

## Chapter 1

**The Fundamental Ideas of the Republic****§ 1. The Origin of the American Republic**

The United States of America did not begin as a republic. Indeed, during most of the American Revolution the goal was throwing off the rule of Great Britain and establishing independent and self-governing nations. We should especially note that the goal was not even that of establishing a *single* nation. Rather, the expressed aim of the revolution was to turn each one of the thirteen British colonies into its own sovereign nation – and this is why the states are called "states." The unity of America was the unity of *united* states, sovereign states choosing to band together in mutual self interests and for the strength and security that such unity had to offer. This aim was stated clearly in the Declaration of Independence:

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 compel them to the separation. . .

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 the 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 the 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.

It is important to note the reference in the opening line of the Declaration to "the laws of nature and of nature's God" the delegates to Congress claim entitlement. It is quite wrong to regard any part of the Declaration as a mere rhetorical decoration that can be skipped over without loss of content or context. We will come back later to what certain significance is contained in these words because in modern day America the context in which this significance resides is not well known by many. But as a prelude to that later discussion, the "nature" reference being made is to what was then a radical idea in European political thought that had been published in 1762 by a French political exile named Rousseau. This idea is called **The Social Contract**. It pertains to *the nature of human beings*.

In 1781, while the Revolutionary War was still in progress, the American states codified the form and function of their union in the Articles of Confederation. The Articles themselves had been completed by Congress in 1777. The long delay between 1777 and ratification of the Articles was due

to disagreements and wrangling among the states over such provisions as slavery and over ownership and exploitation of the west from the Appalachians to the Mississippi River. This was finally resolved, and the ratification announced, on March 1, 1781. The Battle of Yorktown was still six months away.

The temper and nature of the American Confederacy was amply spelled out in the Articles:

*Article One* – The style of this Confederacy shall be "The United States of America."

*Article Two* – 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 Three* – 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 whatsoever.

*Article Five* – For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, 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.

Not one of the thirteen states had the least intention of surrendering up its sovereignty to a central government except for particular powers expressly granted Congress by the Articles. More significant to note is that the Articles vest the principal power and authority of government to the individual states themselves and not necessarily to the people of those states. The first government of The United States derived its powers from the states, not from the people. The United States of America was not yet a republic. Rather, in its formal organization it much more closely resembled what nearly a century and a half later would be called a "soviet" in Russia; the word means "a council or body of delegates."

It did not take long for the fundamental weaknesses of the Confederacy to become manifest. The peace that came in 1783 was quickly followed by an economic recession in 1785-86 which, like today, was largely blamed on Congress. And Congress was, in fact, unable to do anything that might help relieve conditions. The Congress was chronically short of money, had no power to tax except that which the states would unanimously agree to grant it, and it proved impossible to secure the unanimous agreement of the states regarding any tax the Congress proposed to them. It was often unable even to exercise the powers it had been granted because the states frequently ignored the funding requisitions Congress sent to them. It could not defend maritime commerce because it was forced to discontinue the Navy and it could not defend American settlers west of the Appalachians because it lacked money to raise troops. It had no courts to adjudicate the laws, and no practical ability to enforce the laws it did pass. There wasn't very much that could be called "united" in the United States.

In 1786 Congress called upon the states to send delegates to a convention in Annapolis for the purpose of proposing an amendment to the Articles that would allow Congress to levy duties on imports. Only twelve delegates from five states attended the Annapolis convention. Failing once again to gain the unanimous consent of the states, the convention was able to accomplish nothing. However, two of the attending delegates, Alexander Hamilton and James Madison, were able to secure the issuance of an invitation to all the states to send delegates to a convention in Philadelphia in May of 1787 "to render the constitution of the federal government adequate to the exigencies of the Union." Five states quickly agreed to send delegates and in February of 1787 Congress gave its reluctant approval to the convention "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein." On May 25th, 1787, twenty-seven delegates from seven states convened in Philadelphia. Once there, they promptly ignored their mandate from the feeble Congress. The Constitutional Convention had begun.

Far from merely revising the Articles of Confederation, the Convention produced a document that proposed to do nothing less than throw out the existing form of the government of the United States and replace it with an entirely new form of government: a Constitutional Republic. The differences between the new Constitution and the existing Confederacy could not have run deeper; it was a second American Revolution. The deepest and most important difference appeared in the very first sentence:

We, the people of the United States . . . do ordain and establish this Constitution for the United States of America.

Under the Articles, the power of government was vested in the states and their legislatures. The Constitution bypassed the states and their legislatures altogether and vested the fundamental power of government directly with the people, mandating that "The United States shall guarantee to every State in this Union a republican form of government." Furthermore, the Convention threw out the crippling restriction that its new Constitution would have to be unanimously ratified by all thirteen states. Instead, only ratification by nine states would be required to put the new Constitution into effect, and this ratification by-passed the state legislatures (who almost certainly would never have ratified it) and called for ratification by state conventions. It was these conventions, and not the state legislatures, that ratified the new Constitution. This method of adoption was unconstitutional in regard to the Articles of Confederation, but Congress sensibly enough sent the document to the states for a decision. In 1789 it procured the needed ratification and the United States of America became a constitutional republic, the first in history. Rhode Island, realizing it could not survive on its own as an independent nation outside the Union, ratified the Constitution in 1790 after becoming assured that a Bill of Rights would be added by amendment to the Constitution almost immediately.

## § 2. The Distinctiveness of a Constitutional Republic

Some may find surprising the statement that the new government of the United States was the first of its kind in history. After all, prior to Caesar the government of Rome was called a republic. In what way was the new American Republic different from its Roman predecessor? To appreciate this, it is necessary to understand the difference between the eighteenth century definition of "republic" and the Roman term *res publica*, which means "a public affair."

### § 2.1 The Roman Republic

Like the United States, the Roman republic was born out of revolution. From the days of its founding, Rome had been ruled by kings. In 534 B.C. the kingship was seized upon the death of king Servius Tullius by a dubious claimant. Roman historian Livy wrote,

Now began the reign of Lucius Tarquinius, whose conduct procured him the surname of the Proud. For he denied the rites of sepulture to his own father in law . . . He put to death the leading senators, whom he believed to have favored the cause of Servius and, conscious that a precedent for gaining the kingship by crime might be found in his own career and turned against himself, he assumed a bodyguard. He had indeed no right to the throne but might, since he was ruling neither by popular decree nor senatorial sanction. Moreover, as he put no trust in the affection of his people, he was compelled to safeguard his authority by fear. . . For this king was the first to break with the custom handed down by his predecessors of consulting the senate on all occasions, and governed the nation without other advice than that of his own household.

Tarquinius ruled for twenty-five years and might have ruled even longer had it not been for, according to legend, an outrage perpetrated by his son, Sextus Tarquinius. Sextus raped Lucretia, the wife of a Roman noble, who then committed suicide after telling what had happened to her husband, father, and a friend of the family named Lucius Junius Brutus. Livy continues,

Brutus, while all the others were absorbed in grief, drew out the knife from Lucretia's wound, and holding it up, dripping with gore, exclaimed, "By this blood, most chaste until a prince wronged it, I swear, and I take you, gods, to witness, that I will pursue Lucius Tarquinius the Proud and his wicked wife and all his children, with sword, with fire, with whatever violence I may; and that I will suffer neither them nor any other to be king in Rome!"

To make a long story short, Brutus proceeded to do just that, overthrowing not only the Roman king but also Rome's Etruscan overlords. Whether or not Lucretia ever really lived and the legendary rape and suicide ever really took place, the fact remains that the Romans did revolt successfully. An assembly of citizen-soldiers mustered by Brutus was convened and elected two consuls, one of whom was Brutus, to head the Roman state as co-executives. Consuls were elected for terms of one year. Supreme legislative authority came to rest with the senate, which was originally comprised of the heads of Rome's clans of patricians. Membership in the senate was for life and was granted only to patricians. Magistrates and other lower officials were elected by the Centurial Assembly, an assembly of soldiers. The form of the Roman government evolved slowly over time but the basic hierarchy of

elected co-consuls to command the army, the senate to rule the state, elected "tribunes of the plebs" to represent the lower classes of citizens, and other lower magistrates remained more or less unchanged for nearly half a millennium until the time of Julius Caesar. The term *populus*, "people," took in only the upper classes, and this is the group who is meant by the famous S P Q R (*Senatus Populusque Romanus* or "the senate and people of Rome") that marked Roman monuments and battle standards. Only gradually over a period of centuries did *populus* slowly come to include the plebian class.

The Roman revolution overthrew the monarchy only to replace it with an aristocracy that ruled Rome until Caesar. As historian Will Durant puts it,

The victors called the revolution a triumph of liberty; but now and then liberty, in the slogans of the strong, means freedom from restraint in the exploitation of the weak.

So it was in the case of the Roman Republic. The great majority of citizens could not elect senators, had little power to influence lawmaking, and no say in the not-infrequent occasions when the senate would appoint a temporary dictator (usually for a six month term) to lead the state during times of great crisis, these typically being some unusually great threat from another military power. *Respublica* quite literally meant nothing more than "the public affair."

## § 2.2 The Constitutional Republic

The modern dictionary definitions of the word republic are somewhat broader than this original Roman model:

**republic** [Fr. *république*; L. *respublica*; *res*, an affair or interest, and *publica*, form of *publicus*, public.]

1. (a) a state or nation in which the supreme power rests in all the citizens entitled to vote (the electorate) and is exercised by representatives elected, directly or indirectly, by them and responsible to them; (b) the form of government of such a state or nation.
2. any group whose members are regarded as having a certain equality, common aims, etc.; as the *republic* of letters.
3. a state or nation with a president as its titular head; distinguished from *monarchy*.
4. common interest; the public. [Obs.]

Definition (1) is broad enough to take in the Roman republic (because of the qualification "all the citizens entitled to vote") if a little leeway is granted for the fact that Roman plebs could not vote for the senators. Definition (2) is a mere analogy and definition (4) is now obsolete. Definition (3) is a mere sophism acknowledging the modern day existence of dictatorships where the dictator attempts to look less unappealing to world and public opinion by calling himself a "president" instead of what he really is – an absolute ruler who would call himself a king had that term not become widely unpopular.

Yet none of these definitions, not even (1), bring out what is distinctive about a constitutional republic. That distinctive idea was born in the eighteenth century and is principally owed to two of that

century's most influential political thinkers: Charles de Secondat, Baron de Montesquieu (1689-1755) and Jean Jacques Rousseau (1712-1778).

Montesquieu's idea of a republic appeared in 1748 in his book, *The Spirit of Laws*. He recognized three basic types of government: the republic, the monarchy, and the despotic:

There are three species of government: republican, monarchical, and despotic. In order to discover their nature, it is sufficient to recollect the common notion, which supposes three definitions, or rather three facts: that a republican government is that in which the body, or only a part of the people, is possessed of the supreme power; monarchy, that in which a single person governs by fixed and established laws; a despotic government, that in which a single person directs everything by his own will and caprice.

What Montesquieu apparently had in mind in making his distinction between monarchy and despotism is the fact that by the eighteenth century the British monarchy was a constitutional monarchy in which the power of the British king was nominally granted by act of the British Parliament. By despotism he might well have had in mind Frederick the Great of Prussia or Peter the Great of Russia, whose claims to their thrones rested in the case of the former on inheritance and in the case of the latter by victory in the power struggles that tended to characterize relationships between Peter and the Russian nobility.

Montesquieu's work was not the stuff revolutions are made from. His definition of republic takes in an aristocracy as much as a democracy. He wrote:

When the body of the people is possessed of the supreme power, it is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy.

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

All in all, Montesquieu did not look with particular favor on the democratic form of a republic, but this was not unusual in his day. Indeed, democratic republics did not receive a strong champion until the works of Mill in the mid-nineteenth century. In Montesquieu's case, the problem with a democratic republic is that "virtue" (by which he means love of country and desire for equality) must imbue the entire population, whereas in an aristocracy only the aristocrats need be "virtuous."

What I distinguish by the name of *virtue*, in a republic, is the love of one's country, that is, the love of equality. It is not a moral, nor a Christian, but a political *virtue*; and it is the spring which sets the republican government in motion, as honor is the spring which gives motion to the monarchy. Hence it is that I have distinguished the love of one's country, and of equality, by the appellation of political virtue. – Montesquieu, *The Spirit of Laws*, 1748

All in all, Montesquieu favored a mixed form of government involving elements of the constitutional monarchy (the fundamental principle of which is "honor"), the constitutional republic in aristocracy

form, and democracy – kings, nobles and Parliament – since he holds that the people are always the ultimate source of all governmental power and absolute monarchy historically leads to despotism. The obvious similarity to the British form of government would not endear him to all the Framers of the American Constitution nor to the American people generally after the long war for independence. But in the light of his mixed-form of government we can see what was perhaps Montesquieu's greatest influence on the American Framers of the Constitution, his theory of separation of powers:

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another. – Montesquieu, *The Spirit of Laws*, 1748

To understand this, it is necessary to also understand that Montesquieu drew a sharp distinction between the idea of *liberty* and that of *independence*. The two, he tells us, are not at all the same:

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

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

Rousseau would go on to further refine this idea, but it is this fundamental distinction of *political* liberty that went directly into the framing of the U.S. Constitution. This is a point often poorly understood by many Americans today.

We now come to Rousseau and his refinements. Unlike Montesquieu, Rousseau is regarded as a revolutionary writer. He is often credited with inspiring both the American and the French revolutions, although the argument is stronger in the case of the French revolution. Unlike Montesquieu, Rousseau quite unambiguously holds that the constitutional republic is the only legitimate form of government, and there is no doubt that this view is deeply reflected in the U.S. Constitution. *The Social Contract*, published in 1762, opens with one of the most ringing political declarations ever written:

Man is born free, and everywhere he is in chains.

As a writer Rousseau was known for his use of hyperbole as a device for both getting the attention of his reader and for making his points memorable, and here he certainly succeeded in doing both. His world was a world of absolute monarchs, of a vast divide between the wealthy and the poor, of the subjugation of the powerless by the powerful. His words evoke a gut reaction, arousing to the disenfranchised many and frightening to the powerful few. No peasant or impoverished Parisian would fail to feel what Rousseau meant in declaring man to be in chains. Quite unlike the witty and charming

Montesquieu, Rousseau means for the monarchies to be abolished utterly.

But what does he mean when he says man is born free? On the face of it, this statement would seem to be quite untrue. The child is not free of the rule of his or her parents; the parent is not free of the rule of the authorities that govern the land where he lives; the men in authority are not free of the rule of higher authorities placed over them; even the king is not free of the power of other men, in particular of the army which, if it decided to, could depose and murder him. And even if none of this were in place, uncivilized man in the wild is not free of the necessities of animal survival forced upon him by the nature of life itself. What, then, does Rousseau mean by saying, "Man is born free"?

Key to understanding this is to realize that Rousseau is not speaking of freedom as an abstract and absolute state of being. What every human being is born with, as a matter of innate endowment, is *a natural right* to freedom of action – a right *as a primal ability and drive* to determine for oneself what is best for oneself.

The most ancient of all societies, and the only one that is natural, is the family: and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases, the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his children, return equally to independence. If they remain united, they continue to do so no longer naturally but voluntarily; and the family itself is then maintained only by convention.

This common liberty results from the nature of man. His first law is to provide for his own preservation, his first cares are those that he owes himself; and as soon as he reaches the years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master. – Rousseau

We see this doctrine of natural right, and the inevitable consequences that flow from it, echoed in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

In a world where people were accustomed to the myth of the divine right of kings, these words, and those in *The Social Contract*, seemed new and revolutionary – going as they did against the long established order of a rule by monarchy that often proved despotic and maintained itself by the threat of force and terror. Yet the idea was not really new. In the fourth century B.C. Aristotle had written

Every state is a community of some kind, and every community is established with a view to some good; for everyone always acts in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good. . .

When several villages are united in a single complete community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the basic needs of life, and continuing in existence for the sake of a good life. . . . But justice is the bond of men in states; for the administration of justice, which is the determination of what is just, is the principle of order in political society.

This end goal lies at the heart of all forms of government freely assented to by the governed. It lies at the heart of every peaceful and just society and leads to a *social compact* freely entered into by all citizens of that society. Rousseau goes on to say,

I suppose men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of the individual for his continued maintenance in that state. That primitive condition can subsist no longer; and the human race would perish unless it changed its manner of existence.

But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert.

This sum of forces can arise only where several persons come together; but, as the force and liberty of each man are the chief instruments of his self-preservation, how can he pledge them without harming his own interests and neglecting the cares he owes himself? This difficulty, in its bearing on my present subject, may be stated in the following terms:

*"The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before."* This is the fundamental problem of which the *Social Contract* provides the solution.

The clauses of this contract are so determined by the nature of the act that the slightest modification would make them vain and ineffective; so that, although they have perhaps never been formally set forth, they are everywhere the same and everywhere tacitly admitted and recognized until, on the violation of the social compact, each regains his original rights and resumes his natural liberty, while losing the conventional liberty in favor of which he renounced it.

These clauses, properly understood, may be reduced to one – the total alienation of each associate, together with all his rights, to the whole community; for, in the first place, as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others. . . .

Finally, each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has.

If, then, we discard from the social compact what is not of its essence, we shall find that it reduces itself to the following terms:

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

At once, in place of the individual personality of each contracting party, this act of association creates a moral and collective body, composed of as many members as the assembly contains votes, and receiving from this act its common unity, its common identity, its life, and its will. This public person, so formed by the union of all other persons, formerly took the name of *city*,

and now takes that of *Republic* or *body politic*.

And here we have the definition of *republic* reduced to its essentials and its fundamental character. The only question that now remains is the practical and vexing one: How is *the general will* to be determined and by whom? Differences in how the answer to this question is to be attempted constitute the differences among different forms of government. Rousseau is in no doubt as to how this is to be attempted; it is to be done in the form of a republic as he has defined that term above. The rest of *The Social Contract* attempts to deal with the difficult and vexing issues raised by the problem of rightful government. The American Republic set in form by the Constitution is our American experiment in answering and dealing with these issues and questions.

In chapter 2 we will discuss in much greater detail the nature of these issues, different attempts to resolve them, and what Aristotle called the *perversions* of government when faith and allegiance to the fundamental principle of human institution of government is violated by *rulers* who place their own interests and welfare above those of others. What we will find later is that to *rule* over one's other associates in any society is the greatest of all political *crimes*, whether this rulership be by one person or by many acting in concert. The heart of the Social Contract and the soul of the Idea of the American Republic is a shining ideal: ***liberty with justice for all***. An ideal is not a state-of-being but a perfection one strives to achieve. That particular human efforts to achieve it might prove flawed or fall short of the perfection in this case or that is really irrelevant to the Idea. To be a citizen of the Republic is to *oblige oneself* to making this effort for the common good because it is in the act of making our Republic more perfect in pursuit of the ideal that each one of us better attains those unalienable rights we each demand for ourselves. Yet to do so requires we understand what is meant by *liberty*, by *justice*, and, most of all, understand that freedom for each one of us arises from their conjunction, *liberty with justice for all*. This, too, we will take up in this treatise.

There still remains one question to answer in this present section. We have seen Rousseau's definition of republic. But what is a *constitutional* republic? For that is the form of the Idea of the *American Republic*. The phrase does not mean there is a scrap of paper spelling out some sort of organization chart or hierarchy of powers. The idea of *political constitution* runs deeper than this. Rousseau tacitly presumes a definition Aristotle had long before set down in his *Politics*:

A constitution is the arrangement of the magistracies in a state, especially of the highest of all. The government is everywhere sovereign in the state and the constitution is in fact the government. . . . The words constitution and government have the same meaning, and the government, which is the supreme authority in states, must be in the hands of one, or of a few, or of the many. The true forms of government, therefore, are those in which the one, the few, or the many govern with a view to the common interest; but governments which rule with a view to the private interest, whether of the one, the few, or the many, are perversions. For the members of a state, if they are truly citizens, ought to participate in its advantages. Of forms of government in which one rules, we call that which regards the common interest, kingship; that in which more

than one, but not many, rule, aristocracy; and it is so called either because the rulers are the best men or because they have at heart the best interests of the state and of the citizens. But when the many administer the state for the common interest, the government is called by the generic name – a constitution.

The phrase "constitutional republic" therefore means the arrangement of the form of a republican government (because there is more than one kind of republic). The special character of this arrangement for the American republic was explained by James Madison in *The Federalist*, no. 39:

The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the American people; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government.

Madison next briefly compared the Constitutional Convention's plan to several other existing governments that were then called republics but which were not in fact republics at all:

Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised in the most absolute manner by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

Merely calling a government a republic does not make it a republic. In the twentieth century the same deceiving sophism was used by the Communist regimes of the Union of Soviet Socialist Republics, the People's Republic of China, the Republic of Cuba, as well as by the dictatorship of the Democratic Republic of the Congo. What, then, are the distinctive features or characteristics of a true constitutional republic under the terms of the Social Contract? Madison writes,

[We] may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during [the people's] pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character.

Madison next points out that the new government is *neither* strictly a *federal* nor a *national* government, but rather is a mixed government with characteristics of both. To the states it is federal:

[The] act of the people, as forming so many independent States, not as forming one aggregate

nation, is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the states. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes or by considering the will of the majority of States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all the others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal* and not a *national*, constitution.

Under monarchy, under aristocracy, and under a *national* republic, the people are immediately and individually subject to the acts of the general government. Under a *federal* republic, the States are the immediate subjects of acts of the general government. Madison explained this thusly:

The difference between a federal and national government, as it relates to the *operation of government*, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy [the state governments] in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it in this relation a *national* government.

But if the government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the *extent* of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme and may be controlled, directed, or abolished by it at its pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be a *national* one since its jurisdiction extends to certain enumerated objects only, and leaves to the several states a residual and inviolable sovereignty over all other objects. . .

If we try the Constitution by its last relation to authority by which amendments are to be made, we find it neither wholly *national* nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportions by *States*, not by its *citizens*, it departs from the *national* and advances toward the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal* and partakes of the *national* character.

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

These are general distinctive features defining the United States as a constitutional republic rather than a federal or a national republic. It is by this mixed character, part national and part federal but wholly neither, that the aims of providing several safeguards against tyranny are met, not the least of which are: (1) prevention of the tyranny of the majority over the minority of the citizens of the United States; and (2) prevention of the tyranny of a minority over the majority. Fundamental to the Social Contract is the understanding that the just powers of government exist to safeguard the political and civil liberty of *every* citizen while at the same time ensuring justice for *all* of them. The *right* to govern *ends* when this central objective is trespassed.

Where does this leave the states and states' rights? Controversies regarding states' rights present issues that are not trivial in resolution. *Absolute* resolution in favor of *either* the states *or* the general government violates the Social Contract because such an absolute resolution empowers rulership for the prevailing side. Local despotism is no less onerous than national despotism, and every act of government *at any level of government* that violates the Social Contract renders null the right of that government to govern. This is a central principle of the Idea of the American Republic. It is this central principle that is placed in jeopardy by widespread lack of understanding of the nature of the American system of government. If the principle be corrupted and lost, so too are liberty and justice.

### § 3. Democracy

It has become commonplace during every national election year for letters to appear in the opinions section of local newspapers in which various writers debate each other, to use the term very loosely, over the question of whether the United States is a republic or a democracy. Not surprisingly, one side is usually taken by a partisan of the Republican Party, the other by a partisan of the Democratic Party. It is also commonplace for both writers on both sides to reveal in their words and arguments their profound ignorance of the meaning of either term.

It is not uncommon to meet people who hold the view that democracy, whatever it is they think they mean by this term, is a universal, unlimited, and absolutely good thing. It is far less common in America to meet anyone who admits to holding the contradictory opinion. The great majority of Americans see at least some, usually significant, degree of good in an idea of democracy, although there is far less unity of common understanding in what the term "democracy" means. What is "democracy"? The modern dictionary definitions run thusly:

**democracy** [Fr. *démocratie*; Gr. *dēmokratia*, democracy, popular government, from *dēmos*, the people, and *kratein*, to rule.]

1. government by the people, either directly or through elected representatives; rule by the ruled.
2. a country, state, community, etc. with such a government.
3. majority rule.
4. the acceptance and practice of the principle of the equality of rights, opportunity, and treatment; lack of snobbery; as, there is real *democracy* in this school.
5. the common people.

There is very little distinction between definition (1) and our earlier definition of a republic. What distinction there is resides in the word "rule." Indeed, what our Founding Fathers called "republic" is called "representative democracy" by the rest of the world as well as by some Americans who wish to emphasize adherence to an ideology known as political liberalism. When Americans argue over whether the United States is a "republic" or a "democracy," this is mere squabbling over semantics that does little more than reveal whether the arguer leans towards a conservative-libertarian brand of political philosophy or an American-liberal brand of political philosophy.

Definitions are important. Without well-delineated definitions, words can mean whatever a person wants them to mean, and when two people use the same word to mean different things there can be no meaningful dialogue or debate because these two persons utterly fail to communicate with each other. By one count, there are today no less than thirty-nine different types or forms of political systems or philosophies that are called "democracies" by their supporters. Some of these, such as the so-called "New Democracy" of Mao Zedong or the so-called "totalitarian democracy" of some African and South American governments, are perversions of the word democracy. Others, such as the "workplace democracy," so-called "E-democracy" and "Interactive Democracy," or the term "economic democracy" are nothing but metaphors, mere and sometimes harmless corruptions of language. In the broadest division of classification, that which is rightly called *democracy* today is a political system in which either: (1) government function is carried out immediately by the people, and this is called *direct* democracy; or (2) the power to govern is granted to elected representatives, and this is called "republicanism." If a government is truly an American Republic then it is also a democracy.

But this does not mean there is no difference in attitude or political philosophy if one calls a system of government a republic or a democracy, and it is important to understand the implied distinction, however vague it may be. The tiny distinction that does exist resides in the clause *rule by the ruled*. Contrast this with the its counterpart in the definition of republic as stated by Madison above: a government that *derives all its powers* directly or indirectly from the great body of the people. The italicized phrase is the key phrase. The power *to govern* and the power *to rule* are not at all the same thing, although this vital distinction is one that is often not well enough appreciated. In direct

democracy *there is no power to rule because there are no rulers*. In many forms of representative democracy, particularly the forms alternately called either *liberal* or *constitutional* democracy, it is otherwise. To understand the nature of democracy in the American Republic, it is necessary to understand the difference between direct democracy and representative democracy.

### § 3.1 Direct Democracy as the Prototype of Strict Democracy

Let us briefly examine some examples of the relatively few governments that can legitimately be called democracies. Here we exclude such perversions as the so-called Democratic Republic of the Congo (Zaire), the Democratic People's Republic of Korea (North Korea), and the Lao People's Democratic Republic (Laos). We will find *no* current examples of governments that are in fact *strict* democracies and few that, as democratic republics, tend more toward strict democracy than toward strict republic. The United States is not among these, nor should it be for reasons explained later, although in modern times it has been tending more and more in this direction (as will also be explained later). Ancient Athens was a strict democracy, and, indeed, can be held up as *the definitive strict democracy* and the outstanding example of *direct* democracy. The tribal councils of some Native American peoples provide other examples of direct democracy.

In point of fact, no nation currently established calls itself "The Democracy of X" although there are numerous nations calling themselves by some variant of "The Democratic Republic of X" (and, indeed, many of these are in fact republics). Of existing nations, only twenty-six currently have governments that can be legitimately called democracies in the sense that their systems of government adhere, in varying degrees, more closely to a philosophy of strict democracy than to one of strict republicanism. These include: the Republic of Angola (nominally a multi-party democracy since 1992), the Commonwealth of Australia (a constitutional parliamentary democracy with constitutional monarchy), Barbados (a parliamentary democracy), Belgium (a parliamentary democracy under a constitutional monarch), Belize (a parliamentary democracy within the British Commonwealth), the Republic of Botswana (a parliamentary democracy), Germany (a parliamentary democracy), Grenada (a parliamentary democracy), Jamaica (a parliamentary democracy), the Republic of Latvia (a parliamentary democracy), Lithuania (a parliamentary democracy), the Republic of Malawi (a multi-party democracy), Nepal (a multi-party democracy), New Zealand (a parliamentary democracy), Papua New Guinea (a parliamentary democracy), St. Lucia (a parliamentary democracy), the Republic of Senegal (a parliamentary democracy with socialist leanings), Sierra Leone (a constitutional democracy), Slovakia (a parliamentary democracy), Slovenia (a parliamentary democracy), Taiwan (a parliamentary democracy), the Republic of Trinidad and Tobago (a parliamentary democracy), Turkey (a parliamentary democracy), Tuvalu (a constitutional democracy), Uganda (a multi-party democracy),

the United Kingdom of Great Britain and Northern Ireland (a constitutional monarchy with a parliamentary democracy), and Zimbabwe (a parliamentary democracy). More numerous are republics that can be characterized as federal republics or national republics (a label that would, to a degree, fit the present day United States, although not the Republic envisioned by the Framers of the Constitution) or parliamentary republics.

The preceding list identified different forms of democracy in these countries with different labels. A constitutional democracy is a democracy governed by a constitution. A multi-party democracy is a two-party system *requiring* voters to align themselves with one or the other in large blocs. A parliamentary democracy is a democratic system in which the executive branch is a cabinet headed by a prime minister appointed by the members of the parliament. None of these are *strict* democracies in the sense in which that term is being used in this treatise. The Republic of Poland (*Rzeczpospolita Polska*) generally insists that its government be called a democracy (with no qualifying adjective), although in actuality it conforms to what is more usually termed a Commonwealth, having a popularly elected President as head of state, a council of ministers led by a prime minister, a bicameral parliament, and a multi-tiered judicial branch. Both Commonwealth and *Rzeczpospolita* are derived from the Latin *res publica*. One can easily see that neither the word republic nor the word democracy, without the use of some qualifying adjective, has a very specific meaning today.

It is the historical rarity of strict democracies and the more plentiful existence of mixed-but-predominantly democratic governments that helps explain the more or less non-definitive dictionary definition (1) of democracy above. Why have strict democracies never been commonplace among nations? To understand this, as the Founding Fathers did, it is sufficient to examine the most famous democracy in history, ancient Athens, and look at what life under this system was really like.

Athenian democracy arose in the aftermath of a revolution in which the king of Athens was overthrown. It has at least three distinct periods in its evolution marked by institutions established by Solon (594 BC), Cleisthenes (509 BC), and Ephialtes (462 BC), and interrupted periodically by civil wars in which the democracy of the day was subdued and replaced by periods of tyranny and oligarchy. "The" Athenian democracy is generally considered to be the system set up by Cleisthenes and later peacefully reformed by Ephialtes.

Strictly speaking, democratic Athens had *no* government because all functions normally associated with the concept of government were carried out directly by those of its citizens who were allowed to vote. Citizenship excluded resident foreigners and slaves. Suffrage was limited to Athenian citizens who had completed their military training. This requirement excluded the majority of the population, namely slaves, freed slaves, children, women, and foreign residents. It is estimated that out of about 100,000 people who were citizens, only around 30,000 were allowed to vote.

Athenian democracy was organized into three political bodies: the Assembly (which had a quorum of 6000); the Council of 500; and the Court, which had a minimum requirement of 200 jurors but on occasion had as many as 6000 jurors sitting at one time. There were no presiding judges and no lawyers. There were no elected representatives because the power to govern rested immediately and directly with the voting citizens. With the exception of those chosen to administer the treasury or to be generals of the army, there were no elected administrators. Instead, administrators were selected by lot from among the voting citizens. There were around 1000 officeholders, chosen by lot each year, who served for a term of one year. No person could hold the same office more than once in his lifetime with the exception of the 100 elected administrative officeholders whose duties required special skills and qualifications.

The power exercised by officeholders was routine and quite limited. Officeholders were agents of the people, not their representatives. Holding office was not compulsory. One seeking to be an officeholder, whether elected or appointed by the luck of the draw, nominated himself. Participation in the Assembly, in the Court, and in service as an officeholder *was* regarded as the duty of a citizen. Men who did not participate in politics were held in contempt. The Athenian word for one who was not actively interested in politics was *idiōtēs*, from which comes our English word, "idiot."

Elected officeholders, as a practical matter, generally came from among the wealthiest citizens of Athens. This had far less to do with any personal power or prestige associated with wealth and far more to do with the fact that incompetence and mismanagement of public affairs was redressed by confiscation of the officeholder's property. Wealthy officeholders had far more incentive to perform well than poor ones. All officials, whether appointed by lot or elected, were subject to review by the Assembly or the Court before taking office – a process that might disqualify them for holding office – as well as to review of their performance in office afterwards. Severe punishments, including death by hanging, could result from an adverse outcome of the official's performance review.

On the other hand, there were no punishments that could result from participation in the Assembly or the Court because these bodies were regarded as "the people themselves." Therefore if the Assembly or the Court made a judgment or decision later recognized as a mistake – as often happened – it was deemed that this was due to being "misled" by an orator or a litigator. The penalty for "misleading" the Assembly or the Court was often death by hanging, although banishment for a term of years was another possible punishment. If two citizens brought a serious enough matter before the Court, each was required to bring a rope with him so that the loser could be quickly hanged without too much fuss or bother. If the winner was later deemed to have "misled" the Court, he too would be hanged. Assuming a role of popular leadership in democratic Athens was not for the faint of heart, and the Athenian system certainly discouraged what today we call "the frivolous lawsuit." In most cases,

however, the penalty meted out to the loser was proposed by the winner and decided upon by vote of the Court.

The Assembly had four functions. It made executive pronouncements (e.g., going to war), it elected some officials, it legislated, and it tried political crimes. In the later period of the democracy the latter two functions were shifted exclusively to the Court. There were no political parties (although there were blocs of opinion that were sometimes enduring), no government, and no opposition. Governing was, in effect, simply whichever orator's proposal the Assembly agreed with on any given day. What the Assembly (or the Court) decided on one day, it could completely reverse the next. In the fifth century BC there were ten fixed Assembly meetings per year and special meetings called as events required. This was increased to forty fixed meetings per year the following century. A form of what one might call "aggressive ushering" was used to get people to the Assembly. Slaves would form a cordon using red-stained ropes and herd citizens from the public square to the meeting place like a cattle drive. There was a fine for showing up at the Assembly with a red stain on one's clothing.

The Council of 500 served as an executive committee for the Assembly. It coordinated the various boards and magistrates that carried out the administrative functions of Athens, and it selected from its own membership (again by lot) boards of ten men responsible for such things as naval affairs and religious services. It had little latitude for initiative because its role was merely to carry out the decisions of the Assembly.

The practice of selecting administrative officials by lot, and of allowing each person to hold each particular office only once in his lifetime, clearly tends to make Athenian democracy an affair run by amateurs who might or might not have been competent. On the other hand, Athenians selected for office served on teams (boards or panels), in which there would usually be someone who was old enough and experienced enough to know the right way to do things. In this way, the inexperienced were expected to learn from the experienced. Qualifications for most offices of higher importance usually included age restrictions (a minimum of 30 years of age in some cases, 40 years of age in others). This tended to safeguard the state from the ill effects of incompetence on the part of its higher officials.

On the other hand, it was no guarantee for preventing the passions of mob rule from owning the day. On one occasion, the victorious generals of a sea battle during the Peloponnesian War were accused of not doing enough to rescue the drowning relatives of some of Athens' citizens during the battle. The generals were swiftly hanged. The next day, after passions had cooled and the majority of the Assembly came to regret their hasty decision, those who had brought the charges against the generals were hanged (for misleading the Assembly). On another occasion, swayed by the oratory of a colorful, ambitious, and rather unscrupulous character named Alcibiades, the Assembly hastily voted

for a very ill-considered invasion of Syracuse, a military blunder that led directly to Athens losing the Peloponnesian War to the Spartans (which at that time Athens had all but won). Alcibiades avoided hanging by turning coat and defecting to the Spartans. On another occasion, the ten treasurers of the Delian league were accused at the post-office review of misappropriation of state funds. Put on trial one by one, they were condemned and executed until, just before the trial of the tenth man, an accounting error was discovered and he was allowed to go free.

It is not the least bit difficult to find criticisms of Athens' direct democracy. Plato was not in favor of democracy for a number of well-founded reasons. His idea of the ideal government was that of the philosopher-king. Aristotle used the word "democracy" as a label for a perverted form of government:

Of the above-mentioned forms [kingship, aristocracy, and constitutional government], the perversions are as follows: – of kingship, tyranny; of aristocracy, oligarchy; of constitutional government, democracy. For tyranny is a kind of monarchy which has in view the interests of the monarch only; oligarchy has in view the interests of the wealthy; democracy, of the needy; none of them the common good of all.

Later he writes,

It is obvious which of the three perversions is the worst, and which is the next in badness. That which is the perversion of the first and most divine is necessarily the worst. And just as a royal rule, if not a mere name, must exist by virtue of some great personal superiority of the king, so tyranny, which is the worst of governments, is necessarily the farthest removed from a well-constituted form; oligarchy is little better, for it is a long way from aristocracy, and democracy is the most tolerable of the three. . .

Of forms of democracy first comes that which is said to be based strictly on equality. In such a democracy the law says that it is just for the poor to have no more advantage than the rich; and that neither should be masters, but both equal. For if liberty and equality, as is thought by some, are chiefly to be found in democracy, they will best be attained when all persons share alike in the government to the utmost. . . Here then is one sort of democracy. There is another, in which the magistrates are elected according to a certain property qualification, but a low one; he who has the required amount of property has a share in the government, but he who loses his property loses his rights. Another kind is that in which all the citizens who are under no disqualification share in the government, but still the law is supreme. In another, everybody, if he be only a citizen, is admitted to the government, but the law is supreme as before. A fifth form of democracy, in other respects the same, is that in which not the law but the multitude have the supreme power, and supersede the law by their decrees. This is a state of affairs brought about by the demagogues. For in democracies which are subject to the law the best citizens hold the first place and there are no demagogues; but where the laws are not supreme, there demagogues spring up. For the people become a monarch, and is many in one; and the many have the power in their hand, not as individuals, but collectively. . . At all events this sort of democracy, which is now a monarchy and no longer under control of the law, seeks to exercise monarchical sway and grows into a despot; . . . this sort of democracy is to other democracies what tyranny is to other forms of monarchy. The spirit of both is the same, and they alike exercise a despotic rule over the better citizens. . . The demagogues make the decrees of the people override the laws, by referring all things to the popular assembly.

This last form of democracy – demagoguery – Aristotle regarded as the worst perversion of all. It is perhaps no accident that this is precisely descriptive of many incidents in the history of Athens. In

modern times in America, both (1) the popularity of the referendum or the initiative measure, bypassing the legislature to appeal directly to the populace at large, and (2) calls for the abolition of the Electoral College are moves in the Athenian direction of rule by decree superceding rule of law. This is the demagogue's democracy and it truly is a perversion inimical to the Social Contract.

### § 3.2 Representative Democracy and the Fundamental Duty of Citizenship

Now we turn to the major form of democratic government, the representative democracy. This is a broad-based term with some interpretations that do include today's American government but with others that do not. The crucial distinctions to be made in the following discussion are focused upon the most dangerous but under-recognized aspect of many forms of government calling themselves, and being so called by many, "democracies." This is the concept of rulership.

There is a vast difference between leadership and rulership, although many people do not recognize it. Leadership is marked by the characteristic that a leader has followers who willingly accept as their own goals and objectives for their actions those that are the goals and objectives of the leader. Rulership, by contrast, is marked by the characteristic that those over whom a ruler rules are not followers but *subjects*, people who obey the decrees of the ruler out of prudent regard for their own safety or well-being, which they believe would be endangered by the consequences of disobedience or nonconformity with the decrees of the ruler. George Washington and Mahatma Gandhi were exceptional leaders; Saddam Hussein and Adolf Hitler were tyrannical rulers. Between leadership and rulership are many grades of successively lower excellence. Lao Tzu, a great Chinese sage who lived in the 6th century BC, put it this way:

The very best leader is barely known by men.  
Then comes he whom they know and love.  
Then comes he who is feared.  
Then comes he who is despised.  
  
He who does not trust enough will not be trusted.  
  
How reticent did those leaders appear, showing  
The importance of their words without unnecessary speech!  
When the best leader's work was done, his actions successful,  
The people all said, "We did it ourselves!"

– *Tao Te Ching*, chapter 17

The earliest Mesopotamian city-states were, without exception, military dictatorships ruled by despots through force and violence. Thus the association of governance with rulership is ancient, going back to the very beginnings of the city-state. Even a ruler has lieutenants, for he must command enough allegiance from others to acquire the power used to subjugate the people over whom he rules. There can be rulers who do not display despotism, but every ruler commands the threat of employing

the force of sanctions to be applied against those who disobey or rebel.

But the concept of rulership is contrary to the Social Contract and contrary as well to the very Idea of the American Republic. Aristotle wrote,

The basis of a democratic state is liberty; which, according to the common opinion of men, can only be enjoyed in such a state – this they affirm to be the great end of every democracy. One principle of liberty is for all to rule and be ruled in turn, and indeed democratic justice is the application of numerical, not proportionate, equality; whence it follows that the majority must be supreme and that whatever the majority approve must be the end and the just. Every citizen, it is said, must have equality, and therefore in a democracy the poor have more power than the rich, because there are more of them, and the will of the majority is supreme. This, then, is one note of liberty which all democrats affirm to be the principle of their state. Another is that a man should live as he likes. This, they say, is the mark of liberty since, on the other hand, not to live as a man likes is the mark of a slave. This is the second characteristic of democracy, whence has arisen the claim of men to be ruled by none, if possible, or, if this is impossible, to rule and be ruled in turns; and so it contributes to the freedom based upon equality.

However, as Aristotle points out in sometimes dreary detail, there is a built-in contradiction in these democratic premises. If the rule of the majority is always what is just, if all men are equal, and if every person has a just claim "to be ruled by none, if possible, or, if this is impossible, to rule and be ruled in turns," what justice is there for the minority whose will can never prevail against the self interests of the majority?

There is also a doubt as to what is to be the supreme power in the state: – is it the multitude? Or the wealthy? Or the good? Or the one best man? Or a tyrant? Any of these alternatives seems to involve disagreeable consequences. If the poor, for example, because they are more in number, divide among themselves the property of the rich, is this not unjust? No, by heaven (will be the reply) for the supreme authority justly willed it. But if this is not extreme injustice, what is? . . . [This] law of confiscation clearly cannot be just. If it were, all the acts of a tyrant must of necessity be just, for he only coerces other men by superior power, just as the multitude coerce the rich. But is it just then that the few and the wealthy should be the rulers? And what if they, in like manner, rob and plunder the people – is this just? If so, the other case will likewise be just. But there can be no doubt that all these things are wrong and unjust. – Aristotle

This is the great problem and quandary of all representative government, whether it be called a democracy or a republic. It can never be said with truth and justice that those who are subjugated are equal to those who do the subjugating, for to be subjugated is to be ruled by coercion. The concept of equality held by the society, if it be not universal in practice as well as in theory, is the great weakness of democracy as representative government because if democratic rule is to be just, a just concept of equality that applies to every person must prevail. But what is this concept? Here is an enormously difficult question. Aristotle wrote,

Next comes the question, how is this equality to be obtained? Are we to assign to a thousand poor men the property qualifications of five hundred rich men? and shall we give the thousand a power equal to that of the five hundred? or, if this is not to be the mode, ought we, still retaining the same ratio, to take equal numbers from each and give them the control of the elections and of the courts? Which, according to the democratic notion, is the juster form of the constitution –

this one or one based on numbers only? Democrats say that justice is that to which the majority agree, oligarchs that to which the wealthier class agree; in their opinion the decision should be given according to the amount of property. In both principles there is some inequality and some injustice. For if justice is the will of the few, any one person who has more wealth than all the rest of the rich put together ought, upon the oligarchic principle, to have sole power – but this would be tyranny; or, if justice is the will of the majority, as I was saying before, they will unjustly confiscate the property of the wealthy minority. To find a principle of equality in which they both agree we must inquire into their respective ideas of justice. . . . But although it may be difficult in theory to know what is just and equal, the practical difficulty of inducing those to forebear who can, if they like, encroach is far greater, for the weaker are always asking for equality and justice, but the stronger care for none of these things.

Aristotle takes a rather dim view here of mankind's inner selfish nature, but only an impractical fool takes refuge in the denial that these attitudes and behaviors are not commonplace in the commerce of life. Judgment of what constitutes justice and what constitutes injustice is at the essential core of what Aristotle called constitutional government. But such judgment requires a *standard* for judging as much as it requires a judge. This fact was recognized by the Founding Fathers. In *The Federalist*, no. 10, Madison wrote,

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 government never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true.

Neither Madison nor any of the other Founding Fathers claimed the new Constitution of the United States was a final cure for "this dangerous vice." Instead, they built into the Constitution a mechanism for making improvements as the need for these improvements and their constitution came to light. This was the provision for amendments. History has shown that the safeguards for the proper and just use of this provision were not absolutely adequate – as witness the misuse to which it was put in the case of the Eighteenth Amendment – but history has also shown that this misuse can likewise be corrected – as in the Twenty-first Amendment – and that other unwarrantable violations of liberty and justice can be resisted with great force and success. As said earlier in this treatise, liberty with justice

for all is an Ideal towards which governance must continuously strive; it is not a state-of-being already absolutely accomplished in fact. The political work of a true Republican is never finished.

The difficulties, not only in striving for perfection in the Ideal but also in protecting the progresses already achieved along this path, are never a sufficient foundation for giving up the effort. To give up the effort is to betray oneself as much as one's fellow citizens. But for the effort itself to succeed, all citizens must learn the true nature of the justification for government, the propensities that cause just government to become unjust, and the standards by which all steps to improve it as well as to protect liberty with justice for all must be judged and weighed. More than this, it is *the most fundamental duty* of every citizen to put this understanding into practical action, both in defense of liberty with justice for all as well as in striving to improve the state of its perfection.

Madison went on to recognize and expose the most fatal danger to liberty with justice for all in any system of representative government:

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

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 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 is worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes the faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues to be 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 of the faculties of men . . . is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. . .

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*. – *ibid.*

In the United States today we are the unfortunate witnesses to faction in the worst degree. We see it in the great standoff between the only two factions in our country that have succeeded in amassing *the power to rule*. These are the Republican Party and the Democratic Party. While recognizing that within each there are still citizens who are genuinely devoted to liberty with justice for all, and who are often ostracized for this by the other members of their own party, any impassionate observer will without difficulty perceive that the aggregate actions of both are directed not to the duty of

stewardship in government but to securing the power *to rule* at any cost. Neither faction today makes up a majority of U.S. citizens, but in the two hundred twenty years since the ratification of our Constitution, *the institution of the political party system* in America has succeeded in gaining absolute control over the mechanisms of election and in disenfranchising a great portion of America's body politic. And it is not merely the two great parties that have become villainous to representative government in America. Numerous smaller factions, popularly called "special interest groups," have likewise arisen and gained the skill to manipulate the mechanisms of government at all levels to the violation of the liberty of their fellow citizens and in breach of the Social Contract that is the sole bond now merely eulogized in the motto inscribed in the Great Seal of the United States: *E Pluribus Unum*.

Democracy, in and of itself, is not the cure for this fatal illness, strict democracy least of all. Again quoting Madison,

From this view on 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 the 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. . .

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

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interests of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. . . 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. – *ibid*.

The great and dangerous fallacy of today is voiced by the often-heard statement that our representative or our senator "represents his constituency." It is a fallacy because in the far greater number of cases our representatives – both at the national level and at the state level – define their "constituencies" to be only those citizens who have voted them into office or who are members of their same political party, or both. But this is at best a misconception and at worst a deliberate corruption and betrayal of the principle of representative government. We are today governed by too many petty men and women who, far from displaying "patriotism and love of justice," willingly sacrifice the interests, liberty, and appeals for justice of some fraction of Americans to their own party interests, while the best and most able among us in great measure take no part in governance or the duties of citizenship. Through

ignorance and the lack of civic education, the Idea of the American Republic has been displaced by blind acceptance of the despotic idea: that with the power to govern comes the power to rule.

The only hope of a cure for this miserable condition is to re-learn the principles of the Idea of the American Republic. The Idea is today as lost in regard to state governments as it is to the general government; but we must begin somewhere, so let it be with the role of the constitutional general government of the United States of America.

#### § 4. The Objectives of the General Government of the United States

The great and central factious notion dividing the Republican and Democratic Parties today is presented in the propaganda of both parties as to "the proper role of government." I call this presentation "propaganda" because the slogans and sound bites offered up and slavishly trumpeted in the news media *never in fact* address the true role of the government of the United States. In the most general terms, this role is neither ambiguous, secret, nor open to debate unless we should choose to debate the entire existence of our form of government and its founding principles. The objectives called for and demanded by America's Social Contract *are stated explicitly* in the very first line of the Constitution of the United States of America:

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

These are the stated objectives of our government. There are six of them, and it is the right and the expectation of every citizen of America that those we entrust with government *service* will work for the achievement of each and every one of these six, singly and together. Like all general statements of broad objectives, there is ambiguity and room for the debate of the meaning of each of the six. In this treatise we will devote an entire chapter to each one of the six in its turn. We will discuss for each the principles that define it and the standards for judgment of its accomplishment. We will also discuss the propriety and the need of these objectives for all levels of government in America so that the promise of Article Four, Section 4 of the Constitution be fulfilled: *The United States shall guarantee to every State in this Union a republican form of government.*

But first it will be necessary to discuss and explain the backdrop against which these principles and standards obtain their justice and validity. This backdrop must cover: the community, society, and government under the strict clauses of the Social Contract; the nature of political parties and whether or not the institution of political parties is inimical or compatible with liberty and justice for all; and, not least of all, the concept of citizenship, its duties, and its responsibilities under the Social Contract. These are the topics we must take up next.

## § 5. References

Aristotle, *Politics*, in *The Complete Works of Aristotle*, vol. 2, Jonathan Barnes (ed.), Princeton, NJ: Princeton University Press, 1984.

Articles of Confederation, 1777.

The Constitution of the United States of America, 1787.

Will Durant, *The Story of Civilization*, Pt. 2, *The Life of Greece*, NY: MJF Books, 1939.

Will Durant, *The Story of Civilization*, Pt. 3, *Caesar and Christ*, NY: MJF Books, 1944.

Alexander Hamilton, James Madison, and John Jay, *The Federalist*, 1788.

Thomas Jefferson, Declaration of Independence, 1776.

Lao Tsu, *Tao Te Ching*.

Livy, *From the Founding of the City*, Book I, Cambridge, MA: Harvard University Press, 1919.

Montesquieu, *The Spirit of Laws*, 1748.

Jean Jacques Rousseau, *The Social Contract*, 1762.