

Session 2: Equal Justice

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Equality

[Volume 1, Page 511]

CHAPTER 15 | Document 3

Thomas Gordon, Cato's Letters, no. 45

16 Sept. 1721 *Jacobson 101--6*

Men are naturally equal, and none ever rose above the rest but by Force or Consent: No Man was ever born above all the rest, nor below them all; and therefore there never was any Man in the World so good or so bad, so high or so low, but he had his Fellow. Nature is a kind and benevolent Parent; she constitutes no particular Favourites with Endowments and Privileges above the rest; but for the most part sends all her Offspring into the World furnished with the Elements of Understanding and Strength, to provide for themselves: She gives them Heads to consult their own Security, and Hands to execute their own Counsels; and according to the Use that they make of their Faculties, and of the Opportunities that they find, Degrees of Power and Names of Distinction grow amongst them, and their natural Equality is lost.

Thus Nature, who is their Parent, deals with Men: But Fortune, who is their Nurse, is not so benevolent and impartial; she acts wantonly and capriciously, often cruelly; and counterplotting Justice as well as Nature, frequently sets the Fool above the wise Man, and the Best below the Worst.

And from hence it is, that the most Part of the World, attending much more to the noisy Conduct and glaring Effects of Fortune, than to the quiet and regular Proceedings of Nature, are misled in their Judgment upon this Subject: They confound Fortune with Nature, and too often ascribe to natural Merit and Excellency the Works of Contrivance or Chance. This however, shews that Reason and Equity run in our Heads, while we endeavour to find a just Cause for Things that are not just; and this is the Source of the Reverence which we pay to Men whom Fortune sometimes lifts on high, though Nature had placed them below. The Populace rarely see any Creature rise, but they find a Reason for it in his Parts; when probably the true one will be found in his own Baseness, or another Man's Folly.

From the same Reasoning may be seen why it is, that, let who will be at the Head of a Party, he is always extolled by his Party as superior to the rest of Mankind; and let who will be the first Man of his Country, he will never fail being complimented by many as the first of his Species. But the Issue and their own Behaviour constantly shew, that the highest are upon a Level with the rest, and often with the lowest. Men that are high are almost ever seen in a false Light; the most Part see them at a great Distance, and through a magnifying Medium; some are dazzled with their Splendor, many are awed by their Power. Whatever appears shining or terrible, appears great, and is magnified by the Eye and the Imagination.

That Nature has made Men equal, we know and feel; and when People come to think otherwise, there is no Excess of Folly and Superstition which they may not be brought to practise. Thus they have made Gods of dead Men, and paid divine Honours to many while they were yet living: They saw them to be but Men, yet they worshipped them as Gods. And even they who have not gone quite so far, have yet, by their wild Notions of Inequality, done as much Mischief; they have made Men, and often wicked Men, to be Vice-Gods; and then made God's Power (falsly so called) as irresistible in the Hands of Men as in his own, and much more frightful.

It is evident to common Sense, that there ought to be no [Volume 1, Page 512] Inequality in Society, but for the Sake of Society; but these Men have made one Man's Power and Will the Cause of all Men's Misery. They gave him as far as they could the Power of God, without obliging him to practise the Mercy and Goodness of God.

Those that think themselves furthest above the rest, are generally by their Education below them all. They are debased by a Conceit of their Greatness: They trust to their Blood; which, speaking naturally, gives them no Advantage; and neglect their Mind, which alone, by proper Improvements, sets one Man above another. It is not Blood or Nature, but Art or Accident, which makes one Man excel others. *Aristotle*, therefore, must either have been in Jest, when he said, that he, who naturally excelled all others, ought to govern all; or said it to flatter his Pupil and Prince, *Alexander* the Great. It is certain, that such a Man never yet was found in the World, and never will be found till the End of it. *Alexander* himself, notwithstanding the Greatness of his Spirit, and his Conquests, had in his own Army, and perhaps among the common Soldiers, Men naturally as great and brave as himself, and many more wise.

Whoever pretends to be naturally superior to other Men, claims from Nature what she never gave to any Man. He sets up for being more than a Man; a Character with which Nature has nothing to do. She has thrown her Gifts in common amongst us; and as the highest Offices of Nature fall to the Share of the Mean as well as of the Great, her vilest Offices are performed by the Great as well as by the Mean: Death and Diseases are the Portion of Kings as well as of Clowns; and the Corpse of a Monarch is no more exempted from Stench and Putrefaction, than the Corpse of a Slave.

Mors aequo pulsat pede.

[Pale Death with foot impartial knocks at poor men's hovels and princes' citadels.]

All the Arts and Endowments of Men to acquire Preeminence and Advantages over one another, are so many Proofs and Confessions that they have not such Pre-eminence and Advantages from Nature; and all their Pomp, Titles, and Wealth, are Means and Devices to make the World think that they who possess them are superior in Merit to those that want them. But it is not much to the Glory of the upper Part of Mankind, that their boasted and superior Merit is often the Work of Heralds, Artificers, and Money; and that many derive their whole Stock of Fame from Ancestors, who lived an Age or many Ages ago.

The first Founders of great Families were not always Men of Virtue or Parts; and where they were so, those that came after them did frequently, and almost generally, by trusting to their Blood, disgrace their Name. Such is the Folly of the World, and the Inconvenience of Society, to allow Men to be great by Proxy! An Evil that can scarce ever be cured. The Race of *French* Kings, called by their Historians in Contempt, *Les Rois faineants* and the Succession of the *Roman Caesars*, (in both which, for one good Prince they had ten that were intolerable, either for Folly, or Cruelty, and often for both) might be mentioned as known Proofs of the above Truth; and every Reader will find in his own Memory many more.

I have been told of a Prince, who, while yet under Age, being reproved by his Governor for doing Things ill or indecent, used to answer, *Je suis Roy; I am King*; as if his Quality had altered the Nature of Things, and he himself had been better than other Men, while he acted worse. But he spoke from that Spirit which had been instilled into him from his Cradle. *I am King!* What then, Sir? The Office of a King is not to do Evil, but to prevent it. You have Royal Blood in your Veins: But the Blood of your Page is, without being Royal, as good as yours; or, if you doubt, try the Difference in a Couple of Porringers next Time you are ill; and learn from this Consideration and Experiment, that by Nature you are no better than your People, though subject from your Fortune to be worse, as many of your Ancestors have been.

If my Father got an Estate and Title by Law or the Sword, I may by Virtue of his Will or his Patent enjoy his Acquisition; but if I understand neither Law nor the Sword, I can derive Honour from neither: My Honour therefore is, in the Reason of Things purely nominal; and I am still by Nature a *Plebeian*, as all Men are.

There is nothing moral in Blood, or in Title, or in Place: Actions only, and the Causes that produce them, are moral. He therefore is best that does best. Noble Blood prevents neither Folly, nor Lunacy, nor Crimes: but frequently begets or promotes them: And Noblemen, who act infamously, derive no Honour from virtuous Ancestors, whom they dishonour. A Man who does base Things, is not noble; nor great, if he do little Things: A sober Villager is a better Man than a debauched Lord; an honest Mechanick than a Knavish Courtier.

. . . *Nobilitas sola est atque unica virtus. Prima mihi debes animi bona; sanctus haberi
Justitiacque tenax factis, dictisque mereris?*

Juv. Sat. 8.

[Virtue is the only and sole real nobility. . . . You owe first the virtues of the mind--
do you deserve to be accounted honest, and tenacious of justice, in word and deed?]

We cannot bring more natural Advantages into the World than other Men do; but we can acquire more Virtue in it than we generally acquire. To be great is not in every Man's Power; but to be good is in the Power of all: Thus far every Man may be [u]pon a Level with another, the Lowest with the Highest: and Men might thus come to be morally as well as naturally equal.

The Founders' Constitution

Volume 1, Chapter 15, Document 3

<http://press-pubs.uchicago.edu/founders/documents/v1ch15s3.html>

The University of Chicago Press

Trenchard, John, and Gordon, Thomas. *Cato's Letters*. In *The English Libertarian Heritage*, edited by David L. Jacobson. American Heritage Series. Indianapolis: Bobbs-Merrill, 1965.

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Equality

[Volume 1, Page 518]

CHAPTER 15 | Document 9

Abigail Adams to John Adams

31 Mar. 1776 *Butterfield 120--21*

I wish you would ever write me a Letter half as long as I write you; and tell me if you may where your Fleet are gone? What sort of Defence Virginia can make against our common Enemy? Whether it is so situated as to make an able Defence? Are not the Gentry Lords and the common people vassals, are they not like the uncivilized Natives Brittain represents us to be? I hope their Riffel Men who have shewen themselves very savage and even Blood thirsty; are not a specimen of the Generality of the people.

I am willing to allow the Colony great merrit for having produced a Washington but they have been shamefully duped by a Dunmore.

I have sometimes been ready to think that the passion for Liberty cannot be Eaquelly Strong in the Breasts of those who have been accustomed to deprive their fellow Creatures of theirs. Of this I am certain that it is not founded upon that generous and christian principal of doing to others as we would that others should do unto us.

.....

I long to hear that you have declared an independancy--and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Laidies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute, but such of you as wish to be happy willingly give up the harsh title of Master for the more tender and endearing one of Friend. Why then, not put it out of the power of the vicious and the Lawless to use us with cruelty and indignity with impunity. Men of Sense in all Ages abhor those customs which treat us only as the vassals of your Sex. Regard us then as Beings placed by providence under your protection and in immitation of the Suprem Being make use of that power only for our happiness.

The Founders' Constitution

Volume 1, Chapter 15, Document 9

<http://press-pubs.uchicago.edu/founders/documents/v1ch15s9.html>

The University of Chicago Press

Adams, Abigail Smith. *The Book of Abigail and John: Selected Letters of the Adams Family, 1762--1784*. Edited by L. H. Butterfield et al. Cambridge: Harvard University Press, 1975.

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Equality

[Volume 1, Page 519]

CHAPTER 15 | Document 10

John Adams to Abigail Adams

14 Apr. 1776 *Butterfield 121--23*

You ask where the Fleet is. The inclosed Papers will inform you. You ask what Sort of Defence Virginia can make. I believe they will make an able Defence. Their Militia and minute Men have been some time employed in training them selves, and they have Nine Battallions of regulars as they call them, maintained among them, under good Officers, at the Continental Expence. They have set up a Number of Manufactories of Fire Arms, which are busily employed. They are tolerably supplied with Powder, and are successfull and assiduous, in making Salt Petre. Their neighbouring Sister or rather Daughter Colony of North Carolina, which is a warlike Colony, and has several Battallions at the Continental Expence, as well as a pretty good Militia, are ready to assist them, and they are in very good Spirits, and seem determined to make a brave Resistance.--The Gentry are very rich, and the common People very poor. This Inequality of Property, gives an Aristocratical Turn to all their Proceedings, and occasions a strong Aversion in their Patricians, to Common Sense. But the Spirit of these Barons, is coming down, and it must submit.

.....

As to your extraordinary Code of Laws, I cannot but laugh. We have been told that our Struggle has loosened the bands of Government every where. That Children and Apprentices were disobedient--that schools and Colledges were grown turbulent--that Indians slighted their Guardians and Negroes grew insolent to their Masters. But your Letter was the first Intimation that another Tribe more numerous and powerfull than all the rest were grown discontented.--This is rather too coarse a Compliment but you are so saucy, I wont blot it out.

Depend upon it, We know better than to repeal our Masculine systems. Altho they are in full Force, you know they are little more than Theory. We dare not exert our Power in its full Latitude. We are obliged to go fair, and softly, and in Practice you know We are the subjects. We have only the Name of Masters, and rather than give up this, which would compleatly subject Us to the Despotism of the Peticcoat, I hope General Washington, and all our brave Heroes would fight. I am sure every good Politician would plot, as long as he would against Despotism, Empire, Monarchy, Aristocracy, Oligarchy, or Ochlocracy.--A fine Story indeed. I begin to think the Ministry as deep as they are wicked. After stirring up Tories, Landjobbers, Trimmers, Bigots, Canadians, Indians, Negroes, Hanoverians, Hessians, Russians, Irish Roman Catholicks, Scotch Renegadoes, at last they have stimulated the to demand new Priviledges and threaten to rebell.

The Founders' Constitution

Volume 1, Chapter 15, Document 10

<http://press-pubs.uchicago.edu/founders/documents/v1ch15s10.html>

The University of Chicago Press

Adams, Abigail Smith. *The Book of Abigail and John: Selected Letters of the Adams Family, 1762--1784*. Edited by L. H. Butterfield et al. Cambridge: Harvard University Press, 1975.

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Fundamental Documents

[Volume 1, Page 6]

CHAPTER 1 | Document 3

Virginia Declaration of Rights

12 June 1776 *Mason Papers 1:287--89*

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

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
2. That all power is vested in, and consequently derived from, the People; that magistrates are their trustees and servants, and at all times amenable to them.
3. That Government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community;--of all the various modes and forms of Government that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration;--and that, whenever any Government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the publick weal.
4. That no man, or set of men, are entitled to exclusive or separate emoluments and privileges from the community, but in consideration of publick services; which, not being descendible, neither ought the offices of Magistrate, Legislator, or Judge, to be hereditary.
5. That the Legislative and Executive powers of the State should be separate and distinct from the Judicative; and, that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the law shall direct.
6. That elections of members to serve as Representatives of the people, in Assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for publick uses without their own consent or that of their Representative so elected, nor bound by any law to which they have not, in like manner, assented, for the publick good.
7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the Representatives of the people, is injurious to their rights, and ought not to be exercised.
8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy

trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That in controversies respecting property, and in suits between man and man, the ancient trial by Jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained but by despotick Governments.

13. That a well-regulated Militia, composed of the body [Volume 1, Page 7] of the people, trained to arms, is the proper, natural, and safe defence of a free State; that Standing Armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform Government; and, therefore, that no Government separate from, or independent of, the Government of *Virginia*, ought to be erected or established within the limits thereof.

15. That no free Government, or the blessing of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

16. That Religion, or the duty which we owe to our *Creator*, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity, towards each other.

The Founders' Constitution

Volume 1, Chapter 1, Document 3

<http://press-pubs.uchicago.edu/founders/documents/v1ch1s3.html>

The University of Chicago Press

The Papers of George Mason, 1725--1792. Edited by Robert A. Rutland. 3 vols. Chapel Hill: University of North Carolina Press, 1970.

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Fundamental Documents

[Volume 1, Page 9]

CHAPTER 1 | Document 5

Declaration of Independence

4 July 1776 *Tansill 22--26*

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 [Volume 1, Page 10] 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 endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration 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 harrass 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 neighbouring 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 compleat 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 endeavoured 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 [Volume 1, Page 11] 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.

[New Hampshire]
 Josiah Bartlett
 Wm. Whipple
 Matthew Thornton

[Massachusett Bay]
 Saml. Adams
 John Adams
 Robt. Treat Paine
 Elbridge Gerry

[Rhode Island]
 Step. Hopkins
 William Ellery

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Equality

 [Volume 1, Page 561]

CHAPTER 15 | Document 56

St. George Tucker, A Dissertation on Slavery, in Blackstone's Commentaries 2:App. 31--32, 35--43, 54--55, 68--69, 74--81 (1803)

1796

In the preceding inquiry into the absolute rights of the citizens of united America, we must not be understood as if those rights were equally and universally the privilege of all the inhabitants of the United States, or even of all [Volume 1, Page 562] those, who may challenge this land of freedom as their native country. Among the blessings which the Almighty hath showered down on these states, there is a large portion of the bitterest draught that ever flowed from the cup of affliction. Whilst America hath been the land of promise to Europeans, and their descendants, it hath been the vale of death to millions of the wretched sons of Africa. The genial light of liberty, which hath here shone with unrivalled lustre on the former, hath yielded no comfort to the latter, but to them hath proved a pillar of darkness, whilst it hath conducted the former to the most enviable state of human existence. Whilst we were offering up vows at the shrine of liberty, and sacrificing hecatombs upon her altars; whilst we swore irreconcilable hostility to her enemies, and hurled defiance in their faces; whilst we adjured the God of Hosts to witness our resolution to live free, or die, and imprecated curses on their heads who refused to unite with us in establishing the empire of freedom; we were imposing upon our fellow men; who differ in complexion from us, a *slavery*, ten thousand times more cruel than the utmost extremity of those grievances and oppressions, of which we complained. Such are the inconsistencies of human nature; such the blindness of those who pluck not the beam out of their own eyes, whilst they can espy a mote, in the eyes of their brother; such that partial system of morality which confines rights and injuries, to particular complexions; such the effect of that self-love which justifies, or condemns, not according to principle, but to the agent. Had we turned our eyes inwardly when we supplicated the Father of Mercies to aid the injured and oppressed; when we invoked the Author of Righteousness to attest the purity of our motives, and the justice of our cause¹; and implored the God of Battles to aid our exertions in it's defence, should we not have stood more self convicted than the contrite publican! Should we not have left our gift upon the altar, that we might be first reconciled to our brethren whom we held in bondage? should we not have loosed their chains, and broken their fetters? Or if the difficulties and dangers of such an experiment prohibited the attempt during the convulsions of a revolution, is it not our duty to embrace the first moment of constitutional health and vigour, to effectuate so desirable an object, and to remove from us a stigma, with which our enemies will never fail to upbraid us, nor our consciences to reproach us? To form a just estimate of this obligation, to demonstrate the incompatibility of a state of slavery with the principles of our government, and of that revolution upon which it is founded, and to elucidate the practicability of it's total, though gradual abolition, it will be proper to consider the nature of slavery, its properties, attendants, and consequences in general; it's rise, progress, and present state, not only in this commonwealth, but in such of our sister states as have either perfected, or commenced the great work of it's extirpation; with the means they have adopted to effect it, and those which the circumstances and situation of our country may render it most expedient for us to pursue, for the attainment of the same noble and important end².

.....

I. When a nation is, from any external cause, deprived of the right of being governed by it's own laws, only, such a nation may be considered as in a state of *political slavery*. Such is the state of conquered countries, and, generally, of colonies, and other dependant governments. Such was the state of united America before the

revolution. In this case the personal rights of the subject may be so far secured by wholesome laws, as that the individual may be esteemed free, whilst the state is subject to a higher power: this subjection of one nation, or people, to the will of another, constitutes the first species of slavery, which, in order to distinguish it from the other two, I have called political; inasmuch as it exists only in respect to the governments, and not to the individuals of the two countries. Of this it is not our business to speak, at present.

II. Civil liberty, according to judge Blackstone, being no other than natural liberty so far restrained by human laws, and no farther, as is necessary and expedient for the general advantage of the public, whenever that liberty is, by the laws of the state, further restrained than is necessary and expedient for the general advantage, a state of *civil slavery* commences immediately: this may affect the whole society, and every description of persons in it, and yet the constitution of the state be perfectly free. And this happens whenever the laws of a state respect the form, or energy of the government, more than the happiness of the citizen; as in Venice, where the most oppressive species of civil slavery exists; extending to every individual in the state, from the poorest gondolier to the members of the senate, and the doge himself.

This species of slavery also exists whenever there is an inequality of rights, or privileges, between the subjects or citizens of the same state, except such as necessarily results from the exercise of a public office; for the pre-eminence of one class of men must be founded and erected upon the depression of another; and the measure of exaltation in the former, is that of the slavery of the latter. In all governments, however constituted, or by what description soever denominated, wherever the distinction of rank prevails, or is admitted by the constitution, this species of slavery exists. It existed in every nation, and in every government in Europe before the French revolution. It existed in the American colonies before they became independent states; and notwithstanding the maxims of equality which have been adopted in their several constitutions, it exists in most, if not all, of them, at this day, in the persons of our *free* negroes and mulattoes; whose civil incapacities are almost as numerous as the civil rights of our free citizens. [Volume 1, Page 563] A brief enumeration of them, may not be improper before we proceed to the third head.

Free negroes and mulattoes are by our constitution excluded from the right of suffrage, and by consequence, I apprehend, from office too: they were formerly incapable of serving in the militia, except as drummers or pioneers, but of late years I presume they were enrolled in the lists of those that bear arms³, though formerly punishable for presuming to appear at a musterfield. During the revolutionary war many of them were enlisted as soldiers in the regular army. Even slaves were not rejected from military service at that period, and such as served faithfully during the period of their enlistment, were emancipated by an act passed after the conclusion of the war. An act of justice to which they were entitled upon every principle. All but housekeepers, and persons residing upon the frontiers, are prohibited from keeping, or carrying any gun, powder, shot, club, or other weapon offensive or defensive: Resistance to a white person, in any case, was, formerly, and now, in any case, except a wanton assault on the negroe or mulattoe, is punishable by whipping. No negroe or mulattoe can be a witness in any prosecution, or civil suit in which a white person is a party. Free negroes, together with slaves, were formerly denied the benefit of clergy in cases where it was allowed to white persons; but they are now upon an equal footing as to the allowance of clergy. Emancipated negroes may be sold to pay the debts of their former master contracted before their emancipation; and they may be hired out to satisfy their taxes where no sufficient distress can be had. Their children are to be bound out apprentices by the overseers of the poor. Free negroes have all the advantages in capital cases, which white men are entitled to, except a trial by a jury of their own complexion: and a slave suing for his freedom shall have the same privilege. Free negroes residing, or employed to labour in any town, must be registered; the same thing is required of such as go at large in any county. The penalty in both cases is a fine upon the person employing, or harbouring them, and imprisonment of the negroe. The migration of free negroes or mulattoes to this state is also prohibited; and those who do migrate hither may be sent back to the place from whence they came. Any person, not being a negroe, having one-fourth or more negroe blood in him, is deemed a mulattoe. The law formerly made no other distinction between negroes and mulattoes, whether slaves or freemen. But now the act of 1796, c. 2, which abolishes the punishment of death, except in case of murder, in all cases where any free person may be convicted, creates a most important distinction in their favour; slaves not being entitled to the same benefit. These incapacities and disabilities are evidently the fruit of the third species of slavery, of which it remains to speak; or, rather, they are scions from the same common stock: which is,

III. That condition in which one man is subject to be directed by another in all his actions, and this constitutes a state of *domestic slavery*; to which state all the incapacities and disabilities of civil slavery are incident, with the weight of other numerous calamities superadded thereto. And here it may be proper to make a short inquiry into the origin and foundation of domestic slavery in other countries, previous to it's fatal introduction into this.

Slaves, says Justinian, are either born such or become so. They are born slaves when they are children of bond women; and they become slaves, either by the law of nations, that is, by captivity; for it is the practice of our generals to sell their captives, being accustomed to preserve, and not to destroy them: or by the civil law, which happens when a free person, above the age of twenty, suffers himself to be sold for the sake of sharing the price given for him. The author of the Commentaries on the Laws of England thus combats the reasonableness of all these grounds: "The conqueror," says he, "according to the civilians, had a right to the life of his captive; and having spared that, has a right to deal with him as he pleases. But it is an untrue position, when taken generally, that by the law of nature or nations, a man may kill his enemy: he has a right to kill him only in particular cases; in cases of absolute necessity for self-defence; and it is plain that this absolute necessity did not subsist, since the victor did not actually kill him, but made him prisoner. War itself is justifiable only on principles of self-preservation; and therefore it gives no other right over prisoners but merely to disable them from doing harm to us, by confining their persons: much less can it give a right to kill, torture, abuse, plunder, or even to enslave, an enemy, when the war is over. Since, therefore, the right of *making* slaves by captivity, depends on a supposed right of slaughter, that foundation failing, the consequence drawn from it must fail likewise. But, secondly, it is said slavery may begin *jure civili*; when one man sells himself to another. This, if only meant of contracts to serve, or work for, another, is very just: but when applied to strict slavery, in the sense of the laws of old Rome or modern Barbary, is also impossible. Every sale implies a price, a *quid pro quo*, an equivalent given to the seller, in lieu of what he transfers to the buyer; but what equivalent can be given for life and liberty, both of which, in absolute slavery, are held to be in the master's disposal? His property, also, the very price he seems to receive, devolves, *ipso facto*, to his master, the instant he becomes a slave. In this case, therefore, the buyer gives nothing, and the seller receives nothing: of what validity then can a sale be, which destroys the very principles upon which all sales are founded? Lastly we are told, that besides these two ways by which slaves are acquired, they may also be hereditary; '*servi nascuntur*;' the children of acquired slaves are, '*jure naturae*,' by a negative kind of birthright, slaves also. . . . But *this, being built on the two former rights, must fall together with them.* If neither captivity, nor the sale of one's self, can by the law of nature and reason reduce the parent to slavery, *much less* can they reduce the offspring." Thus by the most clear, manly, and convincing reasoning does this excellent author refute [Volume 1, Page 564] every claim, upon which the practice of slavery is founded, or by which it has been supposed to be justified, at least, in modern times⁴. But were we even to admit, that a captive taken in a *just war*, might by his conqueror be reduced to a state of slavery, this could not justify the claim of Europeans to reduce the natives of Africa to that state: it is a melancholy, though well-known fact, that in order to furnish supplies of these unhappy people for the purposes of the slave trade, the Europeans have constantly, by the most insidious (I had almost said infernal) arts, fomented a kind of perpetual warfare among the ignorant and miserable people of Africa; and instances have not been wanting, where, by the most shameful breach of faith, they have trepanned and made slaves of the *sellers* as well as the *sold*. That such horrid practices have been sanctioned by a civilized nation; that a nation ardent in the cause of liberty, and enjoying it's blessings in the fullest extent, can continue to vindicate a right established upon such a foundation; that a people who have declared, "That *all men* are by nature *equally free* and *independent*," and have made this declaration the first article in the foundation of their government, should in defiance of so sacred a truth, recognized by themselves in so solemn a manner, and on so important an occasion, tolerate a practice incompatible therewith, is such an evidence of the weakness and inconsistency of human nature, as every man who hath a spark of patriotic fire in his bosom must wish to see removed from his own country. If ever there was a cause, if ever an occasion, in which all hearts should be united, every nerve strained, and every power exerted, surely the restoration of human nature to it's unalienable right, is such. Whatever obstacles, therefore, may hitherto have retarded the attempt, he that can appreciate the honour and happiness of his country, will think it time that we should attempt to surmount them.

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Civil, or rather social rights, we may remember, are reducible to three primary heads; the right of personal security; the right of personal liberty; and the right of private property. In a state of slavery the two last are wholly abolished, the person of the slave being at the absolute disposal of his master; and property, what he is incapable, in that state, either of acquiring, or holding, to his own use. Hence it will appear how perfectly irreconcilable a state of slavery is to the principles of a democracy, which, form the *basis* and *foundation* of our government. For our bill of rights, declares, "that all men are, by nature *equally free*, and independent, and have certain rights of which they cannot deprive or divest their posterity . . . namely, the enjoyment of life and *liberty*, with the means of *acquiring* and *possessing property*." This is, indeed, no more than a recognition of the first principles of the law of nature, which teaches us this equality, and enjoins every man, whatever advantages he may possess over another, as to the various qualities or endowments of body or mind, to practise the precepts of the law of nature to those who are in these respects his *inferiors*, no less than it enjoins his *inferiors* to practise them towards *him*. Since he has no more right to insult *them*, than they have to injure him. Nor does the *bare unkindness of nature*, or of fortune condemn a man to a *worse* condition than others, as to the enjoyment of common privileges. It would be hard to reconcile reducing the negroes to a state of slavery to these principles, unless we first degrade them below the rank of human beings, not only politically, but also physically and morally. . . . The Roman lawyers look upon those only properly as *persons*, who are *free*, putting *slaves* into the rank of *goods* and *chattels*; and the policy of our legislature, as well as the practise of slave-holders in America in general, seems conformable to that idea: but surely it is time we should admit the evidence of moral truth, and learn to regard them as our fellow men, and equals, except in those particulars where accident, or possibly nature, may have given us some advantage; a recompence, for which they, perhaps, enjoy in other respects.

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The extirpation of slavery from the United States, is a task equally arduous and momentous. To restore the blessings of liberty to near a million of oppressed individuals, who have groaned under the yoke of bondage, and to their descendants, is an object, which those who trust in Providence, will be convinced would not be unaided by the Divine Author of our being, should we invoke his blessing upon our endeavours. Yet human prudence forbids that we should precipitately engage in a work of such hazard as a general and simultaneous emancipation. The mind of a man must in some measure be formed for his future condition. The early impressions of obedience and submission, which slaves have received among us, and the no less habitual arrogance and assumption of superiority, among the whites, contribute, equally, to unfit the former for *freedom*, and the latter for *equality*.

.....

"But why not retain and *"incorporate the blacks into the state?"* This question has been well answered by Mr. Jefferson, and who is there so free from prejudices among us, as candidly to declare that he has none against such a measure? The recent scenes transacted in the French colonies in the West Indies are enough to make one shudder with the apprehension of realizing similar calamities in this country. Such probably would be the event of an attempt to smother those prejudices which have been cherished for a period of almost two centuries. Many persons who regret domestic slavery, contend that in abolishing it, we must also abolish that scion from it, which I have denominated *civil* slavery. That there must be no distinction of rights; that the descendants of Africans, as men, have an equal claim to all civil rights, as the descendants of Europeans; and upon being delivered from the yoke of bondage have a right to be admitted to all the privileges of a citizen. . . . But have not men when they enter into a state of society, a right to admit, or exclude any description of persons, as they think proper? If it be true, as Mr. Jefferson seems to suppose, that the Africans are really an inferior race of [Volume 1, Page 565] mankind⁵, will not sound policy advise their exclusion from a society in which they have not yet been admitted to participate in civil rights; and even to guard against such admission, at any future period, since it may eventually depreciate the whole national character? And if prejudices have taken such deep root in our minds, as to render it impossible to eradicate this opinion, ought not so general an error, if it be one, to be respected? Shall we not relieve the necessities of the naked diseased beggar, unless we will invite him to a seat at our table; nor afford him shelter from the inclemencies of the night air, unless we admit him also to share our bed! To deny that we ought to abolish slavery, without incorporating the Negroes into the state, and admitting them to a full participation of all our civil and social rights, appears to me to rest upon a similar foundation. The experiment so

far as it has been already made among us, proves that the emancipated blacks are not ambitious of civil rights. To prevent the generation of such an ambition, appears to comport with sound policy; for if it should ever rear its head, its partizans, as well as its opponents, will be enlisted by nature herself, and always ranged in formidable array against each other. We must therefore endeavour to find some middle course, between the tyrannical and iniquitous policy which holds so many human creatures in a state of grievous bondage, and that which would turn loose a numerous, starving, and enraged banditti, upon the innocent descendants of their former oppressors. *Nature, time* and *sound policy* must cooperate with each other to produce such a change: if either be neglected, the work will be incomplete, dangerous, and not improbably destructive.

The plan therefore which I would presume to propose for the consideration of my countrymen is such, as the number of slaves, the difference of their nature, and habits, and the state of agriculture, among us, might render it *expedient*, rather than *desirable* to adopt: and would partake partly of that proposed by Mr. Jefferson, and adopted in other states; and partly of such cautionary restrictions, as a due regard to situation and circumstances, and even to *general* prejudices, might recommend to those, who engage in so arduous, and perhaps unprecedented an undertaking.

1. Let every female born after the adoption of the plan, be free, and transmit freedom to all the descendants, both male and female.
2. As a compensation to those persons, in whose families such females, or their descendants may be born, for the expence and trouble of their maintenance during infancy, let them serve such persons until the age of twenty-eight years: let them then receive twenty dollars in money, two suits of clothes, suited to the season, a hat, a pair of shoes, and two blankets. If these things be not voluntarily done, let the county courts enforce the performance, upon complaint.
3. Let all negroe children be registered with the clerk of the county or corporation court, where born, within one month after their birth: let the person in whose family they are born, take a copy of the register, and deliver it to the mother, or if she die, to the child, before it is of the age of twenty-one years. Let any negro claiming to be free, and above the age of puberty, be considered as of the age of twenty-eight years, if he or she be not registered as required.
4. Let all the negro servants be put on the same footing as white servants and apprentices now are, in respect to food, raiment, correction, and the assignment of their service from one to another.
5. Let the children of negroes and mulattoes, born in the families of their parents, be bound to service by the overseers of the poor, until they shall attain the age of twenty-one years. Let all above that age, who are not house-keepers, nor have voluntarily bound themselves to service for a year before the first day of February annually, be then bound for the remainder of the year by the overseers of the poor. To stimulate the overseers of the poor to perform their duty, let them receive fifteen per cent. of their wages, from the person hiring them, as a compensation for their trouble, and ten per cent. per annum out of the wages of such as they may bind apprentices.
6. If at the age of twenty-seven years, the master of a negro or mulattoe servant be unwilling to pay his freedom dues, above mentioned, at the expiration of the succeeding year, let him bring him into the county court, clad and furnished with necessaries as before directed, and pay into court five dollars, for the servant, and thereupon let the court direct him to be hired by the overseers of the poor for the succeeding year, in the manner before directed.
7. Let no negro or mulatto be capable of taking, holding, or exercising, any public office, freehold, franchise, or privilege⁶, or any estate in lands or tenements, other than a lease not exceeding twenty-one years. . . . Nor of keeping, or bearing arms⁷, unless authorised so to do by some act of the general assembly, whose duration shall be limited to three years. Nor of contracting matrimony with any other than a negro or mulattoe; nor be an attorney; nor be a juror; nor a witness in any court of judicature, except against, or between negroes and mulattoes. Nor be an executor or administrator; nor capable of making any will or testament; nor maintain any

real action; nor be a trustee of lands or tenements himself, nor any other person to be a trustee to him or to his use.

8. Let all persons born after the passing of the act, be considered as entitled to the same mode of trial in criminal cases, as free negroes and mulattoes are now entitled to.

The restrictions in this plan may appear to savour strongly of prejudice: whoever proposes any plan for the [Volume 1, Page 566] abolition of slavery must either encounter, or accommodate himself, to prejudice. . . . I have preferred the latter; not that I pretend to be wholly exempt from it, but that I might avoid as many obstacles as possible to the completion of so desirable a work, as the abolition of slavery⁸. Though I am opposed to the banishment of the negroes, I wish not to encourage their future residence among us. By denying them the most valuable privileges which civil government affords, I wish to render it their inclination and their interest to seek those privileges in some other climate. There is an immense unsettled territory on this continent⁹ more congenial to their natural constitutions than ours, where they may perhaps be received upon more favourable terms than we can permit them to remain with us. Emigrating in small numbers, they will be able to effect settlements more easily than in large numbers; and without the expence or danger of numerous colonies. By releasing them from the yoke of bondage, and enabling them to seek happiness wherever they can hope to find it, we surely confer a benefit, which no one can sufficiently appreciate, who has not tasted of the bitter curse of compulsory servitude. By excluding them from offices, we may hope that the seeds of ambition would be buried too deep, ever to germinate: by disarming them, we may calm our apprehensions of their resentments arising from past sufferings; by incapacitating them from holding lands, we should add one inducement more to emigration, and effectually remove the foundation of ambition, and party-struggles. Their personal rights, and their property, though limited, would, whilst they remain among us, be under the protection of the laws; and their condition not at all inferior to that of the *labouring* poor in most other countries. Under such an arrangement we might reasonably hope, that time would either remove from us a race of men, whom we wish not to incorporate with us, or obliterate those prejudices, which now form an obstacle to such incorporation.

But it is not from the want of liberality to the emancipated race of blacks that I apprehend the most serious objections to the plan I have ventured to suggest. . . . Those slave holders (whose numbers I trust are few) who have been in the habit of considering their fellow creatures as no more than cattle, and the rest of the brute creation, will exclaim that they are to be deprived of their *property*, without compensation. Men who will shut their ears against this moral truth, that all men are by nature *free*, and *equal*, will not even be convinced that they do not possess a *property* in an *unborn* child: they will not distinguish between allowing to *unborn* generations the absolute and unalienable rights of human nature, and taking away that which they *now possess*; they will shut their ears against truth, should you tell them, the loss of the mother's labour for nine months, and the maintenance of a child for a dozen or fourteen years, is amply compensated by the service of that child for as many years more, as he has been an expence to them. But if the voice of reason, justice, and humanity, be not stifled by sordid avarice, or unfeeling tyranny, it would be easy to convince even those who have entertained such erroneous notions, that the right of one man over another is neither founded in nature, nor in sound policy. That it cannot extend to those *not in being*; that no man can in reality be *deprived* of what he doth not possess: that fourteen years labour by a young person in the prime of life, is an ample compensation for a few months of labour lost by the mother, and for the maintenance of a child, in that coarse homely manner that negroes are brought up: and lastly, that a state of slavery is not only perfectly incompatible with the principles of government, but with the safety and security of their masters. History evinces this. At this moment we have the most awful demonstrations of it. Shall we then neglect a duty, which every consideration, moral, religious, political, or *selfish*, recommends? Those who wish to postpone the measure, do not reflect that every day renders the task more arduous to be performed. We have now 300,000 slaves among us. Thirty years hence we shall have double the number. In sixty years we shall have 1,200,000: and in less than another century from this day, even that enormous number will be doubled. Milo acquired strength enough to carry an ox, by beginning with the ox while he was yet a calf. If we complain that the calf is too heavy for our shoulders, what will the ox be?

1. The American standard, at the commencement of those hostilities which terminated in the revolution, had these words upon it. . . .
AN APPEAL TO HEAVEN!

2. The Editor [Tucker] here takes the liberty of making his acknowledgments to the reverend Jeremiah Belknap, D. D. of Boston, and to Zephaniah Swift, Esq. representative in Congress from Connecticut, for their obliging communications; he hath occasionally made use of them in several parts of this Lecture, where he may have omitted referring to them.
3. This was the case under the laws of the state; but the act of 2 Cong. c. 33, for establishing an uniform militia throughout the United States, seems to have excluded all but free white men from bearing arms in the militia.
4. These arguments are, in fact, borrowed from the Spirit of Laws. Lib. xv. c. 2.
5. The celebrated David Hume, in his Essay on National Character, advances the same opinion; Doctor Beattie, in his Essay on Truth, controverts it with many powerful arguments. Early prejudices, had we more satisfactory information than we can possibly possess on the subject at present, would render an inhabitant of a country where negroe slavery prevails, an improper umpire between them.
6. The Romans, before the time of Justinian, adopted a similar policy, in respect to their freed-men. Gibbon, vol. 1, 58.
7. See Spirit of Laws, 12, 15, 1. Blackst. Com. 417.
8. If, upon experiment, it should appear advisable to hasten the operation of this plan, or to enlarge the privileges of free negroes, it will be both easier, and safer so to do, than to retrench any privilege once granted, or to retard the operation of the original plan, after it has been adopted, and in part carried into execution.
9. The immense territory of Louisiana, which extends as far south as the lat. 25° and the two Floridas, would probably afford a ready asylum for such as might choose to become Spanish subjects. How far their political rights might be enlarged in these countries, is, however, questionable: but the climate is undoubtedly more favourable to the African constitution, than ours, and from this cause it is not improbable that emigrations from these states would in time be very considerable.

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(1852) FREDERICK DOUGLASS, "WHAT, TO THE SLAVE, IS THE FOURTH OF JULY"

On July 5, 1852, Frederick Douglass was invited to address the citizens of his hometown, Rochester, New York. Whatever the expectations of his audience on that 76th anniversary of the signing of the Declaration of Independence, Douglass used the occasion not to celebrate the nation's triumphs but to remind all of its continuing enslavement of millions of people. Douglass's speech appears below.

Mr. President, Friends and Fellow Citizens: He who could address this audience without a quailing sensation, has stronger nerves than I have. I do not remember ever to have appeared as a speaker before any assembly more shrinkingly, nor with greater distrust of my ability, than I do this day. A feeling has crept over me, quite unfavorable to the exercise of my limited powers of speech. The task before me is one which requires much previous thought and study for its proper performance. I know that apologies of this sort are generally considered flat and unmeaning. I trust, however, that mine will not be so considered. Should I seem at ease, my appearance would much misrepresent me. The little experience I have had in addressing public meetings, in country schoolhouses, avails me nothing on the present occasion.

The papers and placards say, that I am to deliver a 4th [of] July oration. This certainly sounds large, and out of the common way, for it is true that I have often had the privilege to speak in this beautiful Hall, and to address many who now honor me with their presence. But neither their familiar faces, nor the perfect gage I think I have of Corinthian Hall, seems to free me from embarrassment.

The fact is, ladies and gentlemen, the distance between this platform and the slave plantation, from which I escaped, is considerable—and the difficulties to be overcome in getting from the latter to the former, are by no means slight. That I am here today is, to me, a matter of astonishment as well as of gratitude. You will not, therefore, be surprised, if in what I have to say, I evince no elaborate preparation, nor grace my speech with any high sounding exordium. With little experience and with less learning, I have been able to throw my thoughts hastily and imperfectly together; and trusting to your patient and generous indulgence, I will proceed to lay them before you.

This, for the purpose of this celebration, is the 4th of July. It is the birthday of your National Independence, and of your political freedom. This, to you, is what the Passover was to the emancipated people of God. It carries your minds back to the day, and to the act of your great deliverance; and to the signs, and to the wonders, associated with that act, and that day. This celebration also marks the beginning of another year of your national life; and reminds you that the Republic of America is now 76 years old. I am glad, fellow-citizens, that your nation is so young. Seventy-six years, though a good old age for a man, is but a mere speck in the life of a nation. Three score years and ten is the allotted time for individual men; but nations number their years by thousands. According to this fact, you are, even now, only in the beginning of your national career, still lingering in the period of childhood. I repeat, I am glad this is so. There is hope in the thought, and hope is much needed, under the dark clouds which lower above the horizon. The eye of the reformer is met with angry flashes, portending disastrous times; but his heart may well beat lighter

at the thought that America is young, and that she is still in the impressible stage of her existence. May he not hope that high lessons of wisdom, of justice and of truth, will yet give direction to her destiny? Were the nation older, the patriot's heart might be sadder, and the reformer's brow heavier. Its future might be shrouded in gloom, and the hope of its prophets go out in sorrow. There is consolation in the thought that America is young. Great streams are not easily turned from channels, worn deep in the course of ages. They may sometimes rise in quiet and stately majesty, and inundate the land, refreshing and fertilizing the earth with their mysterious properties. They may also rise in wrath and fury, and bear away, on their angry waves, the accumulated wealth of years of toil and hardship. They, however, gradually flow back to the same old channel, and flow on as serenely as ever. But, while the river may not be turned aside, it may dry up, and leave nothing behind but the withered branch, and the unsightly rock, to howl in the abyss-sweeping wind, the sad tale of departed glory. As with rivers so with nations.

Fellow-citizens, I shall not presume to dwell at length on the associations that cluster about this day. The simple story of it is that, 76 years ago, the people of this country were British subjects. The style and title of your "sovereign people" (in which you now glory) was not then born. You were under the British Crown. Your fathers esteemed the English Government as the home government; and England as the fatherland. This home government, you know, although a considerable distance from your home, did, in the exercise of its parental prerogatives, impose upon its colonial children, such restraints, burdens and limitations, as, in its mature judgment, it deemed wise, right and proper.

But, your fathers, who had not adopted the fashionable idea of this day, of the infallibility of government, and the absolute character of its acts, presumed to differ from the home government in respect to the wisdom and the justice of some of those burdens and restraints. They went so far in their excitement as to pronounce the measures of government unjust, unreasonable, and oppressive, and altogether such as ought not to be quietly submitted to. I scarcely need say, fellow citizens, that my opinion of those measures fully accords with that of your fathers. Such a declaration of agreement on my part would not be worth much to anybody. It would, certainly, prove nothing, as to what part I might have taken, had I lived during the great controversy of 1776. To say now that America was right, and England wrong, is exceedingly easy. Everybody can say it; the dastard, not less than the noble brave, can flippantly discant on the tyranny of England towards the American Colonies. It is fashionable to do so; but there was a time when to pronounce against England, and in favor of the cause of the colonies, tried men's souls. They who did so were accounted in their day, plotters of mischief, agitators and rebels, dangerous men. To side with the right, against the wrong, with the weak against the strong, and with the oppressed against the oppressor! here lies the merit, and the one which, of all others, seems unfashionable in our day. The cause of liberty may be stabbed by the men who glory in the deeds of your fathers. But, to proceed.

Feeling themselves harshly and unjustly treated by the home government, your fathers, like men of honesty, and men of spirit, earnestly sought redress. They petitioned and remonstrated; they did so in a decorous, respectful, and loyal manner. Their conduct was wholly unexceptionable. This, however, did not answer the purpose. They saw themselves treated with sovereign indifference, coldness and scorn. Yet they persevered. They were not the men to look back.

As the sheet anchor takes a firmer hold, when the ship is tossed by the storm, so did the cause of your fathers grow stronger, as it breasted the chilling blasts of kingly displeasure. The greatest and best of British statesmen admitted its justice, and the loftiest eloquence of the British Senate came to its support. But, with that blindness which seems to be the unvarying characteristic of tyrants, since Pharaoh and his hosts were drowned in the Red Sea, the British Government persisted in the exactions complained of.

The madness of this course, we believe, is admitted now, even by England; but we fear the lesson is wholly lost on our present ruler.

Oppression makes a wise man mad. Your fathers were wise men, and if they did not go mad, they became restive under this treatment. They felt themselves the victims of grievous wrongs, wholly incurable in their colonial capacity. With brave men there is always a remedy for oppression. Just here, the idea of a total separation of the colonies from the crown was born! It was a startling idea, much more so, than we, at this distance of time, regard it. The timid and the prudent (as has been intimated) of that day, were, of course, shocked and alarmed by it. Such people lived then, had lived before, and will, probably, ever have a place on this planet; and their course, in respect to any great change, (no matter how great the good to be attained, or the wrong to be redressed by it), may be calculated with as much precision as can be the course of the stars. They hate all changes, but silver, gold and copper change! Of this sort of change they are always strongly in favor.

These people were called Tories in the days of your fathers; and the appellation, probably, conveyed the same idea that is meant by a more modern, though a somewhat less euphonious term, which we often find in our papers, applied to some of our old politicians.

Their opposition to the then dangerous thought was earnest and powerful; but, amid all their terror and affrighted vociferations against it, the alarming and revolutionary idea moved on, and the country with it.

On the second of July, 1776, the old Continental Congress, to the dismay of the lovers of ease, and the worshipers of property, clothed that dreadful idea with all the authority of national sanction. They did so in the form of a resolution; and as we seldom hit upon resolutions, drawn up in our day whose transparency is at all equal to this, it may refresh your minds and help my story if I read it.

[We] 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.

Citizens, your fathers made good that resolution. They succeeded; and to-day you reap the fruits of their success. The freedom gained is yours; and you, therefore, may properly celebrate this anniversary. The 4th of July is the first great fact in your nation's history—the very ring—bolt in the chain of your yet undeveloped destiny.

Pride and patriotism, not less than gratitude, prompt you to celebrate and to hold it in perpetual remembrance. I have said that the Declaration of Independence is the ring-bolt to the chain of your nation's destiny; so, indeed, I regard it. The principles contained in that instrument are saving

principles. Stand by those principles, be true to them on all occasions, in all places, against all foes, and at whatever cost.

From the round top of your ship of state, dark and threatening clouds may be seen. Heavy billows, like mountains in the distance, disclose to the leeward huge forms of flinty rocks! That bolt drawn, that chain broken, and all is lost. Cling to this day—cling to it, and to its principles, with the grasp of a storm-tossed mariner to a spar at midnight.

The coming into being of a nation, in any circumstances, is an interesting event. But, besides general considerations, there were peculiar circumstances which make the advent of this republic an event of special attractiveness.

The whole scene, as I look back to it, was simple, dignified and sublime.

The population of the country, at the time, stood at the insignificant number of three millions. The country was poor in the munitions of war. The population was weak and scattered, and the country a wilderness unsubdued. There were then no means of concert and combination, such as exist now. Neither steam nor lightning had then been reduced to order and discipline. From the Potomac to the Delaware was a journey of many days. Under these, and innumerable other disadvantages, your fathers declared for liberty and independence and triumphed.

Fellow Citizens, I am not wanting in respect for the fathers of this republic. The signers of the Declaration of Independence were brave men. They were great men too—great enough to give fame to a great age. It does not often happen to a nation to raise, at one time, such a number of truly great men. The point from which I am compelled to view them is not, certainly, the most favorable; and yet I cannot contemplate their great deeds with less than admiration. They were statesmen, patriots and heroes, and for the good they did, and the principles they contended for, I will unite with you to honor their memory.

They loved their country better than their own private interests; and, though this is not the highest form of human excellence, all will concede that it is a rare virtue, and that when it is exhibited, it ought to command respect. He who will, intelligently, lay down his life for his country, is a man whom it is not in human nature to despise. Your fathers staked their lives, their fortunes, and their sacred honor, on the cause of their country. In their admiration of liberty, they lost sight of all other interests.

They were peace men; but they preferred revolution to peaceful submission to bondage. They were quiet men; but they did not shrink from agitating against oppression. They showed forbearance; but that they knew its limits. They believed in order; but not in the order of tyranny. With them, nothing was “settled” that was not right. With them, justice, liberty and humanity were “final;” not slavery and oppression. You may well cherish the memory of such men. They were great in their day and generation. Their solid manhood stands out the more as we contrast it with these degenerate times.

How circumspect, exact and proportionate were all their movements! How unlike the politicians of an hour! Their statesmanship looked beyond the passing moment, and stretched away in strength into the distant future. They seized upon eternal principles, and set a glorious example in their defense. Mark them!

Fully appreciating the hardship to be encountered, firmly believing in the right of their cause, honorably inviting the scrutiny of an on-looking world, reverently appealing to heaven to attest their sincerity, soundly comprehending the solemn responsibility they were about to assume, wisely measuring the terrible odds against them, your fathers, the fathers of this republic, did, most deliberately, under the inspiration of a glorious patriotism, and with a sublime faith in the great principles of justice and freedom, lay deep the corner-stone of the national superstructure, which has risen and still rises in grandeur around you.

Of this fundamental work, this day is the anniversary. Our eyes are met with demonstrations of joyous enthusiasm. Banners and pennants wave exultingly on the breeze. The din of business, too, is hushed. Even Mammon seems to have quitted his grasp on this day. The ear-piercing fife and the stirring drum unite their accents with the ascending peal of a thousand church bells. Prayers are made, hymns are sung, and sermons are preached in honor of this day; while the quick martial tramp of a great and multitudinous nation, echoed back by all the hills, valleys and mountains of a vast continent, bespeak the occasion one of thrilling and universal interests nation's jubilee.

Friends and citizens, I need not enter further into the causes which led to this anniversary. Many of you understand them better than I do. You could instruct me in regard to them. That is a branch of knowledge in which you feel, perhaps, a much deeper interest than your speaker. The causes which led to the separation of the colonies from the British crown have never lacked for a tongue. They have all been taught in your common schools, narrated at your firesides, unfolded from your pulpits, and thundered from your legislative halls, and are as familiar to you as household words. They form the staple of your national poetry and eloquence.

I remember also that as a people Americans are remarkably familiar with all facts which make in their own favor. This is esteemed by some as a national trait—perhaps a national weakness. It is a fact, that whatever makes for the wealth or for the reputation of Americans, and can be had cheap will be found by Americans. I shall not be charged with slandering Americans if I say I think the American side of any question may be safely left in American hands.

I leave, therefore, the great deeds of your fathers to other gentlemen whose claim to have been regularly descended will be less likely to be disputed than mine!

My business, if I have any here to-day, is with the present. The accepted time with God and his cause is the ever-living now.

Trust no future, however pleasant, Let the dead past bury its dead; Act, act in the living present, Heart within, and God overhead.

We have to do with the past only as we can make it useful to the present and to the future. To all inspiring motives, to noble deeds which can be gained from the past, we are welcome. But now is the time, the important time. Your fathers have lived, died, and have done their work, and have done much of it well. You live and must die, and you must do your work. You have no right to enjoy a child's share in the labor of your fathers, unless your children are to be blest by your labors. You have no right to wear out and waste the hard-earned fame of your fathers to cover your indolence. Sydney Smith tells us that men seldom eulogize the wisdom and virtues of their fathers, but to excuse some folly or wickedness of their own. This truth is not a doubtful one. There are

illustrations of it near and remote, ancient and modern. It was fashionable, hundreds of years ago, for the children of Jacob to boast, we have "Abraham to our father," when they had long lost Abraham's faith and spirit. That people contented themselves under the shadow of Abraham's great name, while they repudiated the deeds which made his name great. Need I remind you that a similar thing is being done all over this country to-day? Need I tell you that the Jews are not the only people who built the tombs of the prophets, and garnished the sepulchres of the righteous? Washington could not die till he had broken the chains of his slaves. Yet his monument is built up by the price of human blood, and the traders in the bodies and souls of men, shout —"We have Washington to our father."—Alas! that it should be so; yet so it is.

The evil that men do, lives after them, The good is oft' interred with their bones.

Fellow-citizens, pardon me, allow me to ask, why am I called upon to speak here to-day? What have I, or those I represent, to do with your national independence? Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us? and am I, therefore, called upon to bring our humble offering to the national altar, and to confess the benefits and express devout gratitude for the blessings resulting from your independence to us?

Would to God, both for your sakes and ours, that an affirmative answer could be truthfully returned to these questions! Then would my task be light, and my burden easy and delightful. For who is there so cold, that a nation's sympathy could not warm him? Who so obdurate and dead to the claims of gratitude, that would not thankfully acknowledge such priceless benefits? Who so stolid and selfish, that would not give his voice to swell the hallelujahs of a nation's jubilee, when the chains of servitude had been torn from his limbs? I am not that man. In a case like that, the dumb might eloquently speak, and the "lame man leap as an hart."

But, such is not the state of the case. I say it with a sad sense of the disparity between us. I am not included within the pale of this glorious anniversary! Your high independence only reveals the immeasurable distance between us. The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought life and healing to you, has brought stripes and death to me. This Fourth of July is yours, not mine. You may rejoice, I must mourn. To drag a man in fetters into the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony. Do you mean, citizens, to mock me, by asking me to speak to-day? If so, there is a parallel to your conduct. And let me warn you that it is dangerous to copy the example of a nation whose crimes, lowering up to heaven, were thrown down by the breath of the Almighty, burying that nation in irrecoverable ruin! I can to-day take up the plaintive lament of a peeled and woe-smitten people!

"By the rivers of Babylon, there we sat down. Yea! we wept when we remembered Zion. We hanged our harps upon the willows in the midst thereof. For there, they that carried us away captive, required of us a song; and they who wasted us required of us mirth, saying, Sing us one of the songs of Zion. How can we sing the Lord's song in a strange land? If I forget thee, O Jerusalem, let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth."

Fellow-citizens; above your national, tumultuous joy, I hear the mournful wail of millions! whose chains, heavy and grievous yesterday, are, to-day, rendered more intolerable by the jubilee shouts that reach them. If I do forget, if I do not faithfully remember those bleeding children of sorrow this day, "may my right hand forget her cunning, and may my tongue cleave to the roof of my mouth!" To forget them, to pass lightly over their wrongs, and to chime in with the popular theme, would be treason most scandalous and shocking, and would make me a reproach before God and the world. My subject, then fellow-citizens, is American slavery. I shall see, this day, and its popular characteristics, from the slave's point of view. Standing, there, identified with the American bondman, making his wrongs mine, I do not hesitate to declare, with all my soul, that the character and conduct of this nation never looked blacker to me than on this 4th of July! Whether we turn to the declarations of the past, or to the professions of the present, the conduct of the nation seems equally hideous and revolting. America is false to the past, false to the present, and solemnly binds herself to be false to the future. Standing with God and the crushed and bleeding slave on this occasion, I will, in the name of humanity which is outraged, in the name of liberty which is fettered, in the name of the constitution and the Bible, which are disregarded and trampled upon, dare to call in question and to denounce, with all the emphasis I can command, everything that serves to perpetuate slavery—the great sin and shame of America! "I will not equivocate; I will not excuse;" I will use the severest language I can command; and yet not one word shall escape me that any man, whose judgment is not blinded by prejudice, or who is not at heart a slaveholder, shall not confess to be fight and just. But I fancy I hear some one of my audience say, it is just in this circumstance that you and your brother abolitionists fail to make a favorable impression on the public mind. Would you argue more, and denounce less, would you persuade more, and rebuke less, your cause would be much more likely to succeed. But, I submit, where all is plain there is nothing to be argued. What point in the anti-slavery creed would you have me argue? On what branch of the subject do the people of this country need light? Must I undertake to prove that the slave is a man? That point is conceded already. Nobody doubts it. The slaveholders themselves acknowledge it in the enactment of laws for their government. They acknowledge it when they punish disobedience on the part of the slave. There are seventy-two crimes in the State of Virginia, which, if committed by a black man, (no matter how ignorant he be), subject him to the punishment of death; while only two of the same crimes will subject a white man to the like punishment. What is this but the acknowledgement that the slave is a moral, intellectual and responsible being? The manhood of the slave is conceded. It is admitted in the fact that Southern statute books are covered with enactments forbidding, under severe fines and penalties, the teaching of the slave to read or to write. When you can point to any such laws, in reference to the beasts of the field, then I may consent to argue the manhood of the slave. When the dogs in your streets, when the fowls of the air, when the cattle on your hills, when the fish of the sea, and the reptiles that crawl, shall be unable to distinguish the slave from a brute, their will I argue with you that the slave is a man!

For the present, it is enough to affirm the equal manhood of the Negro race. Is it not astonishing that, while we are ploughing, planting and reaping, using all kinds of mechanical tools, erecting houses, constructing bridges, building ships, working in metals of brass, iron, copper, silver and gold; that, while we are reading, writing and cyphering, acting as clerks, merchants and secretaries, having among us lawyers, doctors, ministers, poets, authors, editors, orators and teachers; that, while we are engaged in all manner of enterprises common to other men, digging gold in California, capturing the whale in the Pacific, feeding sheep and cattle on the hill-side, living, moving, acting,

thinking, planning, living in families as husbands, wives and children, and, above all, confessing and worshipping the Christian's God, and looking hopefully for life and immortality beyond the grave, we are called upon to prove that we are men!

Would you have me argue that man is entitled to liberty? that he is the rightful owner of his own body? You have already declared it. Must I argue the wrongfulness of slavery? Is that a question for Republicans? Is it to be settled by the rules of logic and argumentation, as a matter beset with great difficulty, involving a doubtful application of the principle of justice, hard to be understood? How should I look to-day, in the presence of Americans, dividing, and subdividing a discourse, to show that men have a natural right to freedom? speaking of it relatively, and positively, negatively, and affirmatively. To do so, would be to make myself ridiculous, and to offer an insult to your understanding. There is not a man beneath the canopy of heaven, that does not know that slavery is wrong for him.

What, am I to argue that it is wrong to make men brutes, to rob them of their liberty, to work them without wages, to keep them ignorant of their relations to their fellow men, to beat them with sticks, to flay their flesh with the lash, to load their limbs with irons, to hunt them with dogs, to sell them at auction, to sunder their families, to knock out their teeth, to bum their flesh, to starve them into obedience and submission to their masters? Must I argue that a system thus marked with blood and stained with pollution is wrong? No! I will not. I have better employments for my time and strength than such arguments would imply.

What, then, remains to be argued? Is it that slavery is not divine; that God did not establish it; that our doctors of divinity are mistaken? There is blasphemy in the thought. That which is inhuman, cannot be divine! Who can reason on such a proposition? They that can, may; I cannot. The time for such argument is past.

At a time like this, scorching irony, not convincing argument, is needed. O! had I the ability, and could I reach the nation's ear, I would, to-day, pour out a fiery stream of biting ridicule, blasting reproach, withering sarcasm, and stern rebuke. For it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind, and the earthquake. The feeling of the nation must be quickened; the conscience of the nation must be roused; the propriety of the nation must be startled; the hypocrisy of the nation must be exposed; and its crimes against God and man must be proclaimed and denounced.

What, to the American slave, is your Fourth of July? I answer: a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciations of tyrants, brass fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade, and solemnity, are, to him, mere bombast, fraud, deception, impiety, and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices, more shocking and bloody, than are the people of these United States, at this very hour.

Go where you may, search where you will, roam through all the monarchies and despotisms of the old world, travel through South America, search out every abuse, and when you have found the

last, lay your facts by the side of the everyday practices of this nation, and you will say with me, that, for revolting barbarity and shameless hypocrisy, America reigns without a rival. Take the American slave-trade, which, we are told by the papers, is especially prosperous just now. Ex-Senator Benton tells us that the price of men was never higher than now. He mentions the fact to show that slavery is in no danger. This trade is one of the peculiarities of American institutions. It is carried on in all the large towns and cities in one-half of this confederacy; and millions are pocketed every year, by dealers in this horrid traffic. In several states, this trade is a chief source of wealth. It is called (in contradistinction to the foreign slave-trade) "the internal slave trade." It is, probably, called so, too, in order to divert from it the horror with which the foreign slave-trade is contemplated. That trade has long since been denounced by this government, as piracy. It has been denounced with burning words, from the high places of the nation, as an execrable traffic. To arrest it, to put an end to it, this nation keeps a squadron, at immense cost, on the coast of Africa. Everywhere, in this country, it is safe to speak of this foreign slave-trade, as a most inhuman traffic, opposed alike to the laws of God and of man. The duty to extirpate and destroy it, is admitted even by our doctors of divinity. In order to put an end to it, some of these last have consented that their colored brethren (nominally free) should leave this country, and establish themselves on the western coast of Africa! It is, however, a notable fact that, while so much execration is poured out by Americans upon those engaged in the foreign slave-trade, the men engaged in the slave-trade between the states pass without condemnation, and their business is deemed honorable.

Behold the practical operation of this internal slave-trade, the American slave-trade, sustained by American politics and America religion. Here you will see men and women reared like swine for the market. You know what is a swine-drover? I will show you a man-drover. They inhabit all our Southern States. They perambulate the country, and crowd the highways of the nation, with droves of human stock. You will see one of these human flesh-jobbers, armed with pistol, whip and bowie-knife, driving a company of a hundred men, women, and children, from the Potomac to the slave market at New Orleans. These wretched people are to be sold singly, or in lots, to suit purchasers. They are food for the cotton-field, and the deadly sugar-mill. Mark the sad procession, as it moves wearily along, and the inhuman wretch who drives them. Hear his savage yells and his blood-chilling oaths, as he hurries on his affrighted captives! There, see the old man, with locks thinned and gray. Cast one glance, if you please, upon that young mother, whose shoulders are bare to the scorching sun, her briny tears falling on the brow of the babe in her arms. See, too, that girl of thirteen, weeping, yes! weeping, as she thinks of the mother from whom she has been torn! The drove moves tardily. Heat and sorrow have nearly consumed their strength; suddenly you hear a quick snap, like the discharge of a rifle; the fetters clank, and the chain rattles simultaneously; your ears are saluted with a scream, that seems to have torn its way to the center of your soul! The crack you heard, was the sound of the slave-whip; the scream you heard, was from the woman you saw with the babe. Her speed had faltered under the weight of her child and her chains! that gash on her shoulder tells her to move on. Follow the drove to New Orleans. Attend the auction; see men examined like horses; see the forms of women rudely and brutally exposed to the shocking gaze of American slave-buyers. See this drove sold and separated forever; and never forget the deep, sad sobs that arose from that scattered multitude. Tell me citizens, where, under the sun, you can witness a spectacle more fiendish and shocking. Yet this is but a glance at the American slave-trade, as it exists, at this moment, in the ruling part of the United States.

I was born amid such sights and scenes. To me the American slave-trade is a terrible reality. When a child, my soul was often pierced with a sense of its horrors. I lived on Philpot Street, Fell's Point, Baltimore, and have watched from the wharves, the slave ships in the Basin, anchored from the shore, with their cargoes of human flesh, waiting for favorable winds to waft them down the Chesapeake. There was, at that time, a grand slave mart kept at the head of Pratt Street, by Austin Woldfolk. His agents were sent into every town and county in Maryland, announcing their arrival, through the papers, and on flaming hand-bills headed "Cash for Negroes." These men were generally well dressed men, and very captivating in their manners. Ever ready to drink, to treat, and to gamble. The fate of many a slave has depended upon the turn of a single card; and many a child has been snatched from the arms of its mother by bargains arranged in a state of brutal drunkenness.

The flesh-mongers gather up their victims by dozens, and drive them, chained, to the general depot at Baltimore. When a sufficient number have been collected here, a ship is chartered, for the purpose of conveying the forlorn crew to Mobile, or to New Orleans. From the slave prison to the ship, they are usually driven in the darkness of night; for since the antislavery agitation, a certain caution is observed.

In the deep, still darkness of midnight I have been often aroused by the dead heavy footsteps, and the piteous cries of the chained gangs that passed our door. The anguish of my boyish heart was intense; and I was often consoled, when speaking to my mistress in the morning, to hear her say that the custom was very wicked; that she hated to hear the rattle of the chains, and the heart-rending cries. I was glad to find one who sympathized with me in my horror. Fellow-citizens, this murderous traffic is, to-day, in active operation in this boasted republic. In the solitude of my spirit, I see clouds of dust raised on the highways of the South; I see the bleeding footsteps; I hear the doleful wail of fettered humanity, on the way to the slave markets, where the victims are to be sold like horses, sheep and swine, knocked off to the highest bidder. There I see the tenderest ties ruthlessly broken, to gratify the lust, caprice and rapacity of the buyers and sellers of men. My soul sickens at the sight.

Is this the land your Fathers loved, The freedom which they toiled to win? Is this the earth whereon they moved? Are these the graves they slumber in?

But a still more inhuman, disgraceful, and scandalous state of things remains to be presented. By an act of the American Congress, not yet two years old, slavery has been nationalized in its most horrible and revolting form. By that act, Mason & Dixon's line has been obliterated; New York has become as Virginia; and the power to hold, hunt, and sell men, women, and children as slaves remains no longer a mere state institution, but is now an institution of the whole United States. The power is co-extensive with the Star-Spangled Banner and American Christianity. Where these go, may also go the merciless slave-hunter. Where these are, man is not sacred. He is a bird for the sportsman's gun. By that most foul and fiendish of all human decrees, the liberty and person of every man are put in peril. Your broad republican domain is hunting ground for men. Not for thieves and robbers, enemies of society, merely, but for men guilty of no crime. Your lawmakers have commanded all good citizens to engage in this hellish sport. Your President, your Secretary of State, your lords, nobles and ecclesiastics enforce, as a duty you owe to your free and glorious country, and to your God, that you do this accursed thing. Not fewer than forty Americans have,

within the past two years, been hunted down and, without a moment's warning, hurried away in chains, and consigned to slavery and excruciating torture. Some of these have had wives and children, dependent on them for bread; but of this, no account was made. The right of the hunter to his prey stands superior to the right of marriage, and to all rights in this republic, the rights of God included! For black men there are neither law, justice, humanity, nor religion. The Fugitive Slave Law makes makes mercy to them a crime; and bribes the judge who tries them. An American judge gets ten dollars for every victim he consigns to slavery, and five, when he fails to do so. The oath of any two villains is sufficient, under this hell-black enactment, to send the most pious and exemplary black man into the remorseless jaws of slavery! His own testimony is nothing. He can bring no witnesses for himself. The minister of American justice is bound by the law to hear but one side; and that side, is the side of the oppressor. Let this damning fact be perpetually told. Let it be thundered around the world, that, in tyrant-killing, king-hating, people-loving, democratic, Christian America, the seats of justice are filled with judges, who hold their offices under an open and palpable bribe, and are bound, in deciding in the case of a man's liberty, to hear only his accusers!

In glaring violation of justice, in shameless disregard of the forms of administering law, in cunning arrangement to entrap the defenseless, and in diabolical intent, this Fugitive Slave Law stands alone in the annals of tyrannical legislation. I doubt if there be another nation on the globe, having the brass and the baseness to put such a law on the statute-book. If any man in this assembly thinks differently from me in this matter, and feels able to disprove my statements, I will gladly confront him at any suitable time and place he may select.

I take this law to be one of the grossest infringements of Christian Liberty, and, if the churches and ministers of our country were not stupidly blind, or most wickedly indifferent, they, too, would so regard it.

At the very moment that they are thanking God for the enjoyment of civil and religious liberty, and for the right to worship God according to the dictates of their own consciences, they are utterly silent in respect to a law which robs religion of its chief significance, and makes it utterly worthless to a world lying in wickedness. Did this law concern the "mint, anise and cummin" —abridge the right to sing psalms, to partake of the sacrament, or to engage in any of the ceremonies of religion, it would be smitten by the thunder of a thousand pulpits. A general shout would go up from the church, demanding repeal, repeal, instant repeal! And it would go hard with that politician who presumed to solicit the votes of the people without inscribing this motto on his banner. Further, if this demand were not complied with, another Scotland would be added to the history of religious liberty, and the stern old Covenanters would be thrown into the shade. A John Knox would be seen at every church door, and heard from every pulpit, and Fillmore would have no more quarter than was shown by Knox, to the beautiful, but treacherous queen Mary of Scotland. The fact that the church of our country, (with fractional exceptions), does not esteem "the Fugitive Slave Law" as a declaration of war against religious liberty, implies that that church regards religion simply as a form of worship, an empty ceremony, and not a vital principle, requiring active benevolence, justice, love and good will towards man. It esteems sacrifice above mercy; psalm-singing above right doing; solemn meetings above practical righteousness. A worship that can be conducted by persons who refuse to give shelter to the houseless, to give bread to the hungry, clothing to the naked, and who enjoin obedience to a law forbidding these acts of mercy, is a curse, not a blessing

to mankind. The Bible addresses all such persons as “scribes, Pharisees, hypocrites, who pay tithe of mint, anise, and cummin, and have omitted the weightier matters of the law, judgment, mercy and faith.” But the church of this country is not only indifferent to the wrongs of the slave, it actually takes sides with the oppressors. It has made itself the bulwark of American slavery, and the shield of American slave-hunters. Many of its most eloquent Divines, who stand as the very lights of the church, have shamelessly given the sanction of religion and the Bible to the whole slave system. They have taught that man may, properly, be a slave; that the relation of master and slave is ordained of God; that to send back an escaped bondman to his master is clearly the duty of all the followers of the Lord Jesus Christ; and this horrible blasphemy is palmed off upon the world for Christianity.

For my part, I would say, Welcome infidelity! welcome atheism! welcome anything—in preference to the gospel, as preached by those divines. They convert the very name of religion into an engine of tyranny, and barbarous cruelty, and serve to confirm more infidels, in this age, than all the infidel writings of Thomas Paine, Voltaire, and Bolingbroke, put together, have done! These ministers make religion a cold and flinty-hearted thing, having neither principles of right action, nor bowels of compassion. They strip the love of God of its beauty, and leave the throng of religion a huge, horrible, repulsive form. It is a religion for oppressors, tyrants, man-stealers, and thugs. It is not that “pure and undefiled religion” which is from above, and which is “first pure, then peaceable, easy to be entreated, full of mercy and good fruits, without partiality and without hypocrisy.” But a religion which favors the rich against the poor; which exalts the proud above the humble; which divides mankind into two classes, tyrants and slaves; which says to the man in chains, stay there; and to the oppressor, oppress on; it is a religion which may be professed and enjoyed by all the robbers and enslavers of mankind; it makes God a respecter of persons, denies his fatherhood of the race, and tramples in the dust the great truth of the brotherhood of man. All this we affirm to be true of the popular church, and the popular worship of our land and nation—a religion, a church, and a worship which, on the authority of inspired wisdom, we pronounce to be an abomination in the sight of God. In the language of Isaiah, the American church might be well addressed, “Bring no more vain oblations; incense is an abomination unto me: the new moons and Sabbaths, the calling of assemblies, I cannot away with; it is iniquity even the solemn meeting. Your new moons and your appointed feasts my soul hateth. They are a trouble to me; I am weary to bear them; and when ye spread forth your hands I will hide mine eyes from you. Yea! when ye make many prayers, I will not hear. Your hands are full of blood; cease to do evil, learn to do well; seek judgment; relieve the oppressed; judge for the fatherless; plead for the widow.”

The American church is guilty, when viewed in connection with what it is doing to uphold slavery; but it is superlatively guilty when viewed in connection with its ability to abolish slavery.

The sin of which it is guilty is one of omission as well as of commission. Albert Barnes but uttered what the common sense of every man at all observant of the actual state of the case will receive as truth, when he declared that “There is no power out of the church that could sustain slavery an hour, if it were not sustained in it.”

Let the religious press, the pulpit, the Sunday school, the conference meeting, the great ecclesiastical, missionary, Bible and tract associations of the land array their immense powers against slavery and slave-holding; and the whole system of crime and blood would be scattered to

the winds; and that they do not do this involves them in the most awful responsibility of which the mind can conceive.

In prosecuting the anti-slavery enterprise, we have been asked to spare the church, to spare the ministry; but how, we ask, could such a thing be done? We are met on the threshold of our efforts for the redemption of the slave, by the church and ministry of the country, in battle arrayed against us; and we are compelled to fight or flee. From what quarter, I beg to know, has proceeded a fire so deadly upon our ranks, during the last two years, as from the Northern pulpit? As the champions of oppressors, the chosen men of American theology have appeared—men, honored for their so-called piety, and their real learning. The Lords of Buffalo, the Springs of New York, the Lathrops of Auburn, the Coxes and Spencers of Brooklyn, the Gannets and Sharps of Boston, the Deweys of Washington, and other great religious lights of the land, have, in utter denial of the authority of Him, by whom they professed to be called to the ministry, deliberately taught us, against the example of the Hebrews and against the remonstrance of the Apostles, they teach “that we ought to obey man’s law before the law of God.”

My spirit wearies of such blasphemy; and how such men can be supported, as the “standing types and representatives of Jesus Christ,” is a mystery which I leave others to penetrate. In speaking of the American church, however, let it be distinctly understood that I mean the great mass of the religious organizations of our land. There are exceptions, and I thank God that there are. Noble men may be found, scattered all over these Northern States, of whom Henry Ward Beecher of Brooklyn, Samuel J. May of Syracuse, and my esteemed friend [Rev. R. R. Raymond] on the platform, are shining examples; and let me say further, that upon these men lies the duty to inspire our ranks with high religious faith and zeal, and to cheer us on in the great mission of the slave’s redemption from his chains.

One is struck with the difference between the attitude of the American church towards the anti-slavery movement, and that occupied by the churches in England towards a similar movement in that country. There, the church, true to its mission of ameliorating, elevating, and improving the condition of mankind, came forward promptly, bound up the wounds of the West Indian slave, and restored him to his liberty. There, the question of emancipation was a high[ly] religious question. It was demanded, in the name of humanity, and according to the law of the living God. The Sharps, the Clarksons, the Wilberforces, the Buxtons, and Burchells and the Knibbs, were alike famous for their piety, and for their philanthropy. The anti-slavery movement there was not an anti-church movement, for the reason that the church took its full share in prosecuting that movement: and the anti-slavery movement in this country will cease to be an anti-church movement, when the church of this country shall assume a favorable instead of a hostile position towards that movement.

Americans! your republican politics, not less than your republican religion, are flagrantly inconsistent. You boast of your love of liberty, your superior civilization, and your pure Christianity, while the whole political power of the nation (as embodied in the two great political parties) is solemnly pledged to support and perpetuate the enslavement of three millions of your countrymen. You hurl your anathemas at the crowned headed tyrants of Russia and Austria, and pride yourselves on your Democratic institutions, while you yourselves consent to be the mere tools and bodyguards of the tyrants of Virginia and Carolina. You invite to your shores fugitives of oppression from abroad, honor them with banquets, greet them with ovations, cheer them, toast them, salute

them, protect them, and pour out your money to them like water; but the fugitives from your own land you advertise, hunt, arrest, shoot and kill. You glory in your refinement and your universal education yet you maintain a system as barbarous and dreadful as ever stained the character of a nation—a system begun in avarice, supported in pride, and perpetuated in cruelty. You shed tears over fallen Hungary, and make the sad story of her wrongs the theme of your poets, statesmen and orators, till your gallant sons are ready to fly to arms to vindicate her cause against her oppressors; but, in regard to the ten thousand wrongs of the American slave, you would enforce the strictest silence, and would hail him as an enemy of the nation who dares to make those wrongs the subject of public discourse! You are all on fire at the mention of liberty for France or for Ireland; but are as cold as an iceberg at the thought of liberty for the enslaved of America. You discourse eloquently on the dignity of labor; yet, you sustain a system which, in its very essence, casts a stigma upon labor. You can bare your bosom to the storm of British artillery to throw off a threepenny tax on tea; and yet wring the last hard-earned farthing from the grasp of the black laborers of your country. You profess to believe “that, of one blood, God made all nations of men to dwell on the face of all the earth,” and hath commanded all men, everywhere to love one another; yet you notoriously hate, (and glory in your hatred), all men whose skins are not colored like your own. You declare, before the world, and are understood by the world to declare, that you “hold these truths to be self evident, that all men are created equal; and are endowed by their Creator with certain inalienable rights; and that, among these are, life, liberty, and the pursuit of happiness;” and yet, you hold securely, in a bondage which, according to your own Thomas Jefferson, “is worse than ages of that which your fathers rose in rebellion to oppose,” a seventh part of the inhabitants of your country.

Fellow-citizens! I will not enlarge further on your national inconsistencies. The existence of slavery in this country brands your republicanism as a sham, your humanity as a base pretence, and your Christianity as a lie. It destroys your moral power abroad; it corrupts your politicians at home. It saps the foundation of religion; it makes your name a hissing, and a by word to a mocking earth. It is the antagonistic force in your government, the only thing that seriously disturbs and endangers your Union. It fetters your progress; it is the enemy of improvement, the deadly foe of education; it fosters pride; it breeds insolence; it promotes vice; it shelters crime; it is a curse to the earth that supports it; and yet, you cling to it, as if it were the sheet anchor of all your hopes. Oh! be warned! be warned! a horrible reptile is coiled up in your nation’s bosom; the venomous creature is nursing at the tender breast of your youthful republic; for the love of God, tear away, and fling from you the hideous monster, and let the weight of twenty millions crush and destroy it forever!

But it is answered in reply to all this, that precisely what I have now denounced is, in fact, guaranteed and sanctioned by the Constitution of the United States; that the right to hold and to hunt slaves is a part of that Constitution framed by the illustrious Fathers of this Republic. Then, I dare to affirm, notwithstanding all I have said before, your fathers stooped, basely stooped

To palter with us in a double sense: And keep the word of promise to the ear, But break it to the heart.

And instead of being the honest men I have before declared them to be, they were the veriest imposters that ever practiced on mankind. This is the inevitable conclusion, and from it there is no escape. But I differ from those who charge this baseness on the framers of the Constitution of the United States. It is a slander upon their memory, at least, so I believe. There is not time now to

argue the constitutional question at length – nor have I the ability to discuss it as it ought to be discussed. The subject has been handled with masterly power by Lysander Spooner, Esq., by William Goodell, by Samuel E. Sewall, Esq., and last, though not least, by Gerritt Smith, Esq. These gentlemen have, as I think, fully and clearly vindicated the Constitution from any design to support slavery for an hour.

Fellow-citizens! there is no matter in respect to which, the people of the North have allowed themselves to be so ruinously imposed upon, as that of the pro-slavery character of the Constitution. In that instrument I hold there is neither warrant, license, nor sanction of the hateful thing; but, interpreted as it ought to be interpreted, the Constitution is a glorious liberty document. Read its preamble, consider its purposes. Is slavery among them? Is it at the gateway? or is it in the temple? It is neither. While I do not intend to argue this question on the present occasion, let me ask, if it be not somewhat singular that, if the Constitution were intended to be, by its framers and adopters, a slave-holding instrument, why neither slavery, slaveholding, nor slave can anywhere be found in it. What would be thought of an instrument, drawn up, legally drawn up, for the purpose of entitling the city of Rochester to a track of land, in which no mention of land was made? Now, there are certain rules of interpretation, for the proper understanding of all legal instruments. These rules are well established. They are plain, common-sense rules, such as you and I, and all of us, can understand and apply, without having passed years in the study of law. I scout the idea that the question of the constitutionality or unconstitutionality of slavery is not a question for the people. I hold that every American citizen has a right to form an opinion of the constitution, and to propagate that opinion, and to use all honorable means to make his opinion the prevailing one. Without this right, the liberty of an American citizen would be as insecure as that of a Frenchman. Ex-Vice-President Dallas tells us that the constitution is an object to which no American mind can be too attentive, and no American heart too devoted. He further says, the constitution, in its words, is plain and intelligible, and is meant for the home-bred, unsophisticated understandings of our fellow-citizens. Senator Berrien tell us that the Constitution is the fundamental law, that which controls all others. The charter of our liberties, which every citizen has a personal interest in understanding thoroughly. The testimony of Senator Breese, Lewis Cass, and many others that might be named, who are everywhere esteemed as sound lawyers, so regard the constitution. I take it, therefore, that it is not presumption in a private citizen to form an opinion of that instrument.

Now, take the constitution according to its plain reading, and I defy the presentation of a single pro-slavery clause in it. On the other hand it will be found to contain principles and purposes, entirely hostile to the existence of slavery.

I have detained my audience entirely too long already. At some future period I will gladly avail myself of an opportunity to give this subject a full and fair discussion. Allow me to say, in conclusion, notwithstanding the dark picture I have this day presented of the state of the nation, I do not despair of this country.”

Allow me to say, in conclusion, notwithstanding the dark picture I have this day presented of the state of the nation, I do not despair of this country. There are forces in operation, which must inevitably work the downfall of slavery. “The arm of the Lord is not shortened,” and the doom of slavery is certain. I, therefore, leave off where I began, with hope. While drawing encouragement

from the Declaration of Independence, the great principles it contains, and the genius of American Institutions, my spirit is also cheered by the obvious tendencies of the age. Nations do not now stand in the same relation to each other that they did ages ago. No nation can now shut itself up from the surrounding world, and trot round in the same old path of its fathers without interference. The time was when such could be done. Long established customs of hurtful character could formerly fence themselves in, and do their evil work with social impunity. Knowledge was then confined and enjoyed by the privileged few, and the multitude walked on in mental darkness. But a change has now come over the affairs of mankind. Walled cities and empires have become unfashionable. The arm of commerce has borne away the gates of the strong city. Intelligence is penetrating the darkest corners of the globe. It makes its pathway over and under the sea, as well as on the earth. Wind, steam, and lightning are its chartered agents. Oceans no longer divide, but link nations together. From Boston to London is now a holiday excursion. Space is comparatively annihilated. Thoughts expressed on one side of the Atlantic are, distinctly heard on the other.

The far-off and almost fabulous Pacific rolls in grandeur at our feet. The Celestial Empire, the mystery of ages, is being solved. The fiat of the Almighty, "Let there be Light," has not yet spent its force. No abuse, no outrage whether in taste, sport or avarice, can now hide itself from the all-pervading light. The iron shoe, and crippled foot of China must be seen, in contrast with nature. Africa must rise and put on her yet unwoven garment. "Ethiopia shall stretch out her hand unto God." In the fervent aspirations of William Lloyd Garrison, I say, and let every heart join in saying it.

God speed the year of jubilee
The wide world o'er
When from their galling chains set free,
Th' oppress'd shall vilely bend the knee,
And wear the yoke of tyranny
Like brutes no more. That year
will come, and freedom's reign,
To man his plundered rights again
Restore.

God speed the day when human blood
Shall cease to flow!
In every clime be understood,
The claims of human brotherhood,
And each return for evil, good,
Not blow for blow; That day will come
all feuds to end. And change into a faithful friend
Each foe.

God speed the hour, the glorious hour,
When none on earth
Shall exercise a lordly power,
Nor in a tyrant's presence cower;
But all to manhood's stature tower,
By equal birth! That hour will com, to
each, to all, And from his prison-house, the thrall
Go forth.

Until that year, day, hour, arrive,
With head, and heart, and hand I'll strive,
To break the rod, and
rend the gyve,
The spoiler of his prey deprive-
So witness Heaven! And never from my chosen post,
Whate'er the peril or the cost,
Be driven.

~~On the one hand, the industrious must be restrained from every exertion which may exceed the power or inclination of common capacities; on the other hand, the indolent must be forcibly stimulated to common exertions. This would be acting the fable of Procrustes, who, by stretching, or lopping to his iron bedstead, would reduce every man to his own standard length.”⁶~~

~~Gordon Wood is therefore mistaken when he writes, “A republic presumed, as the Virginia declaration of rights put it, that men in the new republic would be ‘equally free and independent,’ and property would make them so” because property was regarded “as a source of personal authority or independence.”⁷ Wood is correct to say that the founders wanted property ownership to be as widespread as possible. But he confuses Virginia’s “by nature equally free and independent” — something true of all human beings everywhere — with the rough equality in material possessions praised by Tocqueville.~~

Are Blacks Excluded?

Another misconception about the equality principle is that it applies to white males only, not to women or blacks. Some prominent historians, such as Forrest McDonald, support that view: “the words *equal* and *equality*, as used in the eighteenth century, did not necessarily imply a conflict with the institution of slavery.” Conor Cruise O’Brien adds, “the words ‘all men are created equal’ do not, in their literal meaning, apply to women, and were not intended by the Founding Fathers (collectively) to apply to slaves. . . . They are for whites only.” According to Jon Meacham, Jefferson “basically meant all white men, especially propertied, ones.” Gordon Wood also believes that the Declaration of Independence “did not mean that blacks . . . were created equal to white men.”⁸

⁶ Nathaniel Chipman, *Sketches of the Principles of Government*, 1793, in *Founders’ Constitution*, 1:557.

⁷ Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), 178.

⁸ Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 53; Conor Cruise O’Brien, *The Long Affair: Thomas Jefferson and the French Revolution, 1785–1800* (Chicago: University of Chicago Press, 1996), 319; Jon Meacham, *Thomas Jefferson: The Art of Power* (New York: Random House, 2012), 107; Gordon S. Wood, “Equality and Social Conflict in the American Revolution,” *William and Mary Quarterly* 51 (1994): 707.

Not all scholars accept this view. Bernard Bailyn speaks for many when he writes, “the contradiction between the proclaimed principles of freedom and . . . [slavery] in America became generally recognized.”⁹ Bailyn complains about the typical misunderstanding of the founders’ opposition to slavery: “What is significant in the historical context of the time is not that the liberty-loving Revolutionaries allowed slavery to survive, but that they – even those who profited directly from the institution – went so far in condemning it, confining it, and setting in motion the forces that would ultimately destroy it.”¹⁰

St. George Tucker, a Virginia law professor writing in 1796, provides a good example of what Bailyn has in mind: “whilst [in 1775] we adjoined the God of Hosts to witness our resolution to live free or die, . . . we were imposing upon our fellow men who differ in complexion from us a *slavery* ten thousand times more cruel than the utmost extremity of those grievances and oppressions of which we complained.” Describing the slavery laws of Virginia, he notes “how frequently the laws of nature have been set aside in favor of institutions [that are] the pure result of prejudice, usurpation, and tyranny.”¹¹ James Otis, in a pamphlet endorsed by the Massachusetts colony legislature, writes: “The colonists are by the law of nature freeborn, as indeed all men are, white or black.”¹²

The language of founding documents did not exclude either blacks or women from equal natural rights. Congress’s 1774 Declarations and Resolves state, “the inhabitants [i.e., not only white male property owners] of the English colonies in North-America . . . have the following rights, . . . life, liberty and property.” In 1776, Congress published an

⁹ Bernard Bailyn, *The Ideological Origins of the American Revolution*, enlarged ed. (Cambridge: Harvard University Press, 1992), 235. The arguments of this section are based on or supported by Thomas G. West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America* (Lanham, MD: Rowman & Littlefield, 1997), ch. 1; Herbert J. Storing, “Slavery and the Moral Foundations of the American Republic,” in *The Moral Foundations of the American Republic*, 3rd ed., ed. Robert H. Horwitz (Charlottesville: University Press of Virginia, 1986), 313–32; Paul Rahe, *Republics Ancient and Modern* (Chapel Hill: University of North Carolina Press, 1992), 617–41; Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774–1804* (Charlottesville: University of Virginia Press, 2009), 241–2.

¹⁰ Bernard Bailyn, *Faces of Revolution: Personalities and Themes in the Struggle for American Independence* (New York: Knopf, 1990), 222–3.

¹¹ St. George Tucker, “On the State of Slavery in Virginia,” 1796, in *View of the Constitution of the United States, with Selected Writings* (Indianapolis: Liberty Fund, 1999), 428.

¹² James Otis, *The Rights of the British Colonies Asserted and Proved*, 1764, in *Pamphlets of the American Revolution*, ed. Bernard Bailyn (Cambridge: Harvard University Press, 1965), 1:439.

address to foreigners fighting for the British, saying that among them “there may be many of liberal minds, possessing just sentiments of the rights of human nature,” meaning not only of whites, males, or property owners. Georgia’s 1776 Constitution states that “the common rights of mankind” (not “of white males”) are the basis of independence from Britain. In 1777 Congress again affirmed “the common rights and privileges of human nature.”¹³

Slavery was legal and practiced in every state in 1776. Few questioned it before the 1760s. That attitude was transformed by the Revolution. For example, emancipation laws in two states made explicit the connection between “created equal” and people of all races. First is Pennsylvania’s 1780 Act for the Gradual Abolition of Slavery: “we conceive that it is our duty . . . to extend a portion of that freedom to others, which hath been extended to us, and release them from that thralldom, to which we ourselves were tyrannically doomed. . . . It is not for us to inquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know that all are the work of the Almighty hand.”¹⁴ Rhode Island’s abolition law states: “Whereas all men are entitled to life, liberty, and the pursuit of happiness, yet the holding mankind in a state of slavery, as private property, . . . is repugnant to this principle, . . . be it therefore enacted . . . that no person or persons . . . born within the limits of this state, on or after the first day of March AD 1784, shall be deemed or considered as servants for life or slaves.”¹⁵

By 1810, more than a hundred thousand slaves had been freed, either by legal actions that began the process of emancipation in eight states, or by individual acts of manumission.¹⁶ However, the early movement

¹³ Continental Congress, Declaration and Resolves, October 14, 1774, in *Founders’ Constitution*, 1:2; Resolution of Congress, Inviting Foreigners Fighting for the British to Join the American Side, August 27, 1776, *Journals of the Continental Congress, 1774–89*, ed. Worthington C. Ford (Washington: Government Printing Office, 1904–37), 5:707; Preamble, GA Constitution, 1776; Resolution of Congress, Nov. 22, 1777, *Journals*, 9:953.

¹⁴ An Act for the Gradual Abolition of Slavery, March 1, 1780, Preamble, in *Writings of Thomas Paine*, ed. Moncure Conway (1902; repr. New York: Burt Franklin, 1969), 2:29.

¹⁵ An Act authorizing the Manumission of Negroes, Mulattoes, and others, and for the gradual Abolition of Slavery, 1784, Rhode Island State Archives, Secretary of State, <http://sos.ri.gov/virtualarchives/items/show/71>. CT (1784), NY (1799), and NJ (1804) adopted similar laws, but without the natural rights language.

¹⁶ Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967).

toward ending slavery in America came to a halt, for four main reasons: sheer selfishness – the convenience of having slaves and the expense of emancipation; fears of the possible violent consequences of emancipation; sincere concerns that the ex-slaves would be unfit for citizenship in a free society; and a vague faith in progress that took the edge off the firmness needed to overcome these powerful anti-abolition concerns.¹⁷ Scholars today generally find these reasons unconvincing – except for selfish interest, to which they often add blind prejudice.¹⁸ Be that as it may, by establishing the equality principle at the center of the American polity, the founders laid the ground for the eventual total abolition of slavery. Abraham Lincoln and other opponents of its expansion appealed to that principle when they built the Republican Party, whose victory in 1860 eventually led to the end of slavery in America.

Strong evidence of the founders' anti-slavery consensus is also found in the frequent denunciations of the founders by Southerners after 1830, such as by Senator John C. Calhoun in 1848:

[The doctrine] that all men are born free and equal . . . [is] the most dangerous of all political errors. . . . We now begin to experience the danger of admitting so great an error to have a place in the declaration of our independence. For a long time it lay dormant; but in the process of time it began to germinate, and produce its poisonous fruits. It had strong hold on the mind of Mr. Jefferson, the author of that document, which caused him to take an utterly false view of the subordinate relation of the black to the white race in the South; and to hold, in consequence, that the former, though utterly unqualified to possess liberty, were as fully entitled to both liberty and equality as the latter; and that to deprive them of it was unjust and immoral. To this error, his proposition to exclude slavery from the territory northwest of the Ohio may be traced, and to that of the ordinance of '87.¹⁹

Calhoun's complaint, so different from what one often hears today, is that Jefferson and the other founders believed in equality too much. Calhoun's last sentence alludes to Jefferson's unsuccessful 1784 proposal to ban slavery from all the territory west of the original thirteen states, a proposal partially incorporated in the Northwest "ordinance of '87," forbidding

¹⁷ West, *Vindicating*, 21–32 (discussing each of these four causes).

¹⁸ Alan Gibson, *Understanding the Founding: The Crucial Questions*, 2nd ed. (Lawrence: University Press of Kansas, 2010), 211–19; Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 3rd ed. (New York: Routledge, 2014).

¹⁹ John C. Calhoun, Senate speech on the Oregon Bill, June 27, 1848, in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence (Indianapolis: Liberty Fund, 1992), 569–70. Jefferson's plan for a temporary government of the Western territory. Apr. 1784, in *Journals of the Continental Congress*, 26:274–9; Northwest Ordinance, art. 6, 1787, in *Founders' Constitution*, 1:29.

slavery north of the Ohio River. The founders' belief in equality, Calhoun laments, threatens the existence of slavery in the South. He was right.

Lincoln was correct to say that from the beginning, the nation was "dedicated to the proposition that all men are created equal," but he was also right that only "a new birth of freedom" could finally rid the nation of the injustice of slavery.²⁰ A suggestion of Leo Strauss explains how the founders could live with slavery while believing in equality. He writes, "Every human being and every society is what it is by virtue of the highest to which it looks up."²¹ The founders (and Lincoln) looked up to the laws of nature and of nature's God. In this sense, the founders' America was defined in 1776 by its anti-slavery principles, in spite of the fact that slavery was then legal in every state. Even in the South, where slavery persisted until the Civil War, few defended slavery in principle before 1830. "[I]f the South was accommodating itself [in the founding era] to slavery in practice," writes historian Matthew Mason, "its spokesmen . . . continued to defend slavery as a necessary evil rather than embracing it as a positive good."²² In a famous passage lamenting the existence of slavery in Virginia, slaveholder Thomas Jefferson exclaimed, "I tremble for my country when I reflect that God is just, that his justice cannot sleep forever."²³

Whether ex-slaves or immigrant blacks had a natural right to become citizens – the founders believed they did not – is a question entirely different from slavery, which almost everyone regarded as contrary to natural right. Immigration and citizenship will be discussed in Chapters 6 and 11.

Are Women Excluded?

Writing in 1764, James Otis asks, "Are not women born as free as men? Would it not be infamous to assert that the ladies are all slaves by nature? . . . [H]ad not every one of them a natural and equitable right to be consulted in . . . the formation of a new original compact or

²⁰ Abraham Lincoln, Gettysburg Address, November 19, 1863.

²¹ Leo Strauss, *The City and Man* (Chicago: Rand McNally, 1964), 153.

²² Matthew Mason, *Slavery and Politics in the Early American Republic* (Chapel Hill: University of North Carolina Press, 2006), 21. Also Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 5, 23.

²³ Thomas Jefferson, *Notes on the State of Virginia*, 1787, Query 18, in *Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 289.

government?”²⁴ No one in the founding denied that women are “born equally free and independent.” Yet many scholars claim that the founders believed that women do not have the same natural rights as men. Gordon Wood flatly claims that the Declaration of Independence “did not mean that . . . women were created equal to white men.”²⁵ Historian Linda Kerber writes, “There had been a blind spot in the Revolutionary vision. . . . [The founders failed] to ask what the Declaration of Independence might have been like had women’s private and public demands been included.”²⁶ Morton White asserts that the founders believed women “lacked . . . rationality.”²⁷

These scholars are incorrect. Every leading statement of principle in the founding refers to all human beings – not only males – as “men.” One can see this in other pronouncements of Congress from the same period in which parallel phrases were used, such as “humanity” and “mankind.” Congress’s 1774 Declarations and Resolves state, “the inhabitants [i.e., not only the males] of the English colonies in North America, by the immutable laws of nature, . . . have the following rights.”²⁸ A report published by the Pennsylvania convention of 1774 speaks of “all,” i.e., all human beings of whatever sex and race: “Nature has made all of the same species, all equal, all free and independent of each other.”²⁹ Therefore, their principles were always open to the possibility of voting rights for both sexes. In New Jersey, women voted in elections routinely during the 1790s and early 1800s, for the first time anywhere in world history.³⁰

The equality principle changed the way people understood family relations. Women and men were increasingly understood to have equal importance, but different roles, in the family and society.³¹ Historian Jan Lewis notes that “Revolutionary-era writers held up the loving

²⁴ Otis, *Rights of the British Colonies*, 420–1.

²⁵ Wood, “Equality and Social Conflict,” 707.

²⁶ Linda S. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980), xii.

²⁷ Morton White, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978), 261.

²⁸ Continental Congress, Declaration and Resolves, October 14, 1774, in *Founders’ Constitution*, 1:2.

²⁹ Instructions from the Committee for the Province of Pennsylvania to the Representatives in Assembly met, July 21, 1774, in *American Archives: Fourth Series*, ed. Peter Force (Washington: M. St. Clare Clarke, 1837–53), 1:558.

³⁰ West, *Vindicating*, ch. 3.

³¹ Wood, *Radicalism*, 147, 183–4; Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 4–9.

partnership of man and wife in opposition to patriarchal dominion as the republican model for social and political relationships.” Abigail Adams expressed the new view when she wrote: “I will never consent to have our sex considered in an inferior point of light. Let each planet shine in their own orbit. God and nature designed it so – if man is Lord, woman is *Lordess* – that is what I contend for.”³² Mary Beth Norton explains: “In the 1780s and 1790s, by contrast, numerous authors proclaimed the importance of America’s female citizens. At times it even seemed as though republican theorists believed that the fate of the republic rested squarely, perhaps solely, upon the shoulders of its womenfolk.”³³

This “republican” understanding of marriage, in which the rights and duties of husband and wife are different but complementary, was widely accepted because in the minds of both sexes, the best protection of the natural rights of women and children was found not in voting rights, but in the integrity of the family, which they regarded as the core institution of a free and civilized society. Rightly or wrongly, they thought laws giving males a more prominent role in positions of formal leadership, both inside and outside the family, would strengthen it. Internally, the husband was legally the head of the family, which meant that he would have the final word on where the family would live and on major expenditures. In the political world outside the family, men mostly – though not always – had the exclusive right to vote, to serve on juries, and to be appointed to public office.

~~The founders may have been wrong, but their judgments were not based on the idea that women are created unequal. Jefferson boasted that Americans did in fact fully recognize and protect women’s equality: “The [Indian] women are submitted to unjust drudgery. This I believe is the case with every barbarous people. With such, force is law. . . . It is civilization alone which replaces women in the enjoyment of their natural equality.” Jefferson says “replaces” because in his view barbarism deprives women of the natural equality that they are born with. He explains: civilization “first teaches us to subdue the selfish passions, and to respect those rights in others which we value in ourselves. Were we in equal barbarism, our females would be equal drudges.” Jefferson implies that women are restored to their “natural equality” when men and women~~

³² Jan Lewis, “The Republican Wife: Virtue and Seduction in the Early Republic,” *William and Mary Quarterly* 44 (1987): 689. Abigail Adams to Elizabeth Peabody, July 19, 1799, in Page Smith, *John Adams* (Garden City: Doubleday, 1962), 2:1006.

³³ Mary Beth Norton, *Liberty’s Daughters: The Revolutionary Experience of American Women, 1750–1800* (Ithaca: Cornell University Press, 1980), 243.

that God and nature put into our hands” to put down the American rebellion.⁴⁸ Historian William Nester notes that the first British excuse was factually incorrect: “The American policy from the beginning was to promote neutrality rather than alliance with the Indians.”⁴⁹ As for Indian savagery, Griffin states that during the French and Indian War less than two decades before 1776 — “[p]eople did not just die or children simply vanish; rather, they did so in appalling ways. . . . [For example,] a raiding party . . . killed a number of women ‘in such a brutal manner that decency forbids the mentioning.’ Thomas Cresap witnessed an Indian raider stabbing his neighbor in the back before tearing ‘his ribs from the backbone.’ . . . [N]ear Fort Pitt alone . . . were two boys . . . who were ‘killed and scalped’; a man beheaded; a family, including mother, father, grandfather, five sons, and one daughter, ‘killed’; and the two Delong sisters, who were scalped but not killed.”⁵⁰

The founders’ experience with Indian tribes and free blacks led them to treat them mostly as separate peoples, not as potential fellow citizens. Equality in natural rights does not mean that all people in the world, or even those physically present in America, have a right to become citizens. I will return to this point in the chapter on consent.

Equality and Inequality

In a widely quoted remark, Harvey Mansfield writes, “a regime based on the self-evident half-truth that all men are created equal will eventually founder because of its disregard of the many ways in which men are created unequal.”⁵¹ This is not Mansfield’s final word on the Declaration of Independence.⁵² Still, this mischaracterization of the equality principle is heard often from conservatives. In reality, the doctrine of equality was meant to respect what the founders regarded as true equality — the understanding that there are no natural masters or natural slaves — while acknowledging the natural and legitimate inequality in the human condition. James Wilson explains in his *Lectures on Law*: “When we say

⁴⁸ William Pitt, speech in Parliament, 1777, quoted in William R. Nester, *The Frontier War for American Independence* (Mechanicsburg, PA: Stackpole Books, 2004), 187.

⁴⁹ *Ibid.* ⁵⁰ Griffin, *American Leviathan*, 62–3.

⁵¹ Harvey C. Mansfield, “Returning to the Founders,” *New Criterion* 12 (Sept. 1993): 50.

⁵² On the complexity of Mansfield’s actual view, see Thomas G. West, “Jaffa versus Mansfield: Does America Have a Constitutional or a ‘Declaration of Independence’ Soul?” *Perspectives on Political Science* 31, No. 4 (Fall 2002): 235–46. Nevertheless, I conclude in this article that Mansfield misunderstands the principles of the founding.

that all men are equal, we mean not to apply this equality to their virtues, their talents, their dispositions, or their acquirements. In all these respects, there is, and it is fit for the great purposes of society that there should be, great inequality among men. . . . That social happiness, which arises from the friendly intercourse of good offices, could not be enjoyed, unless men were so framed and so disposed, as mutually to afford and to stand in need of service and assistance. Hence the necessity not only of great variety, but even of great inequality in the talents of men, bodily as well as mental.”⁵³

No founder denied that human beings are unequal in all sorts of politically relevant ways. Pennsylvania’s and Vermont’s constitutions state, “The house of representatives . . . shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen.” The constitutions of Maryland and Kentucky similarly instruct their “electors of the Senate” to choose “men of the most wisdom, experience and virtue.” Maryland adds that “a person of wisdom, experience, and virtue, shall be chosen Governor.”⁵⁴ Whether stated explicitly or not, these views were accepted everywhere, for the reason stated by Madison in *Federalist* 57: “The aim of every political constitution is, or ought to be, first, to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society.”⁵⁵

Against Mansfield, the founders’ idea of equality was meant to allow genuine as opposed to sham inequality to shine forth and receive the recognition it deserves. The state constitutions just quoted show that elections were supposed to be based on the ability of the candidate to perform the duties of his office, not on family pedigree or hereditary privilege. Long before the colonists’ quarrel with Britain became serious, George Washington denounced the British custom of filling places in the military through connections and patronage. His honor was bruised when he found himself commanded and passed over for promotion by men less capable than himself. He held that “the strictest justice” required appointment by merit alone. This was not only Washington’s pride speaking. Most Americans shared his view. According to Paul Longmire, when Washington became head of the American armies in 1775, he did his best to ensure that appointments would go, unequally, to those best qualified.

⁵³ James Wilson, *Lectures on Law*, 1791, in *Collected Works of James Wilson*, ed. Kermit L. Hall and Mark David Hall (Indianapolis: Liberty Fund, 2007), 1:637.

⁵⁴ Constitutions of PA, 1776, ch. 2, §7; VT, 1777, ch. 2, §7; MD, 1776, §15 and 25; KY, 1792, art. 1, §12.

⁵⁵ Madison, *Federalist* 57, p. 348.

This practice he thought was characteristically American.⁵⁶ Gordon Wood writes: “To eliminate these clusters of personal and familial influence and transform the society became the idealistic goal of the revolutionaries. . . . [They thought of] republicanism [as] a vindication of frustrated talent at the expense of birth and blood. For too long, they felt, merit had been denied.”⁵⁷ Many years after the Revolution Jefferson famously wrote to John Adams, “I agree with you that there is a natural aristocracy among men. The grounds of this are virtue and talents. . . . May we not even say that that form of government is the best which provides the most effectually for a pure selection of these natural aristoi into the offices of government?”⁵⁸

This understanding of equality is not only compatible with but requires recognition of the profound natural and artificial inequality among human beings, insofar as that inequality relates to important aspects of human life. David Ramsay, a South Carolina founder, explains the American view in this way: “It is the happiness of our present constitution, that all offices lie open to men of merit, of whatever rank or condition; and that even the reins of state may be held by the son of the poorest man, if possessed of abilities equal to the important station. We are no more to look up for the blessings of government to hungry courtiers, or the needy dependents of British nobility; but must educate our own children for these exalted purposes.”⁵⁹ John Adams also believed in the equal rights of mankind, but he was well aware of the reality and necessity of human inequality: “Nature . . . has ordained that no two objects shall be perfectly alike, and no two creatures perfectly equal. Although, among men, all are subject by nature to *equal laws* of morality, and in society have a right to *equal laws* for their government, yet no two men are perfectly equal in person, property, understanding, activity, and virtue, or ever can be made so by any power less than that which created them.”⁶⁰ The “equal laws of morality” mentioned by Adams are the laws of nature.

⁵⁶ Paul K. Longmore, *The Invention of George Washington* (Berkeley: University of California Press, 1988), 46–7, 188.

⁵⁷ Wood, *Radicalism*, 177, 180.

⁵⁸ Jefferson to Adams, October 28, 1813, in *Writings*, ed. Peterson, 1305–6.

⁵⁹ David Ramsay, Oration on the Advantages of Independence, Charleston, SC, July 4, 1778, in *Principles and Acts of the Revolution in America*, ed. Hezekiah Niles (New York: A. S. Barnes, 1876), 375.

⁶⁰ John Adams, *Discourses on Davila*, No. 15, in *Works of John Adams*, ed. Charles Francis Adams (Boston: Little, Brown, 1854), 6:285.

The fundamentals in question are the principles of the good society – principles that are naturally right or just. The founders were confident that the European thinkers they admired had succeeded in this task.

The God of Nature

How then are we to understand the fact that God is mentioned as the ground of rights almost as often as nature, or at least in the same breath as nature? The Declaration of Independence speaks of “the laws of nature and of nature’s God.” One might wonder whether the frequent appeals to God in these and other founding documents indicate that the colonists’ appeals are not to reason at all, but instead to divine revelation.

That this is incorrect can be seen in the theology of the founding era, in which God was understood from two perspectives: reason *and* revelation. In the Bible, God issues commands, such as “love God with all your heart” and “do unto others as you would be done by.” But independently of the Bible, the founders believed that human reason is also able to grasp that a first principle animates the world. This principle they called the God of nature – by which they meant God insofar as he is known by reason’s inferences from the orderly structure of nature, including human nature. Believers and unbelievers alike could accept this understanding of God. Vermont’s Ethan Allen is an example of a non-Christian who believes in a God of nature.¹⁷

Matthew Stewart incorrectly states that “‘Nature’s God’ properly belongs to the radical philosophical religion of deism,” which he takes to be “heretical” from a Christian point of view.¹⁸ Stewart is correct that deists like Ethan Allen – who may be defined as believers in a God but not in divine revelation – found the term “God of nature” acceptable. But so too did many Christians during the century leading up to the founding. In 1679, Puritan minister James Fitch writes, “Nature is in all creatures, and God as a God of nature overruleth [i.e., rules over] them.” Rev. Ebenezer Pemberton, another Massachusetts Puritan, says in a 1707 eulogy, “The God of nature was pleased with a liberal hand to bestow on him those

¹⁷ Ethan Allen, *Reason the Only Oracle of Man* (Bennington, VT: Haswell & Russell, 1784), vii, 275.

¹⁸ Matthew Stewart, *Nature’s God: The Heretical Origins of the American Republic* (New York: Norton, 2014), 7. Catherine L. Albanese, *Sons of the Fathers: The Civil Religion of the American Revolution* (Philadelphia: Temple University Press, 1976), ch. 4, understands “God of nature” more accurately.

natural intellectual endowments." In 1762, Rev. Abraham Williams calls the law of nature "the constitution of the God of nature."¹⁹ In a 1774 sermon, Nathaniel Niles writes, "We are all stewards, to whom the God of nature has committed this talent." On the eve of independence in 1776, Rev. Samuel West sermonizes that the British "are robbing us of the inalienable rights that the God of nature has given us as men and rational beings."²⁰ As these and many other Christian examples show, the God of nature is not necessarily "deistic."

Eighteenth-century Christians often made a distinction between Christianity and "natural religion" – a distinction that does not necessarily imply a conflict. By natural religion they meant truths about the world and its divine basis – the "God of nature" – that can be known by mere reason. Thomas Reese writes: "Christianity is a very important confirmation of natural religion. Here the conclusions of reason are corroborated and rendered more certain by the additional evidence of divine testimony. Those miracles and prophecies which were designed as a proof of the Christian dispensation are also a proof of the truth of natural religion. Thus the dictates of natural light are ratified, if I may so express it, by the stamp of divine authority, and their truth proclaimed by a voice from heaven."²¹

Like Stewart, Harvey Mansfield argues for an outright opposition between the God of nature and Christianity: "'Nature's God' was intended in contrast to a revealed god; so the Declaration (at least in Jefferson's understanding) seems hostile to revealed religion. Revealed religion is revealed only to the godly, and from what Jefferson said in many places against priests, one may suppose that the godly will take advantage of the favor of revelation to demand political power... Revelation in its nature, and not merely by its abuse, is

¹⁹ Abraham Williams, *An Election Sermon*, 1762, in *American Political Writing during the Founding Era*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Press, 1983), 1:7–8, 15.

²⁰ James Fitch, *The First Principles of the Doctrine of Christ*, 1679, quoted in Perry Miller, *The New England Mind: The Seventeenth Century* (Cambridge: Harvard University Press, 1939), 515; Ebenezer Pemberton, *A Funeral Sermon on the Death of... Samuel Willard* (Boston: B. Green, 1707), 63; Williams, *Election Sermon*, in *American Political Writing*, 1:15; Nathaniel Niles, *Two Discourses on Liberty*, 1774, in *ibid.*, 1:271; Samuel West, *On the Right to Rebel against Governors*, 1776, in *ibid.*, 1:437. Stewart, in *Nature's God*, 183, guesses incorrectly when he writes, "'Nature's God' appears in American print for possibly the first time in... 1747."

²¹ Thomas Reese, *An Essay on the Influence of Religion in Civil Society* (Charleston: Markland & M'Iver, 1788), 41.

opposed to the equality of men.”²² This conclusion would be correct if the teaching of the Bible contradicted the teaching of reason on human freedom. But American Christians believed that superstition, not the Bible, taught that the mass of mankind are “born with saddles on their backs,” while “a favored few” (“the godly”) are born “booted and spurred, ready to ride them legitimately, by the grace of God.”²³ John Adams, denouncing the “cruel tyranny” of the Middle Ages, asserts that it was “framed by the Romish clergy for the aggrandizement of their own order.”²⁴ In the founding, believers and unbelievers agreed that God’s law denies them the right to rule others without consent. Therefore Walter Berns is wrong when he concludes, on the basis of Mansfield’s argument, that “*any* revealed religion is incompatible with modern natural right.”²⁵

Believers of all sects supported what John Carroll, the first Catholic bishop of the United States, called “the luminous principles on which the rights of conscience and liberty of religion depend.”²⁶ The Jews of Newport, Rhode Island, addressing President Washington, celebrated the new federal government, which protects “liberty of conscience” and secures “the blessings of civil and religious liberty.”²⁷ And almost all Protestants agreed with this statement of Rev. Nathaniel Niles: “liberty secures the rights of conscience by protecting every member of the state in the free exercise of his religion, unless it be such a religion as is inconsistent with the good of the state.”²⁸

²² Harvey C. Mansfield, “Thomas Jefferson,” in *American Political Thought: The Philosophic Dimensions of American Statesmanship*, ed. Morton J. Frisch and Richard G. Stevens (New York: Scribner’s, 1971), 28.

²³ Jefferson to Roger Weightman, June 24, 1826, in *Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 1517; Wilson uses the same metaphor in *Lectures on Law*, 1:477.

²⁴ Adams, *Dissertation on the Canon and Feudal Law*, 1765, in *Works of John Adams*, 3:448–9.

²⁵ Walter F. Berns, *The First Amendment and the Future of American Democracy* (Chicago: Gateway Editions, 1985), 22 (my emphasis). In support of my argument is Alice M. Baldwin, *The New England Clergy and the American Revolution* (1928; repr. New York: Frederick Ungar, 1958).

²⁶ John Carroll, “To John Fenno of the Gazette of the United States,” June 10, 1789, in *The John Carroll Papers*, ed. Thomas O. Hanley (Notre Dame, IN: University of Notre Dame Press, 1976), 1:365.

²⁷ Address of the Hebrew congregation in Newport to Washington, 1790, in Anson P. Stokes, *Church and State in the United States* (New York: Harper, 1950), 1:861. See also the similar Address of the Hebrew Congregations of Philadelphia, New York, Charleston, and Richmond to the President, December 19, 1790, in *The Occident and American Jewish Advocate* 2, No. 4 (July 1844), www.jewish-history.com.

²⁸ Niles, *Two Discourses on Liberty*, 1774, in *American Political Writing*, 1:268.

~~reforming movement, whose supporters never understand its own proper meaning and purpose, is sure in the end to go astray. It is all very well for Englishmen to do their thinking after the event, because tradition lies at the basis of their national life. But Americans, as a nation, are consecrated to the realization of a group of ideas; and ideas to be fruitful must square both with the facts to which they are applied and with one another. Mr. Roosevelt and his hammer must be accepted gratefully, as the best available type of national reformer; but the day may and should come when a national reformer will appear who can be figured more in the guise of St. Michael, armed with a flaming sword and winged for flight.~~

CHAPTER VII

I

RECONSTRUCTION; ITS CONDITIONS AND PURPOSES

The best method of approaching a critical reconstruction of American political ideas will be by means of an analysis of the meaning of democracy. A clear popular understanding of the contents of the democratic principle is obviously of the utmost practical political importance to the American people. Their loyalty to the idea of democracy, as they understand it, cannot be questioned. Nothing of any considerable political importance is done or left undone in the United States, unless such action or inaction can be plausibly defended on democratic grounds; and the only way to secure for the American people the benefit of a comprehensive and consistent political policy will be to derive it from a comprehensive and consistent conception of democracy.

Democracy as most frequently understood is essentially and exhaustively defined as a matter of popular government; and such a definition raises at once a multitude of time-honored, but by no means superannuated, controversies. The constitutional liberals in England, in France, and in this country have always objected to democracy as so understood, because of the possible sanction it affords for the substitution of a popular despotism in the place of the former royal or oligarchic despotisms. From their point of view individual liberty is the greatest blessing which can be secured to a people by a government; and individual liberty can be permanently guaranteed only in case political liberties are in theory and practice subordinated to civil liberties. Popular political institutions constitute a good servant, but a bad master. When introduced in moderation they keep the government of a country in close relation with well-informed public opinion, which is a necessary condition of political sanitation; but if carried too far, such institutions compromise the security of the individual and the integrity of the state. They erect a power in the state, which in theory is unlimited and which constantly tends in practice to dispense with restrictions. A power which is theoretically absolute is under no obligation to respect the rights either of individuals or minorities; and sooner or later such power will be used for the purpose of opposing the individual. The only way to secure individual liberty is, consequently, to organize a state in which the Sovereign power is deprived of any national excuse or legal opportunity of violating certain essential individual rights.

The foregoing criticism of democracy, defined as popular government, may have much practical importance; but there are objections to it on the score of logic. It is not a criticism of a certain conception of democracy, so much as of democracy itself. Ultimate responsibility for the government of a community must reside somewhere. If the single monarch is practically dethroned, as he is by these liberal critics of democracy, some Sovereign power must be provided to take his place. In England Parliament, by means of a

steady encroachment on the royal prerogatives, has gradually become Sovereign; but other countries, such as France and the United States, which have wholly dispensed with royalty, cannot, even if they would, make a legislative body Sovereign by the simple process of allowing it to usurp power once enjoyed by the Crown. France did, indeed, after it had finally dispensed with Legitimacy, make two attempts to found governments in which the theory of popular Sovereignty was evaded. The Orleans monarchy, for instance, through the mouths of its friends, denied Sovereignty to the people, without being able to claim it for the King; and this insecurity of its legal framework was an indirect cause of a violent explosion of effective popular Sovereignty in 1848. The apologists for the Second Empire admitted the theory of a Sovereign people, but claimed that the Sovereign power could be safely and efficiently used only in case it were delegated to one Napoleon III—a view the correctness of which the results of the Imperial policy eventually tended to damage. There is in point of fact no logical escape from a theory of popular Sovereignty—once the theory of divinely appointed royal Sovereignty is rejected. An escape can be made, of course, as in England, by means of a compromise and a legal fiction; and such an escape can be fully justified from the English national point of view; but countries which have rejected the royal and aristocratic tradition are forbidden this means of escape—if escape it is. They are obliged to admit the doctrine of popular Sovereignty. They are obliged to proclaim a theory of unlimited popular powers.

To be sure, a democracy may impose rules of action upon itself—as the American democracy did in accepting the Federal Constitution. But in adopting the Federal Constitution the American people did not abandon either its responsibilities or rights as Sovereign. Difficult as it may be to escape from the legal framework defined in the Constitution, that body of law in theory remains merely an instrument which was made for the people and which if necessary can and will be modified. A people, to whom was denied the ultimate responsibility for its welfare, would not have obtained the prime condition of genuine liberty. Individual freedom is important, but more important still is the freedom of a whole people to dispose of its own destiny; and I do not see how the existence of such an ultimate popular political freedom and responsibility can be denied by any one who has rejected the theory of a divinely appointed political order. The fallibility of human nature being what it is, the practical application of this theory will have its grave dangers; but these dangers are only evaded and postponed by a failure to place ultimate political responsibility where it belongs. While a country in the position of Germany or Great Britain may be fully justified from the point of view of its national tradition, in merely compromising with democracy, other countries, such as the United States and France, which have earned the right to dispense with these compromises, are at least building their political structure on the real and righteous source of political authority. Democracy may mean something more than a theoretically absolute popular government, but it assuredly cannot mean anything less.

If, however, democracy does not mean anything less than popular Sovereignty, it assuredly does mean something more. It must at least mean an expression of the Sovereign will, which will not contradict and destroy the continuous existence of its own Sovereign power. Several times during the political history of France in the nineteenth century, the popular will has expressed itself in a manner adverse to popular political institutions. Assemblies have been elected by universal suffrage, whose tendencies have been reactionary and undemocratic, and who have been supported in this reactionary policy by an effective public opinion. Or the French people have by means of a plebiscite delegated their Sovereign power to an Imperial dictator, whose whole political system was based on a deep suspicion of the source of his own authority. A particular group of political institutions or course of political action may, then, be representative of the popular will, and yet may be undemocratic. Popular Sovereignty is self-contradictory, unless it is expressed in a manner favorable to its own perpetuity and integrity.

The assertion of the doctrine of popular Sovereignty is, consequently, rather the beginning than the end of democracy. There can be no democracy where the people do not rule; but government by the people is not necessarily democratic. The popular will must in a democratic state be expressed somehow in the interest of democracy itself; and we have not traveled very far towards a satisfactory conception of democracy until this democratic purpose has received some definition. In what way must a democratic state behave in order to contribute to its own integrity?

The ordinary American answer to this question is contained in the assertion of Lincoln, that our government is "dedicated to the proposition that all men are created equal." Lincoln's phrasing of the principle was due to the fact that the obnoxious and undemocratic system of negro slavery was uppermost in his mind when he made his Gettysburg address; but he meant by his assertion of the principle of equality substantially what is meant to-day by the principle of "equal rights for all and special privileges for none." Government by the people has its natural and logical complement in government for the people. Every state with a legal framework must grant certain rights to individuals; and every state, in so far as it is efficient, must guarantee to the individual that his rights, as legally defined, are secure. But an essentially democratic state consists in the circumstance that all citizens enjoy these rights equally. If any citizen or any group of citizens enjoys by virtue of the law any advantage over their fellow-citizens, then the most sacred principle of democracy is violated. On the other hand, a community in which no man or no group of men are granted by law any advantage over their fellow-citizens is the type of the perfect and fruitful democratic state. Society is organized politically for the benefit of all the people. Such an organization may permit radical differences among individuals in the opportunities and possessions they actually enjoy; but no man would be able to impute his own success or failure to the legal framework of society. Every citizen would be getting a "Square Deal."

Such is the idea of the democratic state, which the majority of good Americans believe to be entirely satisfactory. It should endure indefinitely, because it seeks to satisfy every interest essential to associated life. The interest of the individual is protected, because of the liberties he securely enjoys. The general social interest is equally well protected, because the liberties enjoyed by one or by a few are enjoyed by all. Thus the individual and the social interests are automatically harmonized. The virile democrat in pursuing his own interest "under the law" is contributing effectively to the interest of society, while the social interest consists precisely in the promotion of these individual interests, in so far as they can be equally exercised. The divergent demands of the individual and the social interest can be reconciled by grafting the principle of equality on the thrifty tree of individual rights, and the ripe fruit thereof can be gathered merely by shaking the tree.

It must be immediately admitted, also, that the principle of equal rights, like the principle of ultimate popular political responsibility is the expression of an essential aspect of democracy. There is no room for permanent legal privileges in a democratic state. Such privileges may be and frequently are defended on many excellent grounds. They may unquestionably contribute for a time to social and economic efficiency and to individual independence. But whatever advantage may be derived from such permanent discriminations must be abandoned by a democracy. It cannot afford to give any one class of its citizens a permanent advantage or to others a permanent grievance. It ceases to be a democracy, just as soon as any permanent privileges are conferred by its institutions or its laws; and this equality of right and absence of permanent privilege is the expression of a fundamental social interest.

But the principle of equal rights, like the principle of ultimate popular political responsibility, is not sufficient; and because of its insufficiency results in certain dangerous ambiguities and self-contradictions. American political thinkers have always repudiated the idea that by equality of rights they meant anything like equality of performance or power.

The utmost varieties of individual power and ability are bound to exist and are bound to bring about many different levels of individual achievement. Democracy both recognizes the right of the individual to use his powers to the utmost, and encourages him to do so by offering a fair field and, in cases of success, an abundant reward. The democratic principle requires an equal start in the race, while expecting at the same time an unequal finish. But Americans who talk in this way seem wholly blind to the fact that under a legal system which holds private property sacred there may be equal rights, but there cannot possibly be any equal opportunities for exercising such rights. The chance which the individual has to compete with his fellows and take a prize in the race is vitally affected by material conditions over which he has no control. It is as if the competitor in a Marathon cross country run were denied proper nourishment or proper training, and was obliged to toe the mark against rivals who had every benefit of food and discipline. Under such conditions he is not as badly off as if he were entirely excluded from the race. With the aid of exceptional strength and intelligence he may overcome the odds against him and win out. But it would be absurd to claim, because all the rivals toed the same mark, that a man's victory or defeat depended exclusively on his own efforts. Those who have enjoyed the benefits of wealth and thorough education start with an advantage which can be overcome only in very exceptional men,—men so exceptional, in fact, that the average competitor without such benefits feels himself disqualified for the contest.

Because of the ambiguity indicated above, different people with different interests, all of them good patriotic Americans, draw very different inferences from the doctrine of equal rights. The man of conservative ideas and interests means by the rights, which are to be equally exercised, only those rights which are defined and protected by the law—the more fundamental of which are the rights to personal freedom and to private property. The man of radical ideas, on the other hand, observing, as he may very clearly, that these equal rights cannot possibly be made really equivalent to equal opportunities, bases upon the same doctrine a more or less drastic criticism of the existing economic and social order and sometimes of the motives of its beneficiaries and conservators. The same principle, differently interpreted, is the foundation of American political orthodoxy and American political heterodoxy. The same measure of reforming legislation, such as the new Inter-state Commerce Law, seems to one party a wholly inadequate attempt to make the exercise of individual rights a little more equal, while it seems to others an egregious violation of the principle itself. What with reforming legislation on the one hand and the lack of it on the other, the once sweet air of the American political mansion is soured by complaints. Privileges and discriminations seem to lurk in every political and economic corner. The "people" are appealing to the state to protect them against the usurpations of the corporations and the Bosses. The government is appealing to the courts to protect the shippers against the railroads. The corporations are appealing to the Federal courts to protect them from the unfair treatment of state legislatures. Employers are fighting trades-unionism, because it denies equal rights to their employers. The unionists are entreating public opinion to protect them against the unfairness of "government by injunction." To the free trader the whole protectionist system seems a flagrant discrimination on behalf of a certain portion of the community. Everybody seems to be clamoring for a "Square Deal" but nobody seems to be getting it.

The ambiguity of the principle of equal rights and the resulting confusion of counsel are so obvious that there must be some good reason for their apparently unsuspected existence. The truth is that Americans have not readjusted their political ideas to the teaching of their political and economic experience. For a couple of generations after Jefferson had established the doctrine of equal rights as the fundamental principle of the American democracy, the ambiguity resident in the application of the doctrine was concealed. The Jacksonian Democrats, for instance, who were constantly nosing the ground for a scent of unfair treatment, could discover no example of political privileges, except the continued retention of their offices by experienced public servants; and the only case of economic

privilege of which they were certain was that of the National Bank. The fact is, of course, that the great majority of Americans were getting a "Square Deal" as long as the economic opportunities of a new country had not been developed and appropriated. Individual and social interest did substantially coincide as long as so many opportunities were open to the poor and untrained man, and as long as the public interest demanded first of all the utmost celerity of economic development. But, as we have seen in a preceding chapter, the economic development of the country resulted inevitably in a condition which demanded on the part of the successful competitor either increasing capital, improved training, or a larger amount of ability and energy. With the advent of comparative economic and social maturity, the exercise of certain legal rights became substantially equivalent to the exercise of a privilege; and if equality of opportunity was to be maintained, it could not be done by virtue of non-interference. The demands of the "Higher Law" began to diverge from the results of the actual legal system.

Public opinion is, of course, extremely loth to admit that there exists any such divergence of individual and social interest, or any such contradiction in the fundamental American principle. Reformers no less than conservatives have been doggedly determined to place some other interpretation upon the generally recognized abuses; and the interpretation on which they have fastened is that some of the victors have captured too many prizes, because they did not play fair. There is just enough truth in this interpretation to make it plausible, although, as we have seen, the most flagrant examples of apparent cheating were due as much to equivocal rules as to any fraudulent intention. But orthodox public opinion is obliged by the necessities of its own situation to exaggerate the truth of its favorite interpretation; and any such exaggeration is attended with grave dangers, precisely because the ambiguous nature of the principle itself gives a similar ambiguity to its violations. The cheating is understood as disobedience to the actual law, or as violation of a Higher Law, according to the interests and preconceptions of the different reformers; but however it is understood, they believe themselves to be upholding some kind of a Law, and hence endowed with some kind of a sacred mission.

Thus the want of integrity in what is supposed to be the formative principle of democracy results, as it did before the Civil War, in a division of the actual substance of the nation. Men naturally disposed to be indignant at people with whom they disagree come to believe that their indignation is comparable to that of the Lord. Men naturally disposed to be envious and suspicious of others more fortunate than themselves come to confuse their suspicions with a duty to the society. Demagogues can appeal to the passions aroused by this prevailing sense of unfair play for the purpose of getting themselves elected to office or for the purpose of passing blundering measures of repression. The type of admirable and popular democrat ceases to be a statesman, attempting to bestow unity and health on the body politic by prescribing more wholesome habits of living. He becomes instead a sublimated District Attorney, whose duty it is to punish violations both of the actual and the "Higher Law." Thus he is figured as a kind of an avenging angel; but (as it happens) he is an avenging angel who can find little to avenge and who has no power of flight. There is an enormous discrepancy between the promises of these gentlemen and their performances, no matter whether they occupy an executive office, the editorial chairs of yellow journals, or merely the place of public prosecutor; and it sometimes happens that public prosecutors who have played the part of avenging angels before election, are, as Mr. William Travers Jerome knows, themselves prosecuted after a few years of office by their aggrieved constituents. The truth is that these gentlemen are confronted by a task which is in a large measure impossible, and which, so far as possible, would be either disappointing or dangerous in its results.

Hence it is that continued loyalty to a contradictory principle is destructive of a wholesome public sentiment and opinion. A wholesome public opinion in a democracy is one which keeps a democracy sound and whole; and it cannot prevail unless the individuals composing

it recognize mutual ties and responsibilities which lie deeper than any differences of interest and idea. No formula whose effect on public opinion is not binding and healing and unifying has any substantial claim to consideration as the essential and formative democratic idea. Belief in the principle of equal rights does not bind, heal, and unify public opinion. Its effect rather is confusing, distracting, and at worst, disintegrating. A democratic political organization has no immunity from grievances. They are a necessary result of a complicated and changing industrial and social organism. What is good for one generation will often be followed by consequences that spell deprivation for the next. What is good for one man or one class of men will bring ills to other men or classes of men. What is good for the community as a whole may mean temporary loss and a sense of injustice to a minority. All grievances from any cause should receive full expression in a democracy, but, inasmuch as the righteously discontented must be always with us, the fundamental democratic principle should, above all, counsel mutual forbearance and loyalty. The principle of equal rights encourages mutual suspicion and disloyalty. It tends to attribute individual and social ills, for which general moral, economic, and social causes are usually in large measure responsible, to individual wrong-doing; and in this way it arouses and intensifies that personal and class hatred, which never in any society lies far below the surface. Men who have grievances are inflamed into anger and resentment. In claiming what they believe to be their rights, they are in their own opinion acting on behalf not merely of their interests, but of an absolute democratic principle. Their angry resentment becomes transformed in their own minds into righteous indignation; and there may be turned loose upon the community a horde of self-seeking fanatics—like unto those soldiers in the religious wars who robbed and slaughtered their opponents in the service of God.

II

DEMOCRACY AND DISCRIMINATION

The principle of equal rights has always appealed to its more patriotic and sensible adherents as essentially an impartial rule of political action—one that held a perfectly fair balance between the individual and society, and between different and hostile individual and class interests. But as a fundamental principle of democratic policy it is as ambiguous in this respect as it is in other respects. In its traditional form and expression it has concealed an extremely partial interest under a formal proclamation of impartiality. The political thinker who popularized it in this country was not concerned fundamentally with harmonizing the essential interest of the individual with the essential popular or social interest. Jefferson's political system was intended for the benefit only of a special class of individuals, viz., those average people who would not be helped by any really formative rule or method of discrimination. In practice it has proved to be inimical to individual liberty, efficiency, and distinction. An insistent demand for equality, even in the form of a demand for equal rights, inevitably has a negative and limiting effect upon the free and able exercise of individual opportunities. From the Jeffersonian point of view democracy would incur a graver danger from a violation of equality than it would profit from a triumphant assertion of individual liberty. Every opportunity for the edifying exercise of power, on the part either of an individual, a group of individuals, or the state is by its very nature also an opportunity for its evil exercise. The political leader whose official power depends upon popular confidence may betray the trust. The corporation employing thousands of men and supplying millions of people with some necessary service or commodity may reduce the cost of production only for its own profit. The state may use its great authority chiefly for the benefit of special interests. The advocate of equal rights is preoccupied by these opportunities for the abusive exercise of power, because from his point of view rights exercised in the interest of inequality have ceased to be righteous. He distrusts those forms of individual and associated activity which give any individual or association substantial advantages over their

associates. He becomes suspicious of any kind of individual and social distinction with the nature and effects of which he is not completely familiar.

A democracy of equal rights may tend to encourage certain expressions of individual liberty; but they are few in number and limited in scope. It rejoices in the freedom of its citizens, provided this freedom receives certain ordinary expressions. It will follow a political leader, like Jefferson or Jackson, with a blind confidence of which a really free democracy would not be capable, because such leaders are, or claim to be in every respect, except their prominence, one of the "people." Distinction of this kind does not separate a leader from the majority. It only ties them together more firmly. It is an acceptable assertion of individual liberty, because it is liberty converted by its exercise into a kind of equality. In the same way the American democracy most cordially admired for a long time men, who pursued more energetically and successfully than their fellows, ordinary business occupations, because they believed that such familiar expressions of individual liberty really tended towards social and industrial homogeneity. Herein they were mistaken; but the supposition was made in good faith, and it constitutes the basis of the Jeffersonian Democrat's illusion in reference to his own interest in liberty. He dislikes or ignores liberty, only when it looks in the direction of moral and intellectual emancipation. In so far as his influence has prevailed, Americans have been encouraged to think those thoughts and to perform those acts which everybody else is thinking and performing.

The effect of a belief in the principle of "equal rights" on freedom is, however, most clearly shown by its attitude toward Democratic political organization and policy. A people jealous of their rights are not sufficiently afraid of special individual efficiency and distinction to take very many precautions against it. They greet it oftener with neglect than with positive coercion. Jeffersonian Democracy is, however, very much afraid of any examples of associated efficiency. Equality of rights is most in danger of being violated when the exercise of rights is associated with power, and any unusual amount of power is usually derived from the association of a number of individuals for a common purpose. The most dangerous example of such association is not, however, a huge corporation or a labor union; it is the state. The state cannot be bound hand and foot by the law, as can a corporation, because it necessarily possesses some powers of legislation; and the power to legislate inevitably escapes the limitation of the principle of equal rights. The power to legislate implies the power to discriminate; and the best way consequently for a good democracy of equal rights to avoid the danger of discrimination will be to organize the state so that its power for ill will be rigidly restricted. The possible preferential interference on the part of a strong and efficient government must be checked by making the government feeble and devoid of independence. The less independent and efficient the several departments of the government are permitted to become, the less likely that the government as a whole will use its power for anything but a really popular purpose.

In the foregoing type of political organization, which has been very much favored by the American democracy, the freedom of the official political leader is sacrificed for the benefit of the supposed freedom of that class of equalized individuals known as the "people," but by the "people" Jefferson and his followers have never meant all the people or the people as a whole. They have meant a sort of apotheosized majority—the people in so far as they could be generalized and reduced to an average. The interests of this class were conceived as inimical to any discrimination which tended to select peculiarly efficient individuals or those who were peculiarly capable of social service. The system of equal rights, particularly in its economic and political application *has* worked for the benefit of such a class, but rather in its effect upon American intelligence and morals, than in its effect upon American political and economic development. The system, that is, has only partly served the purpose of its founder and his followers, and it has failed because it did not bring with it any machinery adequate even to its own insipid and barren purposes. Even the meager social interest which Jefferson concealed under cover of his demand for equal rights could not be promoted

without some effective organ of social responsibility; and the Democrats of to-day are obliged, as we have seen, to invoke the action of the central government to destroy those economic discriminations which its former inaction had encouraged. But even so the traditional democracy still retains its dislike of centralized and socialized responsibility. It consents to use the machinery of the government only for a negative or destructive object. Such must always be the case as long as it remains true to its fundamental principle. That principle defines the social interest merely in the terms of an indiscriminate individualism—which is the one kind of individualism murderous to both the essential individual and the essential social interest.

The net result has been that wherever the attempt to discriminate in favor of the average or indiscriminate individual has succeeded, it has succeeded at the expense of individual liberty, efficiency, and distinction; but it has more often failed than succeeded. Whenever the exceptional individual has been given any genuine liberty, he has inevitably conquered. That is the whole meaning of the process of economic and social development traced in certain preceding chapters. The strong and capable men not only conquer, but they seek to perpetuate their conquests by occupying all the strategic points in the economic and political battle-field—whereby they obtain certain more or less permanent advantages over their fellow-democrats. Thus in so far as the equal rights are freely exercised, they are bound to result in inequalities; and these inequalities are bound to make for their own perpetuation, and so to provoke still further discrimination. Wherever the principle has been allowed to mean what it seems to mean, it has determined and encouraged its own violation. The marriage which it is supposed to consecrate between liberty and equality gives birth to unnatural children, whose nature it is to devour one or the other of their parents.

The only way in which the thorough-going adherent of the principle of equal rights can treat these tendencies to discrimination, when they develop, is rigidly to repress them; and this tendency to repression is now beginning to take possession of those Americans who represent the pure Democratic tradition. They propose to crush out the chief examples of effective individual and associated action, which their system of democracy has encouraged to develop. They propose frankly to destroy, so far as possible, the economic organization which has been built up under stress of competitive conditions; and by assuming such an attitude they have fallen away even from the pretense of impartiality, and have come out as frankly representative of a class interest. But even to assert this class interest efficiently they have been obliged to abandon, in fact if not in word, their correlative principle of national irresponsibility. Whatever the national interest may be, it is not to be asserted by the political practice of non-interference. The hope of automatic democratic fulfillment must be abandoned. The national government must stop in and discriminate; but it must discriminate, not on behalf of liberty and the special individual, but on behalf of equality and the average man.

Thus the Jeffersonian principle of national irresponsibility can no longer be maintained by those Democrats who sincerely believe that the inequalities of power generated in the American economic and political system are dangerous to the integrity of the democratic state. To this extent really sincere followers of Jefferson are obliged to admit the superior political wisdom of Hamilton's principle of national responsibility, and once they have made this admission, they have implicitly abandoned their contention that the doctrine of equal rights is a sufficient principle of democratic political action. They have implicitly accepted the idea that the public interest is to be asserted, not merely by equalizing individual rights, but by controlling individuals in the exercise of those rights. The national public interest has to be affirmed by positive and aggressive action. The nation has to have a will and a policy as well as the individual; and this policy can no longer be confined to the merely negative task of keeping individual rights from becoming in any way privileged.

The arduous and responsible political task which a nation in its collective capacity must seek to perform is that of selecting among the various prevailing ways of exercising individual rights those which contribute to national perpetuity and integrity. Such selection implies some interference with the natural course of popular notion; and that interference is always costly and may be harmful either to the individual or the social interest must be frankly admitted. He would be a foolish Hamiltonian who would claim that a state, no matter how efficiently organized and ably managed, will not make serious and perhaps enduring mistakes; but he can answer that inaction and irresponsibility are more costly and dangerous than intelligent and responsible interference. The practice of non-interference is just as selective in its effects as the practice of state interference. It means merely that the nation is willing to accept the results of natural selection instead of preferring to substitute the results of artificial selection. In one way or another a nation is bound to recognize the results of selection. The Hamiltonian principle of national responsibility recognizes the inevitability of selection; and since it is inevitable, is not afraid to interfere on behalf of the selection of the really fittest. If a selective policy is pursued in good faith and with sufficient intelligence, the nation will at least be learning from its mistakes. It should find out gradually the kind and method of selection, which is most desirable, and how far selection by non-interference is to be preferred to active selection.

As a matter of fact the American democracy both in its central and in its local governments has always practiced both methods of selection. The state governments have sedulously indulged in a kind of interference conspicuous both for its activity and its inefficiency. The Federal government, on the other hand, has been permitted to interfere very much less; but even during the palmiest days of national irresponsibility it did not altogether escape active intervention. A protective tariff is, of course, a plain case of preferential class legislation, and so was the original Inter-state Commerce Act. They were designed to substitute artificial preferences for those effected by unregulated individual action, on the ground that the proposed modification of the natural course of trade would contribute to the general economic prosperity. No less preferential in purpose are the measures of reform recently enacted by the central government. The amended Inter-state Commerce Law largely increases the power of possible discrimination possessed by the Federal Commission. The Pure Food Bill forbids many practices, which have arisen in connection with the manufacture of food products, and discriminates against the perpetrators of such practices. Factory legislation or laws regulating the hours of labor have a similar meaning and justification. It is not too much to say that substantially all the industrial legislation, demanded by the "people" both here and abroad and passed in the popular interest, has been based essentially on class discrimination.

The situation which these laws are supposed to meet is always the same. A certain number of individuals enjoy, in the beginning, equal opportunities to perform certain acts; and in the competition resulting there from some of these individuals or associations obtain advantages over their competitors, or over their fellow-citizens whom they employ or serve. Sometimes these advantages and the practices whereby they are obtained are profitable to a larger number of people than they injure. Sometimes the reverse is true. In either event the state is usually asked to interfere by the class whose economic position has been compromised. It by no means follows that the state should acquiesce in this demand. In many cases interference may be more costly than beneficial. Each case must be considered on its merits. But whether in any particular case the state takes sides or remains impartial, it most assuredly has a positive function to perform on the promises. If it remains impartial, it simply agrees to abide by the results of natural selection. If it interferes, it seeks to replace natural with artificial discrimination. In both cases it authorizes discriminations which in their effect violate the doctrine of "equal rights." Of course, a reformer can always claim that any particular measure of reform proposes merely to restore to the people a "Square Deal"; but that is simply an easy and thoughtless way of concealing novel purposes under familiar formulas. Any genuine measure of economic or political reform will, of course,

give certain individuals better opportunities than those they have been recently enjoying, but it will reach this result only by depriving other individuals of advantages which they have earned.

Impartiality is the duty of the judge rather than the statesman, of the courts rather than the government. The state which proposes to draw a ring around the conflicting interests of its citizens and interfere only on behalf of a fair fight will be obliged to interfere constantly and will never accomplish its purpose. In economic warfare, the fighting can never be fair for long, and it is the business of the state to see that its own friends are victorious. It holds, if you please, itself a hand in the game. The several players are playing, not merely with one another, but with the political and social bank. The security and perpetuity of the state and of the individual in so far as he is a social animal, depend upon the victory of the national interest—as represented both in the assurance of the national profit and in the domination of the nation's friends. It is in the position of the bank at Monte Carlo, which does not pretend to play fair, but which frankly promulgates rules advantageous to itself. Considering the percentage in its favor and the length of its purse, it cannot possibly lose. It is not really gambling; and it does not propose to take any unnecessary risks. Neither can a state, democratic or otherwise, which believes in its own purpose. While preserving at times an appearance of impartiality so that its citizens may enjoy for a while a sense of the reality of their private game, it must on the whole make the rules in its own interest. It must help those men to win who are most capable of using their winnings for the benefit of society.

III

CONSTRUCTIVE DISCRIMINATION

~~Assuming, then, that a democracy cannot avoid the constant assertion of national responsibility for the national welfare, an all-important question remains as to the way in which and the purpose for which this interference should be exercised. Should it be exercised on behalf of individual liberty? Should it be exercised on behalf of social equality? Is there any way in which it can be exercised on behalf both of liberty and equality?~~

~~Hamilton and the constitutional liberals asserted that the state should interfere exclusively on behalf of individual liberty; but Hamilton was no democrat and was not outlining the policy of a democratic state. In point of fact democracies have never been satisfied with a definition of democratic policy in terms of liberty. Not only have the particular friends of liberty usually been hostile to democracy, but democracies both in idea and behavior have frequently been hostile to liberty; and they have been justified in distrusting a political régime organized wholly or even chiefly for its benefit. "La Liberté," says Mr. Emile Faguet, in the preface to his "Politiques et Moralistes du Dix-Neuvième Siècle"—"La Liberté s'oppose à l'Égalité, car La Liberté est aristocratique par essence. La Liberté ne se donne jamais, ne s'octroie jamais, elle se conquiert. Or ne peuvent la conquérir que des groupes sociaux qui ont su se donner la cohérence, l'organisation et la discipline et qui par conséquent, sont des groupes aristocratiques." The fact that states organized exclusively or largely for the benefit of liberty are essentially aristocratic explains the hostile and suspicious attitude of democracies towards such a principle of political action.~~

~~Only a comparatively small minority are capable at any one time of exercising political, economic, and civil liberties in an able, efficient, or thoroughly worthy manner; and a régime wrought for the benefit of such a minority would become at best a state, in which economic, political, and social power would be very unevenly distributed—a state like the Orleans Monarchy in France of the "Bourgeoisie" and the "Intellectuals." Such a state might well give its citizens fairly good government, as did the Orleans Monarchy; but just in so far~~