the Union would most assuredly be dissolved; on the other hand, if the government applied force against the southern states a terrible civil war might erupt. Buchanan, acting on the opinion of Jeremiah S. Black, his Attorney General, declared that the president did not have the authority to coerce a state into remaining in the Union. In stark contrast to Lincoln’s view of the presidency, Buchanan’s policy announced the impotence of the federal government to prevent secession by force. Reacting to Buchanan’s message, William Seward ironically commented that the “message shows conclusively that it is the duty of the President to execute the law—unless someone opposes it; and that no state has the right to go out of the Union—unless it wants to.

### **Mississippi Resolutions on Secession**

**November 30, 1860**

Whereas, The Constitutional Union was formed by the several States in their separate sovereign capacity for the purpose of mutual advantage and protection;

That the several States are distinct sovereignties, whose supremacy is limited so far only as the same has been delegated by voluntary compact to a Federal Government, and when it fails to accomplish the ends for which it was established, the parties to the compact have the right to resume, each State for itself, such delegated powers;

That the institution of slavery existed prior to the formation of the Federal Constitution, and is recognized by its letter, and all efforts to impair its value or lessen its duration by Congress, or any of the free States, is a violation

of the compact of Union and is destructive of the ends for which it was ordained, but in defiance of the principles of the Union thus established, the people of the Northern States have assumed a revolutionary position toward the Southern States;

That they have set at defiance that provision of the Constitution which was intended to secure domestic tranquility among the States and promote their general welfare, namely: "No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom the Service or Labor may be due;"

That they have by voluntary associations, individual agencies and State legislation interfered with slavery as it prevails in the slaveholding States;

That they have enticed our slaves from us and, by State intervention obstructed and prevented their rendition under the fugitive slave law;

That they continue their system of agitation obviously for the purpose of encouraging other slaves to escape from service, to weaken the institution in the slave-holding States by rendering the holding of such property insecure, and as a consequence its ultimate abolition certain;

That they claim the right and demand its execution by Congress to exclude slavery from the Territories, but claim the right of protection for every species of property owned by themselves;

That they declare in every manner in which public opinion is expressed their unalterable determination to exclude from admittance into the Union any new State that tolerates slavery in its Constitution, and thereby force Congress to a condemnation of that species of property;

That they thus seek by an increase of abolition States "to acquire two-thirds of both houses" for the purpose of preparing an amendment to the Constitution of the United States, abolishing slavery in the States, and so continue the agitation that the proposed amendment shall be ratified by the Legislatures of three-fourths of the States;

That they have in violation of the comity of all civilized nations, and in violation of the comity established by the Constitution of the United States, insulted and outraged our citizens when traveling among them for pleasure, health, or business, by taking their servants and liberating the same, under the forms of State laws, and subjecting their owners to degrading and ignominious punishment;

That to encourage the stealing of our property they have put at defiance that provision of the Constitution which declares that fugitives from justice (escaping) into another State, on demand of the Executive authority of that state from which he fled, shall be delivered up;

That they have sought to create domestic discord in the Southern States by incendiary publications;

That they have encouraged a hostile invasion of a Southern State to excite insurrection, murder, and rapine;

That they have deprived Southern citizens of their property and continue an unfriendly agitation of their domestic institutions, claiming for themselves perfect immunity from external interference with their domestic policy; ...

That they have elected a majority of Electors for President and Vice-President on the ground that there exists an irreconcilable conflict between the two sections of the Confederacy in reference to their respective systems of labor and in pursuance of their hostility to us and our institutions, thus declaring to the civilized world that the powers of this Government are to be used for the dishonor and overthrow of the Southern Section of this great Confederacy. Therefore:

*Be it resolved by the Legislature of the State of Mississippi, That in the opinion of those who now constitute the said Legislature, the secession of each aggrieved State is the proper remedy for these injuries.*



## **James Buchanan, "State of the Union Address"**

**December 3, 1860**

Fellow-Citizens of the Senate and House of Representatives:

...The long-continued and intemperate interference of the Northern people with the question of slavery in the Southern States has at length produced its natural effects. The different sections of the Union are now arrayed against each other, and the time has arrived, so much dreaded by the Father of his Country, when hostile geographical parties have been formed....

I have long foreseen and often forewarned my countrymen of the now impending danger.... It can not be denied that for five and twenty years the agitation at the North against slavery has been incessant. In 1835 pictorial handbills and inflammatory appeals were circulated extensively throughout the South of a character to excite the passions of the slaves, and, in the language of General Jackson, "to stimulate them to insurrection and produce all the horrors of a servile war." This agitation has ever since been continued by the public press, by the proceedings of State and county conventions and by abolition sermons and lectures. The time of Congress has been occupied in violent speeches on this never-ending subject, and appeals, in pamphlet and other forms, indorsed by distinguished names, have been sent forth from this central point and spread broadcast over the Union.

How easy would it be for the American people to settle the slavery question forever and to restore peace and harmony to this distracted country! They, and they alone, can do it. All that is necessary to accomplish the object, and all for which the slave States have ever contended, is to be let alone and permitted to manage their domestic institutions in their own way. As sovereign States, they, and they alone, are responsible before God and the world for the slavery existing among them. For this the people of the North are not more responsible and have no more fight to interfere than with similar institutions in Russia or in Brazil.

Upon their good sense and patriotic forbearance I confess I still greatly rely. Without their aid it is beyond the power of any President, no matter what may be his own political proclivities, to restore peace and harmony among the States. Wisely limited and restrained as is his power under our Constitution and laws, he alone can accomplish but little for good or for evil on such a momentous question.

And this brings me to observe that the election of any one of our fellow-citizens to the office of President does not of itself afford just cause for dissolving the Union. This is more especially true if his election has been effected by a mere plurality, and not a majority of the people, and has resulted from transient and temporary causes, which may probably never again occur....

After all, he is no more than the chief executive officer of the Government. His province is not to make but to execute the laws. And it is a remarkable fact in our history that, notwithstanding the repeated efforts of the antislavery party, no single act has ever passed Congress, unless we may possibly except the Missouri compromise, impairing in the slightest degree the rights of the South to their property in slaves; and it may also be observed, judging from present indications, that no probability exists of the passage of such an act by a majority of both Houses, either in the present or the next Congress....

The fugitive-slave law has been carried into execution in every contested case since the commencement of the present Administration, though Often, it is to be regretted, with great loss and inconvenience to the master and with considerable expense to the Government. Let us trust that the State legislatures will repeal their unconstitutional and obnoxious enactments. Unless this shall be done without unnecessary delay, it is impossible for any human power to save the Union.

The Southern States, standing on the basis of the Constitution, have right to demand this act of justice from the States of the North. Should it be refused, then the Constitution, to which all the States are parties, will have been willfully violated by one portion of them in a provision essential to the domestic security and happiness of the remainder. In that event the injured States, after having first used all peaceful and constitutional means to obtain redress, would be justified in revolutionary resistance to the Government of the Union.

I have purposely confined my remarks to revolutionary resistance, because it has been claimed within the last few years that any State, whenever this shall be its sovereign will and pleasure, may secede from the Union in accordance with the Constitution and without any violation of the constitutional rights of the other members of the Confederacy; that as each became parties to the Union by the vote of its own people assembled in convention, so any one of them may retire from the Union in a similar manner by the vote of such a convention.

In order to justify secession as a constitutional remedy, it must be on the principle that the Federal Government is a mere voluntary association of States, to be dissolved at pleasure by any one of the contracting parties. If this be so, the Confederacy is a rope of sand, to be penetrated and dissolved by the first adverse wave of public opinion in any of the States. In this manner our thirty-three States may resolve themselves into as many petty, jarring, and hostile republics, each one retiring from the Union without responsibility whenever any sudden excitement might impel them to such a course. By this process a Union might be entirely broken into fragments in a few weeks which cost our forefathers many years of toil, privation, and blood to establish.

Such a principle is wholly inconsistent with the history as well as the character of the Federal Constitution....

It was intended to be perpetual, and not to be annulled at the pleasure of any one of the contracting parties....

It may be asked, then, Are the people of the States without redress against the tyranny and oppression of the Federal Government? By no means. The right of resistance on the part of the governed against the oppression of their governments can not be denied. It exists independently of all constitutions, and has been exercised at all periods of the world's history. Under it old governments have been destroyed and new ones have taken their place. It is embodied in strong and express language in our own Declaration of Independence. But the distinction must ever be observed that this is revolution against an established government, and not a voluntary secession from it by virtue of an inherent constitutional right. In short, let us look the danger fairly in the face. Secession is neither more nor less than revolution. It may or it may not be a justifiable revolution, but still it is revolution.

What, in the meantime, is the responsibility and true position of the Executive? He is bound by solemn oath, before God and the country, "to take care that the laws be faithfully executed," and from this obligation he can not be absolved by any human power. But what if the performance of this duty, in whole or in part, has been rendered impracticable by events over which he could have exercised no control? Such at the present moment is the case throughout the State of South Carolina so far as the laws of the United States to secure the administration of justice by means of the Federal judiciary are concerned. All the Federal officers within its limits through whose agency alone these laws can be carried into execution have already resigned. We no longer have a district judge, a district attorney, or a marshal in South Carolina. In fact, the whole machinery of the Federal Government necessary for the distribution of remedial justice among the people has been demolished, and it would be difficult, if not impossible, to replace it.

The only acts of Congress on the statute book bearing upon this subject are those of February 28, 1795, and March 3, 1807. These authorize the President, after he shall have ascertained that the marshal, with his *posse comitatus*, is unable to execute civil or criminal process in any particular case, to call forth the militia and employ the Army and Navy to aid him in performing this service, having first by proclamation commanded the insurgents "to disperse and retire peaceably to their respective abodes within a limited time" This duty can not by possibility be performed in a State where no judicial authority exists to issue process, and where there is no marshal to execute it, and where, even if there were such an officer, the entire population would constitute one solid combination to resist him.

The bare enumeration of these provisions proves how inadequate they are without further legislation to overcome a united opposition in a single State, not to speak of other States who may place themselves in a similar attitude. Congress alone has power to decide whether the present laws can or can not be amended so as to carry out more effectually the objects of the Constitution....

Apart from the execution of the laws, so far as this may be practicable, the Executive has no authority to decide what shall be the relations between the Federal Government and South Carolina. He has been invested with no such discretion. He possesses no power to change the relations heretofore existing between them, much less to acknowledge the independence of that State. This would be to invest a mere executive officer with the power of recognizing the dissolution of the confederacy among our thirty-three sovereign States. It bears no resemblance to the recognition of a foreign *de facto* government, involving no such responsibility. Any attempt to do this would, on his part, be a naked act of usurpation. It is therefore my duty to submit to Congress the whole question in all its bearings. The course of events is so rapidly hastening forward that the emergency may soon arise when you may be called upon to decide the momentous question whether you possess the power by force of arms to compel a State to remain in the Union. I should feel myself recreant to my duty were I not to express an opinion on this important subject.

The question fairly stated is, Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw or has actually withdrawn from the Confederacy? If answered in the affirmative, it must be on the principle that the power has been conferred upon Congress to declare and to make war against a State. After much serious reflection I have arrived at the conclusion that no such power has been delegated to Congress or to any other department of the Federal Government. It is manifest upon an inspection of the Constitution that this is not among the specific and enumerated powers granted to Congress, and it is equally apparent that its exercise is not "necessary and proper for carrying into execution" any one of these powers. So far from this power having been delegated to Congress, it was expressly refused by the Convention which framed the Constitution....

But if we possessed this power, would it be wise to exercise it under existing circumstances? The object would doubtless be to preserve the Union. War would not only present the most effectual means of destroying it, but would vanish all hope of its peaceable reconstruction. Besides, in the fraternal conflict a vast amount of blood and treasure would be expended, rendering future reconciliation between the States impossible. In the meantime, who can foretell what would be the sufferings and privations of the people during its existence?

The fact is that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it cannot live in the affections of the people, it must one day perish. Congress possesses many means of preserving it by conciliation, but the sword was not placed in their hand to preserve it by force....

**18. Alexander Stephens was a moderate voice within the southern states as he pleaded with southern politicians to remain loyal to the Union. However, like most southerners, Stephens followed his state once it had formally seceded from the Union. On December 22, Lincoln wrote Stephen to quell the fears of southerners that he sought to interfere with the institution of slavery in the South. The president elect continued to reiterate his pledge that upon assuming the office of the presidency, he would not use the powers of the federal government against the South's peculiar institution. As the nation stood on the brink of the Civil War, Stephens delivered his famous "Cornerstone Speech" in Savannah, Georgia in which he reaffirmed that slavery "was the immediate cause of the late rupture and present revolution."**

**President Abraham Lincoln to Alexander Stephens**

**December 22, 1860**

My dear Sir,

... Do the people of the South really entertain fears that a Republican administration would, directly, or indirectly, interfere with their slaves, or with them, about their slaves? If they do, I wish to assure you, as once a friend, and still, I hope, not an enemy, that there is no cause for such fears.

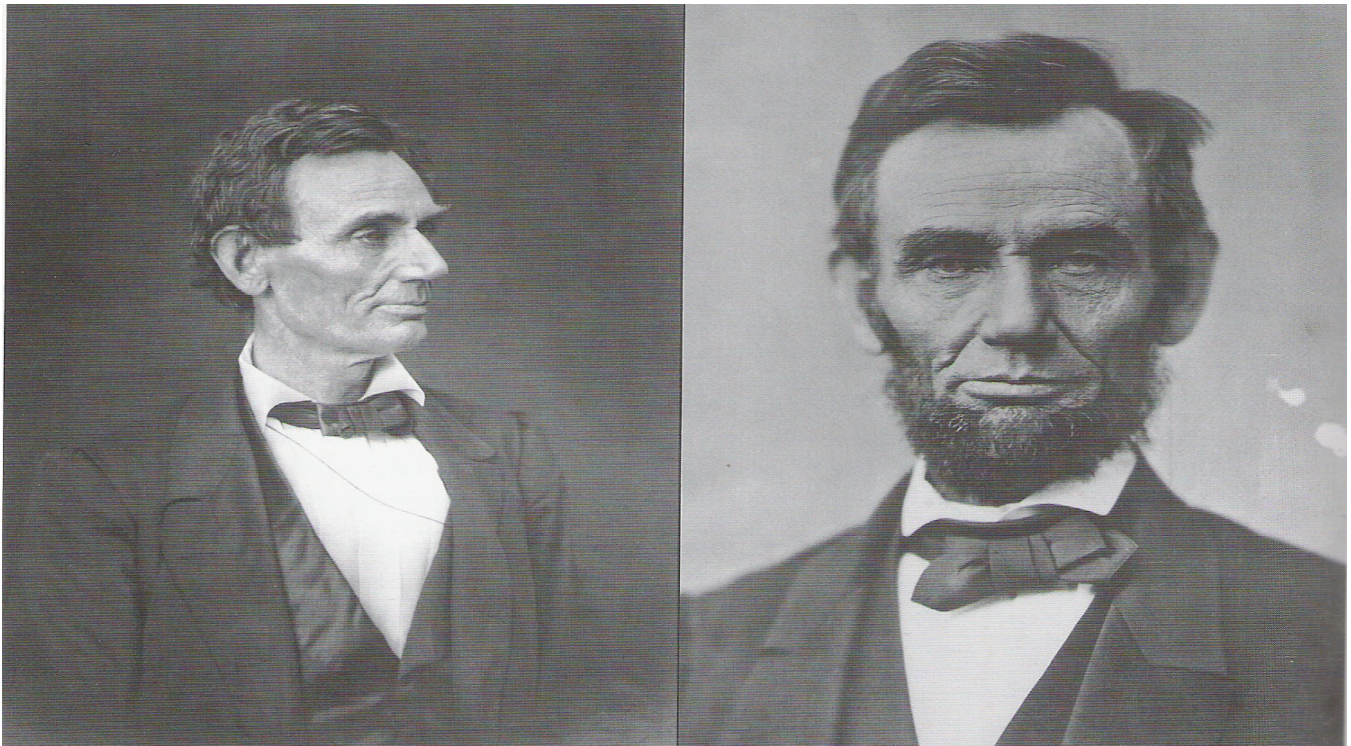
The South would be in no more danger in this respect, than it was in the days of Washington. I suppose, however, this does not meet the case. You think slavery is right and ought to be extended; while we think it is wrong and ought to be restricted. That I suppose is the rub. It certainly is the only substantial difference between us.

### **Alexander Stephens, The Cornerstone Speech**

**March 21, 1861**

[The Confederate] Constitution has put at rest forever all the agitating questions relating to our peculiar institution—African slavery as it exists among us—the proper status of the Negro in our form of civilization. This was the immediate cause of the late rupture and present revolution. Jefferson, in his forecast, had anticipated this, as the “rock upon which the old Union would split.” He was right. What was conjecture with him, is now a realized fact. But whether he fully comprehended the great truth upon which that rock stood and stands, may be doubted. The prevailing ideas entertained by him and most of the leading statesmen at the time of the formation of the old Constitution were, that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. It was an evil they knew not well how to deal with; but the general opinion of the men of that day was, that, somehow or other, in the order of Providence, the institution would be evanescent and pass away.... Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. It was a sandy foundation, and the idea of a Government built upon it—when the “storm came and the wind blew, it fell.”

Our new government is founded upon exactly the opposite ideas; its foundations are laid, its cornerstone rests, upon the great truth that the Negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition. This, our new Government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth....



**Abraham Lincoln**

**19.** The following two documents reveal Abraham Lincoln's commitment to do whatever it took to preserve the Union. Ever the astute politician, Lincoln realized he could not yet make the abolition of slavery a war aim in order to maintain northern unity during the first two years of the Civil War. His letter to Horace Greeley, editor of the *New York Tribune*, indicates Lincoln's willingness to preserve the Union. But even at the moment he wrote Greeley, Lincoln was planning to issue an Emancipation Proclamation. Lincoln and his administration agreed that a major Union victory was required before he could announce his intention to use the president's war powers to issue an executive order freeing all slaves inside the Confederacy's lines. Although many critics of Lincoln are quick to point out that the Proclamation did not free all the slaves, only those in areas of the Confederacy that the administration could not enforce its order, the document clearly and irrevocably established that the Civil War was being fought no longer to preserve the Union, but was also being waged to eliminate slavery.

Nowhere are the purposes of government more exaltingly stated than in Lincoln's Gettysburg Address. In a brief speech at the dedication of the national cemetery at Gettysburg, Pennsylvania, Lincoln summarized succinctly both the American mission—to prove to the world that people are capable of democratic self-government—and the nationalistic understanding of federalism. Lincoln is careful to note that the founding of the nation originated prior to the ratification of the Constitution.

Perhaps the most famous of his speeches, Lincoln's Second Inaugural Address does not speak of the Union's impending triumph, but rather is a solemn reminder of the nation's great loss over four years of civil war. Lincoln's last paragraph, the most well-known and most quoted portion of the speech, calls for a more moderate course of Reconstruction than the policy advocated by the Radical Republicans in Congress: "With malice toward none, with charity for all, ... let us strive on to finish the work we are in, to bind up the nation's wounds, ... to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

### President Abraham Lincoln's Reply to Horace Greeley

August 22, 1862

Dear Sir,

I have just read yours of the 19th. addressed to myself through the New-York Tribune....

As to the policy I "seem to be pursuing" as you say, I have not meant to leave any one in doubt.

I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored; the nearer the Union will be "the Union as it was." If there be those who would not save the Union, unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time destroy slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it would help to save the Union. I shall do less whenever I shall believe what I am doing hurts the cause, and I shall do more whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views.

I have here stated my purpose according to my view of official duty; and I intend no modification of my oft-expressed personal wish that all men everywhere could be free.

### The Emancipation Proclamation

January 1, 1863

By the President of the United States of America:

### A PROCLAMATION

Whereas on the twenty second day of September, in the year of our Lord one thousand eight hundred and sixty two, a proclamation was issued by the President of the United States, containing, among other things, the following, towit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free; and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the executive will on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State and the people thereof are not then in rebellion against the United States."

Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-In-Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the first day above mentioned, order and designate as the States and parts of States wherein the people thereof, respectively, are this day in rebellion against the United States the following, towit:

Arkansas, Texas, Louisiana (except the parishes of St. Bernard, Palquemines, Jefferson, St. John, St. Charles, St. James [,] Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth []); and which excepted parts are for the present left precisely as if this proclamation were not issued.

And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all case when allowed, they labor faithfully for reasonable wages.

And I further declare and make known that such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and of the Independence of the United States of America the eight-seventh.

By the President:

Abraham Lincoln

### **Gettysburg Address**

**November 19, 1863**

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—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.

### **Abraham Lincoln, Second Inaugural Address**

**March 4, 1865**

Fellow-Countrymen:

At this second appearing to take the oath of the Presidential office there is less occasion for an extended address than there was at the first. Then a statement somewhat in detail of a course to be pursued seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself, and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it—all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to saving the Union without war, insurgent agents were in the city seeking to destroy it without war—seeking to dissolve the Union and divide effects by negotiation. Both parties deprecated war, but one of them would make war rather than let the nation survive, and the other would accept war rather than let it perish, and the war came.

One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the Government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which



it has already attained. Neither anticipated that the cause of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense cometh." If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

**20. In the wake of the assassination of President Abraham Lincoln, his successor, Vice President Andrew Johnson of Tennessee, was faced with the dilemma of whether to try Lincoln's assassins in Washington D.C.'s civil courts or in a military tribunal. In the following document, Attorney General James Speed traces the constitutionality of military tribunals during times of war and concludes that Lincoln's assassins should be tried before a military tribunal rather than a civil court.**

### **Opinion on the Constitutional Power of the Military to Try and Execute the Assassins of the President**

**1865**

Martial law had been declared in the District of Columbia, but the civil courts were open and held their regular sessions, and transacted business as in times of peace.

Such being the facts, the question is one of great importance— important, because it involves the constitutional guarantees thrown about the rights of the citizen, and because the security of the army and the government in time of war is involved; important, as it involves a seeming conflict between the laws of peace and of war....

A civil court of the United States is created by a law of Congress, under and according to the Constitution....

A military tribunal exists under and according to the Constitution in time of war.... Should Congress fail to create such tribunals, then, under the Constitution, they must be constituted according to the laws and usages of civilized warfare. They may take cognizance of such offenses as the laws of war permit; they must proceed according to the customary usages of such tribunals in time of war, and inflict such punishments as are sanctioned by the practice of civilized nations in time of war. In time of peace, neither Congress nor the military can create any military tribunals, except such as are made in pursuance of that clause of the Constitution which gives to Congress the power "to make rules for the government of the land and naval forces."...

That the law of nations constitutes a part of the laws of the land, must be admitted. The laws of nations are expressly made laws of the land by the Constitution, when it says that "Congress shall have power to define and punish piracies and felonies committed on the high seas and offenses against the laws of nations." To define is to give the limits or precise meaning of a word or thing in being; to make, it is to call into being. Congress has



the power to define, not to make, the laws of nations; but Congress has the power to make rules for the government of the army and navy. From the very face of the Constitution, then, it is evident that the laws of nations do constitute a part of the laws of the land....

That the laws of nations constitute a part of the laws of the land is established from the face of the Constitution, upon principle and by authority....

Congress can declare war. When war is declared, it must be, under the Constitution, carried on according to the known laws and usages of war among civilized nations. Under the power to define those laws, Congress can not abrogate them or authorize their infraction. The Constitution does not permit this Government to prosecute a war as an uncivilized and barbarous people.

As war is required by the framework of our government to be prosecuted according to the known usages of war among the civilized nations of the earth, it is important to understand what are the obligations, duties, and responsibilities imposed by war upon the military. Congress, not having defined, as under the Constitution it might have done, the laws of war, we must look to the usage of nations to ascertain the powers conferred in war, on whom the exercise of such powers devolve, over whom, and to what extent to those powers reach, and in how far the citizen and the soldier are bound by the legitimate use thereof....

Anciently, when two nations were at war, the conqueror had, or asserted, the right to take from enemy his life, liberty and property: if either was spared, it was as a favor or act of mercy. By the laws of nations, and of war as a part, thereof, the conqueror was deprived of this right.

When two governments, foreign to each other, are at war, or when a civil war becomes territorial, all of the people of the respective belligerents become by the law of nations the enemies of each other. As enemies they can not hold intercourse, but neither can kill or injure the other except under a commission from their respective governments. So humanizing have been, and are the laws of war, that it is a high offense against them to kill an enemy without such commission. The laws of war demand that a man shall not take human life except under a license from his government; and under the Constitution of the United States no license can be given by any department of the Government to take human life in war, except according to the law and usages of war. Soldiers regularly in the service have the license of the government to deprive men, the active enemies of their government, of their liberty and lives; their commission so to act is as perfect and legal as that of a judge to adjudicate, but the soldier must act in obedience to the laws of war, as the judge must in obedience to the civil law. A civil judge must try criminals in the mode prescribed in the Constitution and the law; so, soldiers must kill or capture according to the laws of war. Non-combatants are not to be disturbed or interfered with by the armies of either party except in extreme cases. Armies are called out and organized to meet and overcome the active, acting public enemies.

But enemies with which an army has to deal are of two classes:

1. Open, active participants in hostilities, as soldiers who wear the uniform, move under the flag, and hold the appropriate commission from their government. Openly assuming to discharge the duties and meet the responsibilities and dangers of soldiers, they are entitled to all belligerent rights, and should receive all the courtesies due to soldiers. The true soldier is proud to acknowledge and respect those rights, and every cheerfully extends those courtesies.
2. Secret, but active participants, as spies, brigands, bushwackers, jayhawkers, war rebels and assassins. In all wars, and especially in civil wars, such secret, active enemies rise up to annoy attack and army, and must be met and put down by the army. When lawless wretches become so impudent and powerful as to not be controlled and governed by the ordinary tribunals of a country, armies are called out, and the laws of war invoked. Wars never have been and never can be conducted upon the principle that an army is but a *posse comitatus* of a civil magistrate....

In all wars, and especially in civil wars, secret but active enemies are almost as numerous as open ones. That fact has contributed to make civil wars such scourges to the countries in which they rage. In nearly all foreign wars the contending parties speak different languages and have different habits and manners; but in most civil wars that is not the case; hence there is a security in participating secretly in hostilities that induces many to thus engage. War prosecuted according to the most civilized usage is horrible, but its horrors are greatly aggravated by the immemorial habits of plunder, rape and murder practiced by secret, but active participants. Certain laws and usages have been adopted by the civilized world in wars between nations that are not kin to one another, for the purpose and to the effect of arresting or softening many of the necessary cruel consequences of war. How strongly bound we are, then, in the midst of a great war, where brother and personal friend are fighting against brother and friend, to adopt and be governed by those laws and usages.

A public enemy must or should be dealt with in all wars by the same laws. The fact that they are public enemies, being the same, they should deal with each other according to those laws of war that are contemplated by the Constitution. Whatever rules have been adopted and practiced by the civilized nations of the world in war, to soften its harshness and severity, should be adopted and practiced by us in this war. That the laws of war authorized commanders to create and establish military commissions, courts or tribunals, for the trial of offenders against the laws of war, whether they be active or secret participants in the hostilities, can not be denied. That the judgments of such tribunals may have been sometimes harsh, and sometimes even tyrannical, does not prove that they ought not to exist, nor does it prove that they are not constituted in the interest of justice and mercy. Considering the power that the laws of war give over secret participants in hostilities, such as banditti, guerrillas, spies, etc., the position of a commander would be miserable indeed if he could not call to his aid the judgments of such tribunals; he would become a mere butcher of men, without the power to ascertain justice, and there can be no mercy where there is no justice. War in its mildest form is horrible; but take away from the contending armies the ability and right to organize what is now known as a Bureau of Military Justice, they would soon become monster savages, unrestrained by any and all ideas of law and justice. Surely no lover of mankind, no one that respects law and order, no one that the instinct of justice, or that can be softened by mercy, would, in time of war, take away from the commanders the right to organize military tribunals of justice, and especially such tribunals for the protection of persons charged or suspected with being secret foes and participants in the hostilities. It would be a miracle if the records and history of this war do not show occasional cases in which those tribunals have erred; but they will show many, very many cases in which human life would have been taken but for the interposition and judgments of those tribunals. Every student of the laws of war must acknowledge that such tribunals exert a kindly and benign influence in time of war. Impartial history will record the fact the Bureau of Military Justice, regularly organized during this war, has saved human life and prevented human suffering. The greatest suffering, patiently endured by soldiers, and the hardest battles gallantly fought during this protracted struggle, are not more creditable to the American character than the establishment of this bureau. This people have such an educated and profound respect for law and justice— such a love of mercy— that they have, in the midst of this greatest of civil wars, systematized and brought into regular order, tribunals that before this war existed under the law of war, but without general rule. To condemn the tribunals that have been established under this bureau, is to condemn and denounce the war itself, or justifying the war, to insist that it shall be prosecuted according to the harshest rules, and without the aid of the laws, usages, and customary agencies for mitigating those rules. If such tribunals had not existed before, under the laws and usages of war, the American citizen might as proudly point to their establishments as to our inimitable and inestimable constitutions. It must be constantly borne in mind that such tribunals and such a bureau can not exist except in time of war, and can not then take cognizance of offenders and offenses against the laws of war....

We have seen that when war comes, the laws and usages of war come also, and that during the war they are a part of the laws of the land. Under the Constitution, Congress may define and punish offenses against those laws, but in default of Congress defining those laws and prescribing a punishment for their infraction, and the mode of proceeding to ascertain whether an offense has been committed, and what punishment is to be inflicted, the army must be governed by the laws and usages of war as understood and practiced by the civilized nations of the world. It has been abundantly shown that these tribunals are constituted by the army in the interest of justice and mercy, and for the purpose and to the effect of mitigating the horrors of war.

But it may be insisted that though the laws of war, being a part of the law of nations, constitute a part of the laws of the land, that those laws must be regarded as modified so far, and whenever they come in direct conflict with plain constitutional provisions....

That portion of the Constitution which declares that "no person shall be deprived of his life, liberty or property without due process of law," has such direct reference to, and connection with, trials for crime or criminal prosecutions, that comment upon it would seem to be unnecessary. Trials for offenses against the laws of war are not embraced or intended to be embraced in those provisions. If this is not so, then every man that kills another in battle is a murderer, for he deprived a "person of life without that due process of law" contemplated by this provision; every man that holds another as a prisoner of war is liable for false imprisonment, as he does so without that same due process. The argument that flings around offenders against the laws of war these guarantees of the Constitution would convict all the soldiers of our army of murder; no prisoners could be taken and held; the army could not move. The absurd consequences that would of necessity flow from such an argument show that it can not be the true construction— it can not be what was intended by the framers of the instrument. One of the prime motives for the Union and a Federal Government was to confer the powers of war. If any provisions of the Constitution are so in conflict with the power to carry on war as to destroy and make it valueless, then the instrument, instead of being a great and wise one, is a miserable failure, a *felo de se*.

The fact that the civil courts are open does not affect the right of the military tribunal to hold as a prisoner and to try. The civil courts have no more right to prevent the military, in time of war, from trying an offender against the laws of war than they have a right to interfere with and prevent a battle. A battle may be lawfully fought in the very view and presence of a court; so a spy, or bandit or other offender against the law of war, may be tried, and tried lawfully, when and where the civil courts are open and transacting the usual business.

The laws of war authorized human life to be taken without legal process, or that legal process contemplated by those provisions in the Constitution that are relied upon to show that military judicial tribunals are unconstitutional. Wars should be prosecuted justly as well as bravely. One enemy in the power of another, whether he be an open or a secret one, should not be punished or executed without trial. If the question be once concerning the laws of war, he should be tried by those engaged in the war; they and they only are his peers. The military must decide whether he is or not an active participant in the hostilities. If he is an active participant in the hostilities, it is the duty of the military to take him a prisoner without warrant or other judicial process, and dispose of him as the laws of war direct....

The law of nations, which is the result of the experience and wisdom of ages, has decided that jayhawkers, banditti, etc., are offenders against the laws of nature and of war, and as such amenable to the military. Our Constitution has made those laws a part of the law of the land. Obedience to the Constitution and the law, then, requires that the military should do their whole duty; they must not only meet and fight the enemies of the country in open battle, but they must kill or take the secret enemies of the country, and try and execute them according to the laws of war. The civil tribunals of the country can not rightfully interfere with the military in the performance of their high, arduous and perilous, but lawful duties. That Booth and his associates were secret active public enemies, no mind that contemplates the facts can doubt. The exclamation used by him when he escaped from the box on to the stage, after he had fired the fatal shot, *sic semper tyrannis*, and his dying message, "Say to my mother that I died for my country," show that he was not an assassin from private malice, but that he acted as a public foe. Such a deed is expressly laid down by Vattel, in his work on the law of nations, as an offense against the laws of war, and a great crime. "I give, then, the name of assassination to treacherous murder, whether the perpetrators of the deed be the subjects of the party whom we cause to be assassinated or of our sovereign, or that it be executed by any other emissary introducing himself as a suppliant, a refugee, or a deserter, or, in fine, as a stranger."

Neither the civil nor the military department of the Government should regard itself as wiser and better than the Constitution and the laws that exist under or are made in pursuance thereof. Each department should, in peace and in war, confining itself to its own proper sphere of action, diligently and fearless perform its legitimate

functions, and in the mode prescribed by the Constitution and the law. Such obedience to and observance of law will maintain peace when it exists, and will soonest relieve the country from the abnormal state of war.

My conclusion, therefore, is, that if the persons who are charged with the assassination of the President committed the deed as public enemies, as I believe they did, and whether they did or not is a question to be decided by the tribunal before which they are tried, they not only can, but ought to be tried before a military tribunal. If the persons charged have offended against the laws of war, it would be as palpably wrong of the military to hand them over to the civil courts, as it would be wrong in a civil court to convict a man of murder who had, in time of war, killed another in battle.

**21.** During the early period of Reconstruction, President Andrew Johnson and the Radicals, a tiny but boisterous faction of the Republican Party within Congress, clashed openly over the restoration of the Union and the question of the rights of African Americans. As the southern states accepted Johnson's lenient terms and were restored to the Union, they defiantly passed Black Codes designed to severely restrict the freedom of African Americans.

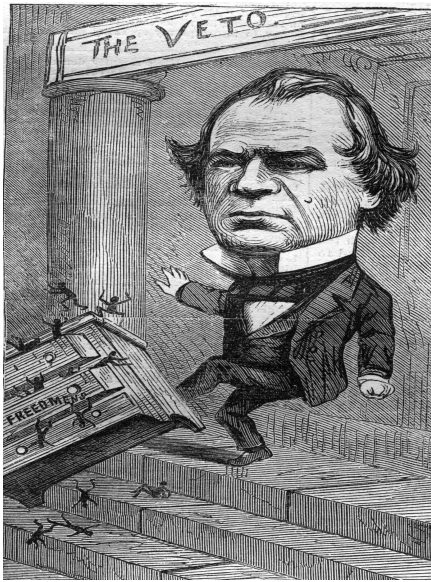
Congress responded by passing a Civil Rights Bill in March 1866. But Johnson, a states rights Jacksonian Democrat that idealized Andrew Jackson and his laissez-faire doctrine, broke with the Republican party that elected him alongside Lincoln and vetoed the bill. Congress mustered up enough support to override Johnson's veto and repassed the bill in April 1866. To safeguard the civil rights of African Americans, Congress then proposed the Fourteenth Amendment, which incorporated the Civil Rights Bill's fundamental principles.

The Slaughterhouse Cases, a series of Supreme Court rulings in 1873, constitute the Court's first comprehensive interpretation of the Fourteenth Amendment. The case did not even involve the rights of African Americans, for whose protection the Amendment had been principally designed. The Court, proclaiming that the case protected African Americans' rights, dismissed the argument of white New Orleans butchers that a Louisiana law creating a monopoly in the slaughtering trade deprived their rights as citizens of the United States under the Fourteenth Amendment. The Court, in a narrow 5 to 4 decision, fell back on a state rights conception of the Union. As in *Dred Scott v. Sanford*, the Court separated the privileges of state and federal citizenship. The Court dismissed the butchers' due process and equal-protection arguments without much analysis. Thus, the Slaughterhouse decision significantly narrowed the rights that the federal government could protect under the Fourteenth Amendment making it extremely difficult to enforce Reconstruction era laws providing civil and political rights for African Americans. The laissez-faire constitutionalism practiced by the majority of the Court signaled a retreat from Reconstruction and the emergence of conservative constitutionalism.

As the South fell under the control of a powerful, conservative oligarchy known as the Redeemers in the wake of Reconstruction, southern state legislatures began to institute mandatory racial segregation laws known as Jim Crow. African American leaders attempted to challenge the constitutionality of these Jim Crow laws in *Plessy v. Ferguson* arguing that they deprived them of their rights according to the Fourteenth Amendment's equal protection clause. However, the Slaughterhouse Cases had severely restricted the protection for African Americans afforded by the clause and eight of the nine justices of the Supreme Court rejected the plea. Justice John Marshall Harlan filed a classic dissent that called for a color-blind Constitution: "The white race deems itself to be the dominant race in this country.... But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." The Court's decision, to uphold legal segregation, would survive for years as the legal basis of segregated schools.

### The Civil Rights Act of 1866

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, see, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.



Andrew Johnson, *Harper's Weekly* April 1866

### Andrew Johnson, Civil Rights Bill Veto Message

March 27, 1866

To the Senate of the United States:

I regret that the bill, which passed both houses of Congress . . . contains provisions which I can not approve, consistently with my sense of duty to the whole people and my obligations to the Constitution of the United States. . . .

To me the details of the bill seem fraught with evil. . . . In all our history, in all our experience as a people living under Federal and State law, no such system as that contemplated by the details of this bill has ever before been proposed or adopted. They establish, for the security of the colored race, safeguards which go infinitely beyond any that the General Government has ever provided for the white race. In fact, the distinction of race and color is, by the bill, made to operate in favor of the colored and against the white race. They interfere with the municipal legislation of the States, with the relations existing exclusively between a State and its citizens, or between inhabitants of the same State — an absorption and assumption of power by the General Government which, if acquiesced in, must sap and destroy our federative system of limited powers, and break down the barriers which preserve the rights of the States. It is another step, or rather stride, to centralization and the concentration of all legislative power in the National Government.

[I]t only remains for me to say that I will cheerfully cooperate with Congress in any measure that may be necessary for the protection of the civil rights of the freedmen, as well as those of all other classes of persons throughout the United States, by judicial process under equal and impartial laws, in conformity with the provisions of the Federal Constitution.

### Slaughter-House Cases

1873

Mr. Justice MILLER . . . delivered the opinion of the court....

[I]n the light of . . . events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have

been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the fifteenth amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth.

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. . . .

The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship--not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. . . . But it had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States. . . .

To establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed.

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” . . .

It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States. . . .

The next observation is more important in view of the arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

The language is, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of *the United States*.” It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word citizen of the State should be left out when it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that

the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the amendment. . . .

In the Constitution of the United States, . . . is found in section two of the fourth article . . . the following words: "The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."

[W]e are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.

"The inquiry," he says, "is, what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are *fundamental*; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

This definition of the privileges and immunities of citizens of the States . . . embraces nearly every civil right for the establishment and protection of which organized government is instituted. . . .

It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretence was set up that those rights depended on the Federal government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States--such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal government. Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of *citizens of the United States*, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?

All this and more must follow, if the proposition of the plaintiffs in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States, in their most ordinary and usual functions, as in its judgment it may think proper on all such subjects. And still further, such a construction followed by the reversal of the judgments of the Supreme Court of Louisiana in these cases, would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment. The argument we admit is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal governments to each other and of both these

governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.

We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them. . . .

The argument has not been much pressed in these cases that the defendant's charter deprives the plaintiffs of their property without due process of law, or that it denies to them the equal protection of the law. The first of these paragraphs has been in the Constitution since the adoption of the fifth amendment, as a restraint upon the Federal power. It is also to be found in some form of expression in the constitutions of nearly all the States, as a restraint upon the power of the States. This law then, has practically been the same as it now is during the existence of the government, except so far as the present amendment may place the restraining power over the States in this matter in the hands of the Federal government.

We are not without judicial interpretation, therefore, both State and National, of the meaning of this clause. And it is sufficient to say that under no construction of that provision that we have ever seen, or any that we deem admissible, can the restraint imposed by the State of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision. "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.

If, however, the States did not conform their laws to its requirements, then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation. We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other. . . .

In the early history of the organization of the government, its statesmen seem to have divided on the line which should separate the powers of the National government from those of the State governments, and though this line has never been very well defined in public opinion, such a division has continued from that day to this.

The adoption of the first eleven amendments to the Constitution so soon after the original instrument was accepted, shows a prevailing sense of danger at that time from the Federal power. And it cannot be denied that such a jealousy continued to exist with many patriotic men until the breaking out of the late civil war. It was then discovered that the true danger to the perpetuity of the Union was in the capacity of the State organizations to combine and concentrate all the powers of the State, and of contiguous States, for a determined resistance to the General Government.

Unquestionably this has given great force to the argument, and added largely to the number of those who believe in the necessity of a strong National government.

But, however pervading this sentiment, and however it may have contributed to the adoption of the amendments we have been considering, we do not see in those amendments any purpose to destroy the main features of the general system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the State with powers for domestic and local government, including the regulation of civil rights—the rights of person and of property—was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation.



But whatever fluctuations may be seen in the history of public opinion on this subject during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held with a steady and an even hand the balance between State and Federal power, and we trust that such may continue to be the history of its relation to that subject so long as it shall have duties to perform which demand of it a construction of the Constitution, or of any of its parts.

The judgments of the Supreme Court of Louisiana in these cases are AFFIRMED.

*Plessy v. Ferguson*

1896

**MR. JUSTICE BROWN . . . delivered the opinion of the court. . . .**

The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced. . . .

Every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion for the public good, and not for the annoyance or oppression of a particular class. . . .

So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and, with respect to this, there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. . . .

Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. . . .

The judgment of the court below is, therefore, Affirmed.

**MR. JUSTICE HARLAN, dissenting. . . .**

[W]e have before us a state enactment that compels, under penalties, the separation of the two races in railroad passenger coaches, and makes it a crime for a citizen of either race to enter a coach that has been assigned to citizens of the other race.

Thus, the State regulates the use of a public highway by citizens of the United States solely upon the basis of race. . . .

In respect of civil rights common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and, under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. . . .

It was said in argument that the statute of Louisiana does not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Everyone knows that the statute in question had its origin in the purpose not so much to exclude white persons from railroad cars occupied by blacks as to exclude colored people from coaches occupied by or assigned to white persons. . . . No one would be so wanting in candor as to assert the contrary. . . .

If a State can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in streetcars or in open vehicles on a public road or street? Why may it not require sheriffs to assign whites to one side of a courtroom and blacks to the other? And why may it not also prohibit the commingling of the two races in the galleries of legislative halls or in public assemblages convened for the consideration of the political questions of the day? Further, if this statute of Louisiana is consistent with the personal liberty of citizens, why may not the State require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics? . . .

The white race deems itself to be the dominant race in this country. And so it is in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case. It was adjudged in that case that the descendants of Africans who were imported into this country and sold as slaves were not included nor intended to be included under the word "citizens" in the Constitution, and could not claim any of the rights and privileges which that instrument provided for and secured to citizens of the United States; that, at the time of the adoption of the Constitution, they were "considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them." The recent amendments of the Constitution, it was supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the States, a dominant race -- a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race.

The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by

means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are forbidden to abridge. . . .

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom to regulate civil rights, common to all citizens, upon the basis of race, and to place in a condition of legal inferiority a large body of American citizens now constituting a part of the political community called the People of the United States, for whom and by whom, through representatives, our government is administered. Such a system is inconsistent with the guarantee given by the Constitution to each State of a republican form of government, and may be stricken down by Congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

For the reasons stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

**22. In an influential essay entitled “The Significance of the Frontier in American History,” which was delivered to an 1893 meeting of the American Historical Association in Chicago, Frederick Jackson Turner found that examining the West could discover the central narrative of American history. Turner stated his thesis simply. The settlement of the West by white Americans stimulated individualism, nationalism, and democracy. He asserted that “the existence of an area of free land, its continuous recession, and the advance of American settlement westward, explain American development.” As long as the frontier remained opened, Turner argued, opportunities for advancement remained possible. However, his essay revealed that the frontier was closing. Mourning the passing of the frontier, Turner concluded, “ now, four centuries from the discovery of America, at the end of a hundred years of life under the Constitution, the frontier has gone, and with its going has closed the first period of American history.”**

### **Frederick Jackson Turner, “The Significance of the Frontier In American History”**

**1893**

In a recent bulletin of the Superintendent of the Census for 1890 appear these significant words: “Up to and including 1880 the country had a frontier of settlement, but at present the unsettled area has been so broken into by isolated bodies of settlement that there can hardly be said to be a frontier line. In the discussion of its extent, its westward movement, etc., it can not, therefore, any longer have a place in the census reports.” This brief official statement marks the closing of a great historic movement. Up to our own day American history has been in a large degree the history of the colonization of the Great West. The existence of an area of free land, its continuous recession, and the advance of American settlement westward, explain American development.

Behind institutions, behind constitutional forms and modifications, lie the vital forces that call these organs into life and shape them to meet changing conditions. The peculiarity of American institutions is the fact that they have been compelled to adapt themselves to the changes of an expanding people—to the changes involved in crossing a continent, in winning a wilderness, and in developing at each area of this progress, out of the primitive economic and political conditions of the frontier, the complexity of city life. Said Calhoun in 1817, “We are great, and rapidly—I was about to say fearfully—growing!” So saying, he touched the distinguishing feature of American life. All peoples show development: the germ theory of politics has been sufficiently emphasized. In the case of most nations, however, the development has occurred in a limited area; and if the nation has expanded, it has met other growing peoples whom it has conquered. But in the case of the United States we have a different phenomenon. Limiting our attention to the Atlantic coast, we have the familiar phenomenon of the evolution of institutions in a limited area, such as the rise of representative government; the differentiation of simple colonial governments into complex organs; the progress from primitive industrial

society, without division of labor, up to manufacturing civilization. But we have in addition to this *a recurrence of the process of evolution in each Western area reached in the process of expansion*. Thus American development has exhibited not merely advance along a single line but a return to primitive conditions on a continually advancing frontier line, and a new development for that area. American social development has been continually beginning over again on the frontier. This perennial rebirth, this fluidity of American life, this expansion westward with its new opportunities, its continuous touch with the simplicity of primitive society, furnish the forces dominating American character. The true point of view in the history of this nation is not the Atlantic coast, it is the Great West. Even the slavery struggle, which is made so exclusive an object of attention by writers like Professor von Holst, occupies its important place in American history because of its relation to westward expansion.

In this advance, the frontier is the outer edge of the wave—the meeting point between savagery and civilization. Much has been written about the frontier from the point of view of border warfare and the chase, but as a field for the serious study of the economist and the historian it has been neglected.

What is the [American] frontier? It is not the European frontier—a fortified boundary line running through dense populations. The most significant thing about it is that it lies at the hither edge of free land. In the census reports it is treated as the margin of that settlement which has a density of two or more to the square mile. The term is an elastic one, and for our purpose does not need sharp definition. We shall consider the whole frontier belt, including the Indian country and the outer margin of the “settled area” of the census reports. This paper[’s] . . . aim is simply to call attention to the frontier as a fertile field for investigation, and to suggest some of the problems which arise in connection with it.

In the settlement of America we have to observe how European life entered the continent, and how America modified and developed that life, and reacted on Europe. Our early history is the study of European germs developing in an American environment. Too exclusive attention has been paid by institutional students to the Germanic origins, too little to the American factors. The frontier is the line of most rapid and effective Americanization. The wilderness masters the colonist. It finds him a European in dress, industries, tools, modes of travel, and thought. It takes him from the railroad car and puts him in the birch canoe. It strips off the garments of civilization and arrays him in the hunting shirt and the moccasin. It puts him in the log cabin of the Cherokee and Iroquois and runs an Indian palisade around him. Before long he has gone to planting Indian corn and plowing with a sharp stick; he shouts the war cry and takes the scalp in orthodox Indian fashion. In short, at the frontier the environment is at first too strong for the man. He must accept the conditions which it furnishes, or perish, and so he fits himself into the Indian clearings and follows the Indian trails. Little by little he transforms the wilderness, but the outcome is not the old Europe, not simply the development of Germanic germs, any more than the first phenomenon was a case of reversion to the Germanic mark. The fact is that here is a new product that is American. At first the frontier was the Atlantic coast. It was the frontier of Europe in a very real sense. Moving westward, the frontier became more and more American. *As successive terminal moraines result from successive glaciations, so each frontier leaves its traces behind it, and when it becomes a settled area the region still partakes of the frontier characteristics*. Thus the advance of the frontier has meant a steady movement away from the influence of Europe, a steady growth of independence on American lines. And to study this advance, the men who grew up under these conditions, and the political, economic, and social results of it, is to study the really American part of our history. . . .

From the conditions of frontier life came intellectual traits of profound importance. The works of travelers along each frontier from colonial days onward describe for each certain traits, and these traits have, while softening down, still persisted as survival in the place of their origin, even when a higher social organization succeeded. The result is that to the frontier the American intellect owes its striking characteristics. That coarseness and strength combined with acuteness and inquisitiveness, that practical, inventive turn of mind, quick to find expedients, that masterful grasp of material things, lacking in the artistic but powerful to effect great ends, that restless, nervous energy, that dominant individualism, working for good and for evil, and withal that buoyancy and exuberance which comes with freedom, these are traits of the frontier, or traits called out elsewhere because of the existence of the frontier. Since the days when the fleet of Columbus sailed into the waters of the New World, America has been another name for opportunity, and the people of the United States have taken their tone from the incessant expansion which has not only been open but has even been forced upon them. He would be a

rash prophet who should assert that the expansive character of American life has now entirely ceased. Movement has been its dominant fact, and, unless this training has no effect upon a people, the American energy will continually demand a wider field for its exercise. But never again will such gifts of free land offer themselves. For a moment at the frontier the bonds of custom are broken, and unrestraint is triumphant. There is not *tabula rasa*. The stubborn American environment is there with its imperious summons to accept its conditions; the inherited ways of doing things are also there; and yet, in spite of environment, and in spite of custom, each frontier did indeed furnish a new field of opportunity, a gate of escape from the bondage of the past; and freshness, and confidence, and scorn of older society, impatience of its restraints and its ideas, and indifference to its lessons, have accompanied the frontier. What the Mediterranean Sea was to the Greeks, breaking the bond of custom, offering new experiences, calling out new institutions and activities, that, and more, the ever retreating frontier has been to the United States directly, and to the nations of Europe more remotely. And now, four centuries from the discovery of America, at the end of a hundred years of life under the Constitution, the frontier has gone, and with its going has closed the first period of American history.

**23.** In 1904, President Theodore Roosevelt announced a substantial alteration to the Monroe Doctrine. The Roosevelt Corollary, as it has come to be known, proclaimed that the United States had the right not only to oppose European intervention in the Western Hemisphere but also to directly intervene in the domestic affairs of its neighbors if those neighbors proved unable to maintain the stability of their nation. Thus, Roosevelt argued that the United States had international police power to monitor Latin American countries and expand its commercial interests in the region. Roosevelt's action cut with a long tradition of isolationism and initiated an interventionist and imperialistic foreign policy. Critics of Roosevelt's policy attacked him for violating international law and usurping his powers as President.

Following a failed attempt to win back the presidency in 1912, Roosevelt went to work on his autobiography. In his book, Roosevelt explained his "stewardship theory" as he cited the examples of Andrew Jackson and Abraham Lincoln, whom he claimed had rightly taken bold executive action to enforce laws on the books or, in some cases, went beyond established laws. Though both Jackson and Lincoln had expanded the powers of the presidency, Congress and the Supreme Court played instrumental roles in curtailing the executive powers of their successors. Beginning with Roosevelt's tenure, the presidency has come to dominate American policy making. Arthur M. Schlesinger, Jr. has described the modern presidency of the United States as the "Imperial Presidency," a legacy that is attributed to Roosevelt's two terms in office which radically changed the nation's political system.

### Roosevelt Corollary December 6, 1904

The steady aim of this Nation, as of all enlightened nations, should be to strive to bring ever nearer the day when there shall prevail throughout the world the peace of justice. . . . It is our duty to remember that a nation has no more right to do injustice to another nation, strong or weak, than an individual has to do injustice to another individual; that the same moral law applies in one case as in the other. But we must also remember that it is as much the duty of the Nation to guard its own rights and its own interests as it is the duty of the individual so to do. . . .

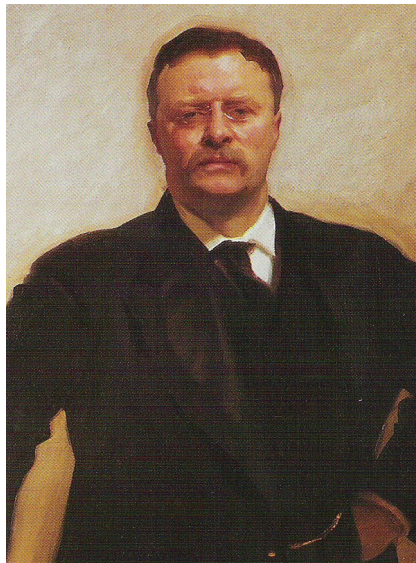
It is not true that the United States feels any land hunger or entertains any projects as regards the other nations of the Western Hemisphere save such as are for their welfare. All that this country desires is to see the neighboring countries stable, orderly, and prosperous. Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may lead the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power.

If every country washed by the Caribbean Sea would show the progress in stable and just civilization which with the aid of the Platt amendment Cuba has shown since our troops left the island, and which so many of

the republics in both Americas are constantly and brilliantly showing, all question of interference by this Nation with their affairs would be at an end. Our interests and those of our southern neighbors are in reality identical. They have great natural riches, and if within their borders the reign of law and justice obtains, prosperity is sure to come to them. While they thus obey the primary laws of civilized society they may rest assured that they will be treated by us in a spirit of cordial and helpful sympathy.

We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations. It is a mere truism to say that every nation, whether in America or anywhere else, which desires to maintain its freedom, its independence, must ultimately realize that the right of such independence can not be separated from the responsibility of making good use of it.

In asserting the Monroe Doctrine, in taking such steps as we have taken in regard to Cuba, Venezuela, and Panama, and in endeavoring to circumscribe the theater of war in the Far East, and to secure the open door in China, we have acted in our own interest as well as in the interest of humanity at large. There are, however, cases in which, while our own interests are not greatly involved, strong appeal is made to our sympathies.... In extreme cases action may be justifiable and proper. What form the action shall take must depend upon the circumstances of the case; that is, upon the degree of the atrocity and upon our power to remedy it. The cases in which we could interfere by force of arms as we interfered to put a stop to intolerable conditions in Cuba are necessarily very few. Yet it is not to be expected that a people like ours, which in spite of certain very obvious shortcomings, nevertheless as a whole shows by its consistent practice its belief in the principles of civil and religious liberty and of orderly freedom, a people among whom even the worst crime, like the crime of lynching, is never more than sporadic, so that individuals and not classes are molested in their fundamental rights--it is inevitable that such a nation should desire eagerly to give expression to its horror on an occasion like that of the massacre of the Jews in Kishenev, or when it witnesses such systematic and long-extended cruelty and oppression as the cruelty and oppression of which the Armenians have been the victims, and which have won for them the indignant pity of the civilized world.



Theodore Roosevelt by John Singer Sargent

### Theodore Roosevelt, "Stewardship Theory"

1913

Very much the most important action that I took as regards labor had nothing to do with legislation, and represented executive action which was not required by the Constitution. It illustrated as well as anything that I

did the theory which I have called the Jackson-Lincoln theory of the presidency; that is, that occasionally great national crises arise which call for immediate and vigorous executive action, and that in such cases it is the duty of the President to act upon the theory that he is the steward of the people, and that the proper attitude for him to take is that he is bound to assume that he has the legal right to do whatever the needs of the people demand, unless the Constitution or the laws explicitly forbid him to do it.

**24.** Prior to the turn of the twentieth century, many Americans were convinced that the industrialization and urbanization of their society had created intolerable problems. Like the antebellum reformers of the 1830s and 1840s, the progressives urged that the nation's most pressing need was to impose order on the growing chaos and to curb society's most glaring injustices. Influential leaders of the Progressive era such as Theodore Roosevelt and Woodrow Wilson maintained that society was capable of improvement and that continued growth and advancement were the nation's destiny.

Following his presidency, Roosevelt assumed a more liberal view of the federal government's intervention in American society and its economy. In a speech to a group of Civil War veterans in Osawatimie, Kansas, Roosevelt expounded upon his philosophy, which he termed "The New Nationalism."

After Woodrow Wilson's election as president in 1912, William B. Hale, a journalist who had written Wilson's campaign biography, put together a compilation based on Wilson's speeches that was published in 1913 as *The New Freedom*. According to Wilson's philosophy, once government had rooted out the evils created by giant corporations, the old laissez-faire, free enterprise system would function properly once again. A new freedom would emerge, enabling small businessmen to operate unfettered by government controls.

**Theodore Roosevelt, "The New Nationalism"  
August 31, 1910**

We come here today to commemorate one of the epochmaking events of the long struggle for the rights of man - the long struggle for the uplift of humanity. Our country - this great Republic - means nothing unless it means the triumph of a real democracy, the triumph of popular government, and, in the long run, of an economic system under which each man shall be guaranteed the opportunity to show the best that there is in him. That is why the history of America is now the central feature of the history of the world; for the world has set its face hopefully toward our democracy; and, O my fellow citizens, each one of you carries on your shoulders not only the burden of doing well for the sake of your own country, but the burden of doing well and of seeing that this nation does well for the sake of mankind. . . .

Practical equality of opportunity for all citizens, when we achieve it, will have two great results. First, every man will have a fair chance to make of himself all that in him lies; to reach the highest point to which his capacities, unassisted by special privilege of his own and unhampered by the special privilege of others, can carry him, and to get for himself and his family substantially what he has earned. Second, equality of opportunity means that the commonwealth will get from every citizen the highest service of which he is capable. No man who carries the burden of the special privileges of another can give to the commonwealth that service to which it is fairly entitled.

I stand for the square deal. But when I say that I am for the square deal, I mean not merely that I stand for fair play under the present rules of the games, but that I stand for having those rules changed so as to work for a more substantial equality of opportunity and of reward for equally good service. One word of warning, which, I think, is hardly necessary in Kansas. When I say I want a square deal for the poor man, I do not mean that I want a square deal for the man who remains poor because he has not got the energy to work for himself. If a man who has had a chance will not make good, then he has got to quit. And you men of the Grand Army, you want justice for the brave man who fought, and punishment for the coward who shirked his work. Is not that so?

Now, this means that our government, national and State, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics. That is one of our tasks to-day. Every special interest is entitled to justice . . . but [no] one is entitled to a vote in Congress, to a voice

on the bench, or to representation in any public office. The Constitution guarantees protections to property, and we must make that promise good. But it does not give the right of suffrage to any corporation. . . .

It has become entirely clear that we must have government supervision of the capitalization, not only of public-service corporations, including, particularly, railways, but of all corporations doing an interstate business. . . .

I believe that the officers, and, especially, the directors, of corporations should be held personally responsible when any corporation breaks the law. . . .

The absence of effective State, and, especially, national, restraint upon unfair money-getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need is to change the conditions which enable these men to accumulate power which is not for the general welfare that they should hold or exercise. We grudge no man a fortune which represents his own power and sagacity, when exercised with entire regard to the welfare of his fellows. Again, comrades over there, take the lesson from your own experience. Not only did you not grudge, but you gloried in the promotion of the great generals who gained their promotion by leading the army to victory. So it is with us. We grudge no man a fortune in civil life if it is honorably obtained and well used. It is not even enough that it should have gained without doing damage to the community. We should permit it to be gained only so long as the gaining represents benefit to the community. This, I know, implies a policy of a far more active governmental interference with social and economic conditions in this country than we have yet had, but I think we have got to face the fact that such an increase in governmental control is now necessary.

No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered - not gambling in stocks, but service rendered. The really big fortune, the swollen fortune, by the mere fact of its size acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means. Therefore, I believe in a graduated income tax on big fortunes, and in another tax which is far more easily collected and far more effective - a graduated inheritance tax on big fortunes, properly safeguarded against evasion and increasing rapidly in amount with the size of the estate. . . .

Conservation means development as much as it does protection. I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us. . . . Moreover, I believe that the natural resources must be used for the benefit of all our people, and not monopolized for the benefit of the few, and here again is another case in which I am accused of taking a revolutionary attitude. People forget now that one hundred years ago there were public men of good character who advocated the nation selling its public lands in great quantities, so that the nation could get the most money out of it, and giving it to the men who could cultivate it for their own uses. We took the proper democratic ground that the land should be granted in small sections to the men who were actually to till it and live on it. Now, with the water-power with the forests, with the mines, we are brought face to face with the fact that there are many people who will go with us in conserving the resources only if they are to be allowed to exploit them for their benefit. That is one of the fundamental reasons why the special interest should be driven out of politics. Of all the questions which can come before this nation, short of the actual preservation of its existence in a great war, there is none which compares in importance with the great central task of leaving this land even a better land for our descendants than it is for us, and training them into a better race to inhabit the land and pass it on. Conservation is a great moral issue for it involves the patriotic duty of insuring the safety and continuance of the nation. Let me add that the health and vitality of our people are at least as well worth conserving as their forests, waters, lands, and minerals, and in this great work the national government must bear a most important part. . . .

Nothing is more true than that excess of every kind is followed by reaction; a fact which should be pondered by reformer and reactionary alike. We are face to face with new conceptions of the relations of property to human welfare, chiefly because certain advocates of the rights of property as against the rights of men have been pushing their claims too far. The man who wrongly holds that every human right is secondary to his profit



must now give way to the advocate of human welfare, who rightly maintains that every man holds his property subject to the general right of the community to regulate its use to whatever degree the public welfare may require it.

But I think we may go still further. The right to regulate the use of wealth in the public interest is universally admitted. Let us admit also the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good. The fundamental thing to do for every man is to give him a chance to reach a place in which he will make the greatest possible contribution to the public welfare. Understand what I say there. Give him a chance, not push him up if he will not be pushed. Help any man who stumbles; if he lies down, it is a poor job to try to carry him; but if he is a worthy man, try your best to see that he gets a chance to show the worth that is in him. No man can be a good citizen unless he has a wage more than sufficient to cover the bare cost of living, and hours of labor short enough so that after his day's work is done he will have time and energy to bear his share in the management of the community, to help in carrying the general load. We keep countless men from being good citizens by the conditions of life with which we surround them. We need comprehensive workmen's compensation acts, both State and national laws to regulate child labor and work for women, and, especially, we need in our common schools not merely education in booklearning, but also practical training for daily life and work. We need to enforce better sanitary conditions for our workers and to extend the use of safety appliances for our workers in industry and commerce, both within and between the States. Also, friends, in the interest of the working man himself we need to set our faces like Mint against mob-violence just as against corporate greed; against violence and injustice and lawlessness by wage-workers just as much as against lawless cunning and greed and selfish arrogance of employers. If I could ask but one thing of my fellow countrymen, my request would be that, whenever they go in for reform, they remember the two sides, and that they always exact justice from one side as much as from the other.... The State must be made efficient for the work which concerns only the people of the State; and the nation for that which concerns all the people. There must remain no neutral ground to serve as a refuge for lawbreakers, and especially for lawbreakers of great wealth, who can hire the vulpine legal cunning which will teach them how to avoid both jurisdictions. It is a misfortune when the national legislature fails to do its duty in providing a national remedy, so that the only national activity is the purely negative activity of the judiciary in forbidding the State to exercise power in the premises.

I do not ask for overcentralization; but I do ask that we work in a spirit of broad and far-reaching nationalism when we work for what concerns our people as a whole. We are all Americans. Our common interests are as broad as the continent. . . . The national government belongs to the whole American people, and where the whole American people are interested, that interest can be guarded effectively only by the national government. The betterment which we seek must be accomplished, I believe, mainly through the national government.

The American people are right in demanding that New Nationalism, without which we cannot hope to deal with new problems. The New Nationalism puts the national need before sectional or personal advantage. It is impatient of the utter confusion that results from local legislatures attempting to treat national issues as local issues. It is still more impatient of the impotence which springs from overdivision of governmental powers, the impotence which makes it possible for local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. This New Nationalism regards the executive power as the steward of the public welfare. It demands of the judiciary that it shall be interested primarily in human welfare rather than in property, just as it demands that the representative body shall represent all the people rather than any one class or section of the people.

I believe in shaping the ends of government to protect property as well as human welfare. . . .

If our political institutions were perfect, they would absolutely prevent the political domination of money in any part of our affairs. We need to make our political representatives more quickly and sensitively responsive to the people whose servants they are. More direct action by the people in their own affairs under proper safeguards is vitally necessary. The direct primary is a step in this direction, if it is associated with a corrupt-practices act effective to prevent the advantage of the man willing recklessly and unscrupulously to spend money over his more honest competitor. It is particularly important that all moneys received or expended for campaign

purposes should be publicly accounted for, not only after election, but before election as well. Political action must be made simpler, easier, and freer from confusion for every citizen. I believe that the prompt removal of unfaithful or incompetent public servants should be made easy and sure in whatever way experience shall show to be most expedient in any given class of cases.

One of the fundamental necessities in a representative government such as ours is to make certain that the men to whom the people delegate their power shall serve the people by whom they are elected, and not the special interests. I believe that every national officer, elected or appointed, should be forbidden to perform any service or receive any compensation, directly or indirectly, from interstate corporations; and a similar provision could not fail to be useful within the States.

The object of government is the welfare of the people. The material progress and prosperity of a nation are desirable chiefly so far as they lead to the moral and material welfare of all good citizens. Just in proportion as the average man and woman are honest, capable of sound judgment and high ideals, active in public affairs - but, first of all, sound in their home life, and the father and mother of healthy children whom they bring up well - just so far, and no farther, we may count our civilization a success. We must have - I believe we have already - a genuine and permanent moral awakening, without which no wisdom of legislation or administration really means anything; and, on the other hand, we must try to secure the social and economic legislation without which any improvement due to purely moral agitation is necessarily evanescent.... No matter how honest and decent we are in our private lives, if we do not have the right kind of law and the right kind of administration of the law, we cannot go forward as a nation. That is imperative; but it must be an addition to, and not a substitution for, the qualities that make us good citizens. In the last analysis, the most important elements in any man's career must be the sum of those qualities which, in the aggregate, we speak of as character. If he has not got it, then no law that the wit of man can devise, no administration of the law by the boldest and strongest executive, will avail to help him. We must have the right kind of character - character that makes a man, first of all, a good man in the home, a good father, a good husband - that makes a man a good neighbor. You must have that, and, then, in addition, you must have the kind of law and the kind of administration of the law which will give to those qualities in the private citizen the best possible chance for development. The prime problem of our nation is to get the right type of good citizenship, and, to get it, we must have progress, and our public men must be genuinely progressive.

### **Woodrow Wilson, "The New Freedom"**

**1913**

There is one great basic fact which underlies all the questions that are discussed on the political platform at the present moment. That singular fact is that nothing is done in this country as it was done twenty years ago.

We are in the presence of a new organization of society. Our life has broken away from the past. The life of America is not the life that it was twenty years ago; it is not the life that it was ten years ago. We have changed our economic conditions, absolutely, from top to bottom; and, with our economic society, the organization of our life. The old political formulas do not fit the present problems; they read now like documents taken out of a forgotten age. The older cries sound as if they belonged to a past age which men have almost forgotten. Things which used to be put into the party platforms of ten years ago would sound antiquated if put into a platform now. We are facing the necessity of fitting a new social organization, as we did once fit the old organization, to the happiness and prosperity of the great body of citizens; for we are conscious that the new order of society has not been made to fit and provide the convenience or prosperity of the average man. The life of the nation has grown infinitely varied. It does not centre now upon questions of governmental structure or of the distribution of governmental powers. It centers upon questions of the very structure and operation of society itself, of which government is only the instrument. Our development has run so fast and so far along the lines sketched in the earlier day of constitutional definition, has so crossed and interlaced those lines, has piled upon them such novel structures of trust and combination, has elaborated within them a life so manifold, so full of forces which

transcend the boundaries of the country itself and fill the eyes of the world, that a new nation seems to have been created which the old formulas do not fit or afford a vital interpretation of.

We have come upon a very different age from any that preceded us. We have come upon an age when we do not do business in the way in which we used to do business,—when we do not carry on any of the operations of manufacture, sale, transportation, or communication as men used to carry them on. There is a sense in which in our day the individual has been submerged. In most parts of our country men work, not for themselves, not as partners in the old way in which they used to work, but generally as employees,—in a higher or lower grade,—of great corporations. There was a time when corporations played a very minor part in our business affairs, but now they play the chief part, and most men are the servants of corporations.

You know what happens when you are the servant of a corporation. You have in no instance access to the men who are really determining the policy of the corporation. If the corporation is doing the things that it ought not to do, you really have no voice in the matter and must obey the orders, and you have oftentimes with deep mortification to co-operate in the doing of things which you know are against the public interest. Your individuality is swallowed up in the individuality and purpose of a great organization.

It is true that, while most men are thus submerged in the corporation, a few, a very few, are exalted to a power which as individuals they could never have wielded. Through the great organizations of which they are the heads, a few are enabled to play a part unprecedented by anything in history in the control of the business operations of the country and in the determination of the happiness of great numbers of people.

Yesterday, and ever since history began, men were related to one another as individuals. To be sure there were the family, the Church, and the State, institutions which associated men in certain wide circles of relationship. But in the ordinary concerns of life, in the ordinary work, in the daily round, men dealt freely and directly with one another. To-day, the everyday relationships of men are largely with great impersonal concerns, with organizations, not with other individual men.

Now this is nothing short of a new social age, a new era of human relationships, a new stage-setting for the drama of life....

We used to think in the old-fashioned days when life was very simple that all that government had to do was to put on a policeman's uniform, and say, "Now don't anybody hurt anybody else." We used to say that the ideal of government was for every man to be left alone and not interfered with, except when he interfered with somebody else; and that the best government was the government that did as little governing as possible. That was the idea that obtained in Jefferson's time. But we are coming now to realize that life is so complicated that we are not dealing with the old conditions, and that the law has to step in and create new conditions under which we may live, the conditions which will make it tolerable for us to live.

Let me illustrate what I mean: It used to be true in our cities that every family occupied a separate house of its own, that every family had its own little premises, that every family was separated in its life from every other family. That is no longer the case in our great cities. Families live in tenements, they live in flats, they live on floors; they are piled layer upon layer in the great tenement houses of our crowded districts, and not only are they piled layer upon layer, but they are associated room by room, so that there is in every room, sometimes, in our congested districts, a separate family. In some foreign countries they have made much more progress than we in handling these things. In the city of Glasgow, for example (Glasgow is one of the model cities of the world), they have made up their minds that the entries and the hallways of great tenements are public streets. Therefore, the policeman goes up the stairway, and patrols the corridors; the lighting department of the city sees to it that the halls are abundantly lighted. The city does not deceive itself into supposing that great building is a unit from which the police are to keep out and the civic authority to be excluded, but it says: "These are public highways, and light is needed in them, and control by the authority of the city."

I liken that to our great modern industrial enterprises. A corporation is very like a large tenement house; it isn't the premises of a single commercial family; it is just as much a public affair as a tenement house is a network of public highways....

[I] used to say, when I had to do with the administration of an educational institution [Wilson had been president of Princeton University—TGW], that I should like to make the young gentlemen of the rising generation as unlike their fathers as possible. Not because their fathers lacked character or intelligence or knowledge or patriotism, but because their fathers, by reason of their advancing years and their established position in society, had lost touch with the processes of life; they had forgotten what it was to begin; they had forgotten what it was to rise; they had forgotten what it was to be dominated by the circumstances of their life on their way up from the bottom to the top, and, therefore, they were out of sympathy with the creative, formative and progressive forces of society.

Progress! Did you ever reflect that that word is almost a new one? No word comes more often or more naturally to the lips of modern man, as if the thing it stands for were almost synonymous with life itself, and yet men through many thousand years never talked or thought of progress. They thought in the other direction. Their stories of heroisms and glory were tales of the past. The ancestor wore the heavier armor and carried the larger spear. "There were giants in those days." Now all that has altered. We think of the future, not the past, as the more glorious time in comparison with which the present is nothing. Progress, development,—those are modern words. The modern idea is to leave the past and press onward to something new.

But what is progress going to do with the past, and with the present? How is it going to treat them? With ignominy, or respect? Should it break with them altogether, or rise out of them, with its roots still deep in the older time? What attitude shall progressives take toward the existing order, toward those institutions of conservatism, the Constitution, the laws, and the courts?

Are those thoughtful men who fear that we are now about to disturb the ancient foundations of our institutions justified in their fear? If they are, we ought to go very slowly about the processes of change. If it is indeed true that we have grown tired of the institutions which we have so carefully and sedulously built up, then we ought to go very slowly and very carefully about the very dangerous task of altering them. We ought, therefore, to ask ourselves, first of all, whether thought in this country is tending to do anything by which we shall retrace our steps, or by which we shall change the whole direction of our development?

I believe, for one, that you cannot tear up ancient rootages and safely plant the tree of liberty in soil which is not native to it. I believe that the ancient traditions of a people are its ballast; you cannot make a tabula rasa upon which to write a political program. You cannot take a new sheet of paper and determine what your life shall be to-morrow. You must knit the new into the old. You cannot put a new patch on an old garment without ruining it; it must be not a patch, but something woven into the old fabric, of practically the same pattern, of the same texture and intention. If I did not believe that to be progressive was to preserve the essentials of our institutions, I for one could not be a progressive.

One of the chief benefits I used to derive from being president of a university was that I had the pleasure of entertaining thoughtful men from all over the world. I cannot tell you how much has dropped into my granary by their presence. I had been casting around in my mind for something by which to draw several parts of my political thought together when it was my good fortune to entertain a very interesting Scotsman who had been devoting himself to the philosophical thought of the seventeenth century. His talk was so engaging that it was delightful to hear him speak of anything, and presently there came out of the unexpected region of his thought the thing I had been waiting for. He called my attention to the fact that in every generation all sorts of speculation and thinking tend to fall under the formula of the dominant thought of the age. For example, after the Newtonian Theory of the universe had been developed, almost all thinking tended to express itself in the analogies of the Newtonian Theory, and since the Darwinian Theory has reigned amongst us, everybody is likely to express whatever he wishes to expound in terms of development and accommodation to environment....

All that progressives ask or desire is permission—in an era when "development," "evolution," is the scientific word—to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine.

Some citizens of this country have never got beyond the Declaration of Independence, signed in Philadelphia, July 4th, 1776. Their bosoms swell against George III, but they have no consciousness of the war for freedom that is going on to-day.

The Declaration of Independence did not mention the questions of our day. It is of no consequence to us unless we can translate its general terms into examples of the present day and substitute them in some vital way for the examples it itself gives, so concrete, so intimately involved in the circumstances of the day in which it was conceived and written. It is an eminently practical document, meant for the use of practical men; not a thesis for philosophers, but a whip for tyrants; not a theory of government, but a program of action. Unless we can translate it into the questions of our own day, we are not worthy of it, we are not the sons of the sires who acted in response to its challenge.

What form does the contest between tyranny and freedom take to-day? What is the special form of tyranny we now fight? How does it endanger the rights of the people, and what do we mean to do in order to make our contest against it effectual? What are to be the items of our new declaration of independence?

By tyranny, as we now fight it, we mean control of the law, of legislation and adjudication, by organizations which do not represent the people, by means which are private and selfish. We mean, specifically, the conduct of our affairs and the shaping of our legislation in the interest of special bodies of capital and those who organize their use. We mean the alliance, for this purpose, of political machines with selfish business. We mean the exploitation of the people by legal and political means. We have seen many of our governments under these influences cease to be representative governments, cease to be governments representative of the people, and become governments representative of special interests, controlled by machines, which in their turn are not controlled by the people.

Sometimes, when I think of the growth of our economic system, it seems to me as if, leaving our law just about where it was before any of the modern inventions or developments took place, we had simply at haphazard extended the family residence, added an office here and a workroom there, and a new set of sleeping rooms there, built up higher on our foundations, and put out little lean-tos on the side, until we have a structure that has no character whatever. Now, the problem is to continue to live in the house and yet change it.

Well, we are architects in our time, and our architects are also engineers. We don't have to stop using a railroad terminal because a new station is being built. We don't have to stop any of the processes of our lives because we are rearranging the structures in which we conduct those processes. What we have to undertake is to systematize the foundations of the house, then to thread all the old parts of the structure with the steel which will be laced together in modern fashion, accommodated to all the modern knowledge of structural strength and elasticity, and then slowly change the partitions, relay the walls, let in the light through new apertures, improve the ventilation; until finally, a generation or two from now, the scaffolding will be taken away, and there will be the family in a great building whose noble architecture will at last be disclosed, where men can live as a single community, co-operative as in a perfected, co-ordinated beehive, not afraid of any storm of nature, not afraid of any artificial storm, any imitation of thunder and lightning, knowing that the foundations go down to the bedrock of principle, and knowing that whenever they please they can change that plan again and accommodate it as they please to the altering necessities of their lives....

Well, we have started now at all events. The procession is under way. The stand-patter doesn't know there is a procession. He is asleep in the back part of his house. He doesn't know that the road is resounding with the tramp of men going to the front. And when he wakes up, the country will be empty. He will be deserted, and he will wonder what has happened. Nothing has happened. The world has been going on. The world has a habit of going on. The world has a habit of leaving those behind who won't go with it. The world has always neglected stand-patters. And, therefore, the stand-patter does not excite my indignation; he excites my sympathy. He is

going to be so lonely before it is all over. And we are good fellows, we are good company; why doesn't he come along? We are not going to do him any harm. We are going to show him a good time. We are going to climb the slow road until it reaches some upland where the air is fresher, where the whole talk of mere politicians is stilled, where men can look in each other's faces and see that there is nothing to conceal, that all they have to talk about they are willing to talk about in the open and talk about with each other; and whence, looking back over the road, we shall see at last that we have fulfilled our promise to mankind. We had said to all the world, "America was created to break every kind of monopoly, and to set men free, upon a footing of equality, upon a footing of opportunity, to match their brains and their energies." and now we have proved that we meant it.

**25.** Prior to the spring of 1917, Woodrow Wilson had successfully managed to keep the United States out of World War I. His 1916 campaign slogan, "he kept us out the war," was largely a contributing factor in his re-election. However, when Germany resumed unrestricted submarine warfare and sank three American merchant ships, Wilson called Congress into extraordinary session. By opting to deliver a message in person on Capitol Hill, Wilson broke with a tradition that had been established in Jefferson's time. Therefore, the impact of a president's message delivered in person enabled Wilson to better attract the attention of the public and, more importantly, Congress. On April 2, as Wilson announced his call for a declaration of war against Germany, he took a great stride towards increasing the power of the President by making a direct appeal to the people. The emotion that Wilson's speech stirred up even affected one his most bitter political enemies. Senator Henry Cabot Lodge approached the president following the speech and said "Mr. President you have expressed in the loftiest manner possible the sentiments of the American people." Four days later, Congress responded to Wilson's call with a formal declaration of war against Germany.

A month later, Congress passed the Selective Service Act, which created the Selective Service Act. This Act expanded the powers of the executive by granting the president the authority to draft soldiers without a monetary incentive for men between the ages of 21 and 30. The draft eventually brought nearly 3 million men into the United States Army; an additional 2 million joined voluntarily in various other branches of the armed services.

On January 8, 1918, Wilson made another personal appearance on Capitol Hill to present fourteen key principles for which the United States was fighting and his plan for postwar peace. His Fourteen Points called for open diplomacy, free seas and free trade, disarmament, and democratic self-rule. In addition to these provisions, the centerpiece of Wilson's vision was an association of nations to guarantee collective security, better known as the League of Nations. Despite Wilson's grand vision, Allied leaders were not impressed. French Premier Georges Clemenceau exclaimed, "Even God Almighty has only ten!" European leaders were not supportive of Wilson's plan because they had paid too steep of a price in the war to allow Germany a generous peace. Closer to home, Republican majorities in Congress opposed the President's course. In the end, Wilson was forced to compromise on most of his Fourteen Points and his League of Nations was hamstrung when Congress refused to ratify the Treaty of Versailles.

### Woodrow Wilson, "War Message" April 2, 1917

I have called the Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making.

On the third of February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after the first day of February it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coasts of Europe or any of the ports controlled by the enemies of Germany within the Mediterranean. . . . Vessels of every kind, whatever their flag, their character, their cargo, their destination, their errand, have been ruthlessly sent to the bottom: without warning and without thought of help or mercy for those on board, the vessels of friendly neutrals along with those of belligerents. Even hospital ships and ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with safe conduct through the proscribed areas by the German Government itself and were distinguished by unmistakable marks of identity, have been sunk with the same reckless lack of compassion or of principle. I was for a little while unable to believe that such things would in fact be done by any government that had hitherto subscribed to the humane practices of civilized nations. International law had its origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world.... The present German submarine warfare against commerce is a warfare against mankind.

It is a war against all nations. American ships have been sunk, American lives taken, in ways which it has stirred us very deeply to learn of, but the ships and people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been no discrimination. The challenge is to all mankind. Each nation must decide for itself how it will meet it. The choice we make for ourselves must be made with a moderation of counsel and a temperateness of judgment befitting our character and our motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right, of human right, of which we are only a single champion.

When I addressed the Congress on the twenty-sixth of February last I thought that it would suffice to assert our neutral rights with arms, our right to use the seas against unlawful interference, our right to keep our people safe against unlawful violence. But armed neutrality, it now appears, is impracticable. Because submarines are in effect outlaws when used as the German submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving chase upon the open sea. It is common prudence in such circumstances, grim necessity indeed, to endeavor to destroy them before they have shown their own intention. They must be dealt with upon sight, if dealt with at all. The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend. The intimation is conveyed that the armed guards which we have placed on our merchant ships will be treated as beyond the pale of law and subject to be dealt with as pirates would be. Armed neutrality is ineffectual enough at best; in such circumstances and in the face of such pretensions it is worse than ineffectual: it is likely only to produce what it was meant to prevent; it is practically certain to draw us into the war without either the rights or the effectiveness of belligerents. There is one choice we cannot make, we are incapable of making: we will not choose the path of submission and suffer the most sacred rights of our Nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it, and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war.

What this will involve is clear. It will involve the utmost practicable cooperation in counsel and action with the governments now at war with Germany, and, as incident to that, the extension to those governments of the most liberal financial credit, in order that our resources may so far as possible be added to theirs. It will involve the organization and mobilization of all the material resources of the country to supply the materials of war and serve the incidental needs of the Nation in the most abundant and yet the most economical and efficient way possible. It will involve the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemy's submarines. It will involve the immediate addition to the armed forces of the United States already provided for by law in case of war at least five hundred thousand men, who should, in my opinion, be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training. It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as they can equitably be sustained by the present generation, by well conceived taxation. . . .

While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are. My own thought has not been driven from its habitual and normal course by the unhappy events of the last two months, and I do not believe that the thought of the Nation has been altered or clouded by them. I have exactly the same things in mind now that I had in mind when I addressed the Senate on the twenty-second of January last, the same that I had in mind when I addressed the Congress on the third of February and on the twenty-sixth of February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really

free and self-governed peoples of the world such a concert of purpose and of action as will henceforth insure the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic governments backed by organized force which is controlled wholly by their will, not by the will of their people. We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval. It was a war determined upon as wars used to be determined upon in the old, unhappy days when peoples were nowhere consulted by their rulers and wars were provoked and waged in the interest of dynasties or of little groups of ambitious men who were accustomed to use their fellow men as pawns and tools. . . .

We are accepting this challenge of hostile purpose because we know that in such a Government, following such methods, we can never have a friend; and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic Governments of the world. We are now about to accept gauge of battle with this natural foe to liberty and shall, if necessary, spend the whole force of the nation to check and nullify its pretensions and its power. We are glad, now that we see the facts with no veil of false pretense about them to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them. Just because we fight without rancor and without selfish object, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion and ourselves observe with proud punctilio the principles of right and of fair play we profess to be fighting for.

I have said nothing of the Governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our honor. The Austro-Hungarian Government has, indeed, avowed its unqualified endorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government, and it has therefore not been possible for this Government to receive Count Tarnowski, the Ambassador recently accredited to this Government by the Imperial and Royal Government of Austria-Hungary; but that Government has not actually engaged in warfare against citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other means of defending our rights.

It will be all the easier for us to conduct ourselves as belligerents in a high spirit of right and fairness because we act without animus, not in enmity towards a people or with the desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible government which has thrown aside all considerations of humanity and of right and is running amuck. We are, let me say again, the sincere friends of the German people, and shall desire nothing so much as the early reestablishment of intimate relations of mutual advantage between us,- however hard it may be for them, for the time being, to believe that this is spoken from our hearts. We have borne with their present Government through all these bitter months because of that friendship,-exercising a patience and forbearance which would otherwise have been impossible. We shall, happily, still have an opportunity to prove that friendship in our daily attitude and actions towards the millions of men and women of German birth and native sympathy who live amongst us and share our life, and we shall be proud to prove it towards all who are in fact loyal to their neighbors and to the Government in the hour of test. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us in rebuking and restraining the few who may be of a different mind and



purpose. If there should be disloyalty, it will be dealt with a firm hand of stern repression; but, if it lifts its head at all, it will lift it only here and there and without countenance except from a lawless and malignant few.

It is a distressing and oppressive duty, Gentlemen of the Congress, which I have performed in thus addressing you. There are, it may be many months of fiery trial and sacrifice ahead of us. It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance. But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts, for democracy, for the right of those who submit to authority to have a voice in their own Governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we can dedicate our lives and our fortunes, every thing that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other.

### **Declaration of War**

**April 6, 1917**

Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America; Therefore be it Resolved by the Senate and the House of Representatives of the United States of America in Congress Assembled, that the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

CHAMP CLARK

Speaker of the House of Representatives

THOS. R. MARSHALL

Vice President of the United States and President of the Senate

Approved, April 6, 1917

WOODROW WILSON

### **Selective Service Act**

**May 18, 1917**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in view of the existing emergency, which demands the raising of troops in addition to those now available, the President be, and he is hereby, authorized . . .

Sec. 1. . . . To raise by draft as herein provided, organize and equip an additional force of five hundred thousand enlisted men, or such part or parts thereof as he may at any time deem necessary. . . .

Sec. 2. That the enlisted men required to raise and maintain the organizations of the Regular Army and to complete and maintain the organizations embodying the members of the National Guard drafted into the service

of the United States, at the maximum legal strength as by this Act provided, shall be raised by voluntary enlistment, or if and whenever the President decides that they can not effectually be so raised or maintained, then by selective draft. . . .

Sec. 3. No bounty shall be paid to induce any person to enlist in the military service of the United States; and no person liable to military service shall hereafter be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, or enrolled in the military service of the United States; and no such person shall be permitted to escape such service or to be discharged therefrom prior to the expiration of his term of service by the payment of money or any other valuable thing whatsoever as consideration for his release from military service or liability thereto.

Sec. 4. That the Vice President of the United States, the officers, legislative, executive, and judicial, of the United States and of the several States, Territories, and the District of Columbia, regular or duly ordained ministers of religion, students who at the time of the approval of this Act are preparing for the ministry in recognized theological or divinity schools, and all persons in the military and naval service of the United States shall be exempt from the selective draft herein prescribed; and nothing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations, but no person so exempted shall be exempted from service in any capacity that the President shall declare to be noncombatant; and the President is hereby authorized to exclude or discharge from said selective draft and from the draft under the second paragraph of section one hereof, or to draft for partial military service only from those liable to draft as in this Act provided, persons of the following classes: County and municipal officials; customhouse clerks; persons employed by the United States in the transmission of the mails; artificers and workmen employed in the armories, arsenals, and navy yards of the United States, and such other persons employed in the service of the United States as the President may designate; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States; persons engaged in industries, including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective operation of the military forces or the maintenance of national interest during the emergency; those in a status with respect to persons dependent upon them for support which renders their exclusion or discharge advisable; and those found to be physically or morally deficient. No exemption or exclusion shall continue when a cause therefore no longer exists: Provided, That notwithstanding the exemptions enumerated herein, each State, Territory, and the District of Columbia shall be required to supply its quota in the proportion that its population bears to the total population of the United States. . . .

Sec. 5. That all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President; and upon proclamation by the President or other public notice given by him or by his direction stating the time and place of such registration it shall be the duty of all persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of this Act; and every such person shall be deemed to have notice of the requirements of this Act upon the publication of said proclamation or other notice as aforesaid given by the President or by his direction; and any person who shall willfully fail or refuse to present himself for registration or to submit thereto as herein provided, shall be guilty of a misdemeanor and shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, and shall thereupon be duly registered. . . .

Sec. 7. . . . The President may provide for the discharge of any of all enlisted men whose status with respect to dependents renders such discharge advisable; and he may also authorize the employment on any active duty of retired enlisted men of the Regular Army, either with their rank on the retired list or in higher enlisted grades, and such retired enlisted men shall receive the full pay and allowances of the grades in which they are actively employed. . . .

Sec. 12. That the President of the United States, as Commander in Chief of the Army, is authorized to make such regulations governing the prohibition of alcoholic liquors in or near military camps and to the officers and enlisted men of the Army as he may from time to time deem necessary or advisable. . . .

Sec. 13. That the Secretary of War is hereby authorized, empowered, and directed during the present war to do everything by him deemed necessary to suppress and prevent the keeping or setting up of houses of ill fame, brothels, or bawdy houses within such distance as he may deem needful of any military camp, station, fort, post, cantonment, training, or mobilization place. . . .

Sec. 14. That all laws and parts of laws in conflict with the provisions of this Act are hereby suspended during the period of this emergency.

### **Woodrow Wilson, The Fourteen Points**

**January 8, 1918**

Gentlemen of the Congress:

. . . It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow nor or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secure once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us.

The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

XII. The Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end. For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this program does remove. We have no jealousy of German greatness, and there is nothing in this program that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to

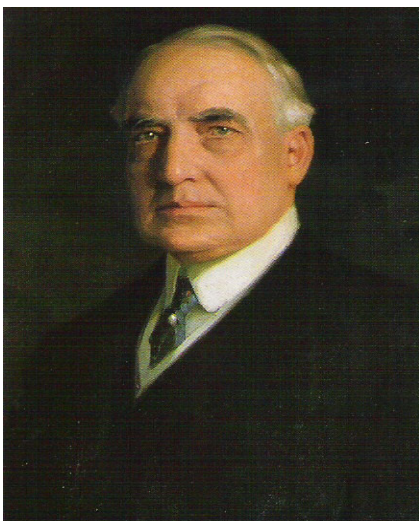
associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world,—the new world in which we now live,—instead of a place of mastery.

Neither do we presume to suggest to her any alteration or modification of her institutions. But it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know whom her spokesmen speak for when they speak to us, whether for the Reichstag majority or for the military party and the men whose creed is imperial domination.

We have spoken now, surely, in terms too concrete to admit of any further doubt or question. An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle be made its foundation no part of the structure of international justice can stand. The people of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything they possess. The moral climax of this the culminating and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity and devotion to the test.

**26.** In the Election of 1920, Ohio Republican Senator Warren G. Harding ran against James M. Cox, the Democratic Governor of Ohio, whose vice-presidential candidate was Assistant Secretary of the Navy Franklin D. Roosevelt. Economic problems, labor unrest, racial tensions, and a host of other issues combined to produce a general sense of disillusionment in the wake of World War I. The election was portrayed as a referendum on whether the nation should maintain the progressive course of President Woodrow Wilson's administration or revert to the laissez-faire approach to government favored by Conservative Republicans. Harding offered only one promise during his campaign, a "return to normalcy." Harding's landslide victory revealed that the nation agreed with his simple philosophy that the nation should adopt a policy of isolationism and a laissez-faire constitutional approach to government.

History has maligned President Herbert Hoover for leading the nation into and his failure to end the Great Depression. But prior to the presidency, Hoover was regarded internationally as a great humanitarian. As Americans eagerly sought a return to normalcy in the early 1920s, Hoover espoused a progressive individualism. His "American Individualism" constituted a philosophy that suited America's reactionary mood without abandoning the work of the progressives. However, after assuming the office of the presidency, Hoover's "American Individualism" became a "Rugged Individualism" in which he called for the laissez-faire approach adopted by both Presidents Warren G. Harding and Calvin C. Coolidge. Hoover's transformation is indicative of the popular sentiment of Americans after an era of progressive reform, a theme that runs throughout the nation's history, as public opinion desired a return to normalcy.



Warren G. Harding



Herbert Hoover

## Warren G. Harding, "Return to Normalcy"

May 14, 1920

There isn't anything the matter with world civilization, except that humanity is viewing it through a vision impaired in a cataclysmal war. Poise has been disturbed, and nerves have been racked, and fever has rendered men irrational; sometimes there have been draughts upon the dangerous cup of barbarity, and men have wandered far from safe paths, but the human procession still marches in the right direction.

America's present need is not heroics, but healing; not nostrums, but normalcy; not revolution, but restoration; not agitation, but adjustment; not surgery, but serenity; not the dramatic, but the dispassionate; not experiment, but equipoise; not submergence in internationality, but sustainment in triumphant nationality....

This republic has its ample tasks. If we put an end to false economics which lure humanity to utter chaos, ours will be the commanding example of world leadership today. If we can prove a representative popular government under which a citizenship seeks what it may do for the government rather than what the government may do for individuals, we shall do more to make democracy safe for the world than all armed conflict ever recorded.

The world needs to be reminded that all human ills are not curable by legislation, and that quantity of statutory enactment and excess of government offer no substitute for quality of citizenship.

The problems of maintained civilization are not to be solved by a transfer of responsibility from citizenship to government, and no eminent page in history was ever drafted by the standards of mediocrity. More, no government is worthy of the name which is directed by influence on the one hand, or moved by intimidation on the other...

My best judgment of America's needs is to steady down, to get squarely on our feet, to make sure of the right path. Let's get out of the fevered delirium of war, with the hallucination that all the money in the world is to be made in the madness of war and the wildness of its aftermath. Let us stop to consider that tranquillity at home is more precious than peace abroad, and that both our good fortune and our eminence are dependent on the normal forward stride of all the American people. ...

## Herbert Hoover, "American Individualism"

1922

We have witnessed in this last eight years the spread of revolution over one-third of the world. The causes of these explosions lie at far greater depths than the failure of governments in war. The war itself in its last stages was a conflict of social philosophies-but beyond this the causes of social explosion lay in the great inequalities and injustices of centuries flogged beyond endurance by the conflict and freed from restraint by the destruction of war. The urgent forces which drive human society have been plunged into a terrible furnace. Great theories spun by dreamers to remedy the pressing human ills have come to the front of men's minds. Great formulas came into life that promised to dissolve all trouble. Great masses of people have flocked to their banners in hopes born of misery and suffering. Nor has this great social ferment been confined to those nations that have burned with revolutions.

Now, as the storm of war, of revolution and of emotion subsides there is left even with us of the United States much unrest, much discontent with the surer forces of human advancement. To all of us, out of this crucible of actual, poignant, individual experience has come a deal of new understanding, and it is for all of us to ponder these new currents if we are to shape our future with intelligence.

Even those parts of the world that suffered less from the war have been partly infected by these ideas. Beyond this, however, many have had high hopes of civilization suddenly purified and ennobled by the sacrifices and services of the war; they had thought the fine unity of purpose gained in war would be carried into great unity of action in remedy of the faults of civilization in peace. But from concentration of every spiritual and material energy upon the single purpose of war the scene changed to the immense complexity and the many purposes of peace.

Thus there loom up certain definite underlying forces in our national life that need to be stripped of the imaginary—the transitory—and a definition should be given to the actual permanent and persistent motivation of our civilization. In contemplation of these questions we must go far deeper than the superficials of our political and economic structure, for these are but the products of our social philosophy—the machinery of our social system.

Nor is it ever amiss to review the political, economic, and spiritual principles through which our country has steadily grown in usefulness and greatness, not only to preserve them from being fouled by false notions, but more importantly that we may guide ourselves in the road of progress.

Five of six great social philosophies are at struggle in the world for ascendancy. There is the Individualism of America. There is the Individualism of the more democratic states of Europe with its careful reservations of castes and classes. There are Communism, Socialism, and Syndicalism, Capitalism, and finally there is Autocracy—whether by birth, by possessions, militarism, or divine right of kings. Even the Divine Right still lingers on although our lifetime has seen fully two-thirds of the earth's population, in Germany, Austria, Russia, and China, arrive at a state of angry disgust with this type of social motive power and throw it on the scrap heap.

All these thoughts are in ferment today in every country in the world. They fluctuate in ascendancy with times and places. They compromise with each other in daily reaction on governments and peoples. Some of these ideas are perhaps more adapted to one race than another. Some are false, some are true. What we are interested in is their challenge to the physical and spiritual forces of America.

The partisans and some of these other brands of social schemes challenge us to comparison; and some of their partisans even among our own people are increasing their agitation that we adopt one or another or parts of their devices in place of our tried individualism. They insist that our social foundations are exhausted, that like feudalism and autocracy America's plan has served its purpose—that it must be abandoned.

There are those who have been left in sober doubt of our institutions or are confounded by bewildering catchwords of vivid phrases. For in this welter of discussions there is much attempt to glorify or defame social and economic forces with phrase. Nor indeed should we disregard the potency of some of these phrases in their stir to action.—"The dictatorship of the Proletariat, Capitalistic nations," "Germany over all,; and a score of others. We need only to review those that have jumped to horseback during the last ten years in order that we may be properly awed by the great social and political havoc that can be worked where the bestial instincts of hate, murder, and destruction are clothed by the demagogue in the fine terms of political idealism.

For myself, let me say at the very outset that my faith in the essential truth, strength, and vitality of the developing creed by which we have hitherto lived in this country of ours has been confirmed and deepened by the searching experiences of seven years of service in the backwash and misery of war. Seven years of contending with economic degeneration, with social disintegration, with incessant political dislocation, with the primary motivation of social forces, and the necessity for broader thought upon their great issues to humanity. And from it all, I emerge an individualist—an unashamed individualist. But let me say also that I am an American individualist. For America has been steadily developing the ideals that constitute progressive individualism.

No doubt, individualism run riot, with no tempering principle would provide a long category inequalities, of tyrannies, dominations, and injustices. America, however, has tempered the whole conception of individualism by the injection of a definite principle, and from this principle it follows that attempts at domination, whether in government or in the processes of industry and commerce, are under an insistent curb. If we would have the values of individualism, their stimulation to initiative, to the development of hand and intellect, to the high

development of thought and spirituality, they must be tampered with that firm and fixed ideal of American individualism—and *equality of opportunity*. If we would have these values we must soften its hardness and stimulate progress though that sense of service that lies in our people.

Therefore, it is not the individualism of other countries for which I speak, by the individualism of America. Our individualism differs from all others because it embraces these great ideals: *that while we build our society upon the attainment of the individual, we shall safeguard to every individual and equality of opportunity to take that position in the community to which his intelligence, character, ability, and ambition entitle him; that we keep the social solution free from frozen strata of classes; that we shall stimulate effort of each individual to achievement; that through an enlarging sense of responsibility and understanding we shall assist him to this attainment; while he in turn must stand up to the emery wheel of competition.*

Individualism cannot be maintained as the foundation of a society if it looks to only legalistic justice based upon contracts, property, and political equality. Such legalistic safeguards are themselves not enough. In our individualism we have long since abandoned the *laissez faire* of the 18th Century—the notion that it is "everyman for himself and the devil take the hindmost." We abandoned that when we adopted the ideal of equality of opportunity—the fair chance of Abraham Lincoln. We have confirmed its abandonment in terms of legislation, of social and economic justice,—in part because we have learned that it is the hindmost who throws the bricks at our social edifice, in part because we have learned that the foremost are not always the best nor the hindmost the worst—and in part because we have learned that social injustice is the destruction of justice itself. We have learned that the impulse of production can only be maintained at a high pitch if there is a fair division of the product. We have also learned that fair division can only be obtained by certain restrictions on the strong and the dominant. We have indeed gone even further in the 20th Century with the embracement of the necessity of a greater and broader sense of service and responsibility to others as a part of individualism. Whatever may be the case with regard to Old World Individualism (and we have given more back to Europe than we have received from her) the truth that is important for us to grasp today is that there is a world of difference between the principles and spirit of Old World individualism and that which we have developed in our country.

We have, in fact, a special social system of our own. We have made it ourselves from materials brought in revolt from conditions in Europe. We have lived it; we constantly improve it; we have seldom tried to define it. It abhors autocracy and does not argue with it, but fights it. It is not capitalism, or socialism, or syndicalism, not a cross breed of them. Like most Americans, I refuse to be damned by anybody's world-classification of it, such as "capitalism," "plutocracy," "proletariat" or "middle class," or any other, or to any kind of compartment that is based on the assumption of some group dominating somebody else.

The social force in which I am interested is far higher and far more precious a thing than all these. It springs from something infinitely more enduring; it springs from the one source of human progress—that each individual shall be given the chance and stimulation for development of the best with which he has been endowed in heart and mind; it is the sole source of progress; it is American individualism.

The rightfulness of our individualism can rest either on philosophic, political, economic, or spiritual grounds. It can rest on the ground of being the only safe avenue to further human progress.

**27.** President Franklin D. Roosevelt's "fireside chats" constituted a series of evening radio addresses delivered to the American people between 1933 and 1944. Rather than deliver a formal address on Capitol Hill, Roosevelt carefully calculated his fireside chats, which were heard by the American public in their own homes, to restore confidence among the people who faced a struggle as a great depression swept throughout the nation. In the following July 24, 1933 fireside chat, Roosevelt explained to the American people the fundamentals of the federal government's planning for national recovery, which signaled a radical break with the *laissez-faire* approach to government favored by Conservatives. Roosevelt's New Deal was the name given to his plan to pull the nation out of the depths of the Great Depression through a series of programs with the goal of relief, recovery, and reform of the United States economy.

### Franklin D. Roosevelt "Fireside Chat"



## On the Purposes and Foundations of the Recovery Program

July 24, 1933

I think it will interest you if I set forth the fundamentals of this planning for national recovery; and this I am very certain will make it abundantly clear to you that all of the proposals and all of the legislation since the fourth day of March have not been just a collection of haphazard schemes but rather the orderly component parts of a connected and logical whole.

Long before Inauguration Day I became convinced that individual effort and local effort and even disjointed Federal effort had failed and of necessity would fail and, therefore, that a rounded leadership by the Federal Government had become a necessity both of theory and of fact. Such leadership, however, had its beginning in preserving and strengthening the credit of the United States Government, because without that no leadership was a possibility. For years the Government had not lived within its income. The immediate task was to bring our regular expenses within our revenues. That has been done.

It may seem inconsistent for a government to cut down its regular expenses and at the same time to borrow and to spend billions for an emergency. But it is not inconsistent because a large portion of the emergency money has been paid out in the form of sound loans which will be repaid to the Treasury over a period of years; and to cover the rest of the emergency money we have imposed taxes to pay the interest and the installments on that part of the debt.

So you will see that we have kept our credit good. We have built a granite foundation in a period of confusion. That foundation of the Federal credit stands there broad and sure. It is the base of the whole recovery plan.

Then came the part of the problem that concerned the credit of the individual citizens themselves. You and I know of the banking crisis and of the great danger to the savings of our people. On March sixth every national bank was closed. One month later 90 per cent of the deposits in the national banks had been made available to the depositors. Today only about 5 per cent of the deposits in national banks are still tied up. The condition relating to state banks, while not quite so good on a percentage basis, is showing a steady reduction in the total of frozen deposits -- a result much better than we had expected three months ago.

The problem of the credit of the individual was made more difficult because of another fact. The dollar was a different dollar from the one with which the average debt had been incurred. For this reason large numbers of people were actually losing possession of and title to their farms and homes. All of you know the financial steps which have been taken to correct this inequality. In addition the Home Loan Act, the Farm Loan Act and the Bankruptcy Act were passed.

It was a vital necessity to restore purchasing power by reducing the debt and interest charges upon our people, but while we were helping people to save their credit it was at the same time absolutely essential to do something about the physical needs of hundreds of thousands who were in dire straits at that very moment. Municipal and State aid were being stretched to the limit. We appropriated half a billion dollars to supplement their efforts and in addition, as you know, we have put 300,000 young men into practical and useful work in our forests and to prevent flood and soil erosion. The wages they earn are going in greater part to the support of the nearly one million people who constitute their families.

In this same classification we can properly place the great public works program running to a total of over Three Billion Dollars -- to be used for highways and ships and flood prevention and inland navigation and thousands of self-sustaining state and municipal improvements. Two points should be made clear in the allotting and administration of these projects -- first, we are using the utmost care to choose labor creating quick-acting, useful projects, avoiding the smell of the pork barrel; and secondly, we are hoping that at least half of the money will come back to the government from projects which will pay for themselves over a period of years.

Thus far I have spoken primarily of the foundation stones -- the measures that were necessary to re-establish credit and to head people in the opposite direction by preventing distress and providing as much work as possible through governmental agencies. Now I come to the links which will build us a more lasting prosperity. I have said that we cannot attain that in a nation half boom and half broke. If all of our people have work and fair wages and fair profits, they can buy the products of their neighbors and business is good. But if you take away the wages and the profits of half of them, business is only half as good. It doesn't help much if the fortunate half is very prosperous -- the best way is for everybody to be reasonably prosperous.

For many years the two great barriers to a normal prosperity have been low farm prices and the creeping paralysis of unemployment. These factors have cut the purchasing power of the country in half. I promised action. Congress did its part when it passed the farm and the industrial recovery acts. Today we are putting these two acts to work and they will work if people understand their plain objectives.

First, the Farm Act: It is based on the fact that the purchasing power of nearly half our population depends on adequate prices for farm products. We have been producing more of some crops than we consume or can sell in a depressed world market. The cure is not to produce so much. Without our help the farmers cannot get together and cut production, and the Farm Bill gives them a method of bringing their production down to a reasonable level and of obtaining reasonable prices for their crops. I have clearly stated that this method is in a sense experimental, but so far as we have gone we have reason to believe that it will produce good results.

It is obvious that if we can greatly increase the purchasing power of the tens of millions of our people who make a living from farming and the distribution of farm crops, we will greatly increase the consumption of those goods which are turned out by industry.

That brings me to the final step -- bringing back industry along sound lines.

Last Autumn, on several occasions, I expressed my faith that we can make possible by democratic self-discipline in industry general increases in wages and shortening of hours sufficient to enable industry to pay its own workers enough to let those workers buy and use the things that their labor produces. This can be done only if we permit and encourage cooperative action in industry because it is obvious that without united action a few selfish men in each competitive group will pay starvation wages and insist on long hours of work. Others in that group must either follow suit or close up shop. We have seen the result of action of that kind in the continuing descent into the economic Hell of the past four years.

There is a clear way to reverse that process: If all employers in each competitive group agree to pay their workers the same wages -- reasonable wages -- and require the same hours -- reasonable hours -- then higher wages and shorter hours will hurt no employer. Moreover, such action is better for the employer than unemployment and low wages, because it makes more buyers for his product. That is the simple idea which is the very heart of the Industrial Recovery Act.

On the basis of this simple principle of everybody doing things together, we are starting out on this nationwide attack on unemployment. It will succeed if our people understand it -- in the big industries, in the little shops, in the great cities and in the small villages. There is nothing complicated about it and there is nothing particularly new in the principle. It goes back to the basic idea of society and of the nation itself that people acting in a group can accomplish things which no individual acting alone could even hope to bring about.

Here is an example. In the Cotton Textile Code and in other agreements already signed, child labor has been abolished. That makes me personally happier than any other one thing with which I have been connected since I came to Washington. In the textile industry -- an industry which came to me spontaneously and with a splendid cooperation as soon as the recovery act was signed, -- child labor was an old evil. But no employer acting alone was able to wipe it out. If one employer tried it, or if one state tried it, the costs of operation rose so high that it was impossible to compete with the employers or states which had failed to act. The moment the Recovery Act was passed, this monstrous thing which neither opinion nor law could reach through years of effort went out in a flash. As a British editorial put it, we did more under a Code in one day than they in England had

been able to do under the common law in eighty-five years of effort. I use this incident, my friends, not to boast of what has already been done but to point the way to you for even greater cooperative efforts this Summer and Autumn.

We are not going through another Winter like the last. I doubt if ever any people so bravely and cheerfully endured a season half so bitter. We cannot ask America to continue to face such needless hardships. It is time for courageous action, and the Recovery Bill gives us the means to conquer unemployment with exactly the same weapon that we have used to strike down Child Labor.

The proposition is simply this:

If all employers will act together to shorten hours and raise wages we can put people back to work. No employer will suffer, because the relative level of competitive cost will advance by the same amount for all. But if any considerable group should lag or shirk, this great opportunity will pass us by and we will go into another desperate Winter. This must not happen.

We have sent out to all employers an agreement which is the result of weeks of consultation. This agreement checks against the voluntary codes of nearly all the large industries which have already been submitted. This blanket agreement carries the unanimous approval of the three boards which I have appointed to advise in this, boards representing the great leaders in labor, in industry and in social service. The agreement has already brought a flood of approval from every State, and from so wide a cross-section of the common calling of industry that I know it is fair for all. It is a plan --deliberate, reasonable and just -- intended to put into effect at once the most important of the broad principles which are being established, industry by industry, through codes. Naturally, it takes a good deal of organizing and a great many hearings and many months, to get these codes perfected and signed, and we cannot wait for all of them to go through. The blanket agreements, however, which I am sending to every employer will start the wheels turning now, and not six months from now.

There are, of course, men, a few of them who might thwart this great common purpose by seeking selfish advantage. There are adequate penalties in the law, but I am now asking the cooperation that comes from opinion and from conscience. These are the only instruments we shall use in this great summer offensive against unemployment. But we shall use them to the limit to protect the willing from the laggard and to make the plan succeed.

In war, in the gloom of night attack, soldiers wear a bright badge on their shoulders to be sure that comrades do not fire on comrades. On that principle, those who cooperate in this program must know each other at a glance. That is why we have provided a badge of honor for this purpose, a simple design with a legend. "We do our part," and I ask that all those who join with me shall display that badge prominently. It is essential to our purpose.

Already all the great, basic industries have come forward willingly with proposed codes, and in these codes they accept the principles leading to mass reemployment. But, important as is this heartening demonstration, the richest field for results is among the small employers, those whose contribution will give new work for from one to ten people. These smaller employers are indeed a vital part of the backbone of the country, and the success of our plans lies largely in their hands.

Already the telegrams and letters are pouring into the White House --messages from employers who ask that their names be placed on this special Roll of Honor. They represent great corporations and companies, and partnerships and individuals. I ask that even before the dates set in the agreements which we have sent out, the employers of the country who have not already done so -- the big fellows and the little fellows -- shall at once write or telegraph to me personally at the White House, expressing their intention of going through with the plan. And it is my purpose to keep posted in the post office of every town, a Roll of Honor of all those who join with me.

I want to take this occasion to say to the twenty-four governors who are now in conference in San Francisco, that nothing thus far has helped in strengthening this great movement more than their resolutions adopted at the very outset of their meeting, giving this plan their instant and unanimous approval, and pledging to support it in their states.

To the men and women whose lives have been darkened by the fact or the fear of unemployment, I am justified in saying a word of encouragement because the codes and the agreements already approved, or about to be passed upon, prove that the plan does raise wages, and that it does put people back to work. You can look on every employer who adopts the plan as one who is doing his part, and those employers deserve well of everyone who works for a living. It will be clear to you, as it is to me, that while the shirking employer may undersell his competitor, the saving he thus makes is made at the expense of his country's welfare.

While we are making this great common effort there should be no discord and dispute. This is no time to cavil or to question the standard set by this universal agreement. It is time for patience and understanding and cooperation. The workers of this country have rights under this law which cannot be taken from them, and nobody will be permitted to whittle them away, but, on the other hand, no aggression is now necessary to attain those rights. The whole country will be united to get them for you. The principle that applies to the employers applies to the workers as well, and I ask you workers to cooperate in the same spirit.

When Andrew Jackson, "Old Hickory," died, someone asked, "Will he go to Heaven?" and the answer was, "He will if he wants to." If I am asked whether the American people will pull themselves out of this depression, I answer, "They will if they want to." The essence of the plan is a universal limitation of hours of work per week for any individual by common consent, and a universal payment of wages above a minimum, also by common consent. I cannot guarantee the success of this nationwide plan, but the people of this country can guarantee its success. I have no faith in "cure-alls" but I believe that we can greatly influence economic forces. I have no sympathy with the professional economists who insist that things must run their course and that human agencies can have no influence on economic ills. One reason is that I happen to know that professional economists have changed their definition of economic laws every five or ten years for a very long time, but I do have faith, and retain faith, in the strength of common purpose, and in the strength of unified action taken by the American people.

That is why I am describing to you the simple purposes and the solid foundations upon which our program of recovery is built. That is why I am asking the employers of the Nation to sign this common covenant with me -- to sign it in the name of patriotism and humanity. That is why I am asking the workers to go along with us in a spirit of understanding and of helpfulness.

**28.** "This nation will remain a neutral nation," President Franklin D. Roosevelt declared shortly after World War II erupted on the European continent, "but I cannot ask that every American remain neutral in thought as well." As war ravaged Europe's landscape, Roosevelt sought to lend American aid to Great Britain. In his 1941 Annual Message to Congress, Roosevelt outlined the things for which Americans were prepared to fight. He closed by defining the four essential freedoms—freedom of speech and expression, freedom to worship, freedom from want, and freedom from fear—that a free world is founded upon. The speech had an influential effect on converting American public opinion to lend support in Britain's struggle against the Germans.

Roosevelt issued Executive Order 8802, otherwise known as the Fair Employment Act, on June 25, 1941. According to the executive order, racial discrimination was to be prohibited in the national defense program. The order marked the first instance in the history of the United States that the federal government sought to promote equal opportunity and prohibit employment discrimination among all citizens "regardless of race, creed, color, or national origin." The order also included a provision that barred private contractors working under defense contract from discrimination as well.

During the summer of 1941, British Prime Minister Winston Churchill slipped away from his country in the midst of World War II to meet secretly with President Roosevelt on the high seas aboard a warship at Newfoundland to establish a joint vision for a postwar world. Although the United States had yet to enter the war, the Atlantic Charter represented an unofficial statement of war aims that both nations shared. Roosevelt and Churchill agreed on eight key points, which declared that neither the British nor the United States sought territorial gains, condemned

German aggression, embraced President Roosevelt's call for freedom from fear and want, and foreshadowed the creation of the United Nations.

### Franklin D. Roosevelt, "Four Freedoms"

January 6, 1941

Mr. Speaker, members of the 77th Congress:

I address you . . . at a moment unprecedented in the history of the union. I use the word "unprecedented" because at no previous time has American security been as seriously threatened from without as it is today.

Since the permanent formation of our government under the Constitution in 1789, most of the periods of crisis in our history have related to our domestic affairs. And, fortunately, only one of these --the four-year war between the States --ever threatened our national unity. Today, thank God, 130,000,000 Americans in forty-eight States have forgotten points of the compass in our national unity. . . .

Every realist knows that the democratic way of life is at this moment being directly assailed in every part of the world --assailed either by arms or by secret spreading of poisonous propaganda by those who seek to destroy unity and promote discord in nations that are still at peace. During sixteen long months this assault has blotted out the whole pattern of democratic life in an appalling number of independent nations, great and small. And the assailants are still on the march, threatening other nations, great and small.

Therefore, as your President, performing my constitutional duty to "give to the Congress information of the state of the union," I find it unhappily necessary to report that the future and the safety of our country and of our democracy are overwhelmingly involved in events far beyond our borders.

Armed defense of democratic existence is now being gallantly waged in four continents. If that defense fails, all the population and all the resources of Europe and Asia, Africa and Australia will be dominated by conquerors. And let us remember that the total of those populations in those four continents, the total of those populations and their resources greatly exceeds the sum total of the population and the resources of the whole of the Western Hemisphere --yes, many times over.

In times like these it is immature-- and, incidentally, untrue-- for anybody to brag that an unprepared America, single-handed and with one hand tied behind its back, can hold off the whole world. . . . As long as the aggressor nations maintain the offensive they, not we, will choose the time and the place and the method of their attack.

And that is why the future of all the American Republics is today in serious danger. That is why this annual message to the Congress is unique in our history. That is why every member of the executive branch of the government and every member of the Congress face great responsibility—great accountability.

The need of the moment is that our actions and our policy should be devoted primarily—almost exclusively—to meeting this foreign peril. For all our domestic problems are now a part of the great emergency. Just as our national policy in internal affairs has been based upon a decent respect for the rights and the dignity of all of our fellow men within our gates, so our national policy in foreign affairs has been based on a decent respect for the rights and the dignity of all nations, large and small. And the justice of morality must and will win in the end.

Our national policy is this:

First, by an impressive expression of the public will and without regard to partisanship, we are committed to all-inclusive national defense.

Second, by an impressive expression of the public will and without regard to partisanship, we are committed to full support of all those resolute people everywhere who are resisting aggression and are thereby keeping war away from our hemisphere. By this support we express our determination that the democratic cause shall prevail, and we strengthen the defense and the security of our own nation.

Third, by an impressive expression of the public will and without regard to partisanship, we are committed to the proposition that principle of morality and considerations for our own security will never permit us to acquiesce in a peace dictated by aggressors and sponsored by appeasers. We know that enduring peace cannot be bought at the cost of other people's freedom.

In the recent national election there was no substantial difference between the two great parties in respect to that national policy. No issue was fought out on the line before the American electorate. And today it is abundantly evident that American citizens everywhere are demanding and supporting speedy and complete action in recognition of obvious danger.

Therefore, the immediate need is a swift and driving increase in our armament production. . . .

New circumstances are constantly begetting new needs for our safety. I shall ask this Congress for greatly increased new appropriations and authorizations to carry on what we have begun.

I also ask this Congress for authority and for funds sufficient to manufacture additional munitions and war supplies of many kinds, to be turned over to those nations which are now in actual war with aggressor nations. Our most useful and immediate role is to act as an arsenal for them as well as for ourselves. They do not need manpower, but they do need billions of dollars' worth of the weapons of defense.

The time is near when they will not be able to pay for them all in ready cash. We cannot, and we will not, tell them that they must surrender merely because of present inability to pay for the weapons which we know they must have. . . .

Let us say to the democracies : "We Americans are vitally concerned in your defense of freedom. We are putting forth our energies, our resources and our organizing powers to give you the strength to regain and maintain a free world. We shall send you in ever-increasing numbers, ships, planes, tanks, guns. That is our purpose and our pledge." In fulfillment of this purpose we will not be intimidated by the threats of dictators that they will regard as a breach of international law or as an act of war our aid to the democracies which dare to resist their aggression. Such aid is not an act of war, even if a dictator should unilaterally proclaim it so to be. And when the dictators --if the dictators-- are ready to make war upon us, they will not wait for an act of war on our part. They did not wait for Norway or Belgium or the Netherlands to commit an act of war. Their only interest is in a new one-way international law which lacks mutuality in its observance and therefore becomes an instrument of oppression.

The happiness of future generations of Americans may well depend on how effective and how immediate we can make our aid felt. No one can tell the exact character of the emergency situations that we may be called upon to meet. The nation's hands must not be tied when the nation's life is in danger. Yes, and we must prepare, all of us prepare, to make the sacrifices that the emergency --almost as serious as war itself-- demands. Whatever stands in the way of speed and efficiency in defense, in defense preparations at any time, must give way to the national need.

A free nation has the right to expect full cooperation from all groups. A free nation has the right to look to the leaders of business, of labor and of agriculture to take the lead in stimulating effort, not among other groups but within their own groups. The best way of dealing with the few slackers or trouble-makers in our midst is, first, to shame them by patriotic example, and if that fails, to use the sovereignty of government to save government.

As men do not live by bread alone, they do not fight by armaments alone. Those who man our defenses and those behind them who build our defenses must have the stamina and the courage which come from

unshakeable belief in the manner of life which they are defending. The mighty action that we are calling for cannot be based on a disregard of all the things worth fighting for. The nation takes great satisfaction and much strength from the things which have been done to make its people conscious of their individual stake in the preservation of democratic life in America. Those things have toughened the fiber of our people, have renewed their faith and strengthened their devotion to the institutions we make ready to protect. Certainly this is no time for any of us to stop thinking about the social and economic problems which are the root cause of the social revolution which is today a supreme factor in the world. There is nothing mysterious about the foundations of a healthy and strong democracy.

The basic things expected by our people of their political and economic systems are simple. They are: equality of opportunity for youth and for others; jobs for those who can work; security for those who need it; the ending of special privilege for the few; the preservation of civil liberties for all; the enjoyment of the fruits of scientific progress in a wider and constantly rising standard of living.

These are the simple, the basic things that must never be lost sight of in the turmoil and unbelievable complexity of our modern world. The inner and abiding straight of our economic and political systems is dependent upon the degree to which they fulfill these expectations.

Many subjects connected with our social economy call for immediate improvement. As examples: We should bring more citizens under the coverage of old-age pensions and unemployment insurance. We should widen the opportunities for adequate medical care. We should plan a better system by which persons deserving or needing gainful employment may obtain it.

I have called for personal sacrifice, and I am assured of the willingness of almost all Americans to respond to that call. . . .

In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression --everywhere in the world.

The second is freedom of every person to worship God in his own way-- everywhere in the world.

The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants --everywhere in the world.

The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor --anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called "new order" of tyranny which the dictators seek to create with the crash of a bomb.

To that new order we oppose the greater conception --the moral order. A good society is able to face schemes of world domination and foreign revolutions alike without fear.

Since the beginning of our American history we have been engaged in change, in a perpetual, peaceful revolution, a revolution which goes on steadily, quietly, adjusting itself to changing conditions without the concentration camp or the quicklime in the ditch. The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society.

This nation has placed its destiny in the hands, heads and hearts of its millions of free men and women, and its faith in freedom under the guidance of God. Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them. Our strength is our unity of purpose.

To that high concept there can be no end save victory.

### **Executive Order 8802**

**June 25, 1941**

*Reaffirming Policy Of Full Participation In The Defense Program By All Persons, Regardless Of Race, Creed, Color, Or National Origin, And Directing Certain Action In Furtherance Of Said Policy*

WHEREAS it is the policy of the United States to encourage full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin, in the firm belief that the democratic way of life within the Nation can be defended successfully only with the help and support of all groups within its borders; and

WHEREAS there is evidence that available and needed workers have been barred from employment in industries engaged in defense production solely because of considerations of race, creed, color, or national origin, to the detriment of workers' morale and of national unity:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes, and as a prerequisite to the successful conduct of our national defense production effort, I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of workers in defense industries or government because of race, creed, color, or national origin, and I do hereby declare that it is the duty of employers and of labor organizations, in furtherance of said policy and of this order, to provide for the full and equitable participation of all workers in defense industries, without discrimination because of race, creed, color, or national origin;

And it is hereby ordered as follows:

1. All departments and agencies of the Government of the United States concerned with vocational and training programs for defense production shall take special measures appropriate to assure that such programs are administered without discrimination because of race, creed, color, or national origin;
2. All contracting agencies of the Government of the United States shall include in all defense contracts hereafter negotiated by them a provision obligating the contractor not to discriminate against any worker because of race, creed, color, or national origin;
3. There is established in the Office of Production Management a Committee on Fair Employment Practice, which shall consist of a chairman and four other members to be appointed by the President. The Chairman and members of the Committee shall serve as such without compensation but shall be entitled to actual and necessary transportation, subsistence and other expenses incidental to performance of their duties. The Committee shall receive and investigate complaints of discrimination in violation of the provisions of this order and shall take appropriate steps to redress grievances which it finds to be valid. The Committee shall also recommend to the several departments and agencies of the Government of the United States and to the President all measures which may be deemed by it necessary or proper to effectuate the provisions of this order.

### **The Atlantic Charter**

**August 14, 1941**



The President of the United States of America and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them;

Fourth, they will endeavor, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance;

Eighth, they believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measure which will lighten for peace-loving peoples the crushing burden of armaments.

**29.** In his 1947 message to Congress, President Harry S. Truman announced what has become known as the Truman Doctrine: the United States' commitment to police the world to ensure that free peoples are able to "work out their own destinies in their own way." "I believe," Truman argued, "that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures." Although Truman's foreign policy initially authorized the federal government to aid only Greece and Turkey, the commitment soon spread to all areas of the globe, particularly in regions under the threat of communist expansion. Truman's Doctrine established a basis for American foreign policy that survived for several decades during the Cold War.

George F. Kennan, the deputy chief mission of the United States to the Soviet Union from 1944 to 1946, is best known as the father of "containment." His writings inspired President Truman's Doctrine and the nation's foreign policy of containing Soviet communism. Writing under the pseudonym "Mr. X," Kennan published his influential article, "The Sources of Soviet Conduct," in the July 1947 issue of *Foreign Affairs*. He argued that Soviet Premier Joseph Stalin's policy was shaped by Marxist-Leninist ideology, which advocated the expansion of communism to defeat capitalism. Kennan concluded that "it is clear that the main element of any United States policy toward the Soviet Union must be that of a long-term, patient but firm and vigilant containment of Russian expansive tendencies." Kennan claimed that the United States had the moral authority to unilaterally undertake a policy of containment, and if it could do so without undermining its own political and economic stability, then the Soviet Union would eventually collapse.

### The Truman Doctrine

March 12, 1947

Mr. President, Mr. Speaker, Members of the Congress of the United States:

The gravity of the situation which confronts the world today necessitates my appearance before a joint session of the Congress. The foreign policy and the national security of this country are involved.

One aspect of the present situation, which I wish to present to you at this time for your consideration and decision, concerns Greece and Turkey.

The United States has received from the Greek Government an urgent appeal for financial and economic assistance. Preliminary reports from the American Economic Mission now in Greece and reports from the American Ambassador in Greece corroborate the statement of the Greek Government that assistance is imperative if Greece is to survive as a free nation.

I do not believe that the American people and the Congress wish to turn a deaf ear to the appeal of the Greek Government. . . .

The very existence of the Greek state is today threatened by the terrorist activities of several thousand armed men, led by Communists, who defy the government's authority at a number of points, particularly along the northern boundaries. A Commission appointed by the United Nations Security Council is at present investigating disturbed conditions in northern Greece and alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria, and Yugoslavia on the other.

Meanwhile, the Greek Government is unable to cope with the situation. The Greek army is small and poorly equipped. It needs supplies and equipment if it is to restore the authority of the government throughout Greek territory.

Greece must have assistance if it is to become a self-supporting and self-respecting democracy. The United States must supply that assistance. We have already extended to Greece certain types of relief and economic aid but these are inadequate. There is no other country to which democratic Greece can turn. No other nation is willing and able to provide the necessary support for a democratic Greek government.

The British Government, which has been helping Greece, can give no further financial or economic aid after March 31. Great Britain finds itself under the necessity of reducing or liquidating its commitments in several parts of the world, including Greece.

We have considered how the United Nations might assist in this crisis. But the situation is an urgent one requiring immediate action and the United Nations and its related organizations are not in a position to extend help of the kind that is required. . . .

Greece's neighbor, Turkey, also deserves our attention. The future of Turkey as an independent and economically sound state is clearly no less important to the freedom-loving peoples of the world than the future of Greece. The circumstances in which Turkey finds itself today are considerably different from those of Greece. Turkey has been spared the disasters that have beset Greece. And during the war, the United States and Great Britain furnished Turkey with material aid. Nevertheless, Turkey now needs our support.

Since the war Turkey has sought financial assistance from Great Britain and the United States for the purpose of effecting that modernization necessary for the maintenance of its national integrity. That integrity is essential to the preservation of order in the Middle East.

The British government has informed us that, owing to its own difficulties can no longer extend financial or economic aid to Turkey. As in the case of Greece, if Turkey is to have the assistance it needs, the United States must supply it. We are the only country able to provide that help.

I am fully aware of the broad implications involved if the United States extends assistance to Greece and Turkey, and I shall discuss these implications with you at this time.

One of the primary objectives of the foreign policy of the United States is the creation of conditions in which we and other nations will be able to work out a way of life free from coercion. This was a fundamental issue in the war with Germany and Japan. Our victory was won over countries which sought to impose their will, and their way of life, upon other nations.

To ensure the peaceful development of nations, free from coercion, the United States has taken a leading part in establishing the United Nations. The United Nations is designed to make possible lasting freedom and independence for all its members. We shall not realize our objectives, however, unless we are willing to help free peoples to maintain their free institutions and their national integrity against aggressive movements that seek to impose upon them totalitarian regimes. This is no more than a frank recognition that totalitarian regimes imposed on free peoples, by direct or indirect aggression, undermine the foundations of international peace and hence the security of the United States.

The peoples of a number of countries of the world have recently had totalitarian regimes forced upon them against their will. The Government of the United States has made frequent protests against coercion and intimidation, in violation of the Yalta agreement, in Poland, Rumania, and Bulgaria. I must also state that in a number of other countries there have been similar developments.

At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one.

One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.

The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio; fixed elections, and the suppression of personal freedoms.

I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures.

I believe that we must assist free peoples to work out their own destinies in their own way.

I believe that our help should be primarily through economic and financial aid which is essential to economic stability and orderly political processes.

The world is not static, and the status quo is not sacred. But we cannot allow changes in the status quo in violation of the Charter of the United Nations by such methods as coercion, or by such subterfuges as political infiltration. In helping free and independent nations to maintain their freedom, the United States will be giving effect to the principles of the Charter of the United Nations.

It is necessary only to glance at a map to realize that the survival and integrity of the Greek nation are of grave importance in a much wider situation. If Greece should fall under the control of an armed minority, the effect upon its neighbor, Turkey, would be immediate and serious. Confusion and disorder might well spread throughout the entire Middle East.

Moreover, the disappearance of Greece as an independent state would have a profound effect upon those countries in Europe whose peoples are struggling against great difficulties to maintain their freedoms and their independence while they repair the damages of war.

It would be an unspeakable tragedy if these countries, which have struggled so long against overwhelming odds, should lose that victory for which they sacrificed so much. Collapse of free institutions and loss of independence would be disastrous not only for them but for the world. Discouragement and possibly failure would quickly be the lot of neighboring peoples striving to maintain their freedom and independence.

Should we fail to aid Greece and Turkey in this fateful hour, the effect will be far reaching to the West as well as to the East. We must take immediate and resolute action.

I therefore ask the Congress to provide authority for assistance to Greece and Turkey in the amount of \$400,000,000 for the period ending June 30, 1948. . . .

In addition to funds, I ask the Congress to authorize the detail of American civilian and military personnel to Greece and Turkey, at the request of those countries, to assist in the tasks of reconstruction, and for the purpose of supervising the use of such financial and material assistance as may be furnished. I recommend that authority also be provided for the instruction and training of selected Greek and Turkish personnel.

Finally, I ask that the Congress provide authority which will permit the speediest and most effective use, in terms of needed commodities, supplies, and equipment, of such funds as may be authorized. . . .

The seeds of totalitarian regimes are nurtured by misery and want. They spread and grow in the evil soil of poverty and strife. They reach their full growth when the hope of a people for a better life has died. We must keep that hope alive. The free peoples of the world look to us for support in maintaining their freedoms.

If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of our own nation.

Great responsibilities have been placed upon us by the swift movement of events. I am confident that the Congress will face these responsibilities squarely.

### **Mr. X, “The Sources of Soviet Conduct”**

**July 1947**

The political personality of Soviet power as we know it today is the product of ideology and circumstances: ideology inherited by the present Soviet leaders from the movement in which they had their political origin, and circumstances of power which they now have exercised for nearly three decades in Russia. ...

Of the original ideology, nothing has been officially junked. Belief is maintained in the basic badness of capitalism, in the inevitability of its destruction, in the obligation of the proletariat to assist in that destruction and to take power into its own hands. But stress has come to be laid primarily on those concepts which relate most specifically to the Soviet regime itself: to its position as the sole truly Socialist regime in a dark and misguided world, and to the relationships of power within it.

The first of these concepts is that of the innate antagonism between capitalism and socialism. We have seen how deeply that concept has become imbedded in foundations of Soviet power. It has profound implications for Russia's conduct as a member of international society. It means that there can never be on Moscow's side any sincere assumption of a community of aims between the Soviet Union and powers which are regarded as capitalist. It must invariably be assumed in Moscow that the aims of the capitalist world are antagonistic to the Soviet regime, and therefore to the interest of the peoples it controls. If the Soviet government occasionally sets its signature to documents which would indicate the contrary, this is to be regarded as a tactical maneuver permissible in dealing with the enemy (who is without honor) and should be taken in the spirit of caveat emptor. Basically, the antagonism remains. It is postulated. And from it flow many of the phenomena which we find

disturbing in the Kremlin's conduct of foreign policy: the secretiveness, the lack of frankness, the duplicity, the wary suspiciousness, and the basic unfriendliness of purpose. These phenomena are there to stay, for the foreseeable future. There can be variations of degree and of emphasis. When there is something the Russians want from us, one or the other of these features of their policy may be thrust temporarily into the background; and when that happens there will always be Americans who will leap forward with gleeful announcements that "the Russians have changed," and some who will even try to take credit for having brought about such "changes." But we should not be misled by tactical maneuvers. These characteristics of Soviet policy, like the postulate from which they flow, are basic to the internal nature of Soviet power, and will be with us, whether in the foreground or the background, until the internal nature of Soviet power is changed.

This means that we are going to continue for a long time to find the Russians difficult to deal with. It does not mean that they should be considered as embarked upon a do-or-die program to overthrow our society by a given date. The theory of the inevitability of the eventual fall of capitalism has the fortunate connotation that there is no hurry about it. The forces of progress can take their time in preparing the final coup de grace. Meanwhile, what is vital is that the "socialist fatherland" - that oasis of power which has been already won for Socialism in their person of the Soviet Union -- should be cherished and defended by all good communists at home and abroad, its fortunes promoted, its enemies badgered and confounded. The promotion of premature, "adventuristic" revolutionary projects abroad which might embarrass Soviet power in any way would be an inexcusable, even a counterrevolutionary act. The cause of socialism is the support and promotion of Soviet power, as defined in Moscow.

This brings us to the second of the concepts important to contemporary Soviet outlook. That is the infallibility of the Kremlin. The Soviet concept of power, which permits no focal points of organization outside the party itself, requires that the party leadership remain in theory the sole repository of truth. For if truth were to be found elsewhere, there would be justification for its expression in organized activity. But it is precisely that which the Kremlin cannot and will not permit.

The leadership of the Communist Party is therefore always right, and has been always right ever since in 1929 Stalin formalized his personal power by announcing that decisions of the Politburo were being taken unanimously.

On the principle of infallibility there rests the iron discipline of the Communist Party. In fact, the two concepts are mutually self-supporting. Perfect discipline requires recognition of infallibility. Infallibility requires the observance of discipline. And the two together go far to determine the behaviorism of the entire Soviet apparatus of power. But their effect cannot be understood unless a third factor be taken into account: namely, the fact that the leadership is at liberty to put forward for tactical purposes any particular thesis which it finds useful to the cause at any particular moment and to require the faithful and unquestioning acceptance of that thesis by the members of the movement as a whole. This means that truth is not a constant but is actually created, for all intents and purposes, by the Soviet leaders themselves. It may vary from week to week, from month to month. It is nothing absolute and immutable -- nothing which flows from objective reality. It is only the most recent manifestation of the wisdom of those in whom the ultimate wisdom is supposed to reside, because they represent the logic of history. The accumulative effect of these factors is to give to the whole subordinate apparatus of Soviet power an unshakable stubbornness and steadfastness in its orientation. This orientation can be changed at will by the Kremlin but by no other power. Once a given party line has been laid down on a given issue of current policy, the whole Soviet governmental machine, including the mechanism of diplomacy, moves inexorably along the prescribed path, like a persistent toy automobile wound up and headed in a given direction, stopping only when it meets with some unanswerable force. The individuals who are the components of this machine are unamenable to argument or reason which comes to them from outside sources. ... Since there can be no appeal to common purposes, there can be no appeal to common mental approaches. For this reason, facts speak louder than words to the ears of the Kremlin; and words carry the greatest weight when they have the ring of reflecting, or being backed up by, facts of unchallengeable validity. ...

Thus the Kremlin has no compunction about retreating in the face of superior force. And being under the compulsion of no timetable, it does not get panicky under the necessity for such retreat. Its political action is a

fluid stream which moves constantly, wherever it is permitted to move, toward a given goal. Its main concern is to make sure that it has filled every nook and cranny available to it in the basin of world power. But if it finds unassailable barriers in its path, it accepts these philosophically and accommodates itself to them. The main thing is that there should always be pressure, unceasing constant pressure, toward the desired goal. There is no trace of any feeling in Soviet psychology that that goal must be reached at any given time.

These considerations make Soviet diplomacy at once easier and more difficult to deal with than the diplomacy of individual aggressive leaders like Napoleon and Hitler. On the one hand it is more sensitive to contrary force, more ready to yield on individual sectors of the diplomatic front when that force is felt to be too strong, and thus more rational in the logic of rhetoric of power. On the other hand it cannot be easily defeated or discouraged by a single victory on the part of its opponents. And the patient persistence by which it is animated means that it can be effectively countered not by sporadic acts which represent the momentary whims of democratic opinion but only by intelligent long-range policies on the part of Russia's adversaries -- policies no less steady in their purpose, and no less variegated and resourceful in their application, than those of the Soviet Union itself.

In these circumstances it is clear that the main element of any United States policy toward the Soviet Union must be that of a long-term, patient but firm and vigilant containment of Russian expansive tendencies. It is important to note, however, that such a policy has nothing to do with outward histrionics: with threats or blustering or superfluous gestures of outward "toughness." While the Kremlin is basically flexible in its reaction to political realities, it is by no means unamenable to considerations of prestige. Like almost any other government, it can be placed by tactless and threatening gestures in a position where it cannot afford to yield even though this might be dictated by its sense of realism. The Russian leaders are keen judges of human psychology, and as such they are highly conscious that loss of temper and of self-control is never a source of strength in political affairs. They are quick to exploit such evidences of weakness. For these reasons, it is a *sine qua non* of successful dealing with Russia that the foreign government in question should remain at all times cool and collected and that its demands on Russian policy should be put forward in such a manner as to leave the way open for a compliance not too detrimental to Russian prestige.

In the light of the above, it will be clearly seen that the Soviet pressure against the free institutions of the western world is something that can be contained by the adroit and vigilant application of counter-force at a series of constantly shifting geographical and political points, corresponding to the shifts and maneuvers of Soviet policy, but which cannot be charmed or talked out of existence. The Russians look forward to a duel of infinite duration, and they see that already they have scored great successes. It must be borne in mind that there was a time when the Communist Party represented far more of a minority in the sphere of Russian national life than Soviet power today represents in the world community. ...

It is clear that the United States cannot expect in the foreseeable future to enjoy political intimacy with the Soviet regime. It must continue to regard the Soviet Union as a rival, not a partner, in the political arena. It must continue to expect that Soviet policies will reflect no abstract love of peace and stability, no real faith in the possibility of a permanent happy coexistence of the Socialist and capitalist worlds, but rather a cautious, persistent pressure toward the disruption and weakening of all rival influence and rival power.

Balanced against this are the facts that Russia, as opposed to the Western world in general, is still by far the weaker party, that Soviet policy is highly flexible, and that Soviet society may well contain deficiencies which will eventually weaken its own total potential. This would of itself warrant the United States entering with reasonable confidence upon a policy of firm containment, designed to confront the Russians with unalterable counter-force at every point where they show signs of encroaching upon the interests of a peaceful and stable world.

But in actuality the possibilities for American policy are by no means limited to holding the line and hoping for the best. It is entirely possible for the United States to influence by its actions the internal developments, both within Russia and throughout the international communist movement, by which Russian policy is largely determined. This is not only a question of the modest measure of informational activity which

this government can conduct in the Soviet Union and elsewhere, although that, too, is important. It is rather a question of the degree to which the United States can create among the peoples of the world generally the impression of a country which knows what it wants, which is coping successfully with the problems of its internal life and with the responsibilities of a world power, and which has a spiritual vitality capable of holding its own among the major ideological currents of the time. To the extent that such an impression can be created and maintained, the aims of Russian communism must appear sterile and quixotic, the hopes and enthusiasm of Moscow's supporters must wane and added strain must be imposed on the Kremlin's foreign policies. For the palsied decrepitude of the capitalist world is the keystone of communist philosophy. Even the failure of the United States to experience the early economic depression which the ravens of the Red Square have been predicting with such complacent confidence since hostilities ceased would have deep and important repercussions throughout the communist world.

By the same token, exhibitions of indecision, disunity and internal disintegration within this country have an exhilarating effect on the whole communist movement. At each evidence of these tendencies, a thrill of hope and excitement goes through the communist world; a new jauntiness can be noted in the Moscow tread; new groups of foreign supporters climb on to what they can only view as the band wagon of international politics; and Russian pressure increases all along the line in international affairs.

It would be an exaggeration to say that American behavior unassisted and alone could exercise a power of life and death over the communist movement and bring about the early fall of Soviet power in Russia. But the United States has it in its power to increase enormously the strains under which Soviet policy must operate, to force upon the Kremlin a far greater degree of moderation and circumspection than it has had to observe in recent years, and in this way to promote tendencies which must eventually find their outlet in either the break-up or the gradual mellowing of Soviet power. For no mystical, Messianic movement -- and particularly not that of the Kremlin -- can face frustration indefinitely without eventually adjusting itself in one way or another to the logic of that state of affairs.

Thus the decision will really fall in large measure in this country itself. The issue of Soviet-American relations is in essence a test of the overall worth of the United States as a nation among nations. To avoid destruction the United States need only measure up to its own best traditions and prove itself worthy of preservation as a great nation.

Surely, there was never a fairer test of national quality than this. In the light of these circumstances, the thoughtful observer of Russian-American relations will find no cause for complaint in the Kremlin's challenge to American society. He will rather experience a certain gratitude to a Providence which, by providing the American people with this implacable challenge, has made their entire security as a nation dependent on their pulling themselves together and accepting the responsibilities of moral and political leadership that history plainly intended them to bear.

**30. President Harry Truman's Executive Order 9981 expanded on President Franklin D. Roosevelt's Executive Order 8802 by establishing equal treatment and opportunity in the United States armed forces for all races, religions, and national origins.**

*Brown v. Board of Education of Topeka* was one of a group of cases originating from the South and from border areas of the North that the Supreme Court brought together to reassess its decision in *Plessy v. Ferguson*, which ruled in favor of separate but equal facilities for African Americans. After a lengthy period of negotiation, the Court ruled unanimously in perhaps the most momentous decision of the twentieth century that segregated schools were unconstitutional. But after a rehearing to determine an appropriate remedy in *Brown II*, the Court instructed the district courts to supervise the process "with all deliberate speed." Despite the intentions of the Court, its decision not to set a clear timetable and leave the process of desegregation to district courts encouraged southern officials to obstruct, delay, and minimize the revolutionary change that the *Brown* decisions established.

As a relatively young Baptist minister, Martin Luther King, Jr. quickly became a leading figure in the civil rights movement. King turned the movement from a militant boycott into a crusade by stressing passive resistance as a device for protesting the plight of African Americans. Beginning in the early 1960s African Americans effectively applied King's philosophy to the sit-ins and economic boycotts to compel white business owners to desegregate lunch counters and other public facilities in the South. King explained his philosophy of nonviolence in his 1958 book *Stride*

### **Toward Freedom.**

In a speech delivered in the state of West Virginia during his 1960 presidential campaign, Massachusetts Senator John F. Kennedy, echoing Franklin D. Roosevelt's New Deal for the Appalachian region, offers his pledge that the Democratic party would continue its policy—hindered by eight years of Republican leadership—of full employment for the high levels of unemployed workers in the region. Kennedy announced that the Democrats would seek to stimulate the region's economy, provide better education, and continue Roosevelt's vision for the Mountain South.

### **Executive Order 9981**

**July 26, 1948**

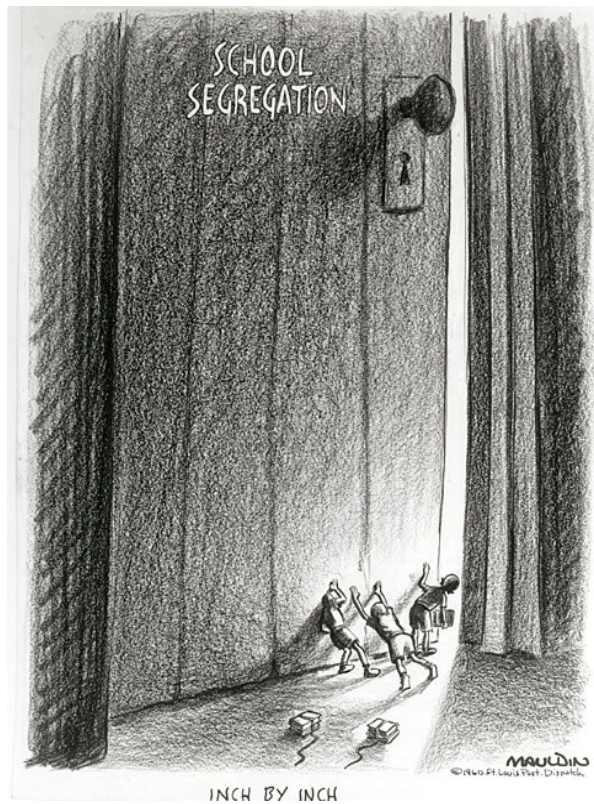
Establishing the President's Committee on Equality of Treatment and Opportunity In the Armed Forces.

WHEREAS it is essential that there be maintained in the armed services of the United States the highest standards of democracy, with equality of treatment and opportunity for all those who serve in our country's defense:

NOW THEREFORE, by virtue of the authority vested in me as President of the United States, by the Constitution and the statutes of the United States, and as Commander in Chief of the armed services, it is hereby ordered as follows:

1. It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.
2. There shall be created in the National Military Establishment an advisory committee to be known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services, which shall be composed of seven members to be designated by the President.
3. The Committee is authorized on behalf of the President to examine into the rules, procedures and practices of the Armed Services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out the policy of this order. The Committee shall confer and advise the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and shall make such recommendations to the President and to said Secretaries as in the judgment of the Committee will effectuate the policy hereof.
4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee in its work, and to furnish the Committee such information or the services of such persons as the Committee may require in the performance of its duties.
5. When requested by the Committee to do so, persons in the armed services or in any of the executive departments and agencies of the Federal Government shall testify before the Committee and shall make available for use of the Committee such documents and other information as the Committee may require.
6. The Committee shall continue to exist until such time as the President shall terminate its existence by Executive order.





"Inch by Inch" by Bill Mauldin, December 1, 1960



Pickers Protesting *Brown v. Board* Poolesville, Maryland, in 1956

### ***Brown v. Board of Education of Topeka***

**1954**

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court. . . .

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. . . .

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. . . .

The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson* . . . , involving not education but transportation. American courts have since labored with the doctrine for over half a century . . . . In . . . recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. . . . In none of these cases, was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. . . .

Here . . . there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and

white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . .

In *Sweatt v. Painter* . . . , in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents*. . . , the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . .

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. . . .

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. . . . In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court.\*

\* Questions 4 and 5 related to the appropriate remedies to end segregation.



Martin Luther King, Jr., by Flip Schulke, *TIME*

### Martin Luther King, Jr., The Philosophy of Nonviolence

1958

Since the philosophy of nonviolence played such a positive role in the Montgomery movement, it may be wise to turn to a brief discussion of some basic aspects of this philosophy.

First, it must be emphasized that nonviolent resistance is not a method for cowards; it does resist. If one used this method because he is afraid, he is not truly nonviolent. That is why Gandhi often said that if cowardice is the only alternative to violence, it is better to fight. He made this statement conscious of the fact that there is always another alternative: no individual or group need ever submit to any wrong, nor need they use violence to right the wrong; there is the way of nonviolent resistance. This is ultimately the way for the strong man. It is not a method of stagnant passivity. The phrase "passive resistance" often gives the false impression that this is a sort of "do-nothing method" in which the resister quietly and passively accepts evil. But nothing is further from the truth. For while the nonviolent resister is passive in the sense that he is not physically aggressive toward his opponent, his mind and emotions are always active, constantly seeking to persuade his opponents that he is wrong. The method is passive physically, but strongly active spiritually. It is not passive resistance to evil, it is active nonviolent resistance to evil.

A second basic fact that characterizes nonviolence is that it does not seek to defeat or humiliate the opponent, but to win his friendship and understanding. The nonviolent resister may often express his protest through noncooperation or boycotts, but he realizes that these are not ends in themselves; they are merely means to awaken a sense of moral shame in the opponent. The end is redemption and reconciliation. The aftermath of nonviolence is the creation of the beloved community, while the aftermath of violence is tragic bitterness.

A third characteristic of this method is that the attack is directed against forces of evil rather than against persons who happen to be doing the evil. It is evil that the nonviolent resister seeks to defeat, not the person victimized by the evil. If he is opposing racial injustice, the nonviolent resister has the vision to see that the basic tension is not between races. As I like to say to the people in Montgomery: "The tension in the city is not between

white people and Negro people. The tension is, at bottom, between justice and injustice, between the forces of light and the forces of darkness. And if there is a victory, it will be a victory not merely for 50,000 Negroes, but a victory for justice and the forces of light. We are out there to defeat injustice and not white persons who may be unjust."

A fourth point that characterizes nonviolent resistance is a willingness to accept suffering without retaliation, to accept blows from the opponent without striking back. "Rivers of blood may have to flow before we gain our freedom, but it must be our blood," Gandhi said to his countrymen. The nonviolent resister is willing to accept violence if necessary, but never to inflict it. He does not seek to dodge jail. If going to jail is necessary, he enters it "as a bridegroom enters the bride's chamber."

One may well ask: "What is the nonviolent resister's justification for this ordeal to which he invites men, for this mass political application of the ancient doctrine of turning the other cheek?" The answer is found in the realization that unearned suffering is redemptive. Suffering, the nonviolent resister realizes, has tremendous educational and transforming possibilities. "Things of fundamental importance to people are not secured by reason alone, but have to be purchased with their suffering," said Gandhi. He continued: "Suffering is infinitely more powerful than the law of the jungle for converting the opponent and opening his ears which are otherwise shut to the voice of reason."

A fifth point concerning nonviolent resistance is that it avoids not only external physical violence but also internal violence of spirit. The nonviolent resister not only refuses to shoot his opponent but he also refuses to hate him. At the center of nonviolence stands the principle of love. The nonviolent resister would contend that in the struggle for human dignity, the oppressed people of the world must not succumb to the temptation of becoming bitter or indulging in hate campaigns. To retaliate in kind would do nothing but intensify the existence of hate in the universe. Along the way of life, someone must have sense enough and morality enough to cut off the chain of hate. This can only be done by projecting the ethic of love to the center of our lives.

In speaking of love at this point, we are not referring to some sentimental or affectionate emotion. It would be nonsense to urge men to love their oppressors in an affectionate sense. Love in this connection means understanding, redemptive good will. Here the Greek language comes to our aid. There are three words for love in the Greek New Testament. First, there is eros. In Platonic philosophy eros meant the yearning of the soul for the realm of the divine. It has come now to mean a sort of aesthetic or romantic love. Second, there is philia which means intimate affection between personal friends. Philia denotes a sort of reciprocal love; the person loves because he is loved. When we speak of loving those who oppose us, we refer to neither eros nor philia; we speak of love which is expressed in the Greek word Agape. Agape means understanding, redeeming good will for all men. It is an overflowing love which is purely spontaneous, unmotivated, groundless, and creative. It is not set in motion by any quality or function of its object. It is the love of God operating in the human heart.

Agape is disinterested love. It is a love in which the individual seeks not his own good, but the good of his neighbor (1 Cor. 10-24). 'Agape does not begin by discriminating between worthy and unworthy people, or any qualities people possess. It begins by loving others for their sakes. It is an entirely "neighbor-regarding concern for others," which discovers the neighbor in every man it meets. Therefore, agape makes no distinction between friend and enemy; it is directed toward both. If one loves an individual merely on account of his friendliness, he loves him for the sake of benefits to be gained from the friendship, rather than for the friend's sake. Consequently, the best way to assure oneself that love is disinterested is to have love for the enemy-neighbor from whom you can expect no good in return, but only hostility and persecution.

Another basic point about agape is that it springs from the need of the other person - his need for belonging to the best of the human family. The Samaritan who helped the Jew in the Jericho Road was "good" because he responded to the human need that he was presented with. God's love is eternal and fails not because man needs his love. St. Paul assures us that the loving act of redemption was done "while we were yet sinners" - that is, at the point of our greatest need for love. Since the white man's personality is greatly distorted by segregation, and his soul is greatly scarred, he needs the love of the Negro. The Negro must love the white man, because the white man needs his love to remove his tensions, insecurities and fears. Agape is not a weak, passive

love. It is love in action. Agape is love seeking to preserve and create community. It is insistence on community even when one seeks to break it. Agape is a willingness to sacrifice in the interest of mutuality. Agape is a willingness to go to any length to restore community. It doesn't stop at the first mile, but goes the second mile to restore community. The cross is the eternal expression of the length to which God will go in order to restore broken community. The resurrection is a symbol of God's triumph over all the forces that seek to block community. The Holy Spirit is the continuing community creating reality that moves through history. He who works against community is working against the whole of creation. Therefore, if I respond to hate with a reciprocal hate I do nothing but intensify the cleavage in broken community. I can only close the gap in broken community by meeting hate with love. If I meet hate with hate, I become depersonalized, because creation is so designed that my personality can only be fulfilled in the context of community. Booker T. Washington was right: "Let no man pull you so low that he makes you hate him." When he pulls you that low he brings you to the point of working against community; he drags you to the point of defying creation, and thereby becoming depersonalized.

In the final analysis, agape means recognition of the fact that all life is interrelated. All humanity is involved in a single process, and all men are brothers. To the degree that I harm my brother, no matter what he is doing to me, to that extent I am harming myself. For example, white men often refuse federal aid to education in order to avoid giving the Negro his rights; but because all men are brothers they cannot deny Negro children without harming their own. They end, all efforts to the contrary, by hurting themselves. Why is this? Because men are brothers. If you harm me, you harm yourself.

Love, agape, is the only cement that can hold this broken community together. When I am commanded to love, I am commanded to restore community, to resist injustice, to meet the needs of my brothers.

A sixth basic fact about nonviolent resistance is that it is based on the conviction that the universe is on the side of justice. Consequently, the believer in nonviolence has deep faith in the future. This faith is another reason why the nonviolent resister can accept suffering without retaliation. For he knows that in his struggle for justice he has cosmic companionship. It is true that there are devout believers in nonviolence who find it difficult to believe in a personal God. But even these persons believe in the existence of some creative force that works for universal wholeness. Whether we call it an unconscious process, an impersonal Brahman, or a Personal Being of matchless power and infinite love, there is a creative force in this universe that works to bring the disconnected aspects of reality into a harmonious whole.

### **John F. Kennedy, "General Welfare of the Mountain South"**

**September 19, 1960**

I have seen an America deeply concerned over the failures of the past 8 years—an America alarmed at the drift and complacency which grip the great Republic—an America looking for new leadership—and turning for that leadership to the Democratic Party.

I return here to tell you that, just as I took my case for the nomination to the people of West Virginia in the spring I am taking your case to the people of the United States this fall. Everywhere I have gone across this great land I have told your story of courage—about the State that refused to die—about the towns that refused to give up—and about the men who can't find jobs but keep looking—of the hungry families, the poverty-stricken mining towns, the stricken industries that keep hoping.

I have told them the story of a State with courageous and determined people—a State rich in resources and the skills of its workers, but a State which is being denied its rightful share in American abundance by the indifference and neglect of the Republican Party. And the people of America have listened. I have repeated to them my pledge to West Virginia—the pledge of a new deal for your State. . . .

But the problems of unemployment and poverty are not confined to West Virginia. This conference proves that. For in each of the States represented here there are men out of work and industries in distress. Throughout the entire Nation men and women—almost 4 million of them—are looking for jobs.

Economists tell us that an unemployment rate of 6 percent is the danger signal. When a community passes that point it is officially regarded as an area of "substantial labor surplus." If it remains there it is entitled to

special Government help through defense procurement and other programs. But today the unemployment rate for the entire Nation is nearly 6 percent. The whole United States is rapidly becoming an area of substantial labor surplus.

Yet the Republican candidate for President is boasting that this is "the greatest prosperity that Americans have ever enjoyed."

I challenge Mr. Nixon to tell that to the people of West Virginia, or Pennsylvania, or Kentucky. I challenge him to tell that to the 4 million people who are out of work, or to 3 million more who are forced to work only part time—to the 1 out of every 10 Americans who, in the richest country in the history of the world, are forced to get by on a partial paycheck or none at all.

And these figures do not tell the full hardship of looking for work week after week. For in 1959 it took the average unemployed worker longer to find a job than at any period since the last time the Republicans were in power—in the days of the great depression. And in both 1958 and 1959, an average of more than 1 million idle workers remained out of a job for more than 15 week—the highest number since before the war.

These figures tell a human story—the story of unemployment benefits running out—of 3 million Americans forced to live on an unhealthy, tasteless diet of surplus foods—a story of hardship and personal tragedy.

What, then, does Mr. Nixon mean when he says we are enjoying the greatest prosperity that Americans have ever enjoyed? Perhaps he believes that if only 1 out of every 10 Americans are unable to find full-time work, the other 9 out of every 10 must be doing all right.

But Mr. Nixon forgets that when people aren't working they spend less for food, and the farmers suffer.

They don't buy cars and the automobile industry suffers.

They don't shop as often or buy as much—and every storekeeper and shopkeeper suffers.

They can't buy houses, and homebuilders suffer.

They are kept from contributing their labor and skills to America—and all America suffers.

Mr. Nixon does not understand—just as Republicans have never understood—that America is not truly prosperous unless every American is permitted to share in the prosperity. Franklin Roosevelt once reminded us that "we cannot be content if some fraction of our people—whether it be one-third or one-fifth or one-tenth is ill-fed, ill-clothed, ill-housed, and insecure." But Mr. Nixon and the party he leads say they are content, just as they have always been content, in the face of poverty and unemployment and an America with its most urgent needs unmet.

The Republican Party which Mr. Nixon leads today is the same Republican Party which for half a century has opposed every single progressive measure which the Democrats have designed to improve human welfare and reduce human misery—the party which fought against the New Deal and tried to block the Fair Deal—the party which, in the past 8 years, has vetoed aid to areas of unemployment, blocked efforts to improve unemployment compensation, opposed raising the minimum wage, refused to expand the distribution of surplus food to the hungry, and failed to offer one single program to increase the welfare of the American people. . . .

In the long run, there is only one way to put men back to work—by stimulating the growth of our economy. Today America's economy is growing more slowly than that of nearly every other industrial nation in the world. It is growing one-third as fast as the Soviet Union and little more than one-half of our own rate of growth under the administration of Harry Truman. A growing economy will mean more industry, greater production and more jobs—but a stagnant economy means idle plants and idle men.

I have come to this conference here in West Virginia to commit our party once again to the policy of full employment. And on Inauguration Day, next January, I will pledge my administration to that policy—and I will send to the Congress specific programs designed to carry it out.

First, we will develop great public resources which make it possible for private enterprise to grow and prosper. Industry needs transportation, and power, and natural resources, and decent homes for its workers if it is to increase production and create new jobs. These are programs which only the Government can carry out - they can be carried out without inflation or deficits—but they are programs which the Republicans have failed to carry out.

Second, we will stimulate private investment in a growing America by eliminating artificial Republican restrictions on the supply of money—restrictions which have made it difficult for existing business to get funds for expansion—and for new businesses to get started.

Third, we will permit every American child to receive the kind of education which will produce the skills and creativity which a growing America desperately needs. Today our schools are overcrowded and our teachers ill paid. Yet our advanced technological society depends on the resources of the mind for scientific advances, the development of new industries and increased productivity. This problem is a national problem—and the National

Government must act to meet it.

Fourth, we must move immediately to meet the growing crisis of automation—the replacement of men by machines. You have felt the impact of automation in your coal mines and steel mills—and the impact is spreading. Yet the Republicans have done nothing to harness the benefits of modern technology for all America, while insuring that displaced men can find new uses for their skills. This problem can be solved—through a nationwide conference of industry and labor to map a strategy for putting displaced men back to work, through technical assistance to plants which want to adjust to modern machinery without undue hardship on their workers, through programs of retraining displaced workers, and through expanding the employment services of the U.S. Government so that men can find new job opportunities.

Fifth, we must give special assistance to help hard-hit areas catch up. Twice a Democratic Congress has passed a bill to aid areas where men have long been out of work—and twice the Republicans have vetoed this bill. Last week the Republican candidate for Vice President said that the Republicans were considering a program to help distressed areas. But they weren't considering West Virginia's problems when they vetoed these bills—or when they opposed every other effort to help. The Republicans consider your problems only at election time—and they forget them immediately thereafter. We Democrats will not forget—and a bill to help distressed areas will be signed into law by a Democratic President next year.

Much more needs to be done. We must give special attention to industries like coal which have been especially hard hit. A growing America needs growing supplies of energy—and coal can help supply that energy if we engage in a broad, dynamic program of coal research to find new uses for coal, and if we strive to expand and diversify existing markets.

**31. For nearly fifty years, from Franklin D. Roosevelt's New Deal of the early 1930s to Ronald Reagan's Conservative Republican Revolution of the 1980s, liberalism dominated the political philosophy of the United States. No other man between Franklin D. Roosevelt's death and the election of Ronald Reagan did more to embody the principles of liberalism than President Lyndon B. Johnson. Although his presidency is stained by the mistakes of the Vietnam War, Johnson's legacy includes a reform program that he labeled the "Great Society." The following three documents reveal Johnson's advocacy, as he supported with great political risk the adoption of the Civil and Voting Rights Acts, for the underdog in American society. Johnson's legislative vision included support for civil rights, a war against poverty, increased spending for education, and healthcare for the elderly.**

### **Lyndon B. Johnson, "The Great Society Speech"**

**May 22, 1964**

The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation.

For a century we labored to settle and to subdue a continent. For half a century we called upon unbounded invention and untiring industry to create an order of plenty for all of our people.

The challenge of the next half century is whether we have the wisdom to use that wealth to enrich and elevate our national life, and to advance the quality of our American civilization.

Your imagination, your initiative, and your indignation will determine whether we build a society where progress is the servant of our needs, or a society where old values and new visions are buried under unbridled growth. For in your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society.

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning.

The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and



restlessness. It is a place where the city of man serves not only the needs of the body and the demands of commerce but the desire for beauty and the hunger for community.

It is a place where man can renew contact with nature. It is a place which honors creation for its own sake and for what it adds to the understanding of the race. It is a place where men are more concerned with the quality of their goals than the quantity of their goods.

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor.

So I want to talk to you today about three places where we begin to build the Great Society--in our cities, in our countryside, and in our classrooms.

Many of you will live to see the day, perhaps 50 years from now, when there will be 400 million Americans--four-fifths of them in urban areas. In the remainder of this century urban population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must rebuild the entire urban United States.

Aristotle said: "Men come together in cities in order to live, but they remain together in order to live the good life." It is harder and harder to live the good life in American cities today.

The catalog of ills is long: there is the decay of the centers and the despoiling of the suburbs. There is not enough housing for our people or transportation for our traffic. Open land is vanishing and old landmarks are violated.

Worst of all expansion is eroding the precious and time honored values of community with neighbors and communion with nature. The loss of these values breeds loneliness and boredom and indifference.

Our society will never be great until our cities are great. Today the frontier of imagination and innovation is inside those cities and not beyond their borders.

New experiments are already going on. It will be the task of your generation to make the American city a place where future generations will come, not only to live but to live the good life.

I understand that if I stayed here tonight I would see that Michigan students are really doing their best to live the good life.

This is the place where the Peace Corps was started. It is inspiring to see how all of you, while you are in this country, are trying so hard to live at the level of the people.

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution. Our parks are overcrowded, our seashores overburdened. Green fields and dense forests are disappearing.

A few years ago we were greatly concerned about the "Ugly American." Today we must act to prevent an ugly America.

For once the battle is lost, once our natural splendor is destroyed, it can never be recaptured. And once man can no longer walk with beauty or wonder at nature his spirit will wither and his sustenance be wasted.



A third place to build the Great Society is in the classrooms of America. There your children's lives will be shaped. Our society will not be great until every young mind is set free to scan the farthest reaches of thought and imagination. We are still far from that goal.

Today, 8 million adult Americans, more than the entire population of Michigan, have not finished 5 years of school. Nearly 20 million have not finished 8 years of school. Nearly 54 million--more than one-quarter of all America--have not even finished high school.

Each year more than 100,000 high school graduates, with proved ability, do not enter college because they cannot afford it. And if we cannot educate today's youth, what will we do in 1970 when elementary school enrollment will be 5 million greater than 1960? And high school enrollment will rise by 5 million. College enrollment will increase by more than 3 million.

In many places, classrooms are overcrowded and curricula are outdated. Most of our qualified teachers are underpaid, and many of our paid teachers are unqualified. So we must give every child a place to sit and a teacher to learn from. Poverty must not be a bar to learning, and learning must offer an escape from poverty.

But more classrooms and more teachers are not enough. We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings--on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society.

The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority. They require us to create new concepts of cooperation, a creative federalism, between the National Capital and the leaders of local communities.

Woodrow Wilson once wrote: "Every man sent out from his university should be a man of his Nation as well as a man of his time."

Within your lifetime powerful forces, already loosed, will take us toward a way of life beyond the realm of our experience, almost beyond the bounds of our imagination.

For better or for worse, your generation has been appointed by history to deal with those problems and to lead America toward a new age. You have the chance never before afforded to any people in any age. You can help build a society where the demands of morality, and the needs of the spirit, can be realized in the life of the Nation.

So, will you join in the battle to give every citizen the full equality which God enjoins and the law requires, whatever his belief, or race, or the color of his skin?

Will you join in the battle to give every citizen an escape from the crushing weight of poverty?

Will you join in the battle to make it possible for all nations to live in enduring peace--as neighbors and not as mortal enemies?

Will you join in the battle to build the Great Society, to prove that our material progress is only the foundation on which we will build a richer life of mind and spirit?

There are those timid souls who say this battle cannot be won; that we are condemned to a soulless wealth. I do not agree. We have the power to shape the civilization that we want. But we need your will, your labor, your hearts, if we are to build that kind of society.

Those who came to this land sought to build more than just a new country. They sought a new world. So I have come here today to your campus to say that you can make their vision our reality. So let us from this moment begin our work so that in the future men will look back and say: It was then, after a long and weary way, that man turned the exploits of his genius to the full enrichment of his life.

### **Civil Rights Act of 1964**

#### **TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION**

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the

premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment....

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof....

#### **TITLE IV—DESEGREGATION OF PUBLIC EDUCATION**

##### **SUITS BY THE ATTORNEY GENERAL**

SEC. 407. (a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized ... to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, ... provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance....

## TITLE VI--NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract ..., is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken....

## TITLE VII--EQUAL EMPLOYMENT OPPORTUNITY

### DEFINITIONS

SEC. 701. For the purposes of this title ...

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person....

### DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as

an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

### **Voting Rights Act of 1965**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965."

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission ... to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the Fifteenth Amendment....

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary....

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color....

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language....

SEC. 6. Whenever ... the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that, in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections....

(b) Any person whom the examiner finds, in accordance with instructions received under section 9 (b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters....

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the Fourteenth Amendment and section 2 of the Fifteenth Amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States ... actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting.

**32. Upon assuming office, President Lyndon B. Johnson inherited a substantial American commitment to preserving the anticommunist South Vietnamese government. Johnson's two predecessors, Dwight D. Eisenhower and John F. Kennedy, were responsible for the escalating numbers of American troops on the ground in South Vietnam. Johnson slowly sent additional American troops, referred to as "advisers," increasing the numbers in Vietnam to over 5,000. Then, in August 1964, Johnson announced that the North Vietnamese had attacked American destroyers patrolling the international waters of the Gulf of Tonkin. Congress acted swiftly as the House voted 416 to 0 and the Senate 88 to 2 to authorize the president to "take all necessary means" to protect American military forces in Southeast Asia. The Tonkin Gulf Resolution furnished President Johnson with the legal basis for the subsequent escalation of the Vietnam War.**

### **The Tonkin Gulf Incident**

**1964**

#### **1. President Johnson's Message to Congress August 5, 1964**

Last night I announced to the American people that the North Vietnamese regime had conducted further deliberate attacks against U.S. naval vessels operating in international waters, and I had therefore directed air action against gunboats and supporting facilities used in these hostile operations. This air action has now been carried out with substantial damage to the boats and facilities. Two U.S. aircraft were lost in the action.

After consultation with the leaders of both parties in the Congress, I further announced a decision to ask the Congress for a resolution expressing the unity and determination of the United States in supporting freedom and in protecting peace in Southeast Asia.

These latest actions of the North Vietnamese regime has given a new and grave turn to the already serious situation in Southeast Asia. Our commitments in that area are well known to the Congress. They were first made in 1954 by President Eisenhower. They were further defined in the Southeast Asia Collective Defense Treaty approved by the Senate in February 1955.

This treaty with its accompanying protocol obligates the United States and other members to act in accordance with their constitutional processes to meet Communist aggression against any of the parties or protocol states.

Our policy in Southeast Asia has been consistent and unchanged since 1954. I summarized it on June 2 in four simple propositions:

America keeps her word. Here as elsewhere, we must and shall honor our commitments.

The issue is the future of Southeast Asia as a whole. A threat to any nation in that region is a threat to all, and a threat to us.

Our purpose is peace. We have no military, political, or territorial ambitions in the area.

This is not just a jungle war, but a struggle for freedom on every front of human activity. Our military and economic assistance to South Vietnam and Laos in particular has the purpose of helping these countries to repel aggression and strengthen their independence.

The threat to the free nations of Southeast Asia has long been clear. The North Vietnamese regime has constantly sought to take over South Vietnam and Laos. This Communist regime has violated the Geneva accords for Vietnam. It has systematically conducted a campaign of subversion, which includes the direction, training, and supply of personnel and arms for the conduct of guerrilla warfare in South Vietnamese territory. In Laos, the North Vietnamese regime has maintained military forces, used Laotian territory for infiltration into South Vietnam, and most recently carried out combat operations - all in direct violation of the Geneva Agreements of 1962.

In recent months, the actions of the North Vietnamese regime have become steadily more threatening...

As President of the United States I have concluded that I should now ask the Congress, on its part, to join in affirming the national determination that all such attacks will be met, and that the United States will continue in its basic policy of assisting the free nations of the area to defend their freedom.

As I have repeatedly made clear, the United States intends no rashness, and seeks no wider war. We must make it clear to all that the United States is united in its determination to bring about the end of Communist subversion and aggression in the area. We seek the full and effective restoration of the international agreements signed in Geneva in 1954, with respect to South Vietnam, and again in Geneva in 1962, with respect to Laos...

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## **2. Joint Resolution of Congress H.J. RES 1145 August 7, 1964**

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Section 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President

determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Section 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

**33.** The powers of the presidency had grown steadily since Theodore Roosevelt at the turn of the twentieth century and as a result of Franklin D. Roosevelt's New Deal. However, the Vietnam War and the Watergate Scandal led both the legislative and judicial branch to curtail the broad and inherent powers of the executive branch. The War Powers Act of 1973 required the president to consult Congress whenever possible before committing American troops into hostilities, to submit within 48 hours an explanation for his actions, and to withdraw any troops after 60 days unless Congress declared war or voted to retain them. In *United States v. Nixon*, the president and his lawyers claimed executive privilege to safeguard audiotape recordings of Nixon and suspected conspirators in the Oval Office. Nixon's argument centered on the inherent right of the executive, not subject to judicial review, to refuse to make available presidential conversations if they had the potential of damaging the security of the United States. The Supreme Court rejected Nixon's argument and ordered him to relinquish the tapes to Justice Department Special Prosecutor Leon Jaworski. Though the Court recognized the existence of executive privilege, the justices ruled that executive privilege could not be utilized to obstruct a criminal investigation.

### The War Powers Act

November 7, 1973

Sec. 1. This joint resolution may be cited as the "War Powers Resolution".

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicate by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

### CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situation where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

### REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the president shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—(A) the circumstances necessitating the introduction of United States Armed Forces; (B) the constitutional and legislative authority under which such introduction took place; and (C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

### *CONGRESSIONAL ACTION*

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

### *CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL*

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.



(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

#### *CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION*

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

#### *INTERPRETATION OF JOINT RESOLUTION*

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred-- (1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or (2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of member of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution--(1) is intended to alter the constitutional authority of the Congress or of the President, or the provision of existing treaties; or (2) shall be construed as granting any authority to the

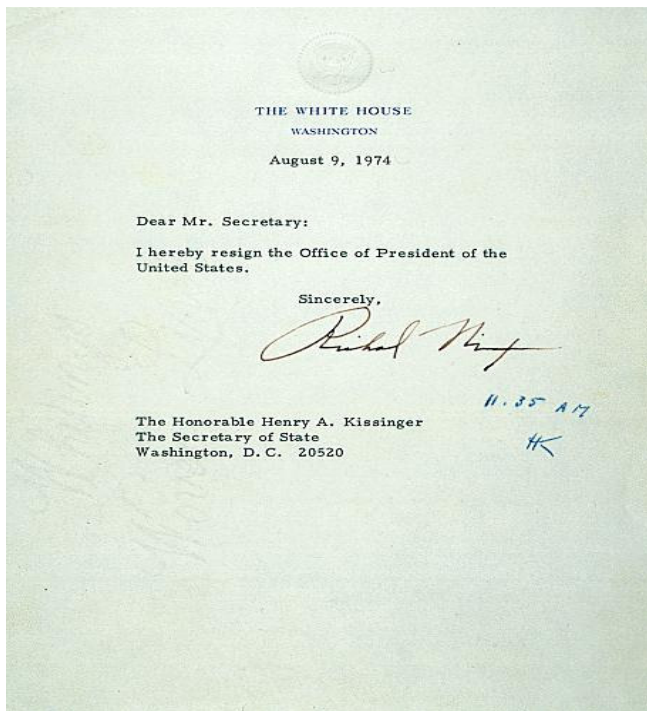
President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

#### *SEPARABILITY CLAUSE*

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

#### *EFFECTIVE DATE*

Sec. 10. This joint resolution shall take effect on the date of its enactment.



**Nixon's Resignation letter to Henry Kissinger, August 9, 1974**



**The Nixon's Depart Washington, by Oliver F. Atkins**

### *United States v. Nixon*

**1974**

Mr. Chief Justice Burger delivered the opinion of the Court....

[W]e turn to the claim that the subpoena should be quashed because it demands "confidential conversations between a President and his close advisors that it would be inconsistent with the public interest to produce." ... The first contention is a broad claim that the separation of powers doctrine precludes judicial review of a President's claim of privilege. The second contention is that if he does not prevail on the claim of absolute privilege, the court should hold as a matter of constitutional law that the privilege prevails over the subpoena *duces tecum*.

In the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the

others.... Many decisions of this Court, however, have unequivocally reaffirmed the holding of *Marbury v. Madison*...., that "[i]t is emphatically the province and duty of the judicial department to say what the law is." ...

No holding of the Court has defined the scope of judicial power specifically relating to the enforcement of a subpoena for confidential Presidential communications for use in a criminal prosecution, but other exercises of power by the Executive Branch and the Legislative Branch have been found invalid as in conflict with the Constitution....

In support of his claim of absolute privilege, the President's counsel urges two grounds, one of which is common to all governments and one of which is peculiar to our system of separation of powers. The first ground is the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties; the importance of this confidentiality is too plain to require further discussions.... Whatever the nature of the privilege of confidentiality of Presidential communications in the exercise of Art. II powers, the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of Presidential communications has similar constitutional underpinnings.

The second ground asserted by the President's counsel in support of the claim of absolute privilege rests on the doctrine of separation of powers. Here it is argued that the independence of the Executive Branch within its own sphere ... insulates a President from a judicial subpoena in an ongoing criminal prosecution, and thereby protects confidential Presidential communications.

However, neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. The President's need for complete candor and objectivity from advisers calls for great deference from the courts. However, when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for *in camera* inspection with all the protection that a district court will be obliged to provide.

The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art. III. In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence....

We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.

**34.** The election of Ronald Reagan in 1980 produced a significant shift in American public policy as the new president promised a change in government more profound than any since the New Deal. A conservative reaction against liberalism had begun in the late 1960s with the election of Richard Nixon and his attacks on opponents of his Vietnam policies. By the late 1970s, American voters began to call for a reduction in the size and role of the federal government. Conservatives, led by President Reagan, slashed federal taxes and reduced the federal budget. Indicative of the conservative attitude towards active government, the general-welfare state, and federalism, Reagan declared that "government is not the solution to our problem; government is the problem."

In his 1985 State of the Union Address, President Ronald Reagan outlined an important foreign policy strategy to oppose the global influence of the Soviet Union. Though the Reagan Doctrine lasted less than a decade, it became the centerpiece of American foreign policy that contributed significantly, along with increased defense

spending, to the end of the Cold War in 1991. Under the Doctrine, the United States provided overt and covert aid to anti-communist resistance movements in an effort to "rollback" Soviet-backed communist governments in Africa, Asia and Latin America. The Doctrine was designed to serve the dual purposes of diminishing Soviet influence in the Third World, while also potentially opening the door for democracy in nations that were largely being governed by Soviet-supported autocrats.



**Ronald Reagan**

### **Ronald Reagan First Inaugural Address**

**January 20, 1981**

To a few of us here today this is a solemn and most momentous occasion, and yet in the history of our nation it is a commonplace occurrence. The orderly transfer of authority as called for in the Constitution routinely takes place, as it has for almost two centuries, and few of us stop to think how unique we really are. In the eyes of many in the world, this every-4-year ceremony we accept as normal is nothing less than a miracle.

Mr. President, I want our fellow citizens to know how much you did to carry on this tradition. By your gracious cooperation in the transition process, you have shown a watching world that we are a united people pledged to maintaining a political system which guarantees individual liberty to a greater degree than any other, and I thank you and your people for all your help in maintaining the continuity which is the bulwark of our Republic.

The business of our nation goes forward. These United States are confronted with an economic affliction of great proportions. We suffer from the longest and one of the worst sustained inflations in our national history. It distorts our economic decisions, penalizes thrift, and crushes the struggling young and the fixed-income elderly alike. It threatens to shatter the lives of millions of our people.

Idle industries have cast workers into unemployment, human misery, and personal indignity. Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement and keeps us from maintaining full productivity.

But great as our tax burden is, it has not kept pace with public spending. For decades we have piled deficit upon deficit, mortgaging our future and our children's future for the temporary convenience of the present. To continue this long trend is to guarantee tremendous social, cultural, political, and economic upheavals.

You and I, as individuals, can, by borrowing, live beyond our means, but for only a limited period of time. Why, then, should we think that collectively, as a nation, we're not bound by that same limitation? We must act today in order to preserve tomorrow. And let there be no misunderstanding: We are going to begin to act, beginning today.

The economic ills we suffer have come upon us over several decades. They will not go away in days, weeks, or months, but they will go away. They will go away because we as Americans have the capacity now, as we've had in the past, to do whatever needs to be done to preserve this last and greatest bastion of freedom.

In this present crisis, government is not the solution to our problem; government is the problem. From time to time we've been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else? All of us together, in and out of government, must bear the burden. The solutions we seek must be equitable, with no one group singled out to pay a higher price.

We hear much of special interest groups. Well, our concern must be for a special interest group that has been too long neglected. It knows no sectional boundaries or ethnic and racial divisions, and it crosses political party lines. It is made up of men and women who raise our food, patrol our streets, man our mines and factories, teach our children, keep our homes, and heal us when we're sick—professionals, industrialists, shopkeepers, clerks, cabbies, and truck drivers. They are in short, "We the people," this breed called Americans.

Well, this administration's objective will be a healthy, vigorous, growing economy that provides equal opportunities for all Americans with no barriers born of bigotry or discrimination. Putting America back to work means putting all Americans back to work. Ending inflation means freeing all Americans from the terror of runaway living costs. All must share in the productive work of this "new beginning," and all must share in the bounty of a revived economy. With the idealism and fair play which are the core of our system and our strength, we can have a strong and prosperous America, at peace with itself and the world.

So, as we begin, let us take inventory. We are a nation that has a government—not the other way around. And this makes us special among the nations of the Earth. Our government has no power except that granted it by the people. It is time to check and reverse the growth of government, which shows signs of having grown beyond the consent of the governed.

It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people. All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.

Now, so there will be no misunderstanding, it's not my intention to do away with government. It is rather to make it work—work with us, not over us; to stand by our side, not ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it.

If we look to the answer as to why for so many years we achieved so much, prospered as no other people on Earth, it was because here in this land we unleashed the energy and individual genius of man to a greater extent than has ever been done before. Freedom and the dignity of the individual have been more available and assured here than in any other place on Earth. The price for this freedom at times has been high, but we have never been unwilling to pay that price.

It is no coincidence that our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government. It is time for us to realize that we're too great a nation to limit ourselves to small dreams. We're not, as some would have us believe, doomed to an inevitable decline. I do not believe in a fate that will fall on us no matter what we do. I do believe in a fate that will fall on us if we do nothing. So, with all the creative energy at our command, let us begin an era of

national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope.

. . . We shall reflect the compassion that is so much a part of your makeup. How can we love our country and not love our countrymen; and loving them, reach out a hand when they fall, heal them when they're sick, and provide opportunity to make them self-sufficient so they will be equal in fact and not just in theory?

Can we solve the problems confronting us? Well, the answer is an unequivocal and emphatic "yes." To paraphrase Winston Churchill, I did not take the oath I've just taken with the intention of presiding over the dissolution of the world's strongest economy.

In the days ahead I will propose removing the roadblocks that have slowed our economy and reduced productivity. Steps will be taken aimed at restoring the balance between the various levels of government. Progress may be slow, measured in inches and feet, not miles, but we will progress. It is time to reawaken this industrial giant, to get government back within its means, and to lighten our punitive tax burden. And these will be our first priorities, and on these principles there will be no compromise.

On the eve of our struggle for independence a man who might have been one of the greatest among the Founding Fathers, Dr. Joseph Warren, president of the Massachusetts Congress, said to his fellow Americans, "Our country is in danger, but not to be despaired of . . . On you depend the fortunes of America. You are to decide the important questions upon which rests the happiness and the liberty of millions yet unborn. Act worthy of yourselves."

Well, I believe we, the Americans of today, are ready to act worthy of ourselves, ready to do what must be done to ensure happiness and liberty for ourselves, our children, and our children's children. And as we renew ourselves here in our own land, we will be seen as having greater strength throughout the world. We will again be the exemplar of freedom and a beacon of hope for those who do not now have freedom.

To those neighbors and allies who share our freedom, we will strengthen our historic ties and assure them of our support and firm commitment. We will match loyalty with loyalty. We will strive for mutually beneficial relations. We will not use our friendship to impose on their sovereignty, for our own sovereignty is not for sale.

As for the enemies of freedom, those who are potential adversaries, they will be reminded that peace is the highest aspiration of the American people. We will negotiate for it, sacrifice for it; we will not surrender for it, now or ever.

Our forbearance should never be misunderstood. Our reluctance for conflict should not be misjudged as a failure of will. When action is required to preserve our national security, we will act. We will maintain sufficient strength to prevail if need be, knowing that if we do so we have the best chance of never having to use that strength.

Above all, we must realize that no arsenal or no weapon in the arsenals of the world is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today's world do not have. It is a weapon that we as Americans do have. Let that be understood by those who practice terrorism and prey upon their neighbors.

I'm told that tens of thousands of prayer meetings are being held on this day, and for that I'm deeply grateful. We are a nation under God, and I believe God intended for us to be free. It would be fitting and good, I think, if on each Inaugural Day in future years it should be declared a day of prayer. . . .

The crisis we are facing today . . . require, however, our best effort and our willingness to believe in ourselves and to believe in our capacity to perform great deeds, to believe that together with God's help we can and will resolve the problems which now confront us.

And after all, why shouldn't we believe that? We are Americans.

God bless you, and thank you.

## **Reagan Doctrine**

**1985**

I come before you to report on the state of our Union, and I'm pleased to report that after 4 years of united effort, the American people have brought forth a nation renewed, stronger, freer, and more secure than before.

Four years ago we began to change, forever I hope, our assumptions about government and its place in our lives. Out of that change has come great and robust growth—in our confidence, our economy, and our role in the world.

Tonight America is stronger because of the values that we hold dear. We believe faith and freedom must be our guiding stars, for they show us truth, they make us brave, give us hope, and leave us wiser than we were. Our progress began not in Washington, D.C., but in the hearts of our families, communities, workplaces, and voluntary groups which, together, are unleashing the invincible spirit of one great nation under God.

We have begun well. But it's only a beginning. We're not here to congratulate ourselves on what we have done but to challenge ourselves to finish what has not yet been done. . . .

For the past 20 years we've believed that no war will be launched as long as each side knows it can retaliate with a deadly counter strike. Well, I believe there's a better way of eliminating the threat of nuclear war. It is a Strategic Defense Initiative aimed ultimately at finding a nonnuclear defense against ballistic missiles. It's the most hopeful possibility of the nuclear age. But it's not very well understood.

Some say it will bring war to the heavens, but its purpose is to deter war in the heavens and on Earth. Now, some say the research would be expensive. Perhaps, but it could save millions of lives, indeed humanity itself. And some say if we build such a system, the Soviets will build a defense system of their own. Well, they already have strategic defenses that surpass ours; a civil defense system, where we have almost none; and a research program covering roughly the same areas of technology that we're now exploring. And finally some say the research will take a long time. Well, the answer to that is: "Let's get started."

Harry Truman once said that, ultimately, our security and the world's hopes for peace and human progress "lie not in measures of defense or in the control of weapons, but in the growth and expansion of freedom and self-government." . . .

We cannot play innocents abroad in a world that's not innocent; nor can we be passive when freedom is under siege. Without resources, diplomacy cannot succeed. Our security assistance programs help friendly governments defend themselves and give them confidence to work for peace. And I hope that you in the Congress will understand that, dollar for dollar, security assistance contributes as much to global security as our own defense budget.

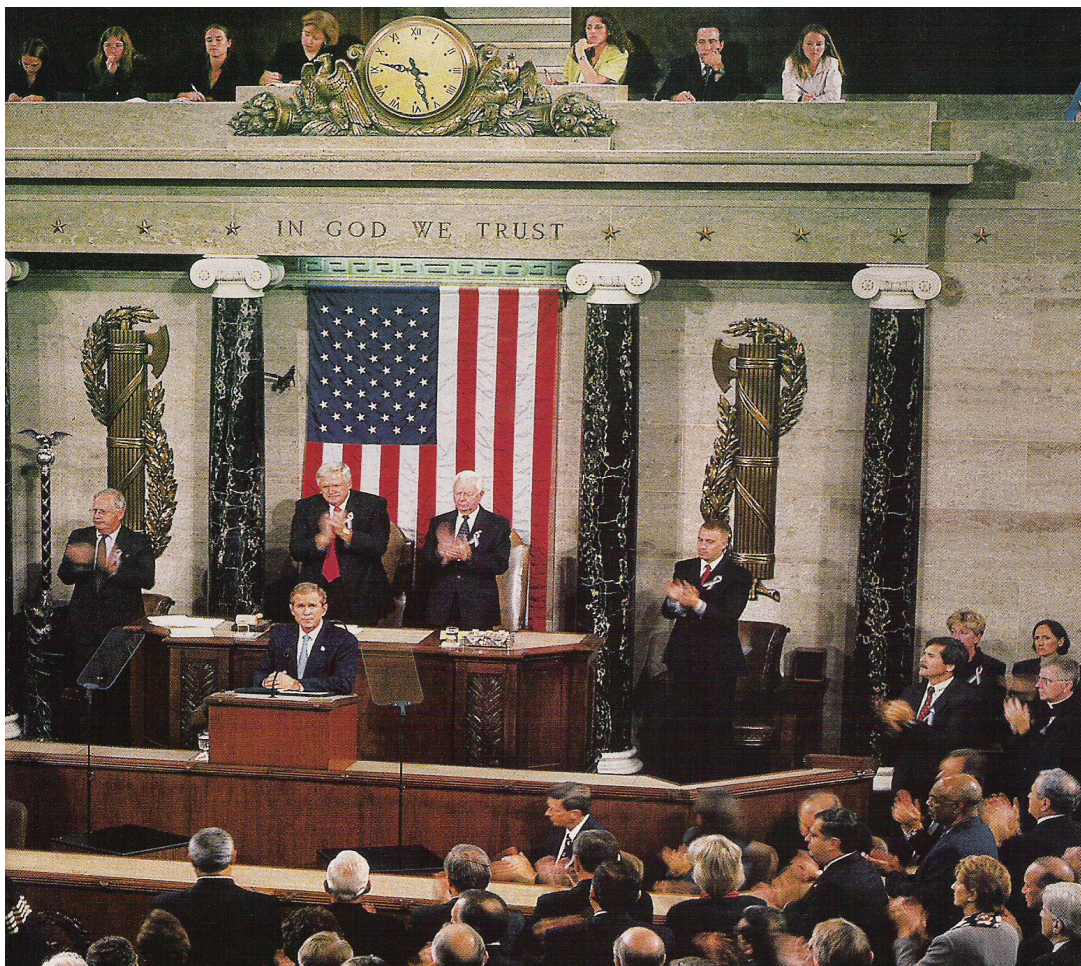
We must stand by all our democratic allies. And we must not break faith with those who are risking their lives—on every continent, from Afghanistan to Nicaragua—to defy Soviet-supported aggression and secure rights which have been ours from birth.

The Sandinista dictatorship of Nicaragua, with full Cuban-Soviet bloc support, not only persecutes its people, the church, and denies a free press, but arms and provides bases for Communist terrorists attacking neighboring states. Support for freedom fighters is self-defense and totally consistent with the OAS and U.N.



Charters. It is essential that the Congress continue all facets of our assistance to Central America. I want to work with you to support the democratic forces whose struggle is tied to our own security. . . .

**35.** The terrorist attacks of September 11, 2001 were a turning point in George W. Bush's presidency. Without a clear mandate as a consequence of the disputed 2000 presidential contest that was ultimately decided by a 5 to 4 decision in the United States Supreme Court, Bush's first eight months in office were uneventful as he presided over a polarized nation divided along party lines. However, in the wake of the attacks of September 11, the nation rallied behind the president. Bush addressed the nation in the House chamber nine days after the terrorist suicide attacks on the World Trade Center, the Pentagon, and a hijacked passenger plane that crashed in Shanksville, Pennsylvania. The President announced that United States would lead a war on terror and that it would not end with the destruction of al Qaeda, but would do so when every terrorist group of global reach had been found, stopped, and defeated. Foreshadowing the administration pretext for going to war against Iraq, President Bush put nation's that funded or harbored terrorist organizations on alert as he declared, "Either you are with us, or you are with the terrorists."



President George W. Bush Pledges a War on Terrorism before a united Congress, Photograph by David Burnett, *TIME*

### George W. Bush's "Address to Congress and the American People"

September 20, 2001

Tonight we are a country awakened to danger and called to defend freedom. Our grief has turned to anger, and anger to resolution. Whether we bring our enemies to justice, or bring justice to our enemies, justice will be done. . . .



On September the 11th, enemies of freedom committed an act of war against our country. Americans have known wars—but for the past 136 years, they have been wars on foreign soil, except for one Sunday in 1941. Americans have known the casualties of war—but not at the center of a great city on a peaceful morning. Americans have known surprise attacks—but never before on thousands of civilians. All of this was brought upon us in a single day—and night fell on a different world, a world where freedom itself is under attack.

Americans have many questions tonight. Americans are asking: Who attacked our country? The evidence we have gathered all points to a collection of loosely affiliated terrorist organizations known as al Qaeda. . . .

Al Qaeda is to terror what the mafia is to crime. But its goal is not making money; its goal is remaking the world—and imposing its radical beliefs on people everywhere.

The terrorists practice a fringe form of Islamic extremism that has been rejected by Muslim scholars and the vast majority of Muslim clerics—a fringe movement that perverts the peaceful teachings of Islam. The terrorists' directive commands them to kill Christians and Jews, to kill all Americans, and make no distinction among military and civilians, including women and children.

This group and its leader—a person named Osama bin Laden—are linked to many other organizations in different countries, including the Egyptian Islamic Jihad and the Islamic Movement of Uzbekistan. There are thousands of these terrorists in more than 60 countries. They are recruited from their own nations and neighborhoods and brought to camps in places like Afghanistan, where they are trained in the tactics of terror. They are sent back to their homes or sent to hide in countries around the world to plot evil and destruction. . . .

The United States respects the people of Afghanistan—after all, we are currently its largest source of humanitarian aid—but we condemn the Taliban regime. It is not only repressing its own people, it is threatening people everywhere by sponsoring and sheltering and supplying terrorists. By aiding and abetting murder, the Taliban regime is committing murder.

And tonight, the United States of America makes the following demands on the Taliban: Deliver to United States authorities all the leaders of al Qaeda who hide in your land. Release all foreign nationals, including American citizens, you have unjustly imprisoned. Protect foreign journalists, diplomats and aid workers in your country. Close immediately and permanently every terrorist training camp in Afghanistan, and hand over every terrorist, and every person in their support structure, to appropriate authorities. Give the United States full access to terrorist training camps, so we can make sure they are no longer operating.

These demands are not open to negotiation or discussion. The Taliban must act, and act immediately. They will hand over the terrorists, or they will share in their fate.

I also want to speak tonight directly to Muslims throughout the world. We respect your faith. It's practiced freely by many millions of Americans, and by millions more in countries that America counts as friends. Its teachings are good and peaceful, and those who commit evil in the name of Allah blaspheme the name of Allah. The terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself. The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists, and every government that supports them.

Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.

Americans are asking, why do they hate us? They hate what we see right here in this chamber—a democratically elected government. Their leaders are self-appointed. They hate our freedoms—our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other. . . .

These terrorists kill not merely to end lives, but to disrupt and end a way of life. With every atrocity, they hope that America grows fearful, retreating from the world and forsaking our friends. They stand against us, because we stand in their way. . . .

Americans are asking: How will we fight and win this war? We will direct every resource at our command—every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war—to the disruption and to the defeat of the global terror network.

Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.

Our nation has been put on notice: We are not immune from attack. We will take defensive measures against terrorism to protect Americans. Today, dozens of federal departments and agencies, as well as state and local governments, have responsibilities affecting homeland security. These efforts must be coordinated at the highest level. So tonight I announce the creation of a Cabinet-level position reporting directly to me—the Office of Homeland Security. . . . He will lead, oversee and coordinate a comprehensive national strategy to safeguard our country against terrorism, and respond to any attacks that may come.

These measures are essential. But the only way to defeat terrorism as a threat to our way of life is to stop it, eliminate it, and destroy it where it grows. . . .

This is not, however, just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom. . . .

The civilized world is rallying to America's side. They understand that if this terror goes unpunished, their own cities, their own citizens may be next. Terror, unanswered, can not only bring down buildings, it can threaten the stability of legitimate governments. And you know what—we are not going to allow it. . . .

After all that has just passed—all the lives taken, and all the possibilities and hopes that died with them—it is natural to wonder if America's future is one of fear. Some speak of an age of terror. I know there are struggles ahead, and dangers to face. But this country will define our times, not be defined by them. As long as the United States of America is determined and strong, this will not be an age of terror; this will be an age of liberty, here and across the world.

Great harm has been done to us. We have suffered great loss. And in our grief and anger we have found our mission and our moment. Freedom and fear are at war. The advance of human freedom—the great achievement of our time, and the great hope of every time—now depends on us. Our nation—this generation—will lift a dark threat of violence from our people and our future. We will rally the world to this cause by our efforts, by our courage. We will not tire, we will not falter, and we will not fail. . . .

I will not forget this wound to our country or those who inflicted it. I will not yield; I will not rest; I will not relent in waging this struggle for freedom and security for the American people.

The course of this conflict is not known, yet its outcome is certain. Freedom and fear, justice and cruelty, have always been at war, and we know that God is not neutral between them.

Fellow citizens, we'll meet violence with patient justice—assured of the rightness of our cause, and confident of the victories to come. In all that lies before us, may God grant us wisdom, and may He watch over the United States of America.

## Bibliography

### Books:

Brinkley, Alan. *The Unfinished Nation: A Concise History of the American People*, 3<sup>rd</sup> ed. (Boston, 2000)

Current, Richard N. John A. Garraty, and Julius Weinberg. *Words that Made American History*, 3<sup>rd</sup> ed. (2 vols., Boston, 1978)

Foner, Eric. *The New American History*. (Philadelphia, 1997)

Kelly, Alfred H., Herman Belz, Winfred A. Harbison. *The American Constitution: Its Origins and Development*, 7<sup>th</sup> ed. (2 vols., New York, 1991)

### Websites:

[www.yale.edu/lawweb/avalon](http://www.yale.edu/lawweb/avalon)

[www.law.ou.edu/hist](http://www.law.ou.edu/hist)

[www.ourdocuments.gov](http://www.ourdocuments.gov)

[www.teacheroz.com/toc.htm](http://www.teacheroz.com/toc.htm)

<http://tennesseeencyclopedia.net>

<http://www.loc.gov>

<http://www.archives.gov/national-archives-experience/charters/charters.html>