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# Of First Principles & Organic Laws

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# *Of First Principles & Organic Laws*

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*by*

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# ABSTRACT

The First Principles and Organic Laws of the United States ought to be part of a daily discussion at every water cooler and every dinner table in the country. Instead, it is entirely possible there have been days, weeks, months—or even years—when neither term has been spoken anywhere in America. Yet, during the first several decades of the country's existence, the concepts of First Principles and Organic Laws were commonly discussed; in fact these notions were crucial to the founding of the country and its political organization. Works concerning the foundation of the United States, the Declaration of Independence, the American War for Independence, the Constitution, the Bill of Rights, and the men involved in these events and creating these documents, are perhaps the most published in the United States. Nonetheless, arguably few American citizens have an accurate understanding of these concepts, events, documents, and men—and they are virtually all men. One method by which to stimulate discussion about how the United States was politically organized, how it *is* politically organized, and how it might be possible to re-organize the political system of the United States, is an exposition of the First Principles and Organic Laws; and of the events, documents, and men, associated with them. This exegesis is underscored by three years of research that produced 750 footnotes from overwhelmingly primary sources, with a 43-page Bibliography. The results are decidedly at odds with the commonly internalized mythology of the United States. It is the prerogative of the citizen reader to use the information herein to discuss and debate the political, social, and economic, organization of the United States; or to perhaps Alter or Abolish it.

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# *Nota Bene:*

Critical reflective skepticism is a willingness to re-examine all previously held attitudes. Herein, the defining documents of the United States—its Organic Laws—and the events surrounding their creation are critically re-examined with reflective skepticism. Such re-examination has extended to the use of capitalization and traditional naming conventions.

Some naming conventions originated centuries ago and may have long passed their expiration date. It is perhaps a disservice to readers to perpetuate and re-enforce *mumpsimus* that scholars, educators, and citizens of the world know full well to be inaccurate. It is for this reason that the actual names of historical personages, political units, and geographic locations are observed, rather than cognomen invented in the distant past that have continued unabated as parochial "conventions." It is unfortunate that some may find this choice pretentious, but if one person will have learned the given names of Aristotéles and Platón and discovered there are such places in the world as Ellada, Deutschland, España, and Bhārat—and that "Greece," "Germany," "Spain," and "India," do not exist—it will have been well worth the effort and potential disdain.

Throughout, the collective term "First Principles," as well as the individual First Principles and their subsets, denote particular concepts and are therefore absolutely proper nouns and properly capitalized—something that emphasizes their philosophical, conceptual, or theoretic importance. Certain other key notions, such as a very specifically defined "Democracy," and groups such as the "Founders," "Framers," "Opulent Minority," "Exploitable Majority," and "Indigenous Peoples," are also proper nouns and thus properly capitalized. The Secret Proceedings—what are euphemistically referenced by historians as the "Constitutional Convention," "Philadelphia Convention," "Federal Convention", or "Grand Convention at Philadelphia"—is a proper noun and capitalized in keeping with the convention for these euphemisms, and also to distinguish these momentous Secret Proceedings from any other secret proceedings and debates. The Founders often capitalized words for emphasis, and always capitalized "States" when referring to the individual United States. The perhaps greater than customary prevalence of capitalized words herein may evoke early printings of works by such American revolutionaries as Thomas Jefferson, Thomas Paine, and Benjamin Franklin; although their stylistic practices may seem somewhat archaic in an academic *milieu* of MLA style, it would not be unwelcomed company.

# *Preamble*

*What right had they to say, 'We, the People?'...Who authorized them to speak the language of, 'We, the People?'...The People gave them no power to use their name; that they exceeded their power is perfectly clear.*

—Patrick Henry[1]

No one living today had a hand in drafting and imposing upon the citizens of the United States its Declaration of Independence, Articles of Confederation & Perpetual Union, Constitution and Bill of Rights, and An Ordinance for the Government of the Territory of the United States North-West of the River Ohio (the "North-West Ordinance"); which are collectively the permanent Organic Laws, or organizing laws, of the United States.[2] Whether or not any of these instruments ever enjoyed the popular support of the American *Dêmos*,[3] there has never in American history been an attempt to obtain the legitimate Consent of the People for any of them. Nor have American citizens ever been familiarized with the very concepts of organic law and the First Principles that are contained within the Declaration of Independence. With the imposition of each successive Organic Law, the wealthiest six percent of American society that James Madison called "the Minority of the Opulent"[4]—Northern European male property owners—unilaterally established new rules and revised the political and social organization of the United States. The existence and importance of the

[1] Patrick Henry, "Speech Before Virginia Ratifying Convention, Wednesday, 4 June, 1788," *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787, Volume III, Second Edition*, Jonathan Elliot, Editor (Washington, DC: Jonathan Elliot—1836), 22-23.

[2] Continental Congress [1776-77] & United States Congress [1787-89], "Organic Laws of the United States of America," *Revised Statutes at Large of the United States: Passed at the First Session of the Forty-Third Congress 1873-1874*, *Volume XVIII, Part 1* (Washington, DC: Government Printing Office—1875), 3-32.

[3] Unattributed, "dêmos; *noun*: the aggregate members of a society," *kypros.net* dictionary (Nicosia, CY: Kypros.Net—2016); accessed 23 August, 2015: http://www.kypros.org/cgi-bin/lexicon

[4] James Madison, [Tuesday, 26 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 183.

Organic Laws and First Principles is shrouded in what amounts to official secrecy, obscured by implanted "collective memory."[5]—i.e., a commonly internalized imagined history—without any *ex cathedra* guidance as to the existence, nature, and significance, of the country's First Principles and Organic Laws.

Once the existence of the Organic Laws of the United States enters the consciousness, the fact that the country has *four* organizing laws can be, in and of itself, somewhat confounding. Logic would seem to dictate a country may only be founded once and organized once, and therefore would have, at most, one founding document and one organizing document if they are not one and the same. Yet, quite a few polities around the globe have had a multiplicity of foundings, re-births, re-organizations, and new constitutions. Since the Franks conquered the Romanized *Na Gaeil* ("Gaelic people") of "Gaul" in 486, France has endured nearly a dozen revolutions, a *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"],[6] five *Républiques Française*, and sixteen constitutions—the latest being its only obtaining organic law, the *Constitution de la Cinquième République***,** adopted in 1958, which incorporates its first principles: the *Déclaration des Droits de l'Homme et du Citoyen*. España has had fourteen constitutions since the *Carta de Bayona* ("Bayonne Statute Royal Charter of 1808-1814"), culminating in its lone active organic law: the *Constitución Española de 1978*. Peter S. Onuf postulates that the United States underwent what could be described as "a continuous founding"[7] that spanned at least from the Declaration of Independence through at least the ratification of the

[5] Maurice Halbwachs, "a group consciousness that exists outside of an individual, lives beyond the individual, and through which an individual understands the past," *Les Cadres Sociaux de la Mémoir* ["The Social Framework of Memory"] (Paris, FR: Librairie Félix Alcan—1925), 6.
[6] Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine, "Article IX," *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"] (Paris, FR: l'Assemblée Nationale Constituante—26 Auguste, 1789).
[7] Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, IN: Indiana University Press—1987), 147.

Constitution; Joseph J. Ellis euphemistically terms the *coup d'état* that imposed the Constitution a "Second Revolution,"[8] apparently considering it a rebellion of the Opulent Minority against an imagined tyranny of democracy. A preponderance of Supreme Court rulings implicitly adopt the "Second Revolution" model: nothing prior to the Constitution is valid—except when a precept of an earlier Organic Law suits the purposes of the Court.

The Declaration of Independence founded the United States with the promise of an egalitarian, isonomic, democratic social organization; its First Principles simultaneously provide a standard for measuring the legitimacy of every political system—one that is as valid today as it was in 1776. The United States did not exist before independence was declared; it has existed ever since. The country was governed on an *ad hoc* basis until the Articles of Confederation & Perpetual Union founded its first formal political system: a confederation of thirteen individual plutocracies. The Articles do not explicitly nor implicitly negate the First Principles, and because a political system is subservient to social organization, the two can and should co-exist. The Constitution does not explicitly nor implicitly negate the Articles as it transforms the existing political system established by the Articles into a plutocratic representative republic. As with the Articles, the new political organization founded by the Constitution is subordinate to the social organization established by the First Principles. The North-West Ordinance inaugurates the American colonial empire by founding, in the Ohio Valley, the first colony of the newly united States, without any input from either the indigenous or colonial inhabitants of the territory. To varying degrees, each successive Organic Law contradicts the preceding Organic Law, and is written as though the preceding Organic Law never existed. Yet, they *do* exist, and are permanent and obtaining.

[8] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 97.

Such inconsistency belies the boast that the United States is a country "of laws and not of men;"[9] where "the law is king"[10] rather than the king being the law. The implication, the mythology, is that in the United States laws are impartial and incorruptible, and not subject to the whims of a monarch or other human. The reality is that the whims of kings have been supplanted by the caprices of the American political class, which is a subset of the Opulent Minority and represents the interests of Opulents. The Organic Laws of the United States are the laws, the rules, made for itself by the Opulent Minority, without the Consent or involvement of the country's *Dêmos*. Yet, Opulents have never seen fit throughout American history to heed the very rules they alone made for themselves. Nor have they felt any compunction to make these rules congruent. If only a few *politici cognoscenti* are aware of the existence of the Organic Laws and the concept itself, and the *Dêmos* is led to believe the law is much too complicated for anyone but the legal class to understand, such incongruity is effectively inconsequential. Perhaps the reason a virtual firewall exists between the Organic Laws and the *Dêmos* is that contained within these laws are all the elements the *Dêmos* needs to force the Opulent Minority to abide by its own rules, which must be followed before the *Dêmos* can reasonably determine if the rules suit them. It is only then that the *Dêmos* can decide to affirm, Alter, or Abolish, some or all of such rules.

American common and statutory law, and English law before it, adheres to what is known as the Plain Meaning Rule: "statutes are to be interpreted using the ordinary, plain meaning[11] of the language of the statute…[unless it leads] to absurd or wholly impracticable

[9] John Adams ["Novanglus"], "Response to an Article by a Loyalist, Massachusettensis [Judge Daniel Leonard], January, 1775," *Boston Gazette* (Boston, MA: Boston Gazette—1775), Novanglus Number 7.
[10] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Publications—1997), 31.
[11] Frederick C. Mish, Editor, "Plain Meaning Rule; *noun:* when the language is unambiguous and clear on its face, the meaning of the statute…must be determined from the language of the statute…not from extrinsic [sources]." *Merriam-Webster's Dictionary of Law* (Springfield, MA: Merriam-Webster, Inc.—1996), 365.

consequences."[12] In practice, courts only follow the Plain Meaning Rule when it is convenient in furthering a political agendum. In order to form a more complete understanding of the difference between what exists and what would exist if the Plain Meaning Rule were followed, it is necessary to critically examine the history of the Organic Laws (Part One); the machinations of American Government with respect to the Organic Laws (Part Two); and the political theories that inform the argument for the social resuscitation of First Principles and Organic Laws (Part Three). It may seem the usurpations by the political class are so ingrained, so impregnable, that altering the course of American events is simply impossible or impracticable; but that is something which ought to be debated every day and everywhere in America, until it is obviated. To do otherwise is to accept an interminable irritant that naggingly piques the natural human aversion to inequity.[13]

[12] John F. Manning, "The Absurdity Doctrine," *Harvard Law Review, Volume 116, Number 8* (Cambridge, MA: Harvard Review Association—June, 2003), 2389.
[13] Elaine Walster, G. William Walster, & Ellen Berscheid, *Equity: Theory & Research* (Boston, MA: Allyn & Bacon—1978), *passim*.

# *Introduction*

*…the* Constitution of the United States *and the* Bill of Rights *are the* Principles *in which we believe, and…these documents*—if put into practice—*represent the essence of mankind's hopes and good intentions.*

—Malcolm X[14]

The Declaration of Independence, the Constitution, and the Bill of Rights—which became collectively known as the "Charters of Freedom" in 1952[15]—and the events surrounding the creation and imposition of these documents, are perhaps the most researched and published subjects in American history, political theory, and legal theory. They are also perhaps the topics most susceptible to socially internalized mythology or imagined history, to which sociologists and historians refer by the far more benignant term, "collective memory."[16] Few Americans, seemingly not even the most sophisticated amongst the political, legal, and academic classes, are aware these documents are two of the four Organic Laws of the United States.[17] In fact, few Americans are aware the country has such a thing as Organic Laws—that is, permanent "laws or principles that define and establish" its social organization [the Declaration of Independence] and government organization [the Constitution and the earlier Articles of Confederation];[18] the North-West Ordinance establishes the government

[14] Malcolm X, "By Any Means Necessary: Speech at the Founding Rally of the Organization of Afro-American Unity, Audubon Ballroom, Manhattan, NY, 28 June, 1964," *By Any Means Necessary: Speeches, Interviews, and a Letter by Malcolm X* (New York, NY: Pathfinder Press—170), 64.
[15] Milton Gustafson, "Travels of the Charters of Freedom," *Prologue Magazine, Volume 34, No. 4* (Washington, DC: The United States National Archives & Records Administration—Winter 2002); accessed 11 April, 2017: https://www.archives.gov/publications/prologue/2002/winter/travels-charters.html
[16] Maurice Halbwachs, "a group consciousness that exists outside of an individual, lives beyond the individual, and through which an individual understands the past," *Les Cadres Sociaux de la Mémoir* ["The Social Framework of Memory"] (Paris, FR: Librairie Félix Alcan—1925), 6.
[17] Continental Congress [1776-77] & United States Congress [1787-89], "Organic Laws of the United States of America," *Revised Statutes at Large of the United States: Passed at the First Session of the Forty-Third Congress 1873-1874*, *Volume XVIII, Part 1* (Washington, DC: Government Printing Office—1875), 3-32.
[18] Henry Campbell Black, M.A. [1891 & 1910], "Organic Law," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 991.

organization of new American colonies. Although the Articles of Confederation & Perpetual Union is designated a permanent Organic Law, it is debatable which, if any, of its precepts can validly co-exist with the Constitution that effectively rendered it moot. As the United States is unlikely to colonize any new territory, the North-West Ordinance can only conceivably apply to American colonies that have not been granted statehood, such as *Borinquén* ("Puerto Rico"), the Virgin Islands, and the *Chamorras* ("Mariana Islands," including *Guåhån* or "Guam"). The First Principles of the Declaration of Independence are incorporated into the Constitution as the "other Rights" that are "retained by the People" in the Ninth Amendment to the Constitution and the Rights "reserved…to the People" in the Tenth Amendment. In other words, both the Declaration and Constitution are in constant use today; understanding the implications for the *Dêmos* of both documents, and the circumstances of their imposition, is therefore imperative for anyone living under them.

Collective memory—originally expressed by Maurice Halbwachs as *mémoir collective*[19]—is a term used by sociologists and historians to describe a group consciousness of a society that exists independent of the individual, outlives the individual, and through which individuals generally understands the past.[20] The phrase is at best a misnomer, but is perhaps a palliative euphemism; individuals in a society cannot share a memory of an event they have not witnessed or that never occurred. A collective "memory" is therefore imagined, and internalized by a population through intentional repetition and re-enforcement from external cultural sources such as the various subtle and overt forms of *System Justification*,[21]

[19] Maurice Halbwachs, *Les Cadres Sociaux de la Mémoir* ["The Social Framework of Memory"] (Paris, FR: Librairie Félix Alcan—1925), 6.
[20] Ibidem, 6.
[21] "psychological processes contributing to the preservation of existing social arrangements even at the expense of personal and group interest," John T. Jost & Mahzarin R. Banaji, "The Role of Stereotyping in System-justification and the Production of False Consciousness," *British Journal of Social Psycholo*gy, Volume 33, Issue 1 (Leicester, UK: The British Psychological Society—March, 1994), 1.

and official propaganda. Once mythology has been internalized and an individual *Weltanschauung*[22] formed, successfully debunking it via the interjection of facts is a daunting, if not impossible challenge. This simple fact of human nature is as true for the most sophisticated amongst the political, legal, and academic classes of a society, as it is for the least *mondaine* and less lettered.

As Leon Festinger and his research team at the University of Minnesota demonstrated with their seminal studies of the psychology of human mindset, a person with strongly held beliefs or ideas who "is presented with…unequivocal and undeniable evidence, that [such] belief is wrong…will frequently emerge, not only unshaken, but even more convinced of the truth of [such] beliefs than ever before…Indeed, [that person] may even show a new fervor about convincing and converting other people to [such a] view."[23] It seems humans will engage in almost unlimited mental gyrations to avoid the psychological distress of what Festinger famously dubbed *cognitive dissonance*.[24] Those educated in the United States, and those still wending their way through the American educational system, may react with cognitive dissonance, or something similar, to any facts and ideas that contradict the orthodox shared consciousness of American internalized mythology—this would include contrary notions of when the United States was founded and the identity of its "founding documents;" who and what the "Patriots" were; the fact that a bloodless *coup d'état* took place in the United States; the existence of things called "First Principles" and "Organic Laws;" the true

[22] Frederick C. Mish, Editor in Chief, "Weltanschauung; *noun*: worldview—from the Deutsch: *welt* (world) + *anschauung* (view)," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 1343.
[23] Leon Festinger, Henry W. Riecken, & Stanley Schachter, *When Prophecy Fails* (Minneapolis, MN: University of Minnesota Press—1956). vii (Abstract).
[24] Frederick C. Mish, Editor in Chief, "cognitive dissonance; *noun*: psychological conflict resulting from incongruous beliefs and attitudes held simultaneously,"*Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 223. Also:
Leon Festinger [1957], *A Theory of Cognitive Dissonance* (Stanford, CA: Stanford University Press—1962), 93-102, *passim*.

implications of the First Principles and the Constitution; and what the Bill of Rights does or does not guarantee.

To begin with, the United States was founded when independence was declared; the country did not exist prior to the Declaration of Independence. The Declaration is thus the only *founding* document of the United States, the First Principles contained within the Declaration are its only founding Principles, and the men who signed the Declaration of Independence are the country's only *Founders*. As part of the country's founding document, the First Principles are both irreducible and *a priori*: "First Principles cannot be derived from one another, nor from anything else; everything must be derived from them."[25] Although appearing within the Constitution are principles such as promoting and providing for the General Welfare, establishing Justice, securing the blessings of Liberty, promoting the Progress of Science and useful Arts, and entitling the Citizens of each State to equal Privileges and Immunities, the Constitution is nonetheless primarily an organization of the quotidian operation of the country. Even the Bill of Rights—other than the First, Ninth, and Tenth Amendments—is chiefly concerned with functioning of the legal system rather than prescribing immutable principles. The principles found within the Constitution and the Bill of Rights are arguably more detailed affirmations of the First Principles, which prescribe an egalitarian social organization within which the political and legal systems must operate. In the imagined American history that is commonly internalized, the First Principles of the Declaration are conflated with precepts of the Constitution and Bill of Rights; the Plain Meaning of the words and phrases of all three documents are misconstrued or unappreciated.

[25] Aristotéles [c. 350 BCE], "First Principles," *Fusike Akroasis* ["*Lectures on Nature*" or "*Physics*"], *Book I Chapter 5,* (San Bernardino, CA: CreateSpace—2012), 12.

There are at least four ways in which the Declaration of Independence is perhaps unique in history. The First Principles prescribe a standard by which to measure the legitimacy of any and all human social organization; this measurement is implicitly proponed as a suitable universal standard for the entire world, not only the United States. In other words, the First Principles are designed to measure the legitimacy of the very country founded by the document containing them. The First Principles also allow the citizenry, the People, the *Dêmos*, the option of whether or not to accept these standards as appropriate for them—that is, to *Consent*—and to refine or dissolve the country (Alter or Abolish it) if the organization does not meet such standards to their satisfaction. The First Principles advance the concept of "Natural Rights": simply by virtue of being human, people naturally have certain Unalienable Rights, and there is no objective way to value or rank humans; all human beings are, therefore, of Equal value. These notions are a stark departure from the rigid social hierarchies that dominated every country in Europa at the time, as they dominated the Thirteen Colonies, which makes these ideas truly revolutionary.

The words and phrases of the Declaration of Independence are written in normal, ordinary, quotidian English that requires no deciphering; nor does understanding the meaning of the concepts plainly expressed in the First Principles depend upon learning any historical context or original intentions of the Founders—the men who founded the country by declaring independence—any more than Einstein's "Theory of Relativity" requires ascertaining his original intentions or the historical context of the creation of the theory. The First Principles have the exact same validity and Plain Meaning today as they did in 1776, and must be accepted or rejected upon their own merit, not through the manipulation of imagined intentions. The Declaration of Independence plainly advances an entirely new model of social

organization "to begin the world over again,"[26] in which "the 'rulers' are the servants, and the People their superiors and sovereigns."[27] Prior to the founding of the United States, the aspirations and humanity of individual subjects not part of an aristocracy or oligarchy or plutocracy had never been a mandated concern of rulers, ruling classes, or polities in the Európan Sphere. Shortly before the American War for Independence, Jean-Jacques Rousseau described the human condition as: "the human species is divided into so many herds of cattle, each with its ruler, who keeps guard over them for the purpose of devouring them."[28]

Perhaps a single exception in the Európan Sphere to such a bleak human condition was the short-lived Corsican Republic (1755-1769), founded upon Enlightenment principles by Generale Pasquale di Paoli. James Boswell's 1768 book, *An Account of Corsica,*[29] made di Paoli renowned throughout the Európan Sphere, and the Corsicami democracy was a well-studied *cause célèbre* of Enlightenment thinkers in the Európan Sphere. The achievement of di Paoli was an inspiration for American insurgents, although *Res Publica Corsa* was substantially more democratic than the Thirteen Colonies ever were, or the United States had been prior to the late twentieth century, as Corsica was founded upon universal suffrage that included women for perhaps the first time in the post-Agricultural Revolution Európan world. France crushed the short-lived democracy, conquering Corsica in 1769, which forced di Paoli and many of the Corsicami leadership into exile in England. Ironically, aid from France was a major factor in the American victory over the British and independence and some exiled Corsi fought on the side of their sanctuary country *against* American independence.

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[26] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Thrift Editions—1997), 52.
[27] Benjamin Franklin [26 July, 1787], *The Political Thought of Benjamin Franklin*, Edited by Ralph Ketchum (Indianapolis, IN: Hackett Publishing Company—2003), 398.
[28] Jean-Jacques Rousseau [1762], "Book I, Chapter 2," *Du Contrat Social ou Principes du Droit Politique* [*Of the Social Contract or Principles of Right*], Translated by G. D. H. Cole (London, UK: J.M. Dent—1913), 3.
[29] James Boswell, Esq. [1769]. *An Account of Corsica: the Journal of a Tour of that Island and Memoirs of Pasquale di Paoli, Third Edition, Corrected* (London, UK: Edward & Charles Dilly—1769), *passim*.

Throughout *An Account of Corsica*, James Boswell describes Pasquale di Paoli and the Corsicans fighting for independence and self-determination as "patriots," translated from the *Corsu* word *patriotta* or "freedom fighter,"[30] which is itself descended intact from the *Latíne* word for "fellow countryman." Boswell also uses the term "compatriots;" the prefix "com-" meaning "with" to indicate patriots working together as colleagues.[31] The most famous of all Corsi, Napoleone di Buonaparte, also later called di Paoli a "patriot."[32] Benjamin Franklin appropriated the term "Patriot" to describe the clandestine American "rebellious insurgents who initially sparked resistance"[33] that led to the American War for Independence. Patriot describes the bond between members of the American resistance movement, not unlike the way in which "Comrade" was used in twentieth century Socialist revolutionary movements. The American insurgency and subsequent war for independence was very much a grassroots "People's Revolution," yet the names of most insurgents never found their way into most history books; they were unsung, average members of the Exploitable Majority, who did exceptional things in the cause Liberty and Equality:

> The well-known Patriots who are generally credited with mounting the Revolution were, in fact, the beneficiaries of rebellious insurgents who initially sparked resistance…During the two years that preceded the Declaration of Independence, Americans launched an insurgency that drove events toward a successful revolution. In the process, American insurgents became American Patriots.[34]

[30] Maurice Waite, Editor, "patriot; *noun*: A person actively opposing enemy forces occupying his or her country; a member of a resistance movement, a freedom fighter. Originally used for those who opposed and fought the British in the American War of Independence," *Oxford English Dictionary, Seventh Edition* (Oxford, UK: Oxford University Press—2012), 526.
[31] Frederick C. Mish, Editor, "compatriot; *noun*" *Merriam-Webster's Dictionary of Law* (Springfield, MA: Merriam-Webster, Inc.—1996), 234.
[32] Matthew D. Zarzeczny**,** *Meteors that Enlighten the Earth: Napoleon and the Cult of Great Men*, (Newcastle Upon Tyne, UK: Cambridge Scholars Publishing—2013), 42.
[33] T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York, NY: Hill & Wang—2010), 4.
[34] Ibidem, 4.

Patriots formed secret societies that were loosely organized into what today would be called "cells," that were designed with sufficient anonymity to thwart or minimize betrayal. The most notable of Patriot secret societies was the "Sons of Liberty," founded in Massachusetts in 1764 by Samuel Adams and John Hancock; affiliates were eventually organized in all Thirteen Colonies. Patriots were typically average people from everyday walks of life and generally in the upper-middle to upper reaches of the colonial life expectancy that was 53.5 years in the founding year of 1776—most had exceeded the 36.5-year life expectancy in England at the time.[35] Life expectancy figures are often skewed if they are calculated as averages that include infant mortality, but in any case these men (and a few women) were not typically the student radical dissidents of today, but were often later in life, when they might be expected to be defenders of the status quo rather than be its mortal foes:

Thomas Paine, 39, was perpetually impecunious despite selling millions of pamphlets, did not own property, and was not able to vote in the country he helped found. Samuel Adams, 53, was a brewer who lost the family business, lost his political newspaper, and formed the "Sons of Liberty" with his friend at the time, John Hancock. Paul Revere, a 41-year-old silversmith, who prior to the war served as a mounted Patriot "town crier," was one of three who made the famous "Midnight Ride," along with fellow horsemen William Dawes, Jr., 30, a tanner, and surgeon Dr. Samuel Prescott, 25. Timothy Bigelow, 37, was a blacksmith, 37; John Crane, a carpenter, 32; Benjamin Edes, a journalist, 44; Timothy Matlack, 40, a brewer and bottler of beer; Christopher Gadsden, 52, a merchant; John Lamb, 41, a trader; Alexander McDougall, 44, and Isaac Sears, 46, captains of privateer vessels; Charles Wilson Peale, 35, a portrait painter; Isaiah Thomas, 27, a printer; James Otis, Jr., 51,

[35] William Fogel, "Table 1.1: Life Expectancy At Birth in Seven Nations, 1725-2100" in *The Escape from Hunger and Premature Death: The Escape from Hunger and Premature Death, 1700-2100: Europe, America, and the Third World* (Cambridge, UK: Cambridge University Press—2004), 2.

a pamphleteer and attorney; George Robert Twelves Hewes, 34, a Boston shoemaker; Hercules Mulligan, 35, tailor; Marinus Willett, 36, a cabinet maker; Charles Thomson, 47, a tutor/secretary; Benjamin Tallmadge, a 22-year-old high school superintendent; Nathan Hale, a 21-year-old teacher who was hanged as a spy by the British; and ordinary farmers like Daniel Shays, 29, and Joseph Plumb Martin, 16.

In addition to Samuel Prescott, there were several other physicians, including: Thomas Paine's friend and benefactor Dr. Benjamin Rush, 30; Dr. Filippo Mazzei, 46, an Italian immigrant and close friend of Thomas Jefferson, who acted as an arms agent during the war; Dr. Thomas Young, 44, physician to John Adams and organizer of the Boston Tea Party; and Dr. Joseph Warren who, at the age of 34, was killed and his corpse horribly mutilated during the Battle of Bunker Hill in 1775. The Sons of Liberty also included Jewish financial broker, Chaim Salomon, 36 and merchant Mordecai Sheftall, 41, who would become the highest-ranking Jewish officer in the Continental Army. There were at least three prominent African-American Patriots—Crispus Attucks, a 47-year-old sailor and dock worker, who was the first person killed in the Revolution; Jack Sisson, 33, riverboat pilot; and Joseph Allcocke, an early leader of the Sons of Liberty in New York, who later became a Loyalist. Two women who gained notoriety in the war were 24-four-year-old seamstress Betsy Ross and 26-year-old Mary Ludwig Hays (known as "Molly Pitcher"), a servant woman, renowned for taking her husband's place on the front lines after he was wounded.

Although a few prominent citizens of means were integrally involved in the insurgency from its origins, it was by no means conceived or directed by Opulents; the Patriot insurgency was a grassroots movement spontaneously organized and prosecuted from the "bottom-up" rather than "top-down." If anything, reluctant Opulents who had wished for

reconciliation were pulled into the fray by the sheer gravitational force of the decade-long insurgency, after which a declaration of independence became inevitable. Opulents who embraced the Patriot cause of the pre-Declaration insurgency and worked as equals with "commoners," were anything but the typical Opulents during that, or any other, period in American history. John Hancock, 38, helped form the Sons of Liberty with Samuel Adams and was the wealthiest man in the colonies; he substantially underwrote the pre-War insurgency in Massachusetts and worked tirelessly to support the War effort. Hancock and Adams were the two colonists most wanted by the British. Benjamin Franklin was, at 69, the oldest active Patriot, who in 1775 had an arrest warrant that threatened hanging issued for him in London, had overcome a working class background that included soap makers, blacksmiths, and printers, to become a wealthy "renaissance man" whose genius and polymathy were arguably on a par with that of Leonardo da Vinci. Patrick Henry was a 39-year-old Virginian, who was born into mid-level gentry, failed as a planter and as a mercantilist before becoming an attorney, and was forced out of his military commission in the War by Conservative political opponents, yet was still able to persuade his loyal Virginian compatriots to remain in the Virginia militia and do battle with the Crown.

Unique amongst Patriots from the Opulent Minority was 33-year-old Thomas Jefferson, the classically-educated scion of a wealthy, slave-holding Virginia plantation owner, he was a gifted writer, an inventor, and a politician of nearly unequalled success, although completely lacking in public oratory skills and the inclination to fight for his cause. Jefferson begged out of a military commission saying he "believed it right not to stand in the way of talents better fitted than his own to the circumstances under which the country was

placed,"[36] and simply returned home. This perceived desertion of the cause led to charges of charges of cowardice and disloyalty for the remainder of his life; unlike the fiery Patrick Henry, Jefferson could not muster a militia from amongst his local Virginian neighbours.

Despite Opulent status, Jefferson, Franklin, Henry, and Hancock, had an affinity for "The People," and vehemently opposed slavery, although all save Hancock were slaveholders and only Franklin freed his and became an Abolitionist. Jefferson's father was a "commoner" with no formal education and perhaps as a consequence, Jefferson was "not amongst those who fear the People; they, and not the rich, are our dependence for continued Freedom."[37] Jefferson held an inconsistent—some say hypocritical—position on slavery; he forcefully denounced slavery in his first draft of the Declaration and voiced opposition to slavery throughout his life, yet never manumitted any of his slaves in life or in death—even his own children by his longtime slave mistress, Sally Hemings. Jefferson included a section in *Notes on the State of Virginia*[38] in which he expressed the opinion that Africans are inferior to Europans and Europans are racist, and the two could therefore never peacefully co-exist in a single society; he entertained the idea of "repatriating" freed slaves to Africa. Franklin emancipated his slaves before 1770, eventually becoming president of the Pennsylvania Abolitionist Society and a trustee of Bray Associates, a group that established schools for people of African descent. Patrick Henry did not free his slaves, and is perhaps a perfect exemplar of the anti-slavery slave owner, who seemed inexplicably compelled to hold slaves although he knew it was morally and ethically wrong, and contrary to the values of the

[36] Thomas Jefferson, *Memoirs, Correspondence, and Private Papers of Thomas Jefferson: Late President of the United States, Volume III*, Thomas Jefferson Randolph, Editor (London, UK: Henry Colburn & Richard Bentley—1829), 42.
[37] Thomas Jefferson, "Letter to Samuel Kercheval, 12 July, 1816, *The Works of Thomas Jefferson, Volume 12 (Correspondence and Papers 1816-1826),* Paul Leicester Ford, Editor (New York, NY: G.W. Putnam & Sons—1905), 10.
[38] Thomas Jefferson [1781-1782], *Notes on the State of Virginia* (Richmond, VA: J.W. Randolph—1853), 148-160.

revolution, as well as anathema to his own professed beliefs. Henry sounds almost like an addict: "I will not, I cannot, justify it…"[39] as he continued to enslave until his death.

With very few exceptions, Opulents were men who had been granted vast colonial holdings in appreciation of past service to the British Crown, or were descendants of such men. The Opulent Minority generally identified with England and very much considered themselves "British," admiring all social, political, legal, and economic aspects of the Empire—and had no intention of separation. At most, Opulents were desirous of a degree of autonomy that would allow a colonial aristocracy independent of, and equal to, the English aristocracy. It is commonly taught in American secondary schools that one-third of colonists were Patriots, one-third Loyalists, and one-third were indifferent; according to historian Robert Calhoon, the "consensus of historians" is that roughly half the population actively supported the Patriot cause and about a fifth were Loyalists.[40] From a practical standpoint, if as few as one-third of Americans supported the Revolution, the Patriots would have effectively been waging a civil war that would impose their will upon an unwilling populace as they simultaneously prosecuted a War for Independence against the world's most powerful empire that imposed its will upon American colonists.

Such a proposition would seem so untenable as to render successful insurgency nearly impossible. It is quite possible one-third, or even one-half, of the Exploitable Majority was indifferent as to who ruled them; after all, throughout history, conquerors had come and gone, and life for peasants had remained largely unchanged. However, it is difficult to imagine that many outside the Opulent Minority were staunch Loyalists; a figure of even one-fifth seems

[39] Patrick Henry, "Letter to Robert Pleasants, 18 January, 1773," *Patrick Henry: Patriot in the Making*, Robert Douthat Meade (Philadelphia, PA: J. B. Lippincott Co.—1957), 299-300.
[40] Robert M. Calhoon, "Chapter 29: Loyalism and Neutrality," *A Companion to the American Revolution* Jack P. Greene & Jack Richon Pole, Editors (Malden, MA: Blackwell Publishers, Ltd.—2008), 235.

suspiciously high. Such a number would mean that in addition to the six percent who comprised the Opulent Minority and clearly benefited from being yoked to the Empire, a further fourteen percent of citizens, who did not own property and were unable to vote, were steadfastly devoted to the preservation of the Empire and their lower status within it. Even the preponderance of Opulents ultimately became revolutionaries upon recognition of the fact that being a Loyalist was dangerous, and the calculation that being a Patriot was perhaps the best means by which to realize their goal of an independent American ruling class.

More Opulents joined the Patriot cause when "Committees of Correspondence" began to be formed in the Colonies. Since Samuel Adams first formed the Sons of Liberty in 1764, he had urged the creation of such committees to co-ordinate and promote inter-colony and inter-locality Patriot activities against the British, including a concerted propaganda campaign against the Colonial government and Loyalists. In early 1772, Adams was finally able to establish the first Committee of Correspondence in Boston, along with Dr. Joseph Warren and James Otis. Dabney Carr formed the Virginia Committees of Correspondence with Thomas Jefferson and Patrick Henry, and several others, in 1773. By 1774, Committees of Correspondence and their derivations—Committees of Safety and Committees of Inspection—had virtually supplanted the imperial authorities in all Thirteen Colonies and many dozens of municipalities,[41] as noted by T.H. Breen: "Two years before the Declaration of Independence…small communities from New Hampshire to Georgia…successfully challenged the authority of Great Britain" and "openly defied Parliamentary acts."[42] Ultimately, a "total of about 7,000 to 8,000 Patriots served on these committees at the colonial

[41] Richard D. Brown, *Revolutionary Politics in Massachusetts: The Boston Committee of Correspondence and the Towns, 1772-1774* (Cambridge, MA: Harvard University Press—1970), 58ff.
[42] T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York, NY: Hill & Wang—2010), 3-4.

and local levels" at a time when the largest city in the Colonies was Philadelphia, at an estimated 40,000 habitants; New York was next at 25,000, followed by Boston at 15,000, Charleston at 12,000, and Newport (Rhode Island) at 11,000.[43]

The Committees of Correspondence changed the nature of being a citizen and revolutionized the town hall meeting in both cities and rural communities with discussions of local matters and far-reaching global politics. Farmer and urbanite Patriots clandestinely planned and engaged in such acts as sabotage, espionage, protests, marches, banishments, and protracted guerilla warfare, but the town hall meeting effectively "became the action-level for the Patriot cause,"[44] or "schools for revolution."[45] The Patriot cause had long been fueled by pseudonymous pamphlets and *broadsides*,[46] but it was not until aspiring bridge designer Thomas Paine anonymously published his first pamphlet, *Common Sense*,[47] on 10 January, 1776, that the insurgency had defined resonate "revolutionary principles"[48] as talking and thinking points. The Patriots and the general citizenry may have initially been unfamiliar with the Enlightenment egalitarian ideals presented by Paine in *Common Sense*, as they may have been with many of the ideas argued by many Patriot pamphleteers and essayists, but Patriots developed a strong sense of their natural human Rights that they felt were being violated. The Patriots "were driven by anger against an imperial government that treated them like second-

[43] United State Census Bureau, *Population of Cities: Changes in Urban Population, 1710 to 1900* (Washington, DC: United States Department of Commerce—1901); accessed 10 April, 2017: https://www2.census.gov/prod2/decennial/documents/00165897ch01

[44] Richard D. Brown, *Revolutionary Politics in Massachusetts: The Boston Committee of Correspondence and the Towns, 1772-1774* (Cambridge, MA: Harvard University Press—1970), 58ff.

[45] T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York, NY: Hill & Wang—2010), 3.

[46] Frederick C. Mish, Editor in Chief, "broadside [or broadsheet]; *noun*: a sizeable sheet of paper printed on one or both sides, as for distribution or posting," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 144.

[47] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Thrift Editions—1997).

[48] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 97.

class subjects"[49] and occupation by the imperial army; but there was also a strong religious component to the insurgency that harkened back to the country's Puritan heritage—the faith that God was on their side because of "their God-given rights,"[50] their *Natural* Rights.

By the time American independence from the British Empire was declared in 1776, colonial municipalities and rural communities had been democratically run for over two years by Committees of Correspondence, Safety, and Inspection, as well as by Provincial Authorities. An open, armed rebellion against the British Empire had already been underway for a year—since the Battles of Lexington & Concord on 19 April, 1775, had transformed the Patriot insurgency of more than a decade into an open War for Independence. On 4 July, 1776, the Continental Congress was simply declaring the obvious; any recalcitrant Opulents theretofore in denial about the future of the American relationship with England were ultimately forced by the war to either join the Patriot cause or renounce it and ally with the Loyalist opposition.

The Declaration of Independence codified and affirmed what had become known amongst the Patriots as "revolutionary values," as it expanded upon the themes Thomas Paine explicated in *Common Sense*. Both *Common Sense* and the Declaration of Independence were published near the end of the eighteenth century—*le Siècle des Lumières*; that is, "The Century of Lights," known in English as "The Enlightenment"[51]—and the Declaration is arguably the culmination of the philosophical inquiries and political theories that were circulated and contemplated throughout the century within the greater Európan Sphere that included Európa's Trans-Atlantic colonies. *Common Sense* and every other pamphlet by

[49] T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York, NY: Hill & Wang—2010), 3.
[50] Ibidem, 3.
[51] Français: literally, "The Century of the Lights;" "enlightenment" is *éclaircissement*.

Thomas Paine, the political writings of Benjamin Franklin, and most of the political works of Thomas Jefferson, are Enlightenment works that often synthesize or expand upon ideas developed by thinkers such as John Locke, Jean-Jacques Rousseau, Montesquieu (Charles-Louis de Secondat, Baron de La Brède et de Montesquieu), David Hume, Immanuel Kant, Aristotéles, Platón, Cicero, and the presently more obscure Joseph Priestly and Sir Richard Cumberland. Paine, Jefferson, and Franklin, shaped the values of the Patriots by conceiving and refining revolutionary ideas about experimental political and social organization, self-determination, the Natural Rights and Unalienable Rights that People inherently possess simply by virtue of being human, and the radical anti-authoritarian doctrine of Liberalism.[52]

*Common Sense* and the Declaration of Independence were read or heard by nearly all the 1776 colonial population of 2.5 million,[53] of which European "adult male literacy seems to have run from seventy percent to virtually one hundred percent."[54] *Common Sense* has the largest circulation in history of any publication by an American author;[55] copies circulated amongst friends and were often orated in public houses, bolstering enthusiasm for separation from the Empire, inspiring enlistment in the Continental Army, and making every citizen

[52] "In general, the belief that it is the aim of politics to preserve individual rights and to maximize freedom of choice," *Concise Oxford Dictionary of Politics, Third Edition*, Iain McLean & Alistair McMillan, Editors (Oxford, UK: Oxford University Press—2009), 306.
"political rationalism, hostility to autocracy, cultural distaste for conservatism and for tradition in general, tolerance, and…understand[ing] society, state, and economy as the sum of the actions of individuals," John Dunn, *Western Political Theory in the Face of the Future*, (Cambridge, UK: Cambridge University Press—1979), 33.
"the genuine concern for the welfare of genetically unrelated others and the willingness to contribute larger proportions of private resources for the welfare of such others," Satoshi Kanazawa, "Why Liberals and Atheists Are More Intelligent," *Social Psychology Quarterly Vol. 73, No. 1* (Washington, DC: American Sociological Association—2010), 38.
[53] United States Census Bureau, *Historical Statistics of the United States: Colonial Times to 1970* (Washington, DC: United States Department of Commerce—1971), accessed 10 July, 2015: https://www.census.gov/prod/www/abs/statab.html
[54] Lawrence A. Cremin, *American Education: The Colonial Experience* (New York, NY: Harper & Row—1970), 546.
[55] Harvey J. Kaye, *Thomas Paine & The Promise of America* (NYC, NY: Hill & Wang—2005), 43.

aware of the concepts of "self-evident,"[56] "the equal rights of nature,"[57] and "the natural rights of all Mankind."[58] Paine's pamphlet insists upon human Equality as it decries class, slavery, indenture, subjugation of women, mistreatment of Indigenous Peoples, and the immuration resulting from the exercise of "arbitrary power."[59] It was largely thanks to Paine and Jefferson that "Ordinary people…may not have read the works of the great English philosopher John Locke—many may not have even recognized his name—but they were quite sure that they possessed basic, God-given rights that protected them from arbitrary rule."[60] Upon signing the Declaration of Independence, John Hancock, President of the Continental Congress, directed that the citizenry be "universally informed" of the Declaration and ordered approximately two hundred broadsheets printed by John Dunlap. The "Dunlap Broadsheets" were read to the entire Continental Army, and were widely distributed and read aloud in public celebrations held throughout the colonies.[61] *Common Sense* and the Declaration are inextricably linked; it is likely the Declaration would not have been possible without *Common Sense*—it certainly would have been a much different, and perhaps much tamer, document. As it is, "the great American cause owed as much to the pen of Paine as to the sword of Washington."[62]

It is useful to study the philosophies of Jefferson and Franklin and the intentions of Congress in creating the Declaration of Independence and declaring independence; not in order to nullify the written word or remain in the grip of the dead hand of the past, but rather to learn if any of these concepts are relevant and beneficial in the present—and if they are, to

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[56] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Thrift Editions—1997), 7 & 46.
[57] Ibidem, 9.
[58] Ibidem, 2.
[59] Ibidem, 27.
[60] T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York, NY: Hill & Wang—2010), 19.
[61] Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York, NY: Alfred A. Knopf, Inc.—1997), 156-159.
[62] Joel Barlow, quoted in: Moncure Daniel Conway, *The Life of Thomas Paine*, (New York, NY: G.P. Putnam's Sons—1892), 63.

practically apply them. The fact that the intentions of Thomas Jefferson and Benjamin Franklin were wildly divergent from those of most members of Congress and the Thirteen State governments, both dominated by the Opulent Minority, is a perfect example of why the self-evident Plain Meaning of printed words and phrases can never be superseded by imagined intentions that are likely to be as numerous and varied as the people who had them. Thomas Jefferson avers: "the object of the Declaration of Independence…was not merely to say things which had never been said before; but to place before mankind the *Common Sense* of the subject, in terms so plain and firm as to command their assent."[63] Part of the beauty of Jefferson's Declaration of Independence is that it is written in such a manner as to resonate within *all* humans: the Opulents in Congress and State houses; the *literati* in Európa whose support was necessary to finance the war; and in every farmhouse and every parlour, on every street corner, in every public house, and within the Exploitable Majority, who would fight the war. The Plain Meaning is clear and unequivocal; the First Principles are unambiguous human universals that apply to every individual, not merely to those in the Opulent Minority.

However, for the Opulent Minority, the words of the Declaration of Independence meant something altogether different from what they meant to Thomas Jefferson and Benjamin Franklin, and to the Exploitable Majority with whom both felt common cause. The Opulent Minority of the United States was declaring itself equal to, and independent from, their counterparts: the Opulent Minority of the British Empire, its aristocracy. The Rights or Equality of the Exploitable Majority is unlikely to have been a consideration for any Opulent not intimately involved in the Patriot cause. It is a given for Opulents—indeed, it is the very nature of being an Opulent—that the Exploitable Majority is decidedly and irreparably

[63] Thomas Jefferson, "Letter to Henry Lee, 8 May, 1825," *Thomas Jefferson: Writings,* Merrill D. Peterson, Editor (New York, NY: Library of America—1984), 1500-1501; emphasis added.

*un*equal, possessing no natural human entitlements other than whatever few privileges Opulents may deign to cast the way of Exploitables on a conditional basis; for Opulents, *Equal Rights* exist only amongst and between a means-tested Opulent Minority. Whereas Patriots were certain all humans inherently possessed Natural Rights and dignity, Opulents viewed "Nature" altogether differently; as Oxford-educated and typical Opulent of the day, William Henry Drayton, asserted in 1769: "Nature never intended that such men should be profound politicians, or able statesmen."[64]

Unsurprisingly, Opulents found "such men" perfectly suitable as soldiers and sailors fighting for independence whilst Opulents were comfortably ensconced in Congress, government offices, and State houses, scrambling to enrich themselves at every turn. Win or lose, for Opulents the war was apparently, first and foremost, an opportunity for personal enrichment. George Washington was the only presently renowned member of the Opulent Minority to actually fight in the War for Independence. He was the second richest man in America after John Hancock (through Washington's marriage to the widow, Martha Custis), and it is possible he was the only conservative Opulent not directly involved in war profiteering. Nonetheless, Washington was a lifelong land speculator and enthusiastic proponent of an eventual American Empire that made much of his land speculation lucrative. Benjamin Franklin was far too old to fight in the War for Independence; Thomas Jefferson was young and robust, but spent most of the war at home in Virginia, contributing virtually nothing to the war effort. Patrick Henry was forced out of his military commission by political opponents, and instead served as governor of Virginia. An older John Hancock was President of the Continental Congress, raising money, supplies, and troops for the Continental Army.

Many powerful Opulents in American government were also merchants,

[64] Gordon S. Wood, *The American Revolution: A History* (New York, NY: Modern Library—2002), 51.

entrepreneurs, and "agents," who engaged in business unimpeded by the War, and often fueled by the War. Most notable amongst them was Robert Morris, the so-called "financier of the war;" his agent and British spy, Silas Deane; his (unrelated) friend, Gouverneur Morris; as well as future Supreme Court justices James Wilson and John Jay. Along with countless local merchants not in public service, these men were engaged in rampant war profiteering and land speculation, activities that considerably increased their wealth and undermined the War effort. Consequently, uprisings to protest food shortages and price gouging by such merchants were common. For example, Thomas Boylston, a merchant, and a "cartload of profiteers," were driven out of Boston by "a female mobility" ("mob") after charging exorbitant prices for coffee and sugar.[65] In addition to his activities as a slave importer, Robert Morris was involved in at least one case of sequestering food aboard the polacre *Victorious*, in Philadelphia, in order to create food scarcity. Also in Philadelphia, militiamen marching for price regulation were fired upon by future Supreme Court justice and Loyalist defender James Wilson, and several of his fellow merchants, who had been dodging militia service and "gouging the people by artificially controlling the supply and price of goods."[66] Wilson and company believed they were the targets of the crowd as it marched down the street on which Wilson's lived, and proceeded to proudly kill with impunity an estimated "six or seven people,"[67] and "dangerously wounded"[68] an estimated "seventeen to nineteen."[69] Philadelphia

[65] Page Smith, *A New Age Now Begins: A People's History of the American Revolution, Volume II* (New York, NY: McGraw-Hill—1976), 1364.
[66] John K. Alexander, "The Fort Wilson Incident of 1779: A Case Study of the Revolutionary Crowd," *The William & Mary Quarterly, Volume 31, Number 4* (Williamsburg, VA: Omohundro Institute of Early American History and Culture—October, 1974), 591.
[67] Ibidem, 589.
[68] Unattributed [1779], *Pennsylvania Colonial Records, XII: Minutes of the Supreme Executive Council, 1779-1781* (Harrisburg, PA: Pennsylvania Supreme Executive Council—1853), I22. The exact number of killed and wounded is in question, although it is clear the great majority of casualties were members of the militia.

had a much more powerful group of Opulents than other cities, and did not prosecute Wilson or his cohorts, but did jail many of the marching militia. Ironically, risky financial dealings later sent both James Wilson and Robert Morris to debtors' prison—Wilson whilst he was a sitting Supreme Court Justice. The unremitting, brazen corruption and profiteering transpiring as the fate of the country hung in the balance, both within and without Congress, so enraged Thomas Paine, then Secretary to the Foreign Affairs Committee in Congress, that he moved to prosecute Silas Deane upon discovery of Deane's treachery in arms purchases from France. Instead, Paine was forced to resign his position by a Congress that was rife with profiteers from the Opulent Minority, who feared exposure and prosecution of their own misdeeds.[70]

Self-enrichment was not the only goal of Opulents during the War for Independence; as war raged, the Opulents in Congress were manoeuvring for a union that would allow the States to retain complete control their independent fiefdoms. The delegates to the Continental Congress agreed upon the concept of a confederation, and had a draft proposal before it that Benjamin Franklin had submitted back on 21 July, 1775. Congress had contemporaneously assigned committees to draft a declaration of independence and "to prepare and digest the form of a confederation to be entered into between these colonies, consist[ing] of a member from each colony,"[71] yet a confederal constitution had not been forthcoming. Jefferson drafted the Declaration of Independence in seventeen days, and it was debated, revised, signed, and distributed less than a week later; it took over sixteen months to adopt the Articles of

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[69] John K. Alexander, "The Fort Wilson Incident of 1779: A Case Study of the Revolutionary Crowd," *The William & Mary Quarterly, Volume 31, Number 4* (Williamsburg, VA: Omohundro Institute of Early American History and Culture—October, 1974), 589.

[70] Harvey J. Kaye, *Thomas Paine: Firebrand of the Revolution* (New York, NY: Oxford University Press—2000), 71-75.
Brian McCartin, *Thomas Paine: Common Sense and Revolutionary Pamphleteering* (New York, NY: The Rosen Publishing Group—2002), 74-76.

[71] William J. Hull, *Maryland Independence and the Confederation* (Baltimore, MD: Maryland Historical Society—1891), 50.

Confederation, and more than three additional years to ratify them (1 March, 1781). Whereas the Declaration of Independence was publically announced and read, broadsheets printed, and the text widely circulated and admired, the Articles of Confederation were passed with little fanfare other than "firing thirteen Cannon on the Hill"[72] in Philadelphia. Considering the country was prosecuting a War that frequently entered cities or was taking place just beyond city gates, the significance of such cannon fire may have been lost upon the public—particularly upon those located beyond earshot.

The two-page draft of the Articles of Confederation that Benjamin Franklin presented to the Continental Congress was very much in keeping with the First Principles of the Declaration; the six-page Articles of Confederation, that ultimately governed the United States from 1777 until 1787, trample upon several of the First Principles as though they never existed. Curiously, Franklin was not named to the committee "to prepare and digest the form of a confederation" that was using his proposal as a template. Perhaps he chose not to participate because he was disheartened by the fate of his earlier attempts at a confederation, and the prospect of the bickering that was sure to accompany the effort to revise his draft: "Every Body cries: 'a Union is absolutely necessary;' but when they come to the Manner and Form of the Union, their weak Noddles are perfectly distracted."[73] Perhaps Franklin's unparalleled gravitas and influence would have interfered with the agendum of a committee dominated by many of the most Conservative and Anglophiliac members of the Opulent Minority; of the thirteen delegates named to the draft committee, only three—Samuel Adams

[72] Thomas Rodney, Delaware Delegate, "Diary Entry, 1 March, 1781," *Rodney Family Papers,* Exhibit—Creating the United States: Road to the Constitution (Washington, DC: Library of Congress, Manuscript Division—2014); accessed 17 March, 2017: https://www.loc.gov/exhibits/creating-the-united-states/road-to-the-constitution.html

[73] Benjamin Franklin, "Letter to Peter Collinson, 29 December, 1754," *The Writings of Benjamin Franklin: Volume III*, Albert Henry Smyth, Editor (New York, NY: The MacMillan Company—1905), 242.

of Massachusetts, Josiah Bartlett of New Hampshire, and Stephen Hopkins of Rhode Island—could be considered "radical" adherents to the revolutionary principles of the Declaration and *Common Sense*. Yet, as politically like-minded as the committee apparently was, it could not reach consensus on a constitution in a timely manner.

Consequently, from the time independence was declared until the Articles of Confederation were adopted more than sixteen months later, on 15 November, 1777, the United States had been governed at the federal level on an *ad hoc* basis; the Continental Congress was essentially a revolutionary junta primarily focused upon waging war. Congress ostensibly operated within the basic framework of Benjamin Franklin's original 1775 draft Articles, which underwent several extensive revisions by the arch-Conservative, future Federalist delegate from Delaware, John Dickinson—until Congress accepted his rather lengthy final version in November of 1777. The standard reason given today for the delay is that the particulars of the Articles were being "debated." The sticking point of such debate was that States and their representatives adamantly insisted upon the preservation of the status quo: each State as an independent, autonomous fiefdom, operated at the pleasure of its Opulents, free from interference by any centralized federal government. Opulents in State governments insisted upon a *laissez faire* system that allowed unfettered profiteering, price gouging, monopolies, slave importation, and indenture, as well as land and financial speculation.The weak federal structure championed by States, whether premeditated or not, allowed States to avoid paying for the war effort or any costs of a federal administration.

The Articles of Confederation had taken so long to concoct most of the thirteen delegates involved were no longer serving in Congress by the time the Articles were passed. It is entirely possible the new delegates who entered Congress would have crafted a

substantially different constitution if given the opportunity. The *laissez faire* ethos that was implicitly institutionalized by the Articles was gradually making corruption on the federal and State levels the American way of life; at the same time, it rendered the Articles of Confederation, the re-named Confederal Congress, and State legislatures, largely irrelevant to the quotidian existence of citizens. Since 1774, citizens had been practicing unrestrained democracy in rural communities, small towns and villages, as well as cities, through Committees of Correspondence and Provisional Authorities—which included the removal of the property requirement for male suffrage. The *People* had not Consented to the Articles of Confederation, and so were not bound by the Articles or by any other political machinations of the Opulents to which they were not a party. The Articles create a clear and rigid social hierarchy in contravention of the First Principles of Equality and Liberty, by limiting "all privileges and immunities" to "free inhabitants," who are not "paupers and vagabonds"—which implicitly, if not explicitly, classified everyone who was not an Opulent as a "pauper." It was clear that "once so many ordinary people had experienced such a heady sense of social empowerment, they…[were unwilling]…to turn back the clock to the days when aristocratic pretenders demanded deference,"[74] and they were second-class citizens.

By the same token, the quotidian existence of citizens was largely irrelevant to the Opulent Minority. To Opulents, it seemed entirely proper that men without property were disenfranchised on the State and federal levels because "poverty excludes them from a right of suffrage"[75]—just as it seemed reasonable to deny the vote and equality to women, slaves, indentures, and Indigenous Peoples. The theory was that without property, a man did not have

[74] T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York, NY: Hill & Wang—2010), 18.
[75] Madison [April, 1787], "Vices of the Political System of the United States," in *The Papers of James Madison*, *Volume IX: 9 April 1786-24 May 1787 with Supplement 1781-1784*, William T. Hutchinson, William M.E. Rachal, & Robert A. Rutland, Editors (Chicago, IL: University of Chicago Press—1975), 348-357.

a so-called 'ownership stake' in the country. As John Jay was later fond of quipping: "[t]he people who own the country ought to govern it."[76] Throughout the British Empire there had been a property qualification for male suffrage that endured from perhaps the seventh century CE until *1918*, at which time both women and men were granted universal suffrage in the United Kingdom. Enfranchisement in the Thirteen Colonies, and subsequently in the Thirteen States, had always been means-tested and thereby limited to the mere six percent of American citizens,[77] twelve percent of adults, who were Opulents: male, overwhelmingly of Northern Európan descent, and property owners.[78] Independence did not rescind the wealth barrier on the State level: New Hampshire was the first State to eliminate its property requirements for free men of Európan descent, in 1792; North Carolina was the last State to do so, in 1856.

However, no such barrier existed on the community level after Committees of Correspondence, Safety, and Inspection, as well as Provisional Authorities, supplanted the British colonial administration. Rural and urban citizens alike "had clamored for years for the right to vote,"[79] and Patriots built a new, direct democratic system from the grassroots up, guided by the First Principles, which transformed the United States into a pastiche of wildly divergent local and regional governments, laws, and politicians. Once the Provisional Authorities had taken over in municipalities and rural communities, men of all walks of life attended town hall meetings to express their opinions and voted in local elections.[80] The

[76] William Jay, *The Life of John Jay: With Selections From His Correspondence & Miscellaneous Papers, Volume I* (New York, NY: J. & J. Harper—1833), 70.
[77] Northern California Citizenship Project. "U.S. Voting Rights Timeline." *Mobilize the Immigrant Vote 2004* (San Francisco, CA: Northern California Citizenship Project—2004); accessed 12 January, 2015: http://www.kqed.org/assets/pdf/education/digitalmedia/us-voting-rights-timeline.pdf
[78] Donald Ratcliffe, "The Right to Vote and the Rise of Democracy, 1787–1828," *Journal of the Early Republic* (Philadelphia, PA: Society for Historians of the Early American Republic—Summer 2013), 221.
[79] David Lefer, *The Founding Conservatives: How a Group of Unsung Heroes Saved the American Revolution* (New York, NY: Sentinel Press—2013), 132.
[80] John Dickinson & Benjamin Franklin, et al, "Article IV," *Articles of Confederation & Perpetual Union* (York Town, PA: The Second Continental Congress—15 November, 1777).

Patriots had taken to heart the words of Thomas Paine, who had emphatically declared "We have it in our power to begin the world over again,"[81] and Patrick Henry, who announced on the second day of the Continental Congress in 1774: "government is at an end…[and the States are returned to] a state of nature."[82] The insurgency, war, and democracy, had only re-enforced the revolutionary values of Social Justice and the First Principles: "Ordinary people were no longer willing to trust only wealthy and learned gentlemen to represent them."[83] Patriots certainly had no interest in being "represented" by people whom they were not allowed to choose because suffrage had been denied to "paupers." The Patriot apparatus began as a parallel or shadow system to the Colonial Administration of the British Crown, and now seemed to be a parallel system to the one administered by the Opulent Minority.

After independence had been won and war was no longer a focus, the implications of the emergence of Democracy and the isonomy of ordinary people was not lost upon "Colonel" James Madison, a diminutive man who had been commissioned as a colonel in the Virginia militia, but did not serve due to fragile health. Madison began to sound the alarm amongst Opulents over what he considered a "looming anarchy:"[84] the empowerment of the Exploitable Majority. Instances of Patriots fulfilling the First Principle duty to "Alter of Abolish"—such as 4,000-man Shays' Rebellion of 1786-1787—only increased Madison's dyspepsia on the subject. Specifically, Madison feared the very real possibility that the various local Patriot political apparatus could form inter-community alliances as had the Committees of Correspondence under colonial rule, which then would have the potential of

[81] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Thrift Editions—1997), 52.
[82] Patrick Henry, "6 September, 1774," quoted in: Neil L. York, "The First Continental Congress and the Problem of American Rights," *Pennsylvania Magazine of History and Biography, Volume 122, Number 4* (Philadelphia, PA: The Historical Society of Pennsylvania—October,1998), 360.
[83] Gordon S. Wood, *The American Revolution: A History* (New York, NY: Modern Library—2002), 51.
[84] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 103.

making superfluous the federal and State governments the Opulents had imposed, much the same way in which the British colonial authorities had been superseded. One likely result of a Patriot takeover would be the eventual institutionalization of isonomic and egalitarian Democracy, with universal suffrage and an end to bondage; a state in which "the 'rulers' are the servants—and the People their superiors and sovereigns."[85]

James Madison was to the Opulent Minority what Samuel Adams was to the Patriot insurgency: someone who doggedly pursued a vision until he was finally able to persuade a sufficient number of colleagues to share his vision. Madison saw a clear and present danger from "the superior force of an interested and overbearing majority,"[86] that was undeservedly "sighing for a more equal distribution of [life's] blessings,"[87] and he had no doubt that "if elections were open to all classes of people, the property of landed proprietors would be insecure."[88] Madison seemed to understand better than anyone that "all politics is local,"[89] a notion that is once again gaining currency in the United States and Európa. What Madison described as a "spirit of locality"[90] is seen in grassroots political systems, farm-to-table and "locavore" movements, buy local and independent movements, and the sanctuary movement. Madison was acutely aware that so long as such a spirit of locality existed, the potential for entrenched isonomic, egalitarian Democracy remained an ever-present and unacceptable

[85] Benjamin Franklin [26 July, 1787], *The Political Thought of Benjamin Franklin*, Edited by Ralph Ketchum (Indianapolis, IN: Hackett Publishing Company—2003), 398.
[86] James Madison ["Publius"], "The Federalist No. 10*:* The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection (Continued)," *New York Daily Advertiser* (New York, NY: New York Daily Advertiser—Thursday, 22 November, 1787).
[87] James Madison [Tuesday, 26 June, 1787], in *The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 422.
[88] James Madison, [Tuesday, 26 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates* (Albany, NY: Websters & Skinners—1821), 183.
[89] Byron Price [Chief of Washington Bureau, The Associated Press], "Politics at Random," in *Sarasota Herald* (Sarasota, FL: Sarasota Herald—16 February, 1932), p. 7, col. 3.
[90] James Madison, "Observations on Jefferson's Draft of a Constitution for Virginia, 15 October, 1788," in *The Papers of James Madison*, *Volume XI*, Robert A. Rutland, Charles F. Hobson, Thomas A. Mason, Editors (Charlottesville, VA: University Press of Virginia—1978), 285.

Sword of Dāmoklês[91] over the collective heads of the Opulent Minority; a threat to the wealth, status, and power of every Opulent, including his own. Madison and his fellow Opulents were highly exercised over the turn they perceived society had taken: "Deference—the acquiescence to the authority of one's social superiors—was disappearing with remarkable rapidity."[92] To Opulents like Madison, the potential end of the Exploitable servility was a crisis that threatened all men of means with the calamitous end of the established and natural "political, social, [economic, and] moral order."[93]

The new, local, direct democratic organization in the United States was not only a threat to Opulent wealth and the perceived natural order; such systems also embarrassed, even mortified, status-conscious Opulents aspiring to a *bona fide* centralized aristocratic United States led by a powerful monarch or head of state to put America on a par with the most powerful empires in Európa. In fact, the goal of many Opulents from as early as the 1750s and 1760s was to "transfer the great seat of Empire into America,"[94] and transform the United States into "the greatest empire in the world."[95] To that end, on 13 July, 1787, two months before the Constitution was imposed, and a year before it was ratified by the States, the Confederal Congress passed "An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio," that established the administration of the first

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[91] An allusion to the imminent and ever-present peril faced by those in positions of power. The parable of the courtier Dāmoklês and the tyrant Dionysos II is told in Cicero [45 BCE], *The Tusculanae Disputationes, Volume 21*—an online translation of the story:
http://www.livius.org/sources/content/cicero/tusculan-deputations/damocles/?

[92] Joyce Appleby, "The American Heritage: The Heirs and the Disinherited," *Journal of American History, Volume 74, Number 3, The Constitution and American Life: A Special Issue* (Bloomington, IN: Organization of American Historians—December, 1987), 799.

[93] Paul Lagassé, Editor, "Censorship," *The Columbia Encyclopedia, Sixth Edition* (New York, NY: Columbia University Press—2001).

[94] John Adams, "Letter to James Warren, Oct. 8, 1775," in *Papers of John Adams, Volume 3*, Robert J. Taylor, Gregg L. Lint, & Celeste Walker, Editors (Cambridge, MA: Belknap Press of Harvard University Press —1980), 192.

[95] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 67.

American colonial acquisition, the "North-West Territory"—that is, the territory bounded by the Ohio River, the Mississippi River, and the Great Lakes.

The visionary and canny James Madison recognized that in order to create an American Empire that would eclipse every other empire in history, as well as thwart Democracy and ensure perpetual dominance by the Opulent Minority, the Confederation had to be replaced by a new, highly centralized, federal government led by a monarch or other powerful executive; and the Articles of Confederation had to be replaced by a new Constitution. There were two seemingly insurmountable hurdles for Madison's plan: the Articles of Confederation specified an unbreakable *Perpetual Union*, and any amendment to the Articles required unanimous approval of the States. The Thirteen States still were quite content with the *status quo* of unobstructed corruption and were adamantly opposed to creating a replica of the British monarchy and aristocracy after having fought so long and hard, and expended so much blood and treasure, in order to extricate the United States from the British Empire. A strong federal government and king had virtually no *public* support, but the Consent of the People was never a consideration for Madison and the other Opulents.

Madison reckoned that the only practical and expedient means by which to surmount the impediments to a new American monarchy was a *coup d'état*, and as *chef d'un coup* he began to assemble a group of like-minded *Coupistes*, and await a propitious opportunity to strike. Madison developed a close relationship with Alexander Hamilton, who had risen from extremely humble beginnings on the Caribbean isle of Nevis, to become *aide-de-camp* and *protégé* to General George Washington, as well as a member of Washington's inner circle. Hamilton eventually attained the rank of major general and parlayed his military service into a political career. Madison and Hamilton discovered they shared a vision of a British-style

American Empire with a powerful central government led by a monarch. Washington's military inner circle also included John Jay of New York and John Marshall of Virginia—wealthy Conservatives who had been commissioned as officers in the Continental Army in the time honored tradition of the British aristocracy. Washington, Hamilton, Jay, and Marshall, had formed a close bond with each other and with Washington's friend and civilian patron from Pennsylvania, Gouverneur Morris. Madison easily fit into the circle. John Adams, who originally had been considered the most "Radical" Patriot, supported the cause from his post as United States Minister to the Court of St. James's (England) and United States Minister to the Nederlands. Adams had nominated George Washington to be Commander-in-Chief of the Continental Army and later became the first vice-president under Washington. James Wilson a Conservative attorney, merchant, land speculator, war profiteer, and Associate Supreme Court justice, strongly allied with this core group of *Coupistes*.

The opportunity to stage a bloodless *coup d'état* presented itself in the Spring of 1787. George Washington had the loyalty of what remained of the Continental Army; Benjamin Franklin was 81-years-old, could no longer walk, and could barely whisper. It just so happened that the two men most capable of mounting a formidable opposition to the plans of the *Coupistes*, and most likely to do so—Thomas Paine and Thomas Jefferson—were in Paris. James Madison and Alexander Hamilton were able to engineer approval from the Confederal Congress for a "convention of delegates" in Philadelphia, under the pretext that it would be "for the sole and express purpose of revising the Articles of Confederation."[96]

The *Coupistes* used this convention of delegates—what is now known as the

[96] Confederation Congress, "Report of Proceedings in Congress, Wednesday, 21 Februrary, 1787," *Journals of the Continental Congress*, *Volume 38* [manuscript] (Washington, DC: Library of Congress—Wednesday, 21 Februrary, 1787); accessed 15 July, 2015: http://avalon.law.yale.edu/18th_century/const04.asp

"Constitutional Convention," but was at the time called "The "Secret Proceedings"[97] by its chroniclers—to seize control of the United States, overthrow the existing constitution and obtaining law (the Articles of Confederation), and effectively imposed a new Constitution that established a form of government which had not previously existed in the United States. Despite encountering some spirited but disorganized opposition, the *Coupistes* were ultimately able to coerce ratification of the new Constitution by the States, and legitimization of the *Coupistes* and their *coup d'état* amongst the Opulent Minority. The *Coupistes,* and those who supported their cause, who were generally referenced as "Federalists" after a series of eighty-five propagandistic letters supporting the imposition of the Constitution, now known as *The Federalist Papers*, began appearing in sympathetic New York City newspapers. This series of letters was written by Alexander Hamilton, James Madison, and John Jay, all using the collective *nom de plume*, "Publius."

*The Federalist Papers* espouse a dark *Weltanschauung* akin to the Hobbesian "every man is enemy to every man"[98]—for James Madison, writing as "Publius," the only viable means to manage the tumult is "ambition must be made to counteract ambition."[99] It became evident from the Publius tracts that the *Coupistes* had never entertained the slightest philosophical opposition to monarchy and aristocracy; certainly Madison, Hamilton, and Jay, were completely opposed to the revolutionary values of the Patriots and wholly enamored of a traditional British-style hereditary, patriarchal hierarchy. The Federalists admired the

[97] Robert Yates, John Lansing, Jr., & Luther Martin [1787], *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821).
[98] Thomas Hobbes [1651], "Chapter XIII: Of the Natural Condition of Mankind as Concerning Their Felicity and Misery," *Leviathan: The Matter, Forme and Power of a Common Wealth, Ecclesiasticall and Civil* (London, UK: Oxford University Press—1909), 96.
[99] James Madison [Publius], "The Structure of the Government Must Furnish the Proper Checks & Balances between the Different Departments," *The Federalist No. 51* (New York, NY: New York Packet—Friday, 8 February, 1788).

unassailable sovereignty of a monarchical *Leviathan*[100] and English common law in its entirety, as well as the British political and economic systems. The Federalists had no desire to experiment with Humanist and Enlightenment ideals; their ideal was nobility and royalty. The First Principles were merely foolish and unwarranted aspirations of undeserving commoners. To describe the Federalists as "counter-revolutionary" would seem a term much too benign when applied to their betrayal of the revolution that made their *coup d'état* possible. It is incontrovertible that the Federalist *Coupistes* had absolutely no possibility of defeating the British on their own; they needed the commoner Patriots for that.

It is not unreasonable to assume each man in the *Coupiste* leadership envisioned himself as fearless leader of a new federal monarchy. George Washington, John Adams, and James Madison, each served as President, and John Jay ascended as far as Chief Justice of the Supreme Court and governor of New York. John Marshall defined the Supreme Court as the longest serving Chief Justice in history. Alexander Hamilton was likely precluded from the presidency by scandal and by virtue of being "foreign-born"—although he was born within the British Empire—but Aaron Burr saw to it that Hamilton would never have the chance. It is not unreasonable to note the perpetually unsated desire of the Opulent Minority for wealth and power. It is not unreasonable to describe as Machiavellian the actions of James Madison, undisputed *chef d'un coup*, as well as those of his fellow *Coupistes* and Federalists, as they:

> …manipulated the political process to force a calling of the Constitutional Convention, collaborated to set the agenda in Philadelphia, attempted to somewhat successfully orchestrate the debates in the state ratifying conventions, and then drafted the Bill of Rights as an insurance policy to ensure state compliance with the constitutional settlement.[101]

[100] Thomas Hobbes [1651], *Leviathan: The Matter, Forme and Power of a Common Wealth, Ecclesiasticall and Civil* (London, UK: Oxford University Press—1909).
[101] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), xv.

The American *coup d'état* and the resulting imposition of the Constitution sharply pivoted American society away from the revolutionary values of isonomic Democracy, Equality, Liberty, Consent, and all the other First Principles of the Declaration of Independence, and instead set the United States on its present course of incrementally retreating from such values. As Patrick Henry stared such cynical betrayal of the revolution in the face, he hoped against hope "that the spirit which predominated in the revolution is not yet gone."[102] This pivot is quite simply the most important event in American history, and its significance cannot be overestimated. The *Coupistes*, who later took the name "Federalists" and eventually metamorphosed into the Federalist Party—the political wing of the Opulent Minority—were the germ of the most potent, influential, and enduring, political movement in American history. Opulent solidarity is virtually unbreakable and infinite; Opulent ambition and greed is only limited by rival ambition and greed. The political agenda of the Opulent Minority are today represented by the neo-Federalist modern Conservative Movement, and by organizations such as the Federalist Society, the Heritage Foundation, the Republican Party and its "Freedom Caucus."

The *Coupistes*/Federalists unabashedly imposed their will upon the United States through a bloodless *coup d'état* and the institutionalization of a Constitution that implicitly enshrines a patriarchal social order and political system antithetical to the First Principles of the Declaration of Independence. The Declaration recognizes that the imposition of will is the fundamental issue of human social organization and asserts in the strongest of terms that no social organization is *ever* legitimate if it allows one person, or one group of people, to impose their will upon even a single other human. The Declaration of Independence separated

[102] Patrick Henry, "Rights Omitted From Enumeration: Wednesday, 25 June, 1788," Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution, Volume III, Second Edition* (Washington, DC: Jonathan Elliot—1836), 652.

the United Statese from the British Empire; the *Coupistes*/Federalists were ruthlessly determined to re-create it. The First Principles asseverate that all humans are of Equal Value and entitled to Liberty, Self-Determination, and other Unalienable Rights, simply by virtue of the fact they are human; what were known as "Natural Rights." For the Federalists and other Conservatives, people are not of equal value, are incapable and undeserving of Self-Determination, and have no rights—only whatever privileges the Opulent Minority deigns to give them. Federalists and other Conservatives are arguably obsessed with the concept of "Order"—as in "Law & Order," the natural political, social, economic, and moral order, and what William F. Buckley, Jr. imagined to be an "organic moral order."[103] To them, Liberty is not Personal Autonomy limited only by the Liberty of another; rather, it is an oxymoron of "Ordered Liberty" that only permits "Liberty" within the narrow confines of the political, social, economic, and moral *order*, that is appropriately prescribed by the Opulent Minority. Democracy must only exist within a racist, misogynist, exploitative, élitist, anti-democratic, all-male Opulent Minority that has a substantial financial investment in the country. Justice is only established for the meritorious Opulents.

Yet, try as they may, James Madison and the Federalists could not quite manage to expunge the expectation of Democracy and Social Justice from the American collective memory via the Constitution; indeed, the Declaration of Independence has become arguably the most iconic political document in world history. The "Revolutionary Values" of the Patriots stubbornly persisted in the internalized American mythology even after the Federalist administration of John Adams was able to "stack" the court systems of the United States with Federalist jurists who actively eroded Liberty and de-established Justice, and Chief Justice

[103] William F. Buckley, Jr. "The Magazine's Credencia," *National Review* (New York, NY: National Review—19 November, 1955),

John Marshal single-handedly crafted a Supreme Court designed to preserve and protect the established political, social, economic, and moral order, by eviscerating the First Principles and the guarantees of the Constitution—and its Bill of Rights. Such values have perpetuated despite the best efforts of all subsequent Supreme Courts to continue the tradition begun by the Marshall Court, aided by the fact that the Declaration of Independence has never been repealed or revoked; it has continuously obtained since it was signed. The Declaration of Independence has formally been a "permanent law" since 1814;[104] Congress designated it as such in 1845,[105] and enshrined it as the first "Organic Law" in 1875.[106] The Plain Meaning of the words and phrases of the Declaration of Independence, the Constitution, and its amendments, has not changed since these documents were written. The Plain Meaning of these words and phrases provide the legal framework for transmuting American society into whatever form its citizens wish it to take; which makes the Plain Meaning of the First Principles, the Bill of Rights, and neglected portions of the Constitution, as threatening today to the established political, social, economic, and moral order, as they were in 1776 and 1787.

[104] Senator Elbridge Gerry, (DR-MA) & Speaker Henry Clay (DR-KY), "An Act Authorizing a Subscription for the Laws of the United States, and for the Distribution Thereof." *Laws of the United States, 13th Congress of the United States, Session II, Chapter 69* (Philadelphia, PA: John Bioren & W. John Duane, 18 April, 1814), 129-130.

[105] Congress of the United States, *The Public Statutes at Large of the United States Statutes: From the Organization of the Government in 1789 to 3 March, 1845, Volume I,* Richard Peters, Esq., Editor (Boston, MA: Charles C. Little & James Brown—1845), 1-22,

[106] William M. Evarts, Secretary of State, "Organic Laws of the United States of America," *Second Edition Revised Statutes at Large of the United States: 1774-1875, Passed at the First Session of the Forty-Third Congress 1873-1874, Volume XVIII, Part 1*, George S. Boutwell, Commissioner (Washington, DC: Government Printing Office—1878), 2-32.

# I: *First Principles*

First Principles *cannot be derived from one another, or from anything else; everything must be derived from them.*

— Aristotéles[107]

*First Principles* is a concept discussed at length by Aristotéles in *Fusike Akroasis* ["*Physics*"][108]—that is, a basic, foundational, or *ab initio,*[109] self-evident proposition or assumption. Although he wrote nearly two millennia prior to *le Siècle des Lumières* (the "Enlightenment"),[110] Aristotéles was the starting point for many Enlightenment thinkers; a number of them adapted Aristotéles' notion of First Principles to politics and "government." Most notable of such works are the essay "Of the First Principles of Government,"[111] by David Hume (1742), and *The Social Contract: Or Principles of Political Right*,[112] a book by Jean-Jacques Rousseau (1762). American independence was declared at the end of *le Siècle des Lumières*, and the Declaration of Independence is arguably the culmination and realization of such philosophical inquiries and political theories, formulated in the wake of the hugely influential *First Principles of Government: and, On the Nature of Political, Civil, and Religious Liberty*, by Joseph Priestly, first published in 1768, with a second edition in 1771.[113] Alexander Hamilton clearly voiced the concept of First Principles during the State debates over ratification of the Constitution, in *The Federalist No. 31*: "there are certain primary

[107] Aristotéles [c. 350 BCE], "First Principles," *Fusike Akroasis ["Lectures on Nature" or "Physics"]*, *Book I Chapter 5,* (San Bernadino, CA: CreateSpace—2012), 12.
[108] Terence Irwin, *Aristotle's First Principles* (Oxford, UK: Clarendon Press—1990), 3.
[109] Latin: "from the beginning."
[110] Français: literally, "The Century of the Lights;" "enlightenment" is *éclaircissement*.
[111] David Hume [1742], "Of the First Principles of Government" *Essays, Moral, Political, & Literary,* Edited by Eugene F. Miller (Indianapolis, IN: Liberty Fund—1987), 32-36.
[112] Jean-Jacques Rousseau [1762], *Du Contrat Social ou Principes du Droit Politique* [*Of the Social Contract or Principles of Right*], Translated by G. D. H. Cole (London, UK: J.M. Dent—1913), *passim*.
[113] Joseph Priestly [1768], *An Essay on the First Principles of Government: and, On the Nature of Political, Civil, and Religious Liberty, Second Edition* (London, UK: J. Johnson—1771), *passim*.

Truths, or *First Principles*, upon which all subsequent reasonings must depend."[114] Thomas Paine wrote a pamphlet on the subject, *Dissertation on the First Principles of Government,*[115] in 1795. Immanuel Kant uses the term "Postulates" (1793)[116] when referring to the concept of First Principles. The notion of fundamental First Principles is one that was widely understood in the Europan Sphere during the eighteenth and nineteenth centuries. Yet somehow in the intervening years, what are the most indispensible of American political ideas have somehow almost entirely receded from American public consciousness or "collective memory."

The Declaration of Independence does not simply declare independence from the British Empire; it makes a persuasive and resonate case for collective Self-Determination—that is, for an isonomic and democratic social organization—by equal and autonomous individuals who naturally possess the right to exist as a country by virtue of the fact that they are human beings. For the first time in the course of Human Events, a putative political unit delivered to its People, and made known to the entire world, First Principles that prescribe a standard by which to measure its own legitimacy and the legitimacy of any political unit, as it insists the People hold the United States to the standard it has set for itself. The United States is obligated to: obtain the Consent of the People; treat all citizens as Equal; and preserve the Unalienable Rights of citizens, including their Personal Autonomy (Life & Liberty) and their Pursuit of Happiness. Accordingly, if the social and political organization of the United States does not meet these standards to the satisfaction of its citizens, they have a *Duty* to Alter or Abolish such organization and establish a new system more to their liking and able to earn

[114] Alexander Hamilton [Publius], "The Federalist No. 31: The Same Subject Continued; Concerning the General Power of Taxation," *New York Packet* (New York, NY: New York Packet—Tuesday, 1 January, 1788); *emphasis added*.
[115] Thomas Paine [1795], *Dissertation on First Principles of Government* (London, UK: ECCO Print Edition—2015).
[116] Immanuel Kant [1793], *Religion Within The Limits of Reason Alone*, Translated by Theodore M. Greene & Hoyt H. Hudson (La Salle, IL: The Open Court Publishing Company—1934).

their Consent. In his "First Inaugural Address," Abraham Lincoln said: "It is safe to assert that no government proper ever had a provision in its organic law for its own termination."[117] Yet, the First Principles do exactly that. Lincoln was at the time forcefully making the argument that the Union was perpetual and indivisible; had he correctly interpreted the Organic Laws he would have had the opposite effect of bolstering the South's case for secession. Lincoln could have made the case that the South could not secede without the Consent of its citizens—including its slaves—but that would have potentially brought the notion of Consent of the People to the fore of American politics for the foreseeable future, and possibly sown the seeds of an entirely different civil war.

The First Principles contained in the Declaration of Independence are the "other Rights" that are "retained by the People" in the Ninth Amendment to the Constitution, and the Rights "reserved…to the People" in the Tenth Amendment; both amendments were inserted into the Bill of Rights by James Madison after he was thwarted from incorporating the First Principles in their entirety. Chief Justice John Marshall affirmed the First Principles as inviolable in perhaps the most famous and influential Supreme Court ruling in American history, *Marbury v. Madison* (1803): "The [First] Principles, therefore, so established are deemed fundamental; and as the authority from which they proceed is supreme…they are designed to be permanent."[118] The Declaration of Independence has continuously, if rather surreptiously, obtained as American law since it was signed; Congress formally deputed it a United States law in 1814[119] and enshrined the First Principles as permanent law when the

[117] Abraham Lincoln, "First Inaugural Address, Monday, 4 March, 1861," *Abraham Lincoln Papers at the Library of Congress, Manuscript Division* (Washington, D.C.: American Memory Project—2000-02); accessed 20 April, 2017: http://memory.loc.gov/ammem/alhtml/malhome.html
[118] Chief Justice John Marshall, "Opinion," *Marbury v. Madison* [5 U.S. 137, 176], 1803.
[119] Senator Elbridge Gerry, (DR-MA) & Speaker Henry Clay (DR-KY), "An Act Authorizing a Subscription for the Laws of the United States, and for the Distribution Thereof." *Laws of the United States, 13th Congress of the*

Declaration of Independence was included in *The Public Statutes at Large of the United States* in 1845.[120] The Declaration of Independence was designated the first of the four "Organic Laws of the United States" in 1875.[121] Yet, even as the First Principles were being institutionalized, the term "First Principles" and their significance were already beginning to fade from the American consciousness, aided considerably by a Supreme Court that has adopted the inexplicable and unsupportable position that the Constitution is the country's *only* Organic Law and the United States began not with its Declaration of Independence in 1776, but with the imposition of the Constitution in 1787. In the alternative history imagined by the Supreme Court in the over one hundred decisions that mention federal "organic law," a *new* United States was born in 1787 with the imposition of the Constitution, and everything that went before is essentially irrelevant. The Supreme Court re-imagines the Declaration of Independence as an aspirational set of principles—which the Court also recognizes as politically dangerous to explicitly repudiate.

It has also become normative in the United States to consider it 'disloyal,' or even treasonous, for American citizens to measure or question the legitimacy of the established American system as demanded by the First Principles. In many instances, social norms or government regulations force American citizens to pledge undying loyalty to the political, social, economic, and moral order that has been established by the Opulent Minority. Although such oaths ostensibly vow unquestioning fealty to the "United States," the United

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*United States, Session II, Chapter 69* (Philadelphia, PA: John Bioren & W. John Duane, 18 April, 1814), 129-130.

[120] Office of the Federal Register, *The Public Statutes at Large of the United States Statutes: From the Organization of the Government in 1789 to 3 March, 1845, Volume I,* Richard Peters, Editor (Boston, MA: Charles C. Little & James Brown—1845), 1-22; accessed 21 November, 2015: http://www.loc.gov/law/help/statutes-at-large/index.php

[121] William M. Evarts, Secretary of State, "Organic Laws of the United States of America," *Second Edition Revised Statutes at Large of the United States: 1774-1875, Passed at the First Session of the Forty-Third Congress 1873-1874, Volume XVIII, Part 1*, George S. Boutwell, Commissioner (Washington, DC: Government Printing Office—1878), 2-32.

States has been conflated with its established order, its Opulent Minority, and its patriarchic hierarchy, each of which the dominant American culture imbues with a religiosity that ordains societal worship. Efforts to divert the *Dêmos* away from seeking accountability for those who control the county, and towards public subservience to those in control, generally becomes more pronounced when Capitalism is undergoing an economic downturn in one of its endemic boom and bust cycles and its efficacy is in question—or when the United States diverts its "blood and treasure" resources to elective ill-conceived wars of which the public disapproves.

In 1917, after America entered World War I—what was then the latest and most deadly iteration of the constant state of warfare that existed in Európa since at least the dawn of written history—William Tyler Page wrote an affirmation of what he imagined to be American "political faith" and "American values": "The American's Creed."[122] Page's sentiments struck a chord with a Congress that was distressed at the lack of support for American involvement in the war, prompting the House of Representatives to make the "The American's Creed" a resolution, which it passed in 1918. The creed became a *de facto* American loyalty oath during the Great Depression, when there was a great deal of consternation amongst the Opulent Minority over the possibility the *Dêmos* might prefer another economic system to Capitalism. The concept of First Principles had almost completely faded from the American consciousness by the time William Tyler Page's oath was supplanted by another oath of loyalty and indoctrination, the "Pledge of Allegiance," which Congress formally adopted shortly after American entry into the Second World War, in 1942. "The American Creed" is still used as an oath taken as part of the naturalization ceremony for newly naturalized American citizens.

[122] William Tyler Page [1917], "The American's Creed," resolution passed by the United States House of Representatives (Washington, DC: United States House of Representatives—3 April, 1918); accessed 1 July, 2016: http://www.ushistory.org/documents/creed.htm

Although the American Creed and the First Principles of the Declaration of Independence are antithetical, the term "American Creed" seems to have latterly developed more resonance than "First Principles;" authors such as England's G.K. Chesterton[123] and Sweden's Gunnar Myrdal[124] refer to the First Principles as the "American Creed." At the turn of the twentieth-first century, Forrest Church revived the term "American Creed" to apply to the First Principles and the Declaration of Independence.[125] Historians Annette Gordon-Reed and Peter S. Onuf again resurrected the term for the First Principles and the Declaration in a 2016 book about Thomas Jefferson,[126] *Most Blessed of Patriarchs*, and promoted the term on a national book tour. Despite such developments, neither the term "American Creed" nor the importance of the First Principles and the Declaration of Independence has captured the attention of the twenty-first century American public. An ongoing public debate about the significance of the First Principles and Organic Law is long overdue.

[123] G.K. Chesterton, *What I Saw In America* (New York, NY: Dodd, Mead and Company—1922), 7.
[124] Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York, NY: Harper & Brothers—1944), *passim*.
[125] Forrest Church, *The American Creed: A Biography of the Declaration of Independence* (New York, NY: St. Martin's Press—2002).
[126] Annette Gordon-Reed & Peter S. Onuf, "*Most Blessed of Patriarchs": Thomas Jefferson and the Empire of the Imagination* (New York, NY: Liveright Publishing Corporation—2016), 251 & 267.

# Chapter II: *Organic Laws of the United States*

[Organic Law *is the*] fundamental law *or constitution of a state or nation—written or unwritten; that law, or system of laws or* principles, *which defines and establishes the organization of its government.*

—Henry Campbell Black [127]

There are four "general and permanent"[128] Organic Laws of the United States:[129] the Declaration of Independence[130] (1776); the Articles of Confederation & Perpetual Union[131] (1777); An Ordinance for the Government of the Territory of the United States North-West of the River Ohio[132] (the "North-West Ordinance of 1787"); and the Constitution of the United States[133] (1787), with all its amendments—the first ten of which are known as the Bill of Rights[134] (1789). There is no official United States government definition of "Organic Law." Based upon the definitions found in law dictionaries such as *Black's Law Dictionary* or *Merriam-Webster's Dictionary of Law*, "organic" in this instance was originally "organical" and is a cognate of "organizing." Based upon the more than two hundred mentions of the term "organic law" in Supreme Court decisions, the Court considers the Organic Laws of the United States to be organizing laws, instruments that organized the government of the country; but the Court also recognizes that an organic law may also be a charter; that is, "a

[127] Henry Campbell Black, M.A. [1891 & 1910], "Organic Law," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 991.
[128] Office of the Law Revision Counsel ("OLRC"), *United States Code* (Washington, DC: U.S. House of Representatives—2015); accessed 15 July, 2015: http://uscode.house.gov/about_code.xhtml
[129] Ibidem, "Frontal Matter," xxiii-lxxv; accessed 15 July, 2015: http://uscode.house.gov/download/annualhistoricalarchives/pdf/OrganicLaws2012/index.html
[130] Thomas Jefferson, "Declaration of Independence," (Philadelphia, PA: Continental Congress—1776).
[131] John Dickinson & Benjamin Franklin, et al, "Article IV," *Articles of Confederation & Perpetual Union* (York Town, PA: The Second Continental Congress—15 November, 1777).
[132] Thomas Jefferson, Nathan Dane & Rufus King, "An Ordinance for the Government of the Territory of the United States North-West of the River Ohio," (Philadelphia, PA: Second Continental Congress—13 July, 1787).
[133] James Madison, et al, "United States Constitution" (Philadelphia, PA: Secret Proceedings—17 September, 1787).
[134] James Madison, et al, "Bill of Rights," (Philadelphia, PA: Continental Congress—25 September, 1789).

written instrument [guaranteeing] rights…or privileges,"[135] which describes both the Declaration of Independence and the Bill of Rights. Because all four Organic Laws are *permanent*, the Organic Laws that organize the government cannot contravene or violate the Rights and Protections chartered in the Organic Law that preceded all others and has never been repealed or amended—the Declaration of Independence. Although the other three Organic Laws were not designed to be in harmony with the First Principles and do not explicitly acknowledge them, the Constitution incorporates the First Principles of the Declaration of Independence as the "other Rights" that are "retained by the People" in the Ninth Amendment to the Constitution and the Rights "reserved…to the People" in the Tenth Amendment. Historically, all the Organic Laws have been ignored in whole or in part by all levels and branches of American government; but over time and without herald, the "Charters of Freedom" (the Declaration, the Constitution, and the Bill of Rights), have in large part been effectively harmonized through legislation and Supreme Court rulings, as time and events have rendered the other two Organic Laws irrelevant or moot.

The term "Organic Law" is an apparently uniquely American coinage and seems to have first appeared in the Supreme Court decision, *U.S. v. Arredondo* (1832).[136] The next year, *Lessée of Livingston v. Moore* was the first of many times the Court—the Marshall Court in this instance—implicitly and erroneously imagined the Constitution to be the *only* Organic Law, calling it "the constitutional or organic law of this federal union of the states,"[137] thereby inferring the Constitution is the foundational law of the country. The Legislative Branch, Congress, has consistently had other ideas about what documents

[135] Frederick C. Mish, Editor in Chief, "charter; *noun*," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 193.
[136] Justice Henry Baldwin, "Opinion," *U.S. v. Arredondo* [31 U.S. 691, 713]—1832.
[137] Justice William Johnson, "Opinion," *Lessée of Livingston v. Moore* [32 U.S. 469, 483-484]—1833.

comprise the Organic Laws of the country, and perhaps a generally more accurate understanding of history than the Court, albeit entirely without fanfare for the Organic Laws. Abraham Lincoln lists four Organic Laws in the fifteenth paragraph of his "First Inaugural Address, Monday, 4 March, 1861;"[138] but in place of the North-West Ordinance of 1787, he mistakenly substitutes the Articles of Association of 1774—a pact to boycott British goods and services after the British Parliament passed the "Intolerable Acts" or "Coercive Acts."[139] The fact Lincoln did not find it necessary to explain the meaning of "organic law" would seem to indicate he felt his audience was familiar with the term.

What are now officially, but not widely, known as the four "Organic Laws of the United States," were formally recognized as United States laws by the 13th Congress in 1814, and published in a limited edition book with the utilitarian title: *Laws of the United States*.[140] The 28th Congress authorized the Office of the Federal Register to publish *The Public Statutes at Large of the United States Statutes* in 1845, edited by Richard Peters—the actual printing itself contracted to Little, Brown, & Company, of Boston[141]—in which the four current Organic Laws were formally enshrined as "permanent" in the first section that immediately follows the Table of Contents, but without the designation "Organic Laws." In 1875, the 43rd Congress passed legislation empowering a commission chaired by Thomas Jefferson Durant to create a *Revised Statutes at Large of the United States* and transferring production to the

[138] Abraham Lincoln, "First Inaugural Address, Monday, 4 March, 1861," *Abraham Lincoln Papers at the Library of Congress, Manuscript Division* (Washington, D.C.: American Memory Project—2000-02); accessed 20 April, 2017: http://memory.loc.gov/ammem/alhtml/malhome.html

[139] A a series of punitive laws passed by the British Parliament in 1774 in retaliation for the Boston Tea Party: The Boston Port Act; the Massachusetts Government Act; the Administration of Justice Act; and the Quartering Act.

[140] Senator Elbridge Gerry, (DR-MA) & Speaker Henry Clay (DR-KY), "An Act Authorizing a Subscription for the Laws of the United States, and for the Distribution Thereof." *Laws of the United States, 13th Congress of the United States, Session II, Chapter 69* (Philadelphia, PA: John Bioren & W. John Duane, 18 April, 1814), 129-130.

[141] Office of the Federal Register, *The Public Statutes at Large of the United States Statutes: From the Organization of the Government in 1789 to 3 March, 1845, Volume I,* Richard Peters, Editor (Boston, MA: Charles C. Little & James Brown—1845), 1-22.

Government Printing Office in Washington, D.C., under the direction of the Department of State, headed by Secretary of State Hamilton Fish (1869-1877).[142]

However, it was was soon discovered that the *Revised Statutes at Large of the United States* were marred by considerable errata, and the four Organic Laws had inadvertently been omitted. George S. Boutwell was appointed in 1877 as sole commissioner responsible for preparing a new revision that rectified all errata and omissions. Boutwell oversaw the 1878 publication of *Second Edition Revised Statutes at Large of the United States: 1774-1875*, *Volume XVII, Part 1,* with the four Organic Laws contained in a section entitled "Organic Laws of the United States," occupying pages 2-32, after the "Table of Contents"[143]—where they have remained in each subsequent publication until this day. From 1927 until the present day, the United States Office of the Law Revision Counsel has published an official compilation and codification of the general and permanent federal statutes of the United States in the *United States Code*—that is, the *Compiled Statutes of the United States: Embracing the Statutes of the United States of a General and Permanent Nature*—which also includes Organic Laws of the United States in its initial section: "Frontal Matter."[144] The Revision Counsel notes that in the eventuality of any disharmony between the versions of the same Organic Law in each publication, the Law as it appears in the *Statutes at Large* takes judicial precedence over that found in the *US Codes*.[145] The Revision Counsel does not,

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[142] Secretary of State, "Organic Laws of the United States of America," *Revised Statutes at Large of the United States: Passed at the First Session of the 43rd Congress 1873-1874*, *Volume XVIII* (Washington, DC: Government Printing Office—1875).

[143] William M. Evarts, Secretary of State, "Organic Laws of the United States of America," *Second Edition Revised Statutes at Large of the United States: 1774-1875, Passed at the First Session of the 43rd Congress 1873-1874, Volume XVIII, Part 1*, George S. Boutwell, Commissioner (Washington, DC: Government Printing Office—1878), 2-32.

[144] Office of the Law Revision Counsel ("OLRC"), "Organic Laws of the United States of America," *United States Code* (Washington, DC: Government Printing Office—1927), "Frontal Matter," xxiii-lxxv.

[145] Office of the Law Revision Counsel ["OLRC"] (Washington, DC: House of Representatives—2015); accessed 15 July, 2015:

however, provide a protocol for resolving disharmony amongst and between the four Organic Laws themselves, which is in keeping with a government apparatus that effectively regards the Organic Laws as curios rather than permanently obtaining law, if it regards them at all, but nonetheless continues to print them and they continue to obtain.

There does not seem to be a historical precedent for the concept of organic laws in ancient or medieval societies in the "Western Tradition;" they did not exist in either *Imperium Rōmānum* ("Roman Empire") or *Ellīnikī́ Aftokratoría* ("Greek Empire"). There seem to be only two organic laws outside the United States, both from the twentieth century: the *Constitution Française du 1958* (France) and the *Constitución Española de 1978* (España). However, both of these constitutions are the most recent in a succession of constitutions in two countries that have existed since the fifth and fifteenth centuries, respectively.

It would seem a country may only be founded once; yet quite a few polities around the globe have had several re-births and founding documents. Following the Franken conquest of "Gaul" in 486, after the fall of *Imperium Rōmānum*, the region became known as "Frankia," *Regnum Francorum*, and eventually, "France." France has colonized several neighbouring regions with vastly different languages and cultures from its own—such as *Breizh* ("Brittany") and *Euskadi* ("Basque Country")—endured nearly a dozen revolutions, a *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"],[146] five *Républiques Française*, and sixteen constitutions; the latest being the *Constitution de la Cinquième République* of 1958, which incorporates the *Déclaration des Droits de l'Homme et du Citoyen*. España operated without a constitution for the more than

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http://uscode.house.gov/download/annualhisto ricalarchives/pdf/OrganicLaws2012/index.html

[146] Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine, "Article IX," *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"] (Paris, FR: l'Assemblée Nationale Constituante—26 Auguste, 1789).

three hundreds years between the Christian *Reconquista* of 1492 and the *Carta de Bayona* ("Bayonne Statute Royal Charter of 1808-1814"); it has had fourteen constitutions since, culminating with the *Constitución Española de 1978*. By contrast, England has neither a foundational document nor a constitution, just an ever-increasing body of laws accumulated since the Anglo-Saxon colonization of Britain.

The United States is unique in that it has four permanent Organic Laws; yet there is but a single book devoted to the subject of its four official Organic Laws: the scrupulously researched *Four Pillars of Constitutionalism: The Organic Laws of the United States*, by one "Richard H. Cox, Ph.D." (1997).[147] The book features a 71-page introduction by Cox, followed by the text of the four Organic Laws. In his introduction, Cox does not explicate the concept of an organic law or its origins, but he does make the case that "in our Declaration or organic law,"[148] the First Principles are self-evidently "meant to set up a standard maxim for free society, which should be familiar to all, and revered by all."[149] Cox underscores "the principles of the Declaration of Independence" as the foundation of society to which all other Organic Laws must conform,[150] and emphasizes the fact that the Constitution incorporates the First Principles of the Declaration as the "other Rights" that are "retained by the People" in the Ninth Amendment and the Rights "reserved…to the People" in the Tenth Amendment: "These rights are recognized by the Constitution as existing anterior to, and independently of, all laws and all constitutions."[151] The incorporation of the First Principles within the Bill of

[147] Richard H. Cox, Ph.D., *Four Pillars of Constitutionalism: The Organic Laws of the United States* (Amherst, NY: Prometheus Books—1997).
[148] Rep. Thaddeus Stevens (R-PA), "8 May, 1866," *The Reconstruction Amendment Debates*, Alfred Avins, Editor (Richmond, VA: Virginia Commission on Constitutional Government—1967), 212.
[149] Abraham Lincoln, "Speech in Springfield, Illinois, 26 June, 1857," *The Collected Works of Abraham Lincoln, Volume II*, Roy P. Basler, Editor (News Brunswick, NJ: Rutgers University Press—1953), 406.
[150] Cox, *Four Pillars of Constitutionalism*, 39.
[151] Rep. William Lawrence (R-OH), "December, 1865," *The Reconstruction Amendment Debates*, Alfred Avins, Editor (Richmond, VA: Virginia Commission on Constitutional Government—1967), 205-206.

Rights implicitly makes ignoring them impermissible and precludes such ignorance becoming normative: "The Declaration of Independence must be recognized as the law of the land, and every man, alien and native, black and white, protected in the inalienable, God-given rights of Life, Liberty, and the Pursuit of Happiness."[152]

Sixteen months after the First Principles of the Declaration of Independence animated the American Revolution, the Articles of Confederation & Perpetual Union were approved by the Second Continental Congress on November 15, 1777, and submitted to the Opulents of the individual Thirteen States for ratification. The Articles were eventually ratified on 1 March, 1781, four and one-half years after independence was declared. The *Perpetual* Articles were not "a mere treaty"[153] as Akhil Reed Amar suggests, nor were they simply a "Peace Pact,"[154] as Joseph J. Ellis, claims. The Articles imposed and established the original federal political organization of the United States: a very de-centralized, unicameral confederation without a head of state. Congress eventually contemplated amending the Articles, but the State governments had neither inclination nor incentive to dissolve the Confederation that allowed them to function virtually unimpeded.

The Articles of Confederation & Perpetual Union in no way incorporate or reference the First Principles or the Declaration of Independence, either explicitly or implicitly. As with the imposition of the Declaration, the imposition of the Articles dispensed with the First Principle of Consent of the People, but the Articles also disregarded all other First Principles. The Articles' mandate of "Perpetual Union" for the Confederation denies citizens the First

[152] Speaker Schuyler Colfax (R-IN) [December, 1865], "Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction," Robert J. Kaczorowski, *New York University Law Review, Volume 61* (New York, NY: New York University School of Law—November, 1986), 894.
[153] Akhil Reed Amar, "Philadelphia Revisited: Amending the Constitution Outside Article V," *The University of Chicago Law Review, Volume 55, # 4* (Chicago, IL: University of Chicago—1988), 1055.
[154] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1788* (New York, NY: Alfred A. Knopf—2015), xi.

Principle ability to Alter or Abolish the country's political organization, if they so choose. Article IV contravenes the First Principle of Equality by formalizing a social hierarchy that criminalizes poverty and homelessness as it legitimizes involuntary servitude, by separating Americans into four distinctly unequal categories: "the free inhabitants of each of these States;" indentures and slaves (inhabitants who are not free); "paupers;" and "vagabonds." Article IV goes on to state that free citizens "shall be entitled to all privileges and immunities;" whereas slaves, indentures, paupers, and vagabonds, are "excepted" from such privileges and immunities.[155] The Articles of Confederation are antithetical to the First Principles, yet were imposed as Patriots waged a War for Independence predicated upon the revolutionary values of the First Principles; which perhaps explains why the imposition was not accompanied by the sort of fanfare given the Declaration of Independence—such as posting it in broadsides and reading it aloud to the troops.

The notion of confederating the Thirteen Colonies was originally the brainchild of Benjamin Franklin, but he had only tangential involvement in the eventual Articles of Confederation & Perpetual Union. Franklin wrote several draft unification documents, the first of which pre-dated the "French & Indian War" (or "Seven Years War") of 1756-1763—although that war set in motion events that eventually led to independence and confederation. Shortly after Franklin published in his *Pennsylvania Gazette* on Thursday, 9 May, 1754,[156] what is considered America's first political cartoon—the "Join or Die" snake he had drawn—Franklin submitted "The Albany Plan of Union,"[157] to the First Congress of the American

[155] John Dickinson & Benjamin Franklin, et al, "Article IV," *Articles of Confederation & Perpetual Union* (York Town, PA: The Second Continental Congress—15 November, 1777).
[156] Benjamin Franklin, "Join or Die," *The Pennsylvania Gazette* (Philadelphia, PA: Pennsylvania Gazette—Thursday, 09 May, 1754), 2.
[157] Benjamin Franklin, "The Albany Plan of Union, 1754," *The Papers of Benjamin Franklin, Volume V, 1 July, 1753, through 31 March, 1755*, Leonard W. Labaree, Editor (New Haven, CT: Yale University Press—1962), 374–392.

Colonies in June, 1754. The plan was accepted by the Congress, but not surprisingly vetoed by the British authorities; it was also rejected by the individual colonies. Franklin revived his idea for union a year before independence was declared, which was a little over two months after he returned from a ten-year diplomatic mission as United States Minister to the Court of St. James's in London, under of King George III, fourteen weeks after the military phase of the War for Independence had already begun.

Benjamin Franklin had returned to America fleeing an arrest warrant for treason against the British Empire that would likely have resulted in his being hanged, despite the fact he was on a diplomatic mission to the English court and thereby supposed to be under diplomatic immunity. The British refusal to honor Franklin's diplomatic status on the grounds he was a *subject*, not a foreign dignitary, was a clear indication to him that George III and the British Empire had no intention of compromise with the upstart Colonies. The Crown regarded the Colonies and the colonists as property; whereas the colonists considered the Colonies elf-determining autonomous polities. Franklin was certain a formal union of the Colonies was crucial to a military victory over the largest and most powerful empire in the world, and in late July, 1775, he circulated around the Continental Congress the last draft he would write, which used his earlier Albany Plan as a template. The next Summer, as Franklin worked editing Thomas Jefferson's Declaration of Independence alongside John Adams, Robert Livingstone and Roger Sherman, his plan of union was being transformed by Conservative icon John Dickinson into the Articles of Confederation & *Perpetual Union*, which bear only a passing resemblance to the prototype Franklin had originally submitted. With the later imposition of the Constitution, the institutionalization of class warfare in earnest within American society was the only perpetual aspect of the Articles.

After a little less than ten years, the confederal government established by the Articles of Confederation without the Consent of the People was overthrown by a group of *Coupistes* led by James Madison and Alexander Hamilton—who staged the only successful *coup d'état* in American History, claiming to be "We the People." The Articles of Confederation did not "collapse"[158] as Jack N. Rakove contends; nor was the *coup* a "Second Revolution,"[159] as Joseph J. Ellis has characterized it. There was nothing heroic, virtuous, emulative, or sacrosanct, about the *coup*; it was simply one group of greedy Opulents overthrowing a government that had been imposed by another group of avaricious Opulents a decade earlier. The Opulents who operated the individual States still adamantly clung to their autonomous fiefdoms, but the Federalists were able to persuade the preponderance of Opulents—who controlled all the State legislatures and were the only citizens with suffrage on the State and federal levels—that insular State fiefdoms were still possible within the new, centralized federal system. Perhaps even more persuasive was the idea that wealth acquired by a powerful American Empire, destined to become "the greatest empire in the world,"[160] was sure to trickle-down to all the Opulents in the individual States.

The Articles of Confederation have never been repealed, and they remain the second permanent Organic Law of the United States—which theoretically and technically would make the United States still a confederation as organized under the Articles. However, the Confederation was overthrown by a Federalist *coup d'état* in 1787, replaced by a Constitution that imposed a completely new form of government that is based largely upon political

[158] Jack N. Rakove, "The Collapse of the Articles of Confederation," *The American Founding: Essays on the Formation of the Constitution*, edited by J. Jackson Barlow, Leonard W. Levy, Ken Masugi (Westport, CT: Praeger Publishers—1988), *passim*.
[159] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), *passim*.
[160] Ibidem, 67.

theories found in the second of John Locke's *Two Treatises of Government*[161] and in Baron de Montesqieu's *de l'Esprit des Loix* (*"Of the Spirit of the Laws"*).[162] It was, and is, simply not possible for the Union to simultaneously be organized as a confederation of autonomous States and as a highly centralized federal government to which the States are subordinate, any more than the Earth may simultaneously be pear-shaped and flat. In order for a centralized federal republic to be imposed, the existing de-centralized confederation had to be deposed, both *de jure* and *de facto*. The Constitution does not mention the Articles of Confederation, yet inferably deposes them by forming what it describes as a "more perfect Union." The formation of a more perfect Union supersedes the form of the original, apparently less perfect, Union; which cannot simultaneously exist with the new, radically different union.

Leaving aside the fact that perfection is entirely subjective and therefore not objectively unattainable, the continued categorization of the Articles of Confederation & Perpetual Union as a permanent Organic Law seems enigmatic until a single term therein is considered: "Perpetual Union." In his First Inaugural Address,[163] Abraham Lincoln cites this Perpetual Union as the justification for forcing the Southern States to remain in the Union. Chief Justice Salmon P. Chase cites the same phrase in *Texas v. White*, holding that the United States are "an indestructible Union, composed of indestructible States," "perpetual," and "final."[164] This same argument is raised today when estranged States such as Texas and California consider secession. In order to make his case that a Perpetual Union existed, Lincoln had to surmount the mutual exclusivity of the Articles of Confederation and the

[161] John Locke [1689], "Second Treatise On Civil Government," *Two Treatises of Government* (New Haven, CT: Yale University Press—2003).
[162] de Secondat, Charles-Louis, Baron de La Brede et de Montesquieu [1748], *de l'Esprit des Loix* ["The Spirit of the Laws"], Translated by Thomas Nugent [1752] (Kitchner, ON: Batoche Books—2001).
[163] Abraham Lincoln, "First Inaugural Address, Monday, 4 March, 1861," *Abraham Lincoln Papers at the Library of Congress, Manuscript Division* (Washington, D.C.: American Memory Project—2000-02); accessed 20 April, 2017: http://memory.loc.gov/ammem/alhtml/malhome.html
[164] Chief Justice Salmon P. Chase, "Opinion," *Texas v. White* [74 U.S. 700, 725], 1 December, 1868.

Constitution, which he did by weaving an alternative historical narrative in which he essentially imagines the United States was "participating in a continuous founding"[165] from 1774 until at least 1787:

> The Union is much older than the Constitution; it was formed, in fact, by the Articles of Association, in 1774. It was matured and continued by the Declaration of Independence, in 1776. It was further matured, and the faith of all the then Thirteen States expressly plighted and engaged that it should be "Perpetual," by the Articles of Confederation in 1778—and finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was "to form a more perfect Union."[166]

In his alternative history, Lincoln marks the founding of the United States not with its Declaration of Independence on 4 July, 1776, but rather with the formation of what is now called the "First Continental Congress" on 5 September, 1774, seven months before shots were fired at Lexington & Concord. The first Continental Congress was organized by the Committees of Correspondence of the individual Colonies for the purpose of negotiating a compact amongst and between the Colonies to boycott goods produced in Great Britain and its various other colonies: the Continental Association created by the Articles of Association of 20 October, 1774. These Articles also prescribe the proper conduct for American colonists during the boycott. The facts that Georgia did not participate in this Congress and Congress did not actually create a union or even a *sobriquet* for a united Twelve or Thirteen Colonies, does not seem to disturb Lincoln's rendition of history. By Lincoln's account, the founding of the country ought to be celebrated on 5 September or 20 October instead of 4 July, and the Organic Laws of the United States ought to include the Articles of Association, but omit the North-West Ordinance—as he did.

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[165] Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, IN: Indiana University Press—1987), 147.
[166] Abraham Lincoln, "First Inaugural Address, Monday, 4 March, 1861," *Abraham Lincoln Papers at the Library of Congress, Manuscript Division* (Washington, D.C.: American Memory Project—2000-02).

In point of fact, it was not necessary for Lincoln to rely upon imagined history and a specious theory of Perpetual Union to make a case against Southern Secession. The Constitution overthrew the Articles of Confederation, but did not repeal and replace the First Principles and the Declaration of Independence; quite the opposite. It cannot be over-emphasized that the First Principles are incorporated into the Constitution as the "other Rights" that are "retained by the People" in the Ninth Amendment and the Rights "reserved…to the People" in the Tenth Amendment. The Southern States, in declaring their secession in February, 1861, had neither sought nor obtained the Consent of their People to Alter or Abolish the Union, which would necessarily include the Consent of those of African descent held in bondage. However, even if slaves had overwhelmingly voted to remain enslaved, Unalienable Rights are "incapable of being surrendered, waived or transferred,"[167] and the sole purpose of Southern Secession was to deny with impunity the Unalienable Rights of slaves; that is, those contained in the First Principles, the Bill of Rights, and several clauses of the Constitution itself. The People of any State have the Right to Alter or Abolish, but not the Right to alienate the Unalienable Rights of other citizens—including those of African descent who were already illegally held in servitude.

Presumably the reason Lincoln resorted to a re-imagining of history rather than reliance upon the First Principles and the Bill of Rights is that ignoring the First Principles, the Constitution, and the Bill of Rights, had already become a way of life in a United States in 1861. Citizens were routinely denied their Unalienable Rights as a result. If Lincoln were to use the denial of Rights to justify the forcible continuation of the Union, it might rightfully draw attention to the alienation of Rights that had become normative; the Supreme Court had

[167] Frederick C. Mish, Editor in Chief, "unalienable; adjective," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 586.

consistently and erroneously ruled that the Bill of Rights did not apply to States or municipalities, and that the Declaration of Independence was not binding. The People were denied the Right to Consent, Alter, or Abolish; Equality did not exist; citizens did not have true Personal Autonomy; women had no Rights; Indigenous People had no Rights, and they were still being extirpated and their land stolen. Indenture still existed; Chinese "kulis" were virtual slaves in the construction of the transcontinental railroads, the California levee system, and a wide variety of jobs from gold miner to laundry worker to cook to servant.[168] The denial of rights was not limited to adults, as "children of from five to seven or eight years of age" worked as virtual slaves in coalmines,[169] factories, and other Capitalist enterprises. Employers and corporations hired mercenary thugs and "goon squads," such as "agents" from the Pinkerton Agency and the Corporations Auxiliary Company, to crush labor unrest and worker organizing.[170] With respect to Unalienable Rights, the United States was a figurative glass house from coast to coast—and lobbing bricks at a few panes of that glass house in the Southern States could potentially shatter the entire structure.

Despite the incorporation of the First Principles into the Constitution, the Constitution as originally written contains considerable disagreement with the First Principles—much of which has been gradually resolved or mitigated, often through amendments that re-affirmed existing Rights and would never have been contemplated had the Supreme Court, all other levels of government, and society at large, adhered to the Plain Meaning of the words and phrases of the First Principles and the Constitution. However, First Principles such as the Unalienable Right of Equality have not yet been fully realized. All the First Principles are

[168] Stan Steiner, *Fusang: The Chinese Who Built America* (New York, NY: Harper & Row—1979), *passim*.
[169] Barbara Freese, *Coal: A Human History* (Cambridge, MA: Basic Books—2003), 78.
[170] Robert Michael Smith, *From Blackjacks To Briefcases: A History of Commercialized Strikebreaking and Union-busting in the United States* (Athens, OH: Ohio University Press—2003), *passim*.

affirmed via the Ninth Amendment, but Equality is also specifically addressed in the body of the Constitution, in Article IV, Section 2, Clause 1: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." However, American women, people without property, and "People of Color," have never been entitled "to *all* the Privileges and Immunities;" in practice, discrimination and injustice against the Exploitable Majority has been the societal norm in the United States. Such rampant disregard for Equality necessitated the Thirteenth, Fourteenth, Fifteenth, and Nineteenth Amendments, as well as Civil Rights Acts of 1866, 1871, 1875, 1957, 1960, 1964, 1965, 1968, 1987, and 1991, that were designed to resurrect guarantees in the Constitution and Declaration that were being systematically ignored. Despite these amendments, relevant laws, and relevant passages in the Constitution and the Declaration, people of African descent were not allowed to vote until 1965, Indigenous Peoples until 1949, and women until 1920. Women, people of African descent, and all people of non-Európan descent are still not Equal, and unequal treatment of anyone who does fall into a few narrow "Protected Classes"—for instance, tall, short, ugly, bald, obese—is still considered "legal" and permissible; those who possess American citizenship are not yet collectively considered a Protected Class of Equal individuals.

Although James Madison and the Federalists were adamant in the Secret Proceedings of 1787 that Democracy must be thwarted, they were not so crass or foolish as to explicitly include such sentiments within the Constitution. Instead, Madison and his fellow *Coupistes* built subtle but insurmountable impediments to popular sovereignty into the Constitution, which are not commonly recognized as such. The concept of a republic governed by elected representatives who have nearly unfettered power until they next stand for election, and over whom the electorate has negligible influence, is a thoroughly undemocratic barrier between

the "Will of the People" and what transpires in the American political system; it is also contrary to the First Principles. The Electoral College is yet another barrier to popular sovereignty and Democracy that prevents the People from directly voting for President and providess smaller States inordinate power that is appropriate for a confederation of equal States, but creates dramatically unequal representation in a centralized federal government. An equal number of senators for each State is also more appropriate for a confederation, providing citizens who reside in low population States such as Wyoming, Vermont, Alaska, and North Dakota, a voice equal to that of people living in States such as California, Texas, Florida, and New York, which have populations that are from twelve to more than *sixty times* greater than those of Wyoming, Vermont, Alaska, and North Dakota. A social hierarchy, leaders, and government itself, are contrary to the First Principles of Equality and Personal Autonomy, as well as to the democratic system described in the Declaration of Independence.

In addition to significant inconsistencies, the Constitution has lapses in internal logic and serious flaws in its vaunted "system of Checks & Balances." Whether or not such design defects and alogism are intentional, they allow the Supreme Court to function without any effective accountability or checks. This construction has also permitted the Political Class to create a virtual "Constitution in Reverse;" the three branches of American government usurp powers the Constitution does not confer, whilst shirking and attenuating the duties assigned them by the Constitution they are sworn to uphold. Consequently, the practical effects of this "Constitution in Reverse" have become normative—part of the commonly internalized American mythology, a neuron firing in the implanted American "collective memory."[171]

An Ordinance for the Government of the Territory of the United States North-West of

[171] Maurice Halbwachs, "a group consciousness that exists outside of an individual and lives beyond the individual, and through which an individual understands the past," *Les Cadres Sociaux de la Mémoir* ["The Social Framework of Memory"] (Paris, FR: Librairie Félix Alcan—1925), 6.

the River Ohio (the "North-West Ordinance of 1787"), on the other hand, is almost entirely missing from the American collective memory and it may, at first blush, seem somewhat inexplicable that the North-West Ordinance has been designated an Organic Law. However, the imposition of the North-West Ordinance is a highly significant chapter in American History. On 13 July, 1787, nearly two months after the Secret Proceedings began on 25 May, 1787, and about two months prior to the finalization of the Constitution on 17 September, 1787, the North-West Ordinance establishes the first American colony that "shall forever remain a part of this Confederacy of the United States of America": the "North-West Territory" bounded by the Ohio River, the Mississippi River, and the Great Lakes. Many concepts of the Ordinance were included within the Constitution, and Article VI is considered the basis for the Thirteenth Amendment to the Constitution: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes."[172]

The North-West Ordinance of 1787 is based upon a proposal by Thomas Jefferson, which became the Land Ordinance of 1784. The Ordinance of 1784 was revised in 1787 by Manasseh Cutler and Nathan Dane, who were Federalist representatives from Massachusetts, and anti-slavery provisions were added by Rufus King, a Federalist senator from New York. The North-West Ordinance establishes a government for the North-West Territory and provides a template for new States to enter the Union, and was extended to "Western States" by an act of Congress on 14 August, 1848. The North-West Ordinance states: "The said Territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation." [173] It

[172] Thomas Jefferson, Manasseh Cutler, Nathan Dane, & Rufus King, "An Ordinance for the Government of the Territory of the United States North-West of the River Ohio" (Philadelphia, PA: Second Continental Congress—13 July, 1787).
[173] Ibidem.

was again modified in 1789 to reflect the imposition of a new Constitution. The government structure designed by the Ordinance grants new Rights such as *habeas corpus* and public education, removes other Rights, often violates the First Principles, and is not always consistent with the Constitution. The Ordinance attempts to provide Natural Rights for those subjugated or held in bondage by European colonists—who themselves had just won independence—but only in new territories, and without conferring Equality or suffrage upon the subjugated. Contrary to the First Principles, the Ordinance creates what is effectively an appointed ruling aristocracy in each unincorporated territory—an aristocracy that is responsive to the federal government rather than to the inhabitants of each territory. The Ordinance contains no provisions for obtaining the Consent of the People in either the Ohio Territory or any new states carved from it.

No matter how efficacious or admirable any portion of any of the Organic Laws of the United States may or may not be—and the Declaration of Independence is arguably the most significant and impressive political document produced during the course of human events—which would have been more so had Jefferson's indictment of slavery not been excised—the Organic Laws were written and imposed exclusively by the Opulent Minority, through its subset: the Political Class. It was the Opulent Minority that designated four documents as "Organic Laws of the United States." The Exploitable Majority had virtually no involvement with, or input into, any Organic Law. Exploitables were never even allowed in any of the rooms were these documents were conceived and drafted; except, perhaps, as the servants who cleaned them. Nor were the People ever provided the opportunity to Consent to, or reject, any Organic Law. The Organic Laws are simply rules that Opulents made without coercion

and with scant consideration of *la volonté générale*,[174] and not *dans l'intérêt commun*.[175] The Organic Laws are rules that, from their inception, the Opulent Minority has been able to flout or skillfully manipulate to its advantage. Conversely, adherence to the Plain Meaning of the Organic Laws erases Opulent advantage. Although it is not a panacea, forcing Opulents to follow their own rules inevitably tips the scales of social justice towards Equality. Perhaps as important as following the rules is focusing the attention of American society upon the fact that Organic Laws and First Principles exist, and that the concept of Plain Meaning does not require interpretation by Opulents to be understood by citizens. Once American public attention is so focused, it would be political suicide for any member of the Political Class to repudiate the First Principles, the Organic Laws, and the Plain Meaning Rule.

[174] Jean-Jacques Rousseau [1762], "the general will," *Du Contrat Social ou Principes du Droit Politique* [*Of the Social Contract or Principles of Right*], Translated by G. D. H. Cole (London, UK: J.M. Dent—1913), Chapitre VII, Paragraph 7.
[175] Ibidem, "in the common interest," Chapitre VII, Paragraph 7.

# Chapter III: *Coup d'État Fédéraliste*

*A* coup *consists of the infiltration of a small, but critical, segment of the state apparatus, which is then used to displace the government from its control of the remainder…The essence of the* coup *is the seizure of power within the main decision-making center of the state and, through this, the acquisition of control over the nation as a whole.*

—Edward Luttwak, *Coup d'État: A Practical Handbook*[176]

Few—if any—dispute the sequence of events that led to the framing and ratification of the Constitution of the United States. Nor is there contention regarding the identities of the primary actors in these events: a cabal of *Coupistes*, self-styled "Federalists," led by James Madison, Alexander Hamilton, John Jay, and George Washington. It is in the interpretation and the framing of these events and the roles of the participants that differences arise which may become heated; what could reasonably be described as an American mythology or collective memory industry has created an internalized imagined history regarding these events. Those satisfied with the Constitution and the resultant American political and economic systems take what can reasonably be described as an "all's well that ends well" or "the end justifies the means" attitude, viewing the culmination of such events as a glorious "Second American Revolution;"[177] America's most fortuitous blessing that produced a political and economic system *nonpareil*. The Secret Proceedings[178] held as part of a bloodless political *coup d'état* by the nascent country's wealthy Conservative élite—or Opulent Minority[179]—are re-imagined as the "Grand Convention in Philadelphia." The

[176] Edward Luttwak [1968], *Coup d'État: A Practical Handbook* (New York, NY: Alfred A. Knopf—1969), 12 & 40.
[177] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015).
[178] Robert Yates, John Lansing, Jr., & Luther Martin [1787], *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821).
[179] James Madison, [Tuesday, 26 June, 1787], Ibidem, 183.

conspirators are known as "Federalists" and "The Framers," or are erroneously called the "Founding Fathers," as they are conflated with those who actually founded the country with a Declaration of Independence; Washington and Hamilton adorn American currency. The *Coupistes* are glorified in history books and films for undertaking what is now often termed a "Great Experiment" in democracy,[180] although the Federalists were philosophically and disdainfully opposed to Democracy with an attitude that John Jay epitomized with his quip: "The people who own the country ought to govern it."[181]

Indeed, the people who owned the country opposed *any* influence in American politics for "the People." To that end, Opulents institutionalized what has been a perpetual, patriarchal hierarchy able to effectively reduce the First Principles to aspirations rather than certain, Unalienable Rights. It is crucial to explore how the Constitution came to be imposed upon America and important to delve into the intentions and attitudes of the Framers; but the imagined intent of words written hundreds of years ago cannot supersede the Plain Meaning of those words, which today is identical to what it was in 1787, and is likely to remain constant for the foreseeable future. In any legal document, extraneous material cannot be brought to bear in order to re-interpret the Plain Meaning of the text.

The machinations that eventually produced the Constitution may be traced to one notable example of individual Confederal States working in concert to peacefully resolve differences that were not being addressed by Congress: the "Mount Vernon Conference of 1785." The conference, held at George Washington's Mount Vernon estate in Virginia and

[180] The well-worn term associated with American democracy, "great experiment," originated as a mistranslation by Henry Reeves in the first English edition of *Democracy in America*: Alexis de Tocqueville [1835], *de la Démocratie en Amérique* [*Democracy in America*], *Volume I*, Translation by Henry Reeve, Esq., Edited by John C. Spencer (London, UK: Saunders & Otley—1838), 12.
[181] William Jay, *The Life of John Jay: With Selections From His Correspondence & Miscellaneous Papers, Volume I* (New York, NY: J. & J. Harper—1833), 70.

presided over by Washington, succeeded in settling the waterway disputes between Maryland and Virginia, culminating with the Mount Vernon Compact of 1785.[182] James Madison was deeply ambivalent towards the Mount Vernon Compact because if States could work together under the Articles, it obviated the Federalist argument that the Articles of Confederation needed to be completely replaced. Madison was of the express opinion that because two States worked together without involvement of the other eleven, the Compact violated the Articles of Confederation—or perhaps invalidated them altogether—which would thereby open the door for a centralized federal government with a strong head of state. It should be noted that Madison's opinions were not based upon the Plain Meaning of any clause or phrase in the Articles, yet gained traction amongst his colleagues. Madison also perceived the Compact presented an opportunity, correctly reckoning that it could be leveraged to press the Virginia legislature to advocate an expansion of that negotiation into a commission on trade, that he could exploit to his advantage. Madison saw the commission as a first step towards the new government he passionately desired: "The story of the manipulation of these occasions is the story of how the Annapolis Convention was called."[183]

Madison drafted a request from Virginia to all the State governments suggesting they appoint commissioners "to take into consideration the trade of the United States; to examine the relative situation and trade of said states; to consider how far a uniform system in their commercial regulations may be necessary to their common interests and permanent harmony."[184] However, he recognized that his fellow Virginian legislators "were especially suspicious of James Madison, the avowed champion of schemes to increase the resources of

[182] Kate Mason Rowland, "The Mount Vernon Convention," *The Pennsylvania Magazine of History and Biography, Volume 11, Number 4* (Philadelphia, PA: The Historical Society of Pennsylvania—January, 1988), 110-125.
[183] Gaillard Hunt, *The Life of James Madison* (NYC, NY: Doubleday, Page & Co.—1902), 92.
[184] Ibidem, 92.

the continental establishment."[185] Madison was nothing if not canny; he induced Virginia Delegate John Tyler—who carried no such baggage—to present the request to the legislature as Tyler's own. The bill languished until the last day of the session and was then rushed through before adjournment. A letter was sent on 21 January, 1786, inviting all Thirteen States to send delegates to Mann's Tavern in Annapolis, Maryland, September 11–14, 1786, in order to form a Commission to Remedy Defects of the Federal Government. Only twelve men attended from five states—New Jersey, New York, Pennsylvania, Delaware, and Virginia—and eleven of the twelve happened to be Federalists. In other words, twelve men met in a bar to discuss trade—a meeting inflated by the myth machine into something called "The Annapolis Convention," as though it had hundreds of people in a high-ceilinged center holding signs with the names of states emblazoned on them as confetti fell.

Two weeks before the Annapolis meeting was scheduled to begin, Shays' Rebellion erupted in Massachusetts on 29 August, 1786; it involved over four thousand *Shaysites* and raged until it was brutally crushed in June, 1787, with two men hanged for treason in the aftermath. On 20 September, 1786, the Paper Money Riot broke out in Exeter, New Hampshire. Both of these regional uprisings were instances of the Exploitable Majority exercising its First Principle duty to Alter of Abolish the social injustice of oppressive actions by local Opulent Minorities; practices that had simply been ignored by State and district authorities until those who had been wronged reached the boiling point. James Madison and his fellow Federalists were not appalled, much less troubled, by such injustice—on the contrary, they were appalled at the temerity of the Exploitable Majority displayed in defying their betters. Madison and the Federalists saw these uprisings as palpable evidence of the clear and present danger the masses represented to the continued unfettered ability of those "who

[185] Gaillard Hunt, *The Life of James Madison* (NYC, NY: Doubleday, Page & Co.—1902), 92.

own the country"[186] to operate the country as they saw fit. It was a shot across the bow of those with estate, and "James Madison felt it. George Washington expressed it, as did Edmund Randolph and Alexander Hamilton." [187] As Opulents saw it, "Deference—the acquiescence to the authority of one's social superiors—was disappearing with remarkable rapidity;"[188] it was a crisis that threatened all men of means with the end of the present social order. "Madison had insisted that Shays' Rebellion constituted…[a] crisis, interpreting the insurrection as symptomatic of looming anarchy or dissolution of the current Confederation into a series of smaller sovereignties."[189] It is not unreasonable to characterize James Madison as terrified by the People and obsessed with thwarting egalitarian social organization. Madison perceived an opportunity to exploit the fear of the People shared by his Opulent peers, in order to create a hierarchical State that would forcefully repress dissent and maintain the existing social, political, economic, and moral order.

At the conclusion of the tavern gathering in Annapolis, Federalist attendees prepared a glowing report of the meeting that James Madison and Alexander Hamilton agreed Congressman Hamilton would use to convey to the Confederation Congress the "unanimous support"[190] amongst the delegates for a larger conference to seek remedies for the perceived issues facing the country, which they believed were inadequately addressed by the Articles of Confederation. Hamilton's efforts succeeded in prompting an apparently wary Congress to call for a "convention" to be held in Philadelphia, with a significant caveat:

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[186] William Jay, *The Life of John Jay: With Selections From His Correspondence & Miscellaneous Papers, Volume I* (New York, NY: J. & J. Harper—1833), 70.
[187] Joyce Appleby, "The American Heritage: The Heirs and the Disinherited," *Journal of American History, Volume 74, Number 3, The Constitution and American Life: A Special Issue* (Bloomington, IN: Organization of American Historians—December, 1987), 798.
[188] Ibidem, 799.
[189] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 103.
[190] Ibidem, 100.

> Resolved, that in the opinion of Congress it is expedient that on the second Monday in May next [14 May, 1787], a convention of delegates who shall have been appointed by the several States, be held at Philladelphia for the sole and express purpose of revising the Articles of Confederation.[191]

Despite the mandated "sole and express purpose" of the gathering, Madison, Hamilton, Jay, et al, were determined this convention would result in an entirely new constitution in the Federalist image: strong central government led by a powerful single executive or monarch, a permanent aristocracy, and a federal bureaucracy designed to protect the Opulent Minority. Their intent seems to have been no secret to friend and foe alike; it simply cannot be a co-incidence that most of those appointed delegates to the convention were Federalists; whereas, with few exceptions, those opposed to such a scheme refused to attend. As James Madison biographer Gaillard Hunt asserts, "the assemblage was looked upon from the beginning as one of Federalists."[192] Later in life, Madison was not shy about expressing that, despite the given parameters of the meeting, "its object"[193] was all along the replacement of the Articles with a new Constitution. Increasing "the power of Congress was Madison's greatest object at this time"[194] and he was, after all, "the avowed champion of schemes to increase the resources of the continental establishment."[195] The opposition—supporters of the revolutionary First Principles and social justice—"had not sought to send its champions as delegates."[196] The State of Rhode Island had declined to participate at all. Patrick Henry famously expressed that he "smelt a rat in Philadelphia, tending toward the

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[191] Confederation Congress, "Report of Proceedings in Congress, Wednesday, 21 Februrary, 1787," *Journals of the Continental Congress*, *Volume 38* [manuscript] (Washington, DC: Library of Congress—Wednesday, 21 Februrary, 1787); accessed 15 July, 2015: http://avalon.law.yale.edu/18th_century/const04.asp
[192] Gaillard Hunt, *The Life of James Madison* (New York, NY: Doubleday, Page & Co.—1902), 118.
[193] James Madison, "Letter to Thomas Cooper, 26 December, 1826," *Letters and Other Writings of James Madison, Volume III*, *1816-1828* (Philadelphia, PA: J.P. Lippincott—1865), 546.
[194] Gaillard Hunt, *The Life of James Madison* (NYC, NY: Doubleday, Page & Co.—1902), 92.
[195] Ibidem, 92.
[196] Ibidem, 117-118.

monarchy,"[197] a sentiment no doubt shared by the other boycotters. Article XII of the Articles of Confederation did not allow amendment without unanimous approval of the Thirteen States; it states any amendment must be "confirmed by the legislatures of every State."[198] As Rhode Island, New York, and Massachusetts, strongly opposed the Federalist scheme of new constitution and centralized government, it appeared to opponents that the Federalists were defeated before they began. Opponents had completely misjudged and underestimated James Madison, Alexander Hamilton, and their fellow *Coupistes*; the Federalists would seize control of the country and change its very nature because of this miscalculation.

It appears to have been unthinkable to their opponents that the Federalists could, or would, violate the existing laws of the United States and cast aside the Articles of Confederation & Perpetual Union by staging a bloodless *coup d'état*. The idea that a *coup d'état* occurred in the United States, and that it was responsible for the imposition of the Constitution, has been so unthinkable that the thought is completely absent from the implanted American collective memory. Only one book recognizes the *coup* for what it was and has the courage to use the word in its title: *The Framers' Coup: The Making of the Constitution*, by historian Michael J. Klarman.[199] Madison scholar and Stanford Professor Jack N. Rakove contends the Articles of Confederation & Perpetual Union simply "collapsed,"[200] as though suddenly vanishing from the face of the Earth through an act of God; a spontaneous chrysalis from which naturally emerged a beautiful Constitution and

[197] Kenneth C. Davis, *America's Hidden History: Untold Tales of the First Pilgrims, Fighting Women, and Forgotten Founders Who Shaped a Nation* (Washington, DC: Smithsonian—2008), 227.
[198] John Dickinson, Benjamin Franklin, et al, Articles of Confederation & Perpetual Union (York Town, PA: Second Continental Congress—15 November, 1777).
[199] Michael J. Klarman, *The Framers' Coup: The Making of the Constitution* (New York, NY: Oxford University Press—2016).
[200] Jack N. Rakove, "The Collapse of the Articles of Confederation," *The American Founding: Essays on the Formation of the Constitution*, Edited by J. Jackson Barlow, Leonard W. Levy, Ken Masugi (Westport, CT: Praeger Publishers—1988).

"more Perfect Union."[201] Some historians classify the Articles as a "wartime document" signed by desperate States in exigent circumstances that would therefore be non-binding once the war concluded and the circumstances ended. Akhil Reed Amar suggests the Articles were "a mere treaty."[202] Pulitzer Prize winning historian and Madison aficionado Joseph J. Ellis claims the Articles of Confederation & Perpetual Union were merely a "Peace Pact"[203] amongst and between independent states that was intended to expire upon the conclusion of the American Revolution—"the independent states came together temporarily to win the war, then would go their separate ways"[204]—although the *perpetual* Articles do not feature the slightest hint of such a plan. Had that truly been the intent, the terms "Perpetual" and "Union" were entirely unnecessary and inappropriate, and the Articles would logically provide for orderly dissolution once the war ended, and would not have integrated political and financial systems and infrastructure in a manner that would have resulted in the substantial tumult of disentanglement upon dissolution of the Union.

The wartime "marriage of convenience" rationale seems to be based upon tortured logic advanced by James Madison: "all the States have assented to the Confederation, an infraction of any one Article by one of the States, is a dissolution of the whole. This is the doctrine of the civil law on treaties."[205] Madison is not clear how "civil law" obtains with regard to what he claims is effectively an international treaty between sovereign nation-states, or to which civil law he refers: American, British, or the State of Virginia. Moreover, history

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[201] Gouverneur Morris, "Preamble," *United States Constitution* (Philadelphia, PA: Continental Congress—17 September, 1787).
[202] Akhil Reed Amar, "Philadelphia Revisited: Amending the Constitution Outside Article V," *The University of Chicago Law Review, Volume 55, Number 4* (Chicago, IL: University of Chicago—1988), 1055.
[203] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1788* (New York, NY: Alfred A. Knopf—2015), xi.
[204] Ibidem, xi.
[205] James Madison [Tuesday, 19 June, 1787], Robert Yates, John Lansing, Jr., & Martin Luther, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 147.

is rife with exceptions to this "doctrine" and civil law also recognizes that, regardless of any violations, if the parties to any contract believe it still obtains, and act as though it obtains, then it obtains. Madison's argument seems to be that if the assembled States violate the Articles of Confederation, the Confederation is automatically—and conveniently—dissolved and may then be replaced by a constitution that establishes an entirely new form of government. Again, the Articles assert without caveat that the Union is perpetual.

Clearly, the States were not "going their separate ways" if they were convening a "convention of delegates" in Philadelphia. There would have been no need to consider amendments if the State legislatures and the Confederation Congress did not believe the Articles of Confederation & Perpetual Union were very much in effect and would continue to be for the foreseeable future. The actions of the States since independence gave every indication they were amenable to continuing under the terms of the Articles—that is, as a loose Confederation with a joint defense, joint foreign policy, a joint trade scheme, and the power to borrow, with any disputes resolved by Congress. Any perceived defects within the Articles that would impede any functions of the Confederation or imperil the nascent country could have been resolved through amendment; only Federalists saw a flaw in the absence of a monarch or chief executive and an institutionalized entrenched aristocracy.

This "convention of delegates" was held in the Pennsylvania State House, in Philadelphia, the name of which has now been changed to "Independence Hall" because it is where the Thirteen Colonies declared independence with the signing of the Declaration of Independence. The start of the proceedings was delayed eleven days past the scheduled commencement date of 14 May, 1787—until Friday, 25 May, 1787—to await "a sufficient

number of delegates…to constitute a representation of a majority of the states."[206] The delegates met the entire Summer of 1787, adjourning nearly four months later, on 17 September, 1787. Seventy delegates were invited to the convention; fifty-five attended. The overwhelming majority of attendees were Federalists; in fact, "the assemblage was looked upon from the beginning as one of Federalists."[207] It was readily apparent that this was not a conventional "summoning or convening of an assembly;"[208] a *coup d'état* was clearly on the agenda, which suited the Federalist delegates. What Patrick Henry "smelt" emanating from Philadelphia ought to have reached the noses of the entire country that Summer.

James Madison arrived in Philadelphia a week before the event was scheduled to begin, and greeted the other attendees with a draft he had prepared of an entirely new constitution and system of government that he reckoned was ready for debate. Madison's draft, what would become known as the "Virginia Plan," was based largely upon the second of John Locke's *Two Treatises of Government*[209] and Baron de Montesqieu's *de l'Esprit des Loix* (*"Of the Spirit of the Laws"*),[210] but the influence of John Adams' "Thoughts on Government,"[211] was also evident. Madison's master plan was accompanied by a secret memorandum he had also composed to justify a new government, which he entitled: "Vices of the Political System of the United States." It enumerated twelve perceived "vices" similar to the twelve "defects" listed by Alexander Hamilton in a bill he authored in 1783, but never

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[206] Max Farrand, "Introduction," *The Records of the Federal Convention of 1787, Volume 1*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), xi.
[207] Gaillard Hunt, *The Life of James Madison* (New York, NY: Doubleday, Page & Co.—1902), 118.
[208] Frederick C. Mish, Editor in Chief, "convention; noun," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 253.
[209] John Locke [1689], "Second Treatise On Civil Government," *Two Treatises of Government* (New Haven, CT: Yale University Press—2003).
[210] de Secondat, Charles-Louis, Baron de La Brede et de Montesquieu [1748], *de l'Esprit des Loix* ["The Spirit of the Laws"], Translated by Thomas Nugent [1752] (Kitchner, ON: Batoche Books—2001).
[211] John Adams [1776], "Thoughts on Government," *The Works of John Adams, Second President of the United States: With A Life of the Author, Notes & Illustrations, Volume IV*, Charles Francis Adams, Editor (Boston, MA: Charles C. Little & James Brown—1851), 193-210.

submitted to Congress,[212] and also had sections that had much in common with portions of John Adams' "Thoughts on Government."

The "convention of delegates" quickly transformed into the Secret Proceedings; the press and the public were both barred from attendance and had no idea what was transpiring behind locked doors and drawn curtains in the original American smoke-filled room. All those participating were sworn to secrecy on Tuesday, 29 May, 1787, taking the oath: "That nothing spoken in the House be printed, or otherwise published, or communicated, without leave."[213] This Federalist *omerta* extended until the death of the last *Coupiste*. From his post in Paris as United States Minister to France, Thomas Jefferson expressed his dismay at the lack of transparency in a letter to John Adams in London; yet Jefferson gave the participants in Philadelphia a gracious benefit of the doubt: "I am sorry they began their deliberations by so abominable a precedent as that of tying of the tongues of their members. Nothing can justify this example, but the innocence of their intentions and ignorance of the value of public discussions."[214] As Gaillard Hunt observed: "the People were not permitted to take part in shaping the convention's work."[215] Although quite damning, Hunt's observation is actually somewhat understated; the People had not had a hand in shaping *anything* in America above the local level other than waging a guerilla resistance against the British colonial authority, then fighting and winning a War for Independence.

James Madison had three primary accomplices in orchestrating the Federalist *coup d'état* of 1787: Alexander Hamilton, John Jay, and General George Washington. Joseph J.

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[212] Alexander Hamilton, "Continental Congress; Unsubmitted Resolution Calling for a Convention to Amend the *Articles of Confederation*, [July 1783]," in *The Papers of Alexander Hamilton*, *Volume III: 1782–1786*, Harold C. Syrett, Editor (New York: Columbia University Press—1962), 420–426.
[213] James Madison, "Tuesday, 29 May, 1787," *Volume V: Supplement to Elliot's Debates,* Jonathan Elliot, Editor (Washington, DC: Printed for the Editor—1845) 126.
[214] Thomas Jefferson, "Letter to John Adams, 30 August, 1787," *The Papers of Thomas Jefferson*, *Volume XII: 7 August 1787–31 March 1788*, Julian P. Boyd, Editor (Princeton, NJ: Princeton University Press—1955), 66–69.
[215] Gaillard Hunt, *The Life of James Madison* (New York, NY: Doubleday, Page & Co.—1902), 116.

Ellis has dubbed the four "The Quartet."[216] In addition to being Commander of the Continental Army, Washington was an ardent Federalist and imperialist, who had been coaxed out of retirement to become a delegate from Virginia, and unanimously elected president of the convention.[217] Future unsuccessful dualist and Broadway icon Alexander Hamilton became a primary author of the *Federalist Papers* along with Madison and Jay, and first Secretary of the Treasury. Washington and Hamilton were each ultimately honored with a portrait on the one-dollar bill and ten-dollar bill, respectively. *Federalist Papers* contributor John Jay became the first Secretary of State and first Chief Justice of the Supreme Court under Washington, which he resigned to become the second Governor of New York.

This Quartet was augmented by John Marshall and John Adams, plus a supporting cast of lesser-known *Coupistes*. Marshall later became the Chief Justice who defined the role of the Supreme Court into one of political activism; re-writing the Constitution at will without the necessity of the amendment process. He also began the tradition of lifetime appointments by interpreting something into the Constitution that did not exist explicitly or implicitly therein. John Adams was arguably the most forceful Federalist, but as American Minister to the Court of St. James's in London, England, from 1 April, 1785, to 30 March, 1788, he was unavailable to participate in the *coup*, but passionately assisted the Federalist cause in the battle for States' ratification of the Constitution upon his return home. As second President of the United States, Adams put an indelible Federalist stamp upon the country's government and judicial system. James Wilson, a Conservative aristocratic businessman/politician from Philadelphia, later became Associate Supreme Court Justice. During the war, Wilson made a

[216] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), xv.
[217] Saul K. Padover [1953], *The Living U.S. Constitution: Historical Background Landmark Supreme Court Decisions with Introductions, Indexed Guide, Pen Portraits of the Signers, Third Revised Edition,* Jacob W. Landynski, Editor (New York, NY: Meridian Books—1995), 6.

fortune on land speculation and war profiteering, and he is revered by modern Conservatives for defending other war profiteers and British loyalists as an attorney, and for a battle in which he and thirty-five followers barricaded themselves in his home and murdered several Patriots demonstrating in the street. Gouverneur Morris, was editor of the Constitution and author of its "Preamble," who also attempted to have Thomas Paine beheaded in France in 1794. The unrelated Robert Morris was at one time was considered "the most powerful man in America,"[218] but was accused of war profiteering by Thomas Paine, went bankrupt from land speculation in 1798, became a fugitive shortly thereafter, served three and one-half years in debtor's prison, had a special law written for the sole purpose of freeing him from prison, and upon his release fell into obscurity.

The Federalist *omerta* was disturbingly expansive if viewed from the perspective of a preference for democracy, which is inherently transparent. There were no disinterested witnesses present and no official transcript was made of the Secret Proceedings. It was eventually revealed that several attendees had made notes, the accuracy of which is still debated, but publication and disputation was forbidden until the death of the last *Coupiste*. As with virtually everything from this period, there was a set of notes from a Federalist viewpoint (those of James Madison) and one from the opposite perspective (those by Robert Yates, transcribed by John Lansing, Jr., with additional information by Luther Martin). The first account of the Secret Proceedings to emerge was the notes of Robert Yates—in 1821, twenty-years after his death and thirty-four years after the fact—under the title *The Secret Proceedings & Debates of the Convention Assembled at Philadelphia in the Year 1787*.[219] It

[218] Charles Rappleye, *Robert Morris: Financier of the American Revolution* (New York, NY: Simon & Schuster—2010), 4.
[219] Robert Yates, John Lansing, Jr., & Martin Luther [1787], *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821).

was an excruciatingly long wait for any substantial information about how the Constitution was framed in secret.

Madison's notes were initially contained within *The Papers of James Madison*, edited by Henry D. Gilpin[220]—the serving Attorney General of the United States—and published in 1840; they were reprinted in 1845 by Jonathan Elliot, as *Volume V* of what were known as *Elliot's Debates*.[221] Gaillard Hunt published *The Writings of James Madison, Volume III: 1787—The Journal of the Constitutional Convention, Part I* in 1902, and *The Writings of James Madison, Volume IV: 1787—The Journal of the Constitutional Convention, Part II* in 1903.[222] An "International Edition" of *Debates in the Federal Convention of 1787; Which Framed the Constitution of the United States of America: Reported by James Madison*, edited by Hunt and James Brown Scott into a single volume, was subsequently published in 1920.[223]

Mary Sarah Bilder, author of a detailed examination of a historiography of Madison's notes, *Madison's Hand*,[224] reckons that the truest version is found in *The Documentary History of the Constitution of the United States*, compiled and published by the U.S. Department of State in 1894.[225] In 1911, Max Farrand published *Max Farrand's Records of the Federal Convention of 1787,* containing the combined notes of Madison and Yates, augmented by the notes of the convention Secretary, William Jackson, and those of John

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[220] James Madison [1787], *The Papers of James Madison & His Reports of the Debates in the Federal Convention*, Henry D. Gilpin, Editor (Washington, DC: Langtree & O'Sullivan—1840).
[221] *The Debates on the Adoption of the Federal Constitution in the Convention held at Philadelphia in 1787, Complete in One Volume, Volume V, Supplement to Elliot's Debates,* Jonathan Elliot, Editor (Washington, DC: Printed for the Editor—1845).
[222] Gaillard Hunt, *The Writings of James Madison, Volumes III & IV: The Journal of the Constitutional Convention, Parts I & II* (New York, NY: G.P. Putnam's Sons—1902 & 1903).
[223] Gaillard Hunt & James Brown Scott, *Debates in the Federal Convention of 1787; Which Framed the Constitution of the United States of America: Reported by James Madison* (New York, NY: Oxford University Press—1920).
[224] Mary Sarah Bilder, *Madison' Hand: Revising the Constitutional Convention* (Cambridge, MA: Harvard University Press—2015), 11.
[225] United States Department of State, *The Documentary History of the Constitution of the United States*, *Volumes I-V* (Washington, DC: U.S. Department of State—1894), *passim*.

Lansing, Jr., as well as the notes of delegates Rufus King of Massachusetts, James McHenry and Luther Martin of Maryland, William L. Pierce of Georgia, William Paterson of New Jersey, Charles Pinckney of South Carolina, and George Mason of Virginia—of which number only Mason and Martin were not Federalists. A revised edition of *Farrand* was published in 1937; in 1987, James H. Hutson edited a volume of newly discovered material, published as a companion to the revised *Farrand* editions: *Supplement to Max Farrand's Records of the Federal Convention of 1787*.[226]

James Madison was the last surviving signatory of the Constitution when he died at the age of 85 on 27 June, 1836, one-half century after the *coup d'état* that led to the creation, signing, and imposition of the Constitution. During the intervening fifty years, Madison sporadically "fiddled with the text"[227] of the notes he had taken of the Secret Proceedings, which were originally what Richard Beeman characterizes as "self-serving."[228] Certainly, memory of an event does not improve the further removed one is from the event, and being an octogenarian is generally not a memory enhancement. Madison's notes are interesting and noteworthy; they are simply not reliable. The Yates notes were objectively no better; James H. Hutson, Chief of the Manuscript Division at the Library of Congress, has judged the edited Yates notes "thoroughly unreliable."[229] In other words, *both* sets of surviving notes from the Secret Proceedings are highly suspect, at best, and possibly intentionally misleading; selecting one over the other would appear to be entirely subjective. Yet, these are the only primary

[226] James H. Hutson, Editor, *Supplement to Max Farrand's Records of the Federal Convention of 1787 (New Haven, CT:* Yale University Press—1987).
[227] Mary Sarah Bilder, *Madison' Hand: Revising the Constitutional Convention* (Cambridge, MA: Harvard University Press—2015), 16.
[228] Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York, NY: Random House—2009), 85.
[229] James H. Hutson, "Riddles of the Federal Constitutional Convention," *The William & Mary Quarterly, Volume 44, Number 3—The Constitution of the United States* (Williamsburg, VA: Omohundro Institute of Early American History and Culture—July, 1987), 412.

source documents that exist, flawed as they may be. The speeches quoted therein are by no means verbatim, but *may* contain the gist of what was said. However, many of the most unflattering Federalist quotes come not from the notes of Madison opponent Yates, but from Madison's own notes and letters, and are consistent with opinions expressed in the *Federalist.* They are also in keeping with letters from individual Federalists like Madison, Washington, John Adams, and John Jay—which appears to be why historians and academics alike continue to rely upon these accounts, the considerable skepticism of scholars notwithstanding.

James Madison claimed to his friend, former mentor, and transparency advocate, Thomas Jefferson, that the secrecy and code of silence were simply "to secure unbiased discussion within doors, and to prevent misconceptions & misconstructions without."[230] Yet, as the story unfolds, it seems clear Madison's statements about reasoning behind the sequestration and rigid *omertà* was disingenuous, at best. There was a very real possibility of public outcry and perhaps a people's revolt if Patriots were to learn what Madison, Hamilton, and the other Federalists were proposing and saying about the People. It is quite feasible the lives of the Federalists may have been endangered had such information leaked out; during the War, angry mobs had occasionally attacked the persons and property of wealthy Opulents whom they perceived to be profiting from the war at the expense of the People.[231] The idea that speaking openly and publicly will lead to "misconceptions & misconstructions" is ludicrous; speaking openly and publicly is the remedy for misconception and misconstruction. To that point, Jared Sparks claims that in 1830 James Madison admitted to him "no constitution would ever have been adopted by the convention if the [Secret] Debates had been

[230] James Madison, "Letter to Thomas Jefferson, 6 June, 1787," in *Letters and Other Writings of James Madison, Fourth President of the United States, Volume I* (Philadelphia, PA: J.B. Lippincott & Co., 1865), 332.
[231] David Lefer, *The Founding Conservatives: How a Group of Unsung Heroes Saved the American Revolution* (New York, NY: Sentinel—2013), 1.

public."[232] Historian Joseph J. Ellis offers a similar perspective on the need the Federalists had for secrecy and its "success":

> …since it is unimaginable in any modern context for such restricted conditions to exist for any political gathering charged with significant responsibility over matters of such consequence, the specter of conspiracy has understandably haunted all histories of the convention. Ironically, to the extent that the delegates at Philadelphia succeeded, their success was dependent on violating all of our contemporary convictions about transparency and diversity, which is one reason their success could never be duplicated in our time.[233]

Whether or not American society or its Constitution can now be considered a success by any measure, the "Federalists wanted the future to be like what the future, in fact, turned out to be"[234]—that is, an imperial, hierarchical, Capitalist society patterned after the one from which they had recently separated. As Alexander Hamilton gushed at the Secret Proceedings: "I believe the British government forms the best model the world ever produced." [235] The *Coupistes* were truly the sort of men philosopher David Hume had derided as: "a few great men [or "demi-gods,"[236] as Jefferson called them], who decide for the whole, and will allow of no opposition,"[237] or public discourse. As early as 1755, John Adams had predicted the "transfer [of] the great seat of Empire into America;"[238] in 1770 George Washington was

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[232] Herbert Baxter Adams, *The Life and Writings of Jared Sparks: Comprising Selections From His Journals and Correspondence*, *Volume I*, (Boston, MA: Houghton, Mifflin & Company—1893), 561.
[233] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 139.
[234] Richard Sylla, "Hamilton and the Federalist Financial Revolution: 1789–1795," *The New York Journal of American History, Issue 3—The Alexander Hamilton Issue* (Brooklyn, NY: New York Historical Society—Spring 2004), 38.
[235] Alexander Hamilton [Monday, 18 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings & Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 144.
[236] Thomas Jefferson, "Letter to John Adams, 30 August, 1787," in *The Papers of Thomas Jefferson*, *Volume XII: 7 August 1787–31 March 1788*, Julian P. Boyd, Editor (Princeton, NJ: Princeton University Press—1955), 66–69.
[237] David Hume [1742], "Of the Original Contract," in *Essays: Moral, Political, and Literary*, Eugene F. Miller, Editor (Indianapolis, IN: Liberty Fund, Inc.—1987), 472.
[238] John Adams, "Letter to James Warren, Oct. 8, 1775," in *Papers of John Adams, Volume 3*, Robert J. Taylor, Gregg L. Lint, & Celeste Walker, Editors (Cambridge, MA: Belknap Press of Harvard University Press —1980), 192.

already referring to the Colonies as "a rising empire."[239] At the 1783 Treaty of Paris signing, a delegate from France toasted America as poised to be "the greatest empire in the world."[240]

As Paul Eidelberg argues in *The Philosophy of the American Constitution,* delving into the Original Intent of the *Coupiste* Framers makes inescapable the conviction that they feared "democracy" and intended to replace the First Principles with the "aristocratic principle."[241] In *The Creation of the American Republic, 1776-1787*, Gordon S. Wood concludes the *Coupistes* wanted to bring the "natural aristocracy of the country back into dominance in politics;" therefore "[t]he Constitution was intrinsically an aristocratic document designed to check the democratic tendencies of the period," ensuring permanent power resided in the hands of the "better sort" of people whilst preventing "those who were not rich, well born, or prominent from exercising political power."[242] During the Patriot insurgency prior to Lexington and Concord, Gouverneur Morris betrayed the general attitude of the Opulent Minority: "These sheep, simple as they are, cannot be gulled as heretofore. In short, there is no ruling them, and now...the heads of the mobility [mob] grow dangerous to the gentry, and how to keep them down is the question."[243] It was a question that certainly occupied the mind of James Madison, who later addresses this fear of "the People themselves," by offering "you must first enable the government to *control* the governed." [244] No Consent of the People for Madison or the Federalists.

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[239] Gaillard Hunt, *The Life of James Madison* (New York, NY: Doubleday, Page & Co.—1902), 88-89.
[240] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 67.
[241] Paul Eidelberg, *The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers* (New York, NY: Free Press—1968), 146-147, 153, 208-209, 259-260.
[242] Gordon Wood, *The Creation of the America Republic, 1776-1787* (Chapel Hill, NC: University of North Carolina Press—1969), 513-514.
[243] Gouverneur Morris, "Letter to John Penn, 20 May, 1774," *English Historical Documents: American Colonial Documents to 1776*, Merrill Jensen, Editor (London: Eyre & Spottiswoode—1955), 861.
[244] James Madison [Publius], "The Structure of the Government Must Furnish the Proper Checks & Balances Between the Different Departments," *Federalist No.51* (New York, NY: New York Packet—Friday, February 8, 1788).

Five days after the Secret Proceedings commenced, Roger Sherman provided an indication of the direction they would take and the tenor of *Coupiste* sentiments: "The People…immediately should have as little to do as may be about the government. They want information and are constantly liable to be misled."[245] Madison later decried "the transient impressions into which [the People] might be led."[246] Alexander Hamilton referred to "the People" as the "great beast,"[247] and also contended: "The People are turbulent and changing; they seldom judge or determine right."[248] Elbridge Gerry from Massachusetts, where the Opulent Minority had recently received a scare from Shays' Rebellion in the western part of the State, found it scandalous that the common man would be granted equal standing to Opulents in State legislatures, or be allowed to debate Opulents on an equal footing:

> …the worst men get into the Legislature. Several members of that body have lately been convicted of infamous crimes. Men of indigence, ignorance and baseness, spare no pains, however dirty, to carry their point against men who are superior to the artifices practiced.[249]

George Mason—author of the *Virginia Declaration of Rights* and one of three delegates who refused to sign the Constitution—argued with rather surprising force against universal suffrage and popular elections:

> …it would be as unnatural to refer the choice of a proper character for chief Magistrate to the People, as it would, to refer a trial of colors to a blind man. The extent of the Country renders it impossible that the People can have the requisite capacity to judge of the respective pretensions of the Candidates.[250]

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[245] Roger Sherman, "Thursday, 31 May, 1787," *The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 48.
[246] James Madison, "Tuesday, 26 June, 1787," *The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 421.
[247] Henry Adams, *History of the United States During the Administrations of Thomas Jefferson* (New York, NY: Literary Classics of the United States, Inc.—1986), 61.
[248] Alexander Hamilton, "Monday, 19 June, 1787," *The Records of the Federal Convention of 1787, Volume 1*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 299.
[249] Elbridge Gerry, "Wednesday, 6 June, 1787," *The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 132.
[250] George Mason, "Tuesday, 17 July, 1787," *The Records of the Federal Convention of 1787, Volume II*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 31.

James Madison researched the republics of antiquity in preparation for the Philadelphia convention, and discovered he shared a foreboding with élites throughout history. He interpreted the fact that a wealthy ruling class has dominated empires throughout history as evidence that a vibrant, entrenched Opulent Minority is indispensable "in all civilized countries."[251] Therefore, he considered an Exploitable Majority "sighing for a more equal distribution of [life's] blessings"[252] merely a citizenry that did not understand the natural social order: "if elections were open to all classes of people, the property of landed proprietors would be insecure."[253] Madison was adamant that any government must be "so constituted as to protect the Minority of the Opulent against the [Exploitable] Majority."[254]

Madison seemed to see a parallel in America with the ancient *Res Publica Romana* ("The Roman Republic"). He apparently felt that allowing "plebian" representatives from the Exploitable Majority into State legislatures and Congress would inevitably result in proposals and agitations for reforms such as those advanced by the Brothers Gracchi—plebian tribunes who advocated equal rights and land reform on behalf of their constituencies: the poor and the disenfranchised. The plebian demand for rights in *Res Publica Romana* initiated a chain of events known as the "Crisis of the Roman Republic," perhaps more accurately described as the "Crisis of the Roman Ruling Class," that led to the led to the eventual demise of the Republic and the gradual formation of the Roman Empire sometime thereafter.[255] The tipping point in the trajectory of the Republic was the assassination of Tiberius Gracchus, one of the

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[251] James Madison [Tuesday, 26 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 182.
[252] James Madison [Tuesday, 26 June, 1787], *The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 422.
[253] James Madison, [Tuesday, 26 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 183.
[254] Ibidem, 183.
[255] Barbette Stanley Spaeth, *The Roman Goddess Ceres* (Austin, TX: Univ. of Texas Press—1995), 73.

brothers Gracchi. Madison was aware that denying equality and social justice for the Exploitable Majority of the United Sates would at some point present a clear and present danger to Opulents from what he considered an undeserving Exploitable Majority that simply did not know its place; Patriots had fought with the expectation of democracy and realization of the principles advanced by *Common Sense* and the Declaration of Independence:

> An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this Country, but symptoms of a leveling spirit, as we have understood, have sufficiently appeared in a certain quarters to give notice of the future danger.[256] In England, at this day, if elections were open to *all classes of people*, the property of landed proprietors would be insecure. An agrarian law would soon take place…our government ought to secure the permanent interests of the country against innovation. Landholders ought to have a share in the government, to support these invaluable interests, and to balance and check the other; they ought to be so constituted as to protect the Minority of the Opulent against the Majority.[257]

Madison is addressing a problem associated with stratified societies that disenfranchise their largest segment, their Exploitable Majority, which described the society of ancient Athína ("Athens"), wherein the philosopher Aristotéles resided. Stratification and its likely consequences were of great concern to Aristotéles and he discussed at length in his *Politiká*.[258] Madison had his own concerns as he pondered the social organization of eighteenth century America, which he thought had similarities to that of Athína, and arrived at a much different conclusion from Aristotéles about both the problems and the "solution." Noam Chomsky briefly analyzes the approach of each man to the issue:

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[256] James Madison, "Tuesday, 26 June, 1787*," The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 422-423.
[257] James Madison, [Tuesday, 26 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 183.
[258] Aristotéles [c. 330 BCE], *Politiká* ["*Politics"*], translated by Benjamin Jowett, MA (Oxford, UK: Clarendon Press—1885), 128-129; 146-147.

> Aristotle also made the point that if you have, in a perfect democracy, a small number of very rich people and a large number of very poor people, the poor will use their democratic rights to take property away from the rich. Aristotle regarded that as unjust, and proposed two possible solutions: reducing poverty (which is what he recommended) or reducing democracy. James Madison, who was no fool, noted the same problem, but unlike Aristotle, he aimed to reduce democracy rather than poverty. He believed that the primary goal of government is "to protect the Minority of the Opulent against the majority." As his colleague John Jay was fond of putting it, "The people who own the country ought to govern it."[259] [260]

Aristotéles' actual solution was not simply to "reduce poverty;" he felt that a society could only be stable if it was primarily composed of a middle class, with lower classes and upper classes only small outliers—and with relatively small disparities in income and wealth between and amongst classes that would be too insignificant to potentially de-stabilize society. Madison, Hamilton, Jay, and the other Federalists, institutionalized a sharp divide in American society, into two parts that are starkly unequal in both size and means. The Federalists celebrated a disturbing "natural" social order of "haves" that enjoy aeonian protection and an Exploitable Majority "whose poverty excludes them from a right of suffrage,"[261] condemned to exist as "have-nots" with all possibility of any significant influence upon the American political system eliminated: "All communities divide themselves into the few and the many; the first are the rich and well born, the other the mass of the People."[262] That mass of the People had several divisions—such as men without property, women, slaves and indentures, Indigenous Peoples—but the important partition was wealth. Gouverneur Morris echoed the proposition that civilization depends upon such division:

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[259] Noam Chomsky, *The Common Good: Noam Chomsky Interviewed by David Barsamian* (Berkeley, CA: Odonian Press—1998), 6-7.
[260] Frank Monaghan, *John Jay: Defender of Liberty* (Indianapolis, IN: Bobbs-Merrill Company, Indianapolis—1935), 323.
[261] Madison [April, 1787], "Vices of the Political System of the United States," in *The Papers of James Madison, Volume IX: 9 April 1786-24 May 1787 with Supplement 1781-1784*, William T. Hutchinson, William M.E. Rachal, & Robert A. Rutland, Editors (Chicago, IL: University of Chicago Press—1975), 348-357.
[262] Ibidem, 144.

"there never was, nor ever will be, a civilized Society without an Aristocracy."[263] Madison thought aristocracy was requisite "in all civilized countries,"[264] and Jay's quip that "[t]he people who own the country ought to govern it" [265] bears repetition *ad infinitum*.

The great majority of participants in the Secret Proceedings felt this once and future social order was under persistent siege by the evil forces of "democracy"—by which they meant enfranchisement of the mass of People and the inevitable tyrannical majority rule of those People once they had power. Elbridge Gerry, of Gerry-mandering fame, was convinced all the "evils we experience flow from the excess of democracy."[266] Alexander Hamilton added that the country—that is, the Opulent Minority—has begun to tire "of an excess of democracy"[267] and "the imprudence of Democracy."[268] Bemoaning the excesses of democracy became a theme of the Federalists before, during, and after the Secret Proceedings; they apparently saw no excesses in oligarchy or aristocracy. In fact, for the Opulent Minority the term democracy:

> remained an epithet until the third decade of the nineteenth century. Then, as now, it meant to them mob rule, manipulation of the majority by demagogues, and short-sighted political initiatives on behalf of the putative People that ran counter to the long-term interests of the public[269] [that is, the long-term interests of the Opulent Minority].

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[263] Gouverneur Morris, "Friday, 6 July, 1787," *The Debates on the Adoption of the Federal Constitution in the Convention held at Philadelphia in 1787, Complete in One Volume, Volume V, Supplement to Elliot's Debates,* Jonathan Elliot, Editor (Washington, DC: Printed for the Editor—1845), 283.
[264] James Madison [Tuesday, 26 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821)), 182.
[265] Frank Monaghan, *John Jay: Defender of Liberty* (Indianapolis, IN: Bobbs-Merrill Company, Indianapolis—1935), 323.
[266] Elbridge Gerry [Monday, 31 May, 1787], *The Debates in the Several States on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787*, Volume 1, Second Edition. Jonathan Elliot, Editor (Washington, DC: United States Congress—1836), 423.
[267] Alexander Hamilton [Monday, 18 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings & Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 147.
[268] Ibidem, 145.
[269] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), xviii.

The notion of Democracy is still one that inspires distrust amongst Opulents and the Political Class, and even the Academic Class. This jaundiced view is exactly that of Madison, who often railed against a "spirit of Locality"[270]—the notion that "all politics is local"[271]—and against politicians who represented the concerns and interests of their constituents rather than what Madison perceived as the broader interests of "a Well-Ordered State,"[272] and the Opulents who ran it. Madison's contempt and distaste for Democracy and for "The People" is palpable in *The Federalist No. 10*, wherein he cites failed democracies throughout history, that in actuality never existed, in order to fashion a Hobbesian repudiation of the First Principle that all People are created Equal:

> …democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths…Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions—and their passions.[273]

Means-tested suffrage was a self-evident Natural Law for the Opulent Minority, the Federalists, and the *Coupistes*; means testing guaranteed only the Opulent Minority could vote and thus secured its dominance and kept democracy, and the People, at bay. Madison made phlegmatic reference to "those whose poverty excludes them from a right of suffrage,"[274] as

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[270] James Madison, "Observations on Jefferson's Draft of a Constitution for Virginia, 15 October, 1788," in *The Papers of James Madison*, *Volume XI*, Robert A. Rutland, Charles F. Hobson, Thomas A. Mason, Editors (Charlottesville, VA: University Press of Virginia—1978), 285.
[271] Byron Price [Chief of Washington Bureau, The Associated Press], "Politics at Random," in *Sarasota Herald* (Sarasota, FL: Sarasota Herald—16 February, 1932), p. 7, col. 3.
[272] Platón [380 BCE], *Politeja* ["The Republic"] *Third Edition*, Benjamin Jowett, Translator (Oxford, UK: Clarendon Press—1888), 52, 94, 157, 159, 221, 320, 322, 336.
[273] James Madison ["Publius"], "The Federalist No. 10*:* The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection (Continued)," *New York Daily Advertiser* (New York, NY: New York Daily Advertiser—Thursday, 22 November, 1787).
[274] James Madison [April, 1787], "Vices of the Political System of the United States," in *The Papers of James Madison*, *Volume IX: 9 April 1786-24 May 1787 with Supplement 1781-1784*, William T. Hutchinson, William M.E. Rachal, & Robert A. Rutland, Editors (Chicago, IL: University of Chicago Press—1975), 348-57.

though it were simply a fact of life. John Adams was outraged by the idea of Equality for the common man: "every man, who has not a Farthing, will demand an Equal voice with any other in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks, to one common Levell."[275] Maintaining distinction, ranks, and levels, and denying an equal voice were the hallmarks of Federalist conservatism and of American social organization in 1787:

> In planning the National Congress, therefore, it was not intended that it should represent population alone, but wealth also, and the Senate or second chamber, especially, was designed to represent Conservative forces. John Dickinson of New Jersey thought it should be a large body, as its influence, "from family weight and other causes, would be increased thereby." Elbridge Gerry of Massachusetts, afterwards an ardent member of Jefferson's party, said it should be so constituted as to render secure "the commercial and moneyed interest." Charles Cotesworth Pinckney of South Carolina said it was meant to represent the wealth of the country. George Mason suggested that no one be permitted to serve as a senator who was not possessed of a certain amount of property. Gouverneur Morris of Pennsylvania and John Rutledge of South Carolina agreed that the representation should be by wealth, not by numbers. Abraham Baldwin of Georgia expressed the same view. Charles Pinckney went a step further than Mason and would have had property qualifications for all the high offices: The President should be worth at least $100,000; a Federal Judge at least $50,000; and members of Congress a less amount.[276]

From the beginning, it was clear the *Coupistes* favored a powerful head of state, but the title "President" was a relatively late entry into the naming competition. George Mason earlier referred to the position as the "chief Magistrate of the People."[277] The sentiment amongst Federalists and the Opulents they represented was overwhelmingly for a monarchy—or for someone with monarch-like power—a position each Federalist no doubt fancied himself occupying. Madison insisted this person must be someone who would not only have a

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[275] John Adams, "Letter to James Sullivan, 26 May, 1776," in *Papers of John Adams, Volume 4*, Robert J. Taylor, Mary-Jo Kline, Gregg L. Lint, Editors (Cambridge, MA: Belknap Press of Harvard University Press—1977), 212.
[276] Gaillard Hunt, *The Life of James Madison* (New York, NY: Doubleday, Page & Co.—1902), 118.
[277] George Mason, "Tuesday, 17 July, 1787," *The Records of the Federal Convention of 1787, Volume II*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 31.

veto over acts of Congress, but who would also have "a negative in all cases whatsoever on the legislative acts of the States, as heretofore exercised by the Kingly prerogative, [which] appears to me to be absolutely necessary."[278] From his post as Minister to the Court of St. James's in London, John Adams chimed in his thoughts that seemed to favor precluding elections altogether, stating "that hereditary monarchy or aristocracy" are the "only institutions that can possibly preserve the laws and liberties of the People" and "I esteem them both institutions of admirable wisdom and exemplary Virtue."[279]

From outside the Secret Proceedings, speculation was rampant as to the details of the clandestine machinations inside; although the particulars were covert, the fact that a *coup d'état* was underway seemed to have become public knowledge—or public suspicion. It is likely to have seemed obvious to the excluded Exploitables that secrecy was not a positive sign. As one Joseph Savage of New Jersey expressed in an optimistic letter to his son, Samuel Phillips Savage, regarding the outcome of the Secret Proceedings: "the better sort of people are very desirous of a Monarchical government."[280] As though the revolution against monarchy and empire had never been fought, Alexander Hamilton intoned "nothing but a *permanent* body [monarch] can check the imprudence of democracy,"[281] and he urged installation of a political system that replicated the recently vanquished British system (imagine Hamilton barking *this* soliloquy to the troops at Valley Forge):

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[278] James Madison, "Letter to George Washington, 16 April, 1787," *The Papers of James Madison*, *Volume IX: 9 April 1786-24 May 1787 with Supplement 1781-1784*, William T. Hutchinson, William M.E. Rachal, & Robert A. Rutland, Editors (Chicago, IL: University of Chicago Press—1975), 382-385.
[279] John Adams, "Letter to Dr. Benjamin Rush, 9 June, 1789," *Old Family Letters: Copied From the Originals For Alexander Biddle, Series A,* Alexander Biddle, Editor (Philadelphia, PA: J.B. Lippincott Company—1892), 37-38.
[280] Joseph Savage, "Letter to Samuel Phillips Savage, 17 July, 1787," in Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (Oxford, UK: Oxford University Press—2009), 31.
[281] Alexander Hamilton [Monday, 18 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 145.

> I believe the British government forms *the best model the world ever produced*, and such has been its progress in the minds of the many, that this truth gradually gains ground. This government has for its object *public strength* and *individual security*. It is said with us to be unattainable. All communities divide themselves into the few and the many. The *first* are the rich and well born, the other the mass of the People. The voice of the People has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The People are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, *permanent* share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government. Can a democratic assembly, who annually revolve in the mass of the People, be supposed steadily to pursue the Public Good? [282]

Madison, Hamilton, Adams, and the other Federalists did not get their king, but they were able to craft a representative republican system that installed so many layers between voters and the operation of society—State legislators, the Senate and the House, the Electoral College, the Supreme Court—that even when universal suffrage finally became effective with the Voting Rights Act of 1965, the votes of the electorate were so diluted as to be almost meaningless. The Constitutional system of representative government eventually did away with Patriot political organization on the local level, as well. Under the new Constitution, even the Opulent Minority was forbidden from voting directly for anything. Rather than the First Principle of Consent being a way of life, the notion vanished from public consciousness; a plebiscite has never been held, or even considered, in the United States. To have a say in a representative system, a citizen or a corporation must be able to influence or persuade their representatives, and access to representatives is severely restricted; it is generally limited to those with money and power.

The system established by the Constitution essentially gave the American aristocracy the opportunity to vote for which members of their class would be their rulers, and gave those

[282] Alexander Hamilton [Monday, 18 June, 1787], Robert Yates, John Lansing, Jr., & Luther Martin, *Notes of the Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787* (Albany, NY: Websters & Skinners—1821), 144; *emphasis added*.

rulers almost unassailable power once elected. Universal suffrage merely extended to the entire electorate the opportunity to vote for which faction of the Opulent Minority would rule the country for a defined period of time. Restraining the political influence of Exploitables and cementing the dominance of the Opulents was ensured by an arcane process for amending the American Constitution that verges upon the impossible, and makes the status quo virtually invulnerable; the Constitution has been amended only *seventeen times* in the 224 years between the ratification of the ten amendment Bill of Rights in 1791, and the last amendment ratified on 7 May, 1992. However, that Twenty-seventh Amendment had been submitted for ratification on 25 September, 1789, and required *one hundred and three years* for ratification!

Reducing the potential for consequential advances in Equality and social justice to little more than faint aspiration was apparently not sufficient for James Madison, who felt the Constitution was an abject failure because of his inability to "win the big battles in Philadelphia"[283]—in particular, the fight for a kingly executive. Had the Federalists elected to offer more than one version of a Constitution from which to choose, it would have allowed Madison to present his version, intact, before the States—but the delegates instead offered up only one option, and one that did not entirely please Madison. After the Convention, in a Manhattan apartment he had taken, Madison sulked alone over his perceived setback until the "Great Debate" over State ratification began and he soon recognized the Opulent Minority was generally in line with the Federalists. The most tenacious opposition to his Constitution would be from those calling for a bill of rights to provide at least the appearance of forceful limitations upon Opulent rule, a modest sharpening of the Constitution's general vagueness, and somewhat tepid guarantees of the preservation of some revolutionary values.

[283] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), 169.

As the English Bill of Rights is a hallmark of the English "Glorious Revolution" and revered by Opulents who identify with the British aristocracy that the Glorious Revolution restored to power, James Madison sensed sentiment for such a bill even amongst Federalists. He correctly calculated a bill of rights would not dilute the power of the federal government to any meaningful degree, as it would "satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the Constitution."[284] Madison, Alexander Hamilton, and John Jay, promoted the new Constitution for ratification by the States with eighty-five widely circulated essays and articles published as *The Federalist Nos. 1-85*—all written anonymously under the collective *nom de plume* "Publius," in keeping with the secrecy of the convention and the fear of retaliation from a disgruntled "People." These essays, now known as the *Federalist Papers*, make the case to the Opulents of the country in favor of oligarchic rule, under the guise of "We the People." Although historians such as Richard B. Morris have lauded the *Federalist Papers* as an "incomparable exposition of the Constitution, a classic in political science unsurpassed in both breadth and depth by the product of any later American writer,"[285] if examined critically the *Papers* betray a somewhat breathtaking public display of Hobbesian disdain for Democracy, any bill of rights, the People, and humanity in general; as well as an unabashed call for bringing the masses to heel.

In *Federalist No. 51*, Madison exhibits what is arguably an almost pathological fear of "the People themselves," employs the term "control" *seven times*.[286] He sees control of the masses—enslaved, or otherwise under the yoke of the Opulent Minority—as the primary

[284] James Madison, "Speech Introducing Bill of Rights, 8 June, 1789," *Congressional Register, Volume I*, in *History of the Debates and Proceedings in the Congress of the United States, At the First Session of Congress Begun At The City of New York, 4 March, 1789* (New York, NY: 1st United States Congress, 1789), 423-437.
[285] Richard B. Morris, *The Forging of the Union: 1781-1789* (NYC, NY: Harper & Row—1987), 309.
[286] James Madison [Publius], "The Structure of the Government Must Furnish the Proper Checks & Balances Between the Different Departments," *Federalist No.51* (New York, NY: New York Packet—Friday, February 8, 1788).

function of a political system in a society ruled by an Opulent Minority: "you must first enable the government to *control* the governed."[287] Madison understood the first tenet of membership in an Opulent Minority: there *is* no Opulent Minority without an Exploitable Majority, and in any given society, an Exploitable Majority may only be perpetuated through the limitation of its political influence in that society. In *The Federalist No. 84*, Alexander Hamilton presents a flippantly memorable opposition to any guarantee of rights, contending such a precaution is unnecessary as the Federal Government is not granted any power beyond those enumerated; history has proven this imagined limitation has not impeded any branch of the American government from exercising powers not granted:

> I go further, and affirm that bills of rights—in the sense and in the extent in which they are contended for—are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why for instance, should it be said, that the Liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power.[288]

Hamilton also makes the stunning claim in the same essay that "the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured"[289]—an adoption that has no expression anywhere in the Constitution. Hamilton's contention begs the question of what else do Hamilton and the Federalists imagine is in the Constitution that is not actually in it. Hamilton

[287] James Madison [Publius], "The Structure of the Government Must Furnish the Proper Checks & Balances Between the Different Departments," *Federalist No.51* (New York, NY: New York Packet—Friday, February 8, 1788).
[288] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," in *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[289] Ibidem.

sounds suspiciously like a used car salesman—or perhaps a used horse salesman in 1787—but in doing so he effectively makes the case *for* a bill of rights; one that leaves little or nothing to the imagination. Henry Schofield notes: "one of the objects of the Revolution was to *get rid* of the English common law"[290] that greatly disadvantages the "common man." English law has Parliamentary Supremacy, no Judicial Review, and Due Process is not even mentioned in English law books and dictionaries. Tethering the United States to laws passed or assumed by a Parliament that "consisted of a small landowning élite whose priorities were their own power and prosperity" as it denied the working and middle classes "equality and fairness"[291] is perhaps as counter-revolutionary an action as could have been taken.

However, in *The Federalist,* Madison, Hamilton, and Jay, were not pleading their cases to the disenfranchised public at large; they were making it to the only people who counted in America and to them: men who could vote—that is, Opulents. From the comments made during the Secret Proceedings, it is reasonable to conclude that many Opulents were so enamored of English common law, government, and society, they did not want complete separation from the Crown. It is fair to say that the vast majority of Federalists who were wholly committed to an autonomous polity generally foresaw the United States as a sort of "England 2.0," ruled by the Opulent Minority rather than by the British Crown—except, unlike England, in America every Opulent has a chance to become a ruler. Loyalists who wanted to remain in the New World could see on which side the bread was buttered.

A spirited opposition to the Constitution did exist—much of which has been collected as *The Anti-Federalist Papers*—but it was generally ineffective. There was certainly nothing

[290] Henry Schofield, "Freedom of the Press in the United States." *American Sociological Society Papers & Proceedings,* Volume IX (Chicago, IL: University of Chicago Press—December, 1914), 76.
[291] Uncredited, "About Parliament: Living Heritage," *Parliament UK* (London, UK: Parliament UK—2014), accessed 18 October, 2014:
http://www.parliament.uk/about/living-heritage/evolutionofparliament/houseofcommons/reformacts/

in the opposition that could compare to Thomas Paine's *Common Sense* and *The American Crisis* pamphlets, and opposition simply was not organized or co-ordinated as was the *Federalist* campaign. Perhaps most important, those who agreed, or might agree, with the opposition to the Constitution and its centralized federal government were generally not Opulents, and were thus unlikely to have a vote in State legislatures. Madison complained in "Vices of the Political System" about the lack of competent professional politicians,[292] whereas opponents "were wary of professional politicians always in office"[293] and "theirs was a vision that celebrated localism and feared centralization of authority. The American Revolution, of course, was a revolution that had been fought not simply for freedom, but for localism."[294] Pennsylvania's Samuel Bryan—writing as "Centinel"—penned a twenty-four essay series published in the *Philadelphia Independent Gazetter* between October 5, 1787 and November 24, 1788, lamenting the institutionalization of the Opulent Minority: "it appears that [the system the Constitution creates] is devoid of all responsibility or accountability to the great body of the People…it would be in practice a permanent aristocracy,"[295] and "the wealthy and ambitious…now triumphantly exult in the completion of their long meditated schemes of power and aggrandizement."[296] George Clinton wrote under the name "Cato"; Melancthom Smith wrote as "Federal Farmer;" Robert Yates as "Brutus." Elbridge Gerry of Massachusetts, the opponent of the "excess of democracy," railed against "a government of force and fraud" and the likelihood that "the existence of [the People's] Liberties will soon be

[292] James Madison [Publius] [April, 1787], "Vices of the Political System of the United States: 2. In the People themselves," *The Papers of James Madison*, *Volume IX: 9 April 1786-24 May 1787 with Supplement 1781-1784*, William T. Hutchinson, William M.E. Rachal, & Robert A. Rutland, Editors (Chicago, IL: University of Chicago Press—1975), 354.
[293] Amar, Akhil Reed, " Anti-Federalists, The Federalist Papers, and the Big Argument for Union" *Yale Faculty Scholarship Series, #1041* (New Haven, CT: Yale Law School—1993), 114.
[294] Ibidem, 111.
[295] Samuel Bryan [Centinel], "Centinel 1: Letter of 05 October, 1787," in *Philadelphia Independent Gazetter* (Philadelphia, PA: Philadelphia Independent Gazetter—05 October, 1787).
[296] Ibidem.

terminated"[297]—and Gerry was one of the few on either side with the courage to sign his own name to his albeit rather tepid objection published in over forty newspapers around the country. A great deal of the opposition came in the form of speeches that were only heard in State houses, of which Patrick Henry's orations were perhaps most notable.

Patrick Henry made twenty-five generally impassioned and inspiring speeches before the Virginia House in the debates on ratification between Wednesday, 4 June, 1788, and Wednesday, 25 June, 1788, that are often every bit as evocative and stirring as the pamphlets written by Thomas Paine. However, Henry's speeches in the Virginia debates were not widely circulated and Henry was not a prolific writer; unlike most other "Founding Fathers." Today, Patrick Henry is chiefly remembered for the "Give Me Liberty, or Give Me Death" speech, delivered on 23 March, 1774; whereas his Virginia ratification debates speeches have undeservedly somewhat faded into obscurity. On the first day of the Virginia debates, 4 June, 1788, Henry went straight to the heart of the issue of the subterfuge that led to the imposition of the *Constitution*:

> What right had they to say, *We, the people?*...Who authorized them to speak the language of, *We, the people*...The *People* gave them no power to use their name; that they exceeded their power is perfectly clear.[298]

The next day Henry continued: "How different from the sentiments of freemen that a contemptible minority can prevent the good of the majority!"[299] During the Virginia debates, Henry often alluded to a *coup d'état* having taken place, although he never uttered the term

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[297] Elbridge Gerry, "Letter to James Warren, 18 October, 1787," in *The Documentary History of the Ratification of the Constitution, Volume IV—Ratification of the Constitution by the States: Massachusetts, No. 1,* John P. Kaminski, Gaspare J. Saladino, Richard Leffler, & Charles H. Schoenleber, Editors (Madison, WI: Wisconsin Historical Society Press—1997).
[298] Patrick Henry, "Speech Before Virginia Ratifying Convention, Wednesday, 4 June, 1788," *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787, Volume III, Second Edition*, Jonathan Elliot, Editor (Washington, DC: Jonathan Elliot—1836), 22-23.
[299] Ibidem, "Speech Thursday, 5 June, 1788: Dangerous Ambiguities," 50.

that did not gain widespread use in English until the nineteenth century. He was certainly not swayed by Federalist rhetoric, and was alarmed they had begun "to convert this country to a powerful and mighty empire"[300] in a manner he found "extremely pernicious, impolitic, and dangerous,"[301] prompting him to "dread the operation of it on the middling and lower class of people."[302] Henry correctly reckoned that "all pretentions to human rights and immunities are rendered insecure, if not lost,"[303] and he counters the attacks of Madison and Hamilton on the People in the *Federalist* with "I will submit to your recollection whether Liberty has been destroyed most often by the licentiousness of the People or by the tyranny of rulers? I imagine, Sir, you will find the balance on the side of tyranny."[304] Henry ended the debates in the "hopes that the spirit which predominated in the Revolution is not yet gone, nor the cause of those who are attached to the Revolution yet lost"[305]—but it *had* gone.

If the ninety-four percent of the country who could note vote wanted to oppose the Federalists, they would have had to do so through another armed resistance. However, the Exploitables had just been through the privation of fighting a nearly nine-year war as ground troops and sailors rather than serving as commissioned officers or in Congress or State governments, as most Federalists had. Moreover, the man who led the revolutionary Continental Army—General George Washington—had now turned his back on the men who followed him, and had become the public leader of the Opulents. Although the military was not involved in the *coup*, Washington still had the loyalty of the troops and several of the

[300] Patrick Henry, "Speech Thursday, 5 June, 1788: Dangerous Ambiguities," *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787, Volume III, Second Edition*, Jonathan Elliot, Editor (Washington, DC: Jonathan Elliot—1836), 55.
[301] Ibidem, 44.
[302] Ibidem, 54.
[303] Ibidem, 44.
[304] Ibidem, 47.
[305] Ibidem, "Wednesday, 25 June, 1788: Rights Omitted From Enumeration," 652.

*Coupistes* had been military officers in Washington's inner circle. After independence, Exploitables who exercised their First Principle duty to throw off despotic local governments or seek redress for wrongs done by Opulents, had their uprisings crushed by the military and a few rebels were hanged. Most of the champions of the independence movement and isonomic Democracy were now considered old men in their fifties and sixties; Benjamin Franklin had appeared at every session of the Secret Proceedings, but he was 81 and so infirm he had to be carried in on a sedan chair and James Wilson had to read his speeches for him. Thomas Jefferson and Thomas Paine were in France. Even if Exploitables had had the will to mount a military rebellion, procuring loans from Európa to fight the Opulents—as had been done by Franklin and other diplomats during the American War for Independence—was simply not feasible for Exploitables, if for no other reasons than they had no Franklin to represent them. No foreign lender was likely to undermine a country that had over $54 million in unpaid debt to Európa, with State governments owing an additional $25 million.[306]

Eventually, as James Madison had foreseen, opponents of a "consolidated government"[307] and "one great, consolidated empire"[308] were forced to recognize the futility of their efforts to derail or re-shape the Constitution in a political system dominated by Opulents. Opponents coalesced around a single issue—a bill of rights. As the ratification process progressed, it became apparent to Thomas Jefferson that the Federalists were unbeatable in the current political climate and a bill of rights essentially became a desperate last stand for him: "Half a loaf is better than no bread. If we cannot secure all our Rights, let

[306] Ron Chernow, *Alexander Hamilton* (New York, NY: Penguin Press—2004), 297.
[307] Patrick Henry, "Speech Thursday, 5 June, 1788: Dangerous Ambiguities," *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787, Volume III, Second Edition*, Jonathan Elliot, Editor (Washington, DC: Jonathan Elliot—1836), 44.
[308] Ibidem, 54.

us secure what we can."[309] Jefferson had many serious issues with the Constitution after he read with dismay what the *Coupistes* had created, and attempted from his post in Paris to persuade his friend James Madison to advocate for Jeffersonian ideals—apparently unaware that Madison was the champion of everything Jefferson opposed. Nonetheless, a bill of rights was always Jefferson's top priority: "I disapproved from the first moment...the want of a bill of rights to guard Liberty against the legislative as well as the executive branches of the government,"[310] and a "bill of rights is what the people are entitled to against every government on Earth."[311] Even most Opulents recognized the tumultuous history of European politics demonstrates that today's ruling class could be tomorrow's political prisoners or victims of the guillotine. The protections of a bill of rights were quite appealing to those with a vote; it soon became apparent that there would be no ratification from a sufficient number of States without the inclusion of a bill of rights.

Virginia, Massachusetts, and New York, were crucial to any new United States; Patrick Henry and George Mason in Virginia, Elbridge Gerry and Samuel Adams in Massachusetts, Governor George Clinton and Melancthon Smith in New York, may not have derailed or modified the Constitution, but their efforts produced majorities in their respective state houses that would only ratify after being provided with a guarantee that a bill of rights would be forthcoming. James Madison won Virginia's ratification and his election to Congress on the promise he would secure passage of a bill of rights. Without a bill of rights, the three States would have likely seceded and thrown the fledgling country into chaos or civil

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[309] Thomas Jefferson, "Letter to James Madison, 15 March, 1789," in *The Papers of Thomas Jefferson*, *Volume XIV: 8 October 1788-26 March 1789*, Julian P. Boyd, Editor (Princeton, NJ: Princeton University Press—1958), 659-661.

[310] Thomas Jefferson, "Letter to Francis Hopkinson, 13 March, 1789," in *The Works of Thomas Jefferson, Volume V,* Paul Leicester Ford, Editor (New York, NY: G.P. Putnam's Sons—1904), 457.

[311] Thomas Jefferson, "Letter to James Madison, 20 December, 1787," in *The Papers of Thomas Jefferson*, *Volume XII: August, 1787-March 1788*, Julian P. Boyd, Editor (Princeton, NJ: Princeton University Press—1955), 440.

war. Not surprisingly, the Federalists in Congress tried to renege upon their promise of a bill of rights once the Constitution was ratified; political necessity forced Madison to not relent until the Bill of Rights was amended to the Constitution. On 8 June, 1789, Madison recommended to Congress eighteen amendments as a Bill of Rights, to be preceded by a "Preamble" containing a re-working of the "Preamble" to the Declaration of Independence:

> First, that there be prefixed to the Constitution a declaration: That all power is originally vested in, and consequently derived from, the People. That government is instituted and ought to be exercised for the benefit of the People; which consists in the enjoyment of Life and Liberty, with the right of acquiring and using Property, and generally of pursuing and obtaining Happiness and Safety. That the People have an indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution.[312]

Madison also wanted to explicitly apply the bill of rights to States as well as to the federal government, recognizing that if the rights were not guaranteed in the States, they were essentially worthless. Congress rebuffed Madison's preamble proposal and his notion of making the bill of rights also explicitly binding upon the States. Congress grudgingly adopted Madison's proposal of a bill of rights closely modeled upon the English Bill of Rights of 1689, which was a document treasured by Opulents for its connection to the revered "Glorious Revolution" of 1688 that returned Conservative Protestant Christian rule to England. Madison was, nonetheless, able to insert the Ninth Amendment into the Bill of Rights—"The enumeration in the Constitution, of certain Rights, shall not be construed to deny or disparage others retained by the People"—which acknowledges the First Principles as other Rights "retained by the People," and does not preclude such Rights from applying on the State level. Madison was no doubt overjoyed that any threat to the new Constitution was

[312] James Madison, "Speech Introducing Bill of Rights, 8 June, 1789," *Congressional Register, Volume I*, in *History of the Debates and Proceedings in the Congress of the United States, At the First Session of Congress Begun At The City of New York, 4 March, 1789* (New York, NY: 1st United States Congress, 1789), 423-37.

circumvented, significant political influence of the Exploitables was avoided, and a Bill of Rights that could be undermined through any number of trap doors built into the Constitution was ultimately all that was needed for ratification:

> It has been a fortunate thing that the objection to the government has been made on the ground I stated; because it will be practicable on that ground to obviate the objection, so far as to satisfy the Public Mind that their Liberties will be perpetual, and this without endangering any part of the Constitution, which is considered as essential to the existence of the government by those who promoted its adoption.[313]

In the same speech, Madison gave a faint endorsement for the Bill of Rights that seemed to damn it with faint praise, and belie his lack of enthusiasm for the amendments he had promised Virginia he would add to the Constitution:

> I will own that I never considered this provision so essential to the federal Constitution, as to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form and to a certain extent, such a provision was neither improper nor altogether useless.[314]

Yet, James Madison unabashedly professed to his friend and former mentor, Thomas Jefferson: "My own opinion has always been in favor of a bill of rights;"[315] Jefferson seemed unaware that Madison was the instigator of the *coup*, chief architect of the Constitution, and leading opponent of a bill of rights, working in close partnership with Alexander Hamilton. Madison and Jefferson remained close friends, and in one of the most stunning political turnabouts in American history, Madison reversed himself on virtually every position he obsessively held during the *coup d'état* and adopted the political positions of Jefferson. Together the two founded the Democratic-Republican Party that championed the de-

[313] James Madison, "Speech Introducing Bill of Rights, 8 June, 1789," *Congressional Register, Volume I*, in *History of the Debates and Proceedings in the Congress of the United States, At the First Session of Congress Begun At The City of New York, 4 March, 1789* (New York, NY: 1st United States Congress, 1789), 423-437.
[314] Ibidem, 448-460.
[315] James Madison, "Letter to Thomas Jefferson, 17 October, 1788," in *The Papers of James Madison, Volume XI: 7 March 1788-1 March 1789* Robert A. Rutland & Charles F. Hobson, Editors (Charlottesville, VA: University Press of Virginia—1977), 297-298.

centralized, democratic government Madison had recently defeated, as well as individual State veto of federal law. Jefferson and Madison moved to Philadelphia in 1791 to found the *National Gazette*, in order to counter the Federalist essays of Alexander Hamilton in the *Gazette of the United States*. Madison served as Jefferson's Secretary of State before succeeding him as President. James Madison's abandonment of everything for which he stood does beg the question of whether or not the change stemmed purely from political opportunism or if Madison had truly been born again as a Democratic-Republican champion of "the People."

To a large extent, the Federalist "Framers" were able to marginalize the First Principles without actually having to repudiate or repeal the Declaration of Independence, which remains a permanent Organic Law, with the First Principles incorporated into the Ninth and Tenth Amendments as the "Other Rights." Madison, Hamilton, Washington, Jay, and the other Federalists, demonstrated a Machiavellian ruthlessness that has rarely been seen since in the United States; the government was seized, a Constitution imposed, and recalcitrant States that resisted ratification of the Constitution were extorted into submission through threats of economic and political sanctions.[316] It is no wonder Joseph J. Ellis calls the machinations of Madison and the Federalists in the Framing and imposition of the Constitution "the Second American Revolution," with Madison as the prime mover who:

> …manipulated the political process to force a calling of the Constitutional Convention, collaborated to set the agenda in Philadelphia, attempted to somewhat successfully orchestrate the debates in the state ratifying conventions, and then drafted the *Bill of Rights* as an insurance policy to ensure state compliance with the constitutional settlement.[317]

[316] National Archives, "Teaching With Documents: The Ratification of the Constitution" (College Park, MD: The U.S. National Archives and Records Administration); accessed 21 June, 2016: http://www.archives.gov/education/lessons/constitution-day/ratification.html

[317] Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (New York, NY: Alfred A. Knopf—2015), xv.

There can be scant doubt "the Constitution was intended to restrain the excesses of democracy;"[318] it was certainly not intended to champion it. The Imagined History machine has sanitized the *coup d'état* that made possible the modern United States: "We believe—and I think properly—that the men who met in 1787 to make our Constitution made the best political document ever made…"[319] The "Checks & Balances" incorporated by Madison into the Constitution—"a web of mutually compromising powers woven, in fear of tyrants, around the presidency, Congress and judiciary"[320]—have barely impeded any branch of the American government from seizing and exercising powers not granted therein. The Supreme Court has conferred lifetime tenure to its own members, invested itself with almost unlimited power and unassailability, and has rewritten the Constitution through *fiat justitia*[321] to such an extent that what the Court opines is quite frequently unrecognizable when compared to the Plain Meaning of the Constitution. Congress has ignored both its restraints and its obligations, all the while ensuring that the Opulent Minority continues to be subsidized by the Exploitable Majority. By any objective measure, the "Will of the People" is rarely, if ever, done.

[318] Gordon Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (Oxford, UK: Oxford University Press—2009), 31.
[319] Judge Billings Learned Hand, "Testimony," Special Sub-Committee on the Establishment of a Commission on Ethics in Government, *United States Senate* (Washington, DC: Eighty-Second Congress of the United States—First Session, June, 1951).
[320] Economist Staff, "The Presidency: America's System of Checks & Balances Might Struggle to Contain a Despot," The Economist (Washington, DC: The Economist—4 February, 2017); accessed 23 February, 2017: https://www.economist.com/news/united-states/21716060-next-four-years-will-keep-students-constitution-busy-americas-system-checks
[321] Latin: "judicial decree."

# IV: *The Scheme of Rights & Protections*

*What is true of every member of the society individually, is true of them all collectively—since the* Rights *of the whole can be no more than the sum of the* Rights *of the individuals.*

— Thomas Jefferson[322]

In order for the United States Constitution to be ratified by all Thirteen States, James Madison and his Federalist *Coupistes* were forced to make significant concessions in its architecture—most notably the scheme of Rights and Protections built into several sections of the body of the Constitution and the first ten amendments to the Constitution known as the *Bill of Rights*, which incorporate the First Principles of the Declaration of Independence. The Constitution does not in any way categorize such Rights and Protections, but they may reasonably be divided into three distinct groups: *Political Rights*, which are often called "Civil Rights;" *Due Process Rights & Protections*, which may be considered "Judicial Procedure Rights & Protections;" and *Personal Rights*, or "Personal Autonomy." The Second and Third Amendments do not comfortably fit into any of these three modes. Political Rights under the Constitution are extremely limited; yet Due Process Rights & Protections are quite extensive and Personal Rights nearly unlimited. Political Rights and Due Process Rights & Protections may be grouped together under the larger category of *Positive Rights*, meaning they oblige action; whereas Personal Rights are *Negative Rights*, meaning they generally oblige inaction. The scheme of Rights interwoven throughout the Constitution and Bill of Rights are far more extensive than is commonly internalized in the imagined American "collective memory," and the Plain Meaning of the words and phrases that explicate these Rights has historically been at great variance with the interpretations of the Supreme Court.

[322] Thomas Jefferson, "Letter to James Madison, 6 September, 1789," in *The Works of Thomas Jefferson Volume VI*, Paul Leicester Ford, Editor (New York, NY: G.P. Putnam's Sons—1904), 3-4.

The existence of Positive Rights and Negative Rights in the Constitution effectively obviates Alexander Hamilton's primary argument, in *The Federalist No. 84*, against the need for the attachment of a bill of rights: "Why declare that things shall not be done which there is no power to do*?*"[323] *Positive Rights* oblige *action*, the power to do, upon the part of all branches of all levels of government: federal, state, regional, and municipal. Because they require the "power to do,"[324] Political Rights and Due Process Rights & Protections must be enumerated. On the other hand, *Negative Rights*, by definition, generally oblige *inaction*—the prohibition *from* doing—that is, the Right to *not* be subjected to action, regulation, intrusion, interference or limitation by the three branches, states, municipalities, and fellow citizens. Enumerating in the Bill of Rights the Negative Rights most likely to be abused is presciently prudent, but in order for that list to not be a limitation, it must be accompanied by a disclaimer: that is, words to the effect that the Rights possessed by the *Dêmos* include, but are not limited to, those listed. The Ninth Amendment is such a disclaimer. Any Negative Right that is a Personal Right may temporarily become a Positive Right; if violated it would then require remedial action to protect and/or restore it.

Although James Madison and the Federalist *Coupistes* were intent upon precluding the perceived excesses of Democracy from the recently united States, there is something quite visionary about the scheme of Rights in the Constitution that seem designed to construct an oligarchic utopia: the Opulent Minority could, and would, peacefully and harmoniously co-exist with an Exploitable Majority forever grateful for the wise leadership of Opulents. Exploitables would have no need to vote or participate in the political process or worry their

[323] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," in *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[324] Ibidem.

feeble minds about running a country; they could live their daily lives without a care, secure in the knowledge that Opulents would be operating a country that emulates Platón's "well-ordered State."[325] It would be ruled by "true Philosopher Kings:"[326] men of means with the leisure time necessary to read and consider, "whose enlightened views and virtuous sentiments render them superior"[327]—men such as James Madison, Alexander Hamilton, George Washington, John Jay, John Adams, Gouverneur Morris, and James Wilson. The Exploitable Majority would find Safety and Happiness in the assurance of nearly unlimited personal freedom and ironclad safeguards against abuse of power and punishment; whereas "the people who own the country"[328] would be guaranteed perpetual domination and security of their property. No tyranny of an ungrateful majority "sighing for a more equal distribution of [life's] blessings"[329] for the United States.

Such alleged superior enlightened views and virtuous sentiments of the Opulent Minority have never seen fit to full implement or wholeheartedly embrace either the Bill of Rights or the First Principles. The Supreme Court, helmed by fourth Chief Justice John Marshall, effectively gutted the Bill of Rights by ruling it only applied to the federal government and thus did not bind State and municipal governments or individuals, all of which then became free to violate every Right and Protection contained within the Bill of Rights, as well as the First Principles. In *Barron v. Baltimore* (1833), Marshall opined that the Bill of Rights contains "no expression indicating an intention to apply them to the State

[325] Platón [380 BCE], *Politeja* ["The Republic"] *Third Edition*, Benjamin Jowett, Translator (Oxford, UK: Clarendon Press—1888), 52, 94, 157, 159, 221, 320, 322, 336.
[326] Ibidem, 170, 245.
[327] James Madison [Publius], "The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection (continued)," in *Federalist No. 10* in the *Daily Advertiser* (New York, NY: Daily Advertiser—Thursday, 22 November, 1787).
[328] William Jay, *The Life of John Jay: With Selections From His Correspondence & Miscellaneous Papers, Volume I* (New York, NY: J. & J. Harper —1833), 70.
[329] James Madison [Tuesday, 26 June, 1787], in *The Records of the Federal Convention of 1787, Volume 1*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 422.

governments."[330] The exemption of State governments has been extrapolated to include municipalities, regions, and individuals. By exempting States, municipalities, regional governments, and individuals, from following the Bill of Rights, the Bill of Rights was rendered practically invalid except in the comparatively rare instances of an individual arrested and tried by the federal government. The Marshall ruling was effectively a revocation, an *alienation*, of all Unalienable Rights in the United States. To paraphrase Thomas Paine, anything that is revocable is not a Right—it is a privilege.[331]

The Fourteenth Amendment was designed by its author, John Armor Bingham, to in part address the institutionalization of the many constitutional loopholes exploited by the Marshall Court, and subsequent Courts. He worded the Amendment to explicitly extend "the privileges or immunities of citizens of the United States," as well as Life and Liberty, to the citizens of every State, and restore the Bill of Rights and First Principles by emphasizing "equal protection under the law" and "due process."[332] Nonetheless, the Supreme Court and the entire federal government—as well as the States, regions, and municipalities—proceeded apace as if the Fourteenth Amendment had never been ratified. It was not until *Gitlow v. New York* in 1925—*one hundred and thirty-four years* after ratification of the Bill of Rights—that the Supreme Court expressly held every State in the Union is bound to protect Freedom of Speech.[333] This ruling finally recognized the Plain Meaning of the Fourteenth Amendment and began extending the reach of the Bill of Rights to "incorporate" all the States, as it should have from the day it was ratified in 1791.

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[330] Chief Justice John Marshall, "Opinion," *Barron v. Baltimore* [32 U.S. 243, 250], 1833.
[331] Thomas Paine, *Rights of Man* (Mineola, NY: Dover Publications—1999), 153.
[332] Rep. John Armor Bingham (R-OH), the framer, expressed his intent repeatedly in Congressional sessions: see *Congressional Globe*, 42d Congress, 1st Sess. app. at 84 (Mar. 31, 1871); *Congressional Globe*, 39th Congress, 2d Sess. 811 (Jan. 28, 1867); *Congressional Globe*, 39th Congress, 1st Sess. 2541-42 (May 10, 1866); Id. at 1291-92 (Mar. 9, 1866); Id. at 1089-90 (Feb. 28, 1866); Id. at 1034 (Feb. 26, 1866).
[333] Justice Edward T. Sanford, "Opinion," *Gitlow v. People of State of New York* [268 U.S. 652], 1925.

Thereafter, the Supreme Court has gradually "incorporated" many provisions of the Bill of Rights, but the Court has not similarly obligated regions, municipalities, and individuals, to the Bill of Rights. However, if the Supreme Court has the power to giveth, it also has the power to taketh away at any time it sees fit. Through inherent design defects of the Constitution, the Supreme Court has been able to grant itself the omnipotence to confer or revoke "Rights." It has become both possible and permissible for the Supreme Court to eliminate *all* Rights and Liberties. So long as the Court has such power, anything considered a "Right" in the United States is an insecure privilege, and the Bill of Rights is effectively the "Bill of Potential Provisional Privileges."

Yet, try as they did, James Madison and the Federalists could not erase the threat of the Exploitables and Democracy from the land; despite the overarching anti-citizen agenda of the three branches of government, the privileges of American citizens have greatly expanded in some ways—although they have been greatly contracted in others, through interpretations inconsistent with the Plain Meaning of the Constitution. All Americans over the age of eighteen years who are not felons may now vote—and some States finally allow felons who have completed their sentences to vote—a situation that would have, no doubt, horrified the Federalists. Madison and the Federalists would have been similarly vexed by the Fourteenth Amendment's guarantee of Equal Protection to every person. The fact that James Madison expressed the opinion that the Bill of Rights would in no way impede the dominance of the Opulent Minority, argues that he did not accurately foresee its implications, even with the integration of the First Principles through the Ninth and Tenth Amendments. Madison and the Federalists appear to have myopically viewed the Bill of Rights as protection from political persecution by the federal government, like the English Bill of Rights. It would have been

impossible for Madison to anticipate Congress would be confer the status of Organic Law upon the First Principles. It is quite possible that Congress did not appreciate the potential ramifications of such an act. The Due Process Rights and Protections of citizens have been enhanced in some areas, such as the *Miranda Warning* and the public defender system, but Justice has not been established in the United States by any objective measure, as the recent reports by Amnesty International[334] and Human Rights Watch[335] make abundantly clear:

> …many US laws and practices, particularly in the areas of criminal and juvenile justice, immigration, and national security, violate internationally recognized human rights. Those least able to defend their rights in court or through the political process—members of racial and ethnic minorities, the poor, immigrants, children, and prisoners—are the people most likely to suffer abuses."[336]

Social justice is simply not attainable for most Americans. News reports of unjustly convicted prisoners being exonerated after decades in prison are now commonplace. Incarceration for victimless personal choice and non-conformity contribute to the largest prison population in the world. The terrorism perpetrated by police departments against the people they serve is done with impunity. Whatever Personal Autonomy that may have existed in the United States has possibly reached its apex, due to severe restrictions that have been imposed whilst a country suffering from the constant anxiety induced by a wildly ginned up Muslím "terrorist threat" and the new perpetual state of war. The United States continues its *de facto* criminalization of innocuous individual behavior, ethnicity, skin-tone, gender identity, dissent, and peaceful public assembly. It is not the violation of internationally recognized human rights that should be most disturbing to Americans, but rather the violation of the Unalienable Rights guaranteed in the country's own Organic Laws.

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[334] Salil Shetty, Secretary-General, *Amnesty International Report 2016/17: The State of the World's Human Rights* (London, UK: Amnesty International—2017), 385-389.
[335] Kenneth Roth, Executive Director, *Human Rights Watch World Report 2017: Events of 2016* (New York, NY: Human Rights Watch—2017), 633-653.
[336] Ibidem, 633.

# *Political Rights*

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the Freedom of Speech, or of the Press; or the right of the People peaceably to Assemble, and to Petition the Government for a redress of grievances.*

—The First Amendment[337]

When the Bill of Rights was ratified on 15 December, 1791, the single compound sentence that is the First Amendment contained the only *political* "rights" granted Americans who were not members of the Opulent Minority; that is, who were not free, male property owners who were overwhelmingly Northern Európan and Protestant. Noticeably absent from this brief proclamation is even the hint of a guarantee of the two most consequential of Political Rights: universal suffrage and Isonomy—relatively equal political influence. None save Opulents were permitted to vote since the British first landed on North American shores, although men without property were allowed to vote in many localities after the War for Independence began. However, perhaps as a hedge against eventual universal suffrage, several impedimental layers that entrenched Opulent dominance were placed between citizens and democracy under the new Constitution. Even Opulents could not vote for the newly created offices of "Senator" and "President;" they voted for State legislators who, in turn, chose Senators until passage of the Seventeenth Amendment in 1913, when voters could vote for them directly. State legislatures, in conjunction with State political parties, also select the Electors who comprise the mysterious Electoral College that casts proxy ballots for President in the stead of American voters. In other words, the Constitution that guarantees equal "Privileges and Immunities" to all citizens, also includes a system of unequal suffrage.

[337] James Madison, et al, "First Amendment," *United States Constitution* (Philadelphia, PA: Secret Proceedings, 17 September, 1787).

As suffrage gradually became universal, Electors came to be seen as a failsafe protection against unwise choices made by an unreliable electorate, as they are permitted to vote for a different candidate than the voters selected, giving Electors effective veto power over the votes cast.[338] The first State to enfranchise landless males was New Hampshire in 1790; North Carolina was the last to do so in 1856. Women did not attain full suffrage until 1920, but twenty-six States and territories granted women some form of suffrage prior to that—beginning with the territory of Wyoming granting full suffrage in 1869.[339] Indigenous Peoples were granted suffrage in 1949. Despite the Thirteenth, Fourteenth, and Fifteenth Amendments, African-Americans had to wait until the Voting Rights Act of 1965 for the vote.[340] Today, an Elector represents an average of 711,000 citizens, conditionally pledging to vote for the person for whom those voters cast their ballots for president.

Although Freedom of Speech, Freedom of the Press, Freedom to Assemble, and Freedom to Petition the Government for Redress of Grievance may seem self-evidently political privileges, Freedom of and from religion may not seem at all political at first blush. However, politics and religion were as inseparable in many American jurisdictions as they were in an England where Church and State were one and the same. Since Henry VIII created the Church of England and outlawed Catholicism as treason—in what is now called the "English Reformation"—control of England see-sawed between liberal Catholics who wanted to continue to practice their religion and conservative Protestants who wanted to permanently extirpate Catholicism. Protestants eventually won a "Glorious Revolution" in 1688, and

[338] Kristen D. Burnett, "Congressional Apportionment: 2010 Census Briefs," *United States Census Bureau* (Washington, DC: United States Department of Commerce—November, 2010), *passim*.
[339] National Constitution Center, "Map: State Grant Women the Right to Vote," *Centuries of Citizenship: A Constitutional Timeline* (Philadelphia, PA: National Constitution Center—2006); accessed 22 April, 2017: https://constitutioncenter.org/timeline/html/cw08_12159.html
[340] Northern California Citizenship Project, "U.S. Voting Rights Timeline," *Mobilize the Immigrant Vote 2004* (San Francisco, CA: Northern California Citizenship Project—2004); accessed 14 July, 2013: http://www.kqed.org/assets/pdf/education/digitalmedia/us-voting-rights-timeline.pdf

promptly began the persecution and execution of Catholics. For some Protestants, the persecution was never adequately repressive and existence never sufficiently austere; the unrealized desire for what could be described as "Christian Sharía"[341] sent the Puritans and Pilgrims to the New World where it could be instituted with impunity within insular communities free from any outside authority. Such repressive spirit inspired the "Freedom of Religion" clause in the First Amendment. The rhetoric in contemporary congressional and presidential debates illustrates how religious conformity versus religious freedom remains nearly as significant and controversial in the United States today as it was in 1791.

Freedom of Speech in the First Amendment refers to Political Speech, what Albert Einstein called the "free, unhampered exchange of ideas"[342] and Oliver Wendell Holmes, Jr. extolled as the crucial "free trade in ideas."[343] Free speech is purely about ideas, theories, opinions, conjecture, and the actions of those engaged in the political sphere. Political Speech is distinct from *Personal Speech* and is not subject to the natural limitations inherent in Personal Speech—Personal Speech falls under the First Principle of Personal Autonomy found in the "Preamble" to the *Declaration of Independence,* and is also one of the "other [Rights] retained by the People" in the Ninth Amendment.[344] Personal Speech must "injure no one else"[345] through such actions as libel, slander, fraud, harassment, coercion, reckless endangerment, etc. Government is not a living being and therefore cannot be harmed by speech in the same way that humans can; a government of, by, and for the People may only be

[341] Islamic retributive penalties for perceived law-breaking derived from the *Qur'an*.
[342] Albert Einstein, in "Imminent American Scientists Give Their Views On American Visa Policy," *Bulletin of the Atomic Scientists* Volume VIII, No. 7 (Chicago, IL: Educational Foundation for Nuclear Science, Inc.—October, 1952), 217.
[343] Chief Justice Oliver Wendell Holmes, Jr. "Dissenting," *Abrams v. United States* [250 U.S. 616, 630]—1919.
[344] James Madison, et al, "Ninth Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).
[345] Thomas Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine, *Déclaration des Droits de l'Homme et du Citoyen* (Paris, FR: Assemblée Nationale Constituante—26 Auguste, 1789), Article IV.

harmed if its People are harmed. Politicians knowingly and willingly forego First Principles protection from injurious speech when they enter the political arena. Proving that the People have been done demonstrable harm through speech against the government or "whistle-blowing" should be an almost insurmountable bar. The People are not harmed in the least by whistleblowers revealing dangerous and unconstitutional acts committed by those in government; it is the power structure that is weakened and threatened when the unsavory truth of its operations is revealed.

In many respects, it is difficult to separate Freedom of Speech from Freedom of the Press. Freedom of the Press—which today is expanded to Freedom of the News Media—is the vehicle by which Political Speech and ideas are disseminated and exchanged. The Free Press is also the conduit through which whistleblowers provide information necessary to expose untoward or inept government actions. Certainly, the vital importance of a Free Press and printing what truth can be ascertained was not lost upon the Patriots responsible for the American Revolution—the insurgency could not have succeeded without such political tracts as *Common Sense* and *American Crisis* by Thomas Paine and "Letters from a Farmer in Pennsylvania*"* by John Dickinson. Thomas Jefferson thinks a Free Press is fundamental to Liberty: "Our Liberty cannot be guarded but by the Freedom of the Press, nor that be limited without danger of losing it."[346] Sons of Liberty leader Samuel Adams and his future president cousin, John Adams, include "Liberty of the Press is essential to the security of Freedom in a State"[347] as Article XVI in their Constitution of the Commonwealth of Massachusetts. Benjamin Franklin, noted inventor, publisher, satirist, diplomat, and political pundit, defends

[346] Thomas Jefferson, "Letter To John Jay, 25 January, 1786," *The Works of Thomas Jefferson, Volume V*, Paul Leicester Ford, Editor (New York, NY: G.P. Putnam's Sons—1904), 73.
[347]John Adams, Samuel Adams, and James Bowdoin, *Constitution of the Commonwealth of Massachusetts* (Boston, MA: Commonwealth of Massachusetts—1780), Article XVI.

the Free Press and truth-seeking with his incisive 1731 comment: "when Truth and Error have fair play, the former is always an overmatch for the latter."[348] Thomas Paine echoed Franklin's affection for the Truth: "such is the irresistible nature of Truth, that all it asks—and all it wants—is the Liberty of appearing [in the Free Press]."[349] Justice Hugo Black succinctly defended the Free Press in *New York Times Company v. United States*: "Only a free and unrestrained press can effectively expose deception in government."[350]

Black's words ring somewhat hollow in light of the fact that the deceivers in government are relatively unimpeded in their use of every means at their disposal to prevent such exposure. Freedom of the Press has arguably become the most assailed of all American political Rights, devolving it into a tenuous privilege. The Free Press is perpetually under assault from an American government that has increasingly criminalized journalism, journalists, and their statutorily protected "whistleblower" sources; in the past few years, targeting of reporters and their sources has increased exponentially. Moreover, a new dimension has been added: an assault upon facts. The campaign against a Free Press, reporting and sources is aided and abetted by Supreme Court rulings that flout the Plain Meaning of the First Amendment and ignore such self-evidently unconstitutional statutes as the Espionage Act of 1917. In recent years, the American government has targeted for prosecution such journalists as James Risen of the *New York Times* and the *Intercept*, Judith Miller of the *New York Times*, James Rosen of *Fox News*, Julian Assange of *WikiLeaks*, and Amy Goodman of *Democracy NOW!* Non-government organizations founded to protect a Free Press and journalists—such as the Committee to Protect Journalists, Reporters Sans

[348] Benjamin Franklin, "Apology for Printers," in *The Pennsylvania Gazette* (Philadelphia, PA: The Pennsylvania Gazette—Thursday, 10 June, 1731).
[349] Thomas Paine [1791], "Introduction," in *The Rights of Man* (Mineola, NY: Dover Publications—1999), 104.
[350] Justice Hugo L. Black, "Concurring," *New York Times Company v. United States*, [403 U.S. 713, 717]—1971.

Frontières, The Reporters Committee for Freedom of the Press, and the First Look Press Freedom Defense Fund—originally focused upon journalists and the Press outside the United States, but are now frequently involved in domestic cases of political repression of the Press.

It should be noted that the entire concept of State secrets and classified documents does not appear in the Constitution; any prohibition against revealing classified or secret material properly comes not from any imagined government "right" to restrict public access to its functioning, but from the natural limitation of harm—that is harm to the citizenry. A power structure is inanimate and cannot be harmed. A case may also be made that in the absence of a Constitutional establishment of a governmental entitlement to secrecy, whistleblowing is speech protected by the First Amendment. Nevertheless, proliferation of a State Security apparatus and retaliatory prosecution has necessitated that those who reveal illegal or untoward government activity be statutorily shielded. "The Whistleblower Protection Act of 1989"[351] and "The Whistleblower Protection Enhancement Act of 2012"[352] were designed to protect and encourage whistleblowers, yet the government has ignored these laws in prosecuting sources such as William Binney (2001), Thomas A. Drake (2010), Jeffrey A. Sterling (2010), Chelsea Manning (2010), John Kiriakou (2012), Edward Snowden (2013), and Reality Leigh Winner (2017).

The American power structure is also re-enforced by limiting, and even criminalizing, public protest by those who are Peacefully Assembled. It is now possible to charge those peacefully assembled with rioting or label such an assembly a "criminal conspiracy." Although Congress is expressly forbidden from making any **"**law…prohibiting the *free*

[351] Senator Carl Levin (D-MI), "An Act to Amend Title 5, United States Code, to Strengthen the Protections Available to Federal Employees Against Prohibited Personnel Practices, and for Other Purposes" (Washington, DC: 101st United States Congress—10, April, 1989).
[352] Senator Joseph I. Lieberman (R-CT), "The Whistleblower Protection Enhancement Act of 2012" (Washington, DC: 112th United States Congress—10 October, 2012).

*exercise* of…the Right of the People to Peaceably Assemble" the courts have sustained federal, state, regional, and local laws, that are rife with such prohibitions. Protests are regularly met by militarized police, acting as agents of the Opulent Minority, in what amounts to a war against the Exploitable Majority, who are seen as the "enemy." American law enforcement agents may use counter-terrorism tactics, military equipment and armored vehicles, and private security or mercenaries, against dissidents. Citizen dissidents may sometimes be referenced as "jihadis."[353] Police are ever at the ready to intimidate and physically abuse protestors, squelch public dissent, and suppress any perceived threat to the existing social, political, economic, and moral order.

Protestors are generally forced to ask *permission* to protest, from representatives of the very system against which they are protesting and who have a vested interest in limiting or completely suppressing such protests. Such permission is in the form of licenses or permits, often limiting demonstrations to "protest zones" in relatively remote areas designed to mitigate or completely eviscerate the impact of a protest; protests may also be terminated at will by authorities. All such government intervention defeats the very purpose and effectiveness of peaceful assembly protest and belies the notion of "free exercise." It is also arguable that the very act of armored and armed militarized police confronting protesters subconsciously prompts provocation by police anxious to use their military equipment and training on protesters, who are rebelling against a corrupt system that is primarily what the police feel is their duty to serve and protect.

Another First Amendment privilege that has been largely de-fanged is the ability to

[353] Alleen Brown, Will Parrish, Alice Speri, "Leaked Documents Reveal Counter-Terrorism Tactics Used At Stand Rock to Defeat 'Pipeline Insurgencies,'" *The Intercept* (New York, NY:First Look Media—27 May, 2017); accessed 29 May, 2017: https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/

"Petition the government for a redress of grievances"—because according to the Supreme Court *the government is not obliged to listen or respond* to any such petition! In *Minnesota Board for Community Colleges v. Knight* (1984) Sandra Day O'Connor asserted that: "Nothing in the First Amendment—or in this Court's case law interpreting it—suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to communications of members of the public on public issues."[354] Such specious reasoning defies logic and sense; the right to petition the government for redress implicitly carries with it a requirement that the government listen and respond to all such petitions. Otherwise, the Right to Petition the government for redress is effectively meaningless. In addition to the Court's conferring upon itself and the other two branches of government dispensation from listening or responding to the People, all levels of American government generally enjoy what is called *sovereign immunity* from lawsuits—that is, an impunity that stems from the archaic notion of *rex non potest peccare* ("the king can do no wrong"). *Rex non potest peccare* is "an ancient and fundamental principle of…*English* [Common Law]"[355] that appears nowhere within the Constitution of the United States and nowhere within the voluminous United States statutes; rather, it has been illegally and unjustifiably grafted into American jurisprudence from that English Common Law.

[354] Sandra Day O'Connor, "Opinion," *Minnesota Board for Community Colleges v. Knight* [465 U.S. 271, 365], 1984.
[355] Henry Campbell Black, M.A. [1891 & 1910], "*rex non potest peccare," Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), *emphasis added*, 1188.

# *Due Process Rights & Protections*

*…a speedy and public trial by an impartial jury of peers…equal privileges and immunities… security of home and person (privacy)…no double jeopardy…no self-incrimination…due process…to be informed of the nature and cause of any accusation and charged in court (the writ of* Habeas Corpus)*…no excessive bail or fines…to confront accusers…the ability to subpoena witnesses…assistance of counsel…no cruel or unusual punishment…*

—James Madison[356]

Judging by the extensive attention paid to Due Process within the body of the Constitution and its prevalence in the Bill of Rights, it is clear the fear of persecution by the State was of significant concern to an Opulent Minority familiar with the history of political upheaval in their erstwhile homeland. In England, as in the rest of Európa, rulers and the political winds seemingly shifted moment to moment; today's king could be on the guillotine or in the Tower of London tomorrow. It is therefore somewhat surprising that judicial rules, procedures, rights, and protections, are not codified into a single section of the United States Constitution—which might be entitled "Due Process Rights & Protections"—or written into a single amendment to the Bill of Rights. These protections are instead interspersed throughout the Constitution and the Bill of Rights. It is perhaps equally surprising that some of the most important Due Process Rights and Protections in American jurisprudence are not found in either the Constitution or the Bill of Rights, but were illicitly transplanted into American law from English Common Law and have never been legislated by Congress. The Due Process Rights and Protections are found in Article I, Section 9, Clause 2; Article III, Section 2, Clause 3; Article IV, Section 2, Clause 1, of the Constitution; and in the Fourth, Fifth, Sixth, Seventh and Eighth amendments:

[356] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), *passim*; & James Madison, et al, *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789), *passim*.

Article I, Section 9, Clause 2, identifies *Habeas Corpus* as a privilege liable to suspension—"the Privilege of the Writ of *Habeas Corpus* shall not be suspended, *unless*…"[357]—but does not describe or define *Habeas Corpus* or the conditions for its invocation. *Habeas Corpus*—properly pronounced "hah-bay-yas gore-poos" not "hay-be-us corp-us"—officially entered U.S. law on 24 September, 1789, in the Judiciary Act of 1789, Section 14. It is unclear why this most crucial Due Process right is not simply included in the Bill of Rights, which was passed the next day on 25 September, 1789. The omission may be due to the fact that *Habeas Corpus* has been an integral part of English Common Law since the Assize of Clarendon in 1166, and entitlement to it may have simply been taken for granted by the Anglophiles in Congress. The basic principle of a Writ of *Habeas Corpus* (literally, "you have the body") is "to bring a party before a court or judge" to determine "whether a prisoner is restrained of his liberty by Due Process,"[358] who may then invoke the Sixth Amendment right "to be informed of the nature and cause of the accusation."[359]

Article III, Section 2, Clause 3, enshrines "The Trial of all Crimes…shall be by Jury…"[360] and the Sixth Amendment specifies it must be "a speedy and public trial…by an impartial jury."[361] Article IV, Section 2, Clause 1,[362] establishes Equal Protection without actually using the term: "The Citizens of each State shall be entitled to *all Privileges and Immunities* of Citizens in the several States."

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[357] James Madison, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article I, Section 9, Clause 2, emphasis added.
[358] Henry Campbell Black, M.A. [1891 & 1910], "Habeas Corpus," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 638.
[359] James Madison, et al, "Sixth Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).
[360] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article III, Section 2, Clause 3.
[361] James Madison, et al, "Sixth Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).
[362] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article IV, Section 2, Clause 1.

The Fourth Amendment establishes privacy and security of the home and person, which includes no searches without Warrants and probable cause (*causa probabilis*).[363] The Fifth Amendment asserts no one may be "held to answer" for a crime without an indictment, as well as the double jeopardy protection, protection from self-incrimination, Due Process, and just compensation for seizures via Eminent Domain.[364] The Fourth Amendment does not provide parameters for what "just compensation" may be, nor does it acknowledge that there may as many different notions of what constitutes "just" as there are people.

Although the Sixth Amendment confers "the right to a speedy and public trial…by an impartial jury" and the right "to be informed of the nature and cause of the accusation," unindicted suspects without the means to post bail and/or retain competent counsel routinely languish in harsh jail conditions for years without trial—as the sad case of Kalief Browder's three-year incarceration in New York City's Riker's Island illustrates.[365] Sixty percent of those in American jails have not been tried or convicted of a crime.[366] The ability to properly exercise the other rights of the Sixth Amendment—the right to confront accusers, the right to subpoena witnesses, and the right to have "assistance of counsel" for the defense[367]—also depends a great deal upon financial resources. The party in any legal proceeding with the greatest financial resources clearly has an enormous advantage; yet the Sixth Amendment neglects to guarantee the means to enable a defendant to equitably finance a defense.

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[363]James Madison, et al, "Fourth Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).
[364] Ibidem "Fifth Amendment."
[365] Sam P.K. Collins, *thinkprogress.org* "He Spent Three Years In Jail For A Crime He Didn't Commit: Then He Killed Himself," (Washington, DC: Center for American Progress Action Fund—8 June, 2015, 1:08 PM); accessed 11 July, 2016:
http://thinkprogress.org/health/2015/06/08/3667141/new-york-city-didnt-help-kalief-browder/
[366] Doug McVay, "Prison & Jails Overview," *drugwarfacts.org* (Portland, OR: Drug War Facts—2017); accessed 21 April, 2017: http://drugwarfacts.org/chapter/prison
[367] James Madison, et al, "Sixth Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).

The little known Seventh Amendment preserves the right to trial by jury in civil cases where the value of a controversy "shall exceed twenty dollars"[368]—a right the Supreme Court has never incorporated under the Fourteenth Amendment for a legal controversy regarding any valuation. The Eighth Amendment prohibits excessive bail, excessive fines, and cruel or disproportionate punishment[369]—yet, the United States legal system has routinely meted out all three since its inception, and shows no signs of ridding itself of any one of these practices. In fact, American prisons and jails often effectively act as "debtor's prisons" for those who cannot afford cash bail and fines, and the American legal and prison systems are rife with corruption, *ennui*, and all manner of Human Rights abuses.

In addition to *Habeas Corpus, praesumere ex innocentja* ("the presumption of innocence"), *onus probandi* ("the burden of proof"), and *rationabile dubjum* ("reasonable doubt"), are three "rights" Americans hold sacrosanct—and perhaps even take for granted—but are also not explicitly written into the Constitution or federal statutes. Rather, these are three more concepts derived from English Common Law through interpretation by the courts, and then cemented into common law as judicial precedent. It bears repeated emphasis that American courts have regularly appropriated England Common Law whenever it suits them, and thereby effectively written American law via *fiat justitia*, without a law being written by Congress; in other words, the Judicial Branch has illegally assumed the function of the Legislative Branch of government. Such importations may frequently be quite beneficial to the General Welfare[370] of the *Dêmos*; yet, a protection or immunity that enters American common law in this way and is not part of the constitutional scheme of Rights and

[368] James Madison, et al, "Seventh Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).
[369] Ibidem, "Eighth Amendment."
[370] Relatively equal benefit.

Protections, or any subsequent law, may reasonably be considered a privilege not a Right, and the most easily revocable of all privileges. The concept of the presumption of innocence actually pre-dates English Common Law, but the term itself was coined by the English barrister, Sir William Garrow.[371] The omission of the presumption of innocence from the Constitution, its amendments, all the Organic Laws, and any Congressional legislation, is made all the more glaring by the fact that Thomas Jefferson incorporated it into the Déclaration des Droits de l'Homme et du Citoyen (the "Declaration of the Rights of Man and the Citizen") he helped write in France one month before the Bill of Rights was submitted to the States for ratification. Article IX of the Déclaration des Droits de l'Homme et du Citoyen states: "all persons are held innocent until they shall have been declared guilty."[372]

[371] Christopher Moore, *The Law Society of Upper Canada and Ontario's lawyers, 1797–1997* (Toronto, CA: University of Toronto Press—1997), 37.
[372] Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine, "Article IX," *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"] (Paris, FR: l'Assemblée Nationale Constituante—26 Auguste, 1789).

# *Personal Rights*

*The enumeration in the* Constitution*, of Certain Rights, shall not be construed to deny or disparage others retained by the People.*

—The Ninth Amendment[373]

The Ninth Amendment to the United States Constitution is what is known as a *disclaimer*.[374] In a legal document, any enumeration of items limits the scope to just those items listed unless some variation of the term "including, but not limited to" is affixed to such enumeration, either before or after. The Ninth Amendment follows such an enumeration in the previous eight amendments and clearly performs the disclaimer function; it is an early iteration of a concept that has been refined over two centuries and is today standard. In addition to its disclaimer function, the reference to other Rights "retained by the People" in the Ninth Amendment re-affirms—and thereby incorporates into the Constitution—the Unalienable Rights of the First Principles within the Declaration of Independence. A case may be made that the Ninth Amendment is the most significant of all the amendments.

In *The Federalist*, James Madison, Alexander Hamilton, and John Jay, collectively writing under the *nom de plume* "Publius," take the position that a bill of rights is unnecessary. As Alexander Hamilton intoned during the ratification debate, "no power is given by which restrictions may be imposed."[375] In other words, he contends the concept of "Personal Rights" need not even be addressed, because Congress has not been given

[373] James Madison, et al, "Ninth Amendment," *Bill of Rights* (Philadelphia, PA: Continental Congress—25 September, 1789).
[374] Frederick C. Mish, Editor-In-Chief, "disclaimer; *noun,*" *Merriam-Webster's Collegiate Dictionary, Eleventh Edition.* Springfield, MA: Merriam-Webster, Incorporated—2005), 330.
[375] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).

permission in the new Constitution to regulate or restrict personal behavior of American citizens in *any manner whatsoever*. By such reasoning, Personal Autonomy is without statutory limit in the United States, where "no power is given" to limit it—in which case, personal behavior redounds to a strict *natural limitation*: the Personal Autonomy of others. As Thomas Jefferson notes: "rightful Liberty is unobstructed action according to our Will, within limits drawn around us by the Equal Rights of others."[376] Or, as Zechariah Chafee puts it: "your right to swing your arms ends just where the other man's nose begins."[377] The enumeration of Rights most likely to be abused, and disclaiming the notion they comprise the totality of naturally occurring Rights, in no way repudiates the idea personal behavior has no statutory limit in the United States; conduct is only bound by its natural limitation.

Merely by designating Liberty an Unalienable Right, the natural limitation on Liberty is both implicit and indispensible; in a society wherein Liberty is Unalienable, the natural limitation upon Liberty invalidates any law that does not respect it. Nonetheless, from its inception, the United States has overwhelmed American citizens with a dizzying array of laws that severely restrict personal conduct that inflicts no demonstrable harm upon another citizen. Congress, the States, regions, and municipalities pass the laws, and the Supreme Court holds them constitutional. The Supreme Court has historically been so active in limiting Personal Autonomy and maintaining what it describes as a "social interest in order and morality,"[378] that the Court has been ironically dubbed the "Guardians of the Moral Order."[379]

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[376] Thomas Jefferson, "Letter to Isaac H. Tiffany, 4 April 1819" *Thomas Jefferson Papers at the Library of Congress* (Washington, DC: Library of Congress); accessed 20 July, 2015: http://rotunda.upress.virginia.edu/founders/default.xqy?keys=FOEA-print-04-02-02-0303

[377] Zechariah Chafee, "Freedom of Speech in War Time," *Harvard Law Review*, *Volume 32, Number 8* (Cambridge, MA: The Harvard Law Review Association—June, 1919), 957.

[378] Zechariah Chafee Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press—1941), 150; Justice Frank Murphy, "Opinion," *Chaplinsky v. New Hampshire* [315 U.S. 568, 572] 1942.

[379] Mark Warren Bailey, *Guardians of the Moral Order: The Legal Philosophy of the Supreme Court 1860-1910* (DeKalb, IL: Northern Illinois University Press—2004).

# *Debatable Rights*

*A* well-regulated *Militia, being necessary to the security of a free State, the Right of the People to keep and bear Arms, shall not be infringed…No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner—nor in time of war—but in a manner to be prescribed by law.*

—The Second & Third Amendments[380]

In any discussion of Constitutional Rights, it would be remiss to ignore the Second Amendment—perhaps the most controversial and highly-contested sentence in the Constitution—and the Third Amendment, which may be the least known sentence. The Plain Meaning of the words and phrases Third Amendment should be self-evident; the Plain Meaning of the of the Second Amendment has been clouded by misdirection in furtherance of a particular political agendum. The Second and Third Amendments are very narrowly focused upon limiting the actions of the federal government with respect to a Militia and soldiers; these amendments neither implicitly nor explicitly express individual Political Rights, Judicial Procedure Rights, or Personal Rights. The Third Amendment addresses the forced quartering of soldiers in private American homes; something that has not occurred in the United States since the Civil War and is unlikely to be repeated. The Second Amendment is unique amongst the Bill of Rights in that it is not self-contained; it must be viewed in its proper context: as part of a plan to replace the traditional standing army with a federally regulated citizen militia in each State. The Second Amendment works in conjunction with Article I, Section 8, Clauses 12-16, of the Constitution; the two Uniform Militia Acts of 1792[381] organized the State militias as directed in Article I of the Constitution.

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[380] James Madison, et al, "Second Amendment" & "Third Amendment," *Bill of Rights* (Philadelphia, PA: 1st United States Congress—25 September, 1789).

[381] Rep. Jeremiah Wadsworth, "The Uniform Militia Act of 2 May, 1792" & "The Uniform Militia Act of 8 May, 1792" (Philadelphia, PA: 2nd United States Congress—Session I, 2 May & 8 May, 1792).

Whatever the intent or understanding of the *Coupistes* in the Secret Proceedings may or may not have been as the Second and Third Amendments were drafted, is totally irrelevant to the Plain Meaning of the words and phrases of the two amendments. Fears of a standing federal army, fears of an occupation of a State or States by federal troops, fears of a slave revolt, the English Bill of Rights of 1689, the so-called "Glorious Revolution" of 1688-1689, and other circumstances and events, may or may not have influenced the inclusion of these two amendments in the Bill of Rights. The thinking and intentions behind the Bill of Rights are interesting sources of speculation, debate, and study, and of great importance to the historical record and its understanding. All such activities are, however, inconsequential with respect to the Plain Meaning and legal ramifications of the Bill of Rights and Constitution; with respect to the law, all that matters is exactly what is committed to posterity in writing.

There is simply no other Plain Meaning of the words and phrases of the Third Amendment than its prohibition of the forcible quartering of United States soldiers in the private homes of American citizens. The Amendment is as straightforward and unambiguous as a sentence can be. The Third Amendment does not establish an implicit Right to Privacy as the Supreme Court held in *Griswold v. Connecticut* (1965);[382] nor does it explicitly or implicitly demonstrate an "Original Intent" of the Framers to constrain executive powers during wartime, as the Court held in *Youngstown Sheet & Tube Co. v. Sawyer* (1952).[383] The absolute and sacrosanct Right to Privacy is inherent in the Unalienable Right of Personal Autonomy; the powers of the President are constrained in wartime, as in peacetime, by the checks of Congressional legislation and control of funding, Supreme Court rulings, and international treaties and laws.

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[382] Justice William O. Douglas, "Opinion," *Griswold v. Connecticut* [381 U.S. 479, 484 ]—1965.
[383] Justice Robert H. Jackson, "Concurring Opinion," *Youngstown Sheet & Tube Co. v. Sawyer* [343 U.S. 579, 644]—1952.

With respect to the Second Amendment, it is useful to note that a *militia* is a "part of the organized armed forces in a country liable to call only in emergency," and "the whole body of able-bodied male citizens declared by law as being subject to call for military service;"[384] as well as a "military force raised from the civilian population."[385] The "Militia Clause" (the 15th of Article I, Section 8) mandates Congress "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions," and the "Organizing the Militia Clause" (the 18th clause) directs Congress to:

> …provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress. [386]

In other words, the Second Amendment is an addendum to the "Militia Clause" and the "Organizing the Militia Clause"—which provide a clear definition and parameters of the "well-regulated Militia" to which the Amendment refers. The "Organizing the Militia Clause" also directs Congress to establish a network of well-regulated State militias, which it originally did through the Uniform Militia Acts of 1792. The "Militia Clause" and the "Organizing the Militia Clause" render the Second Amendment somewhat redundant, as the "Organizing Clause" already mandates armed and disciplined State militias. As well-regulated State militias are *constitutionally mandated*, Congress has continued to provide for organizing, arming, and disciplining, the Militia in the form of the National Guard, which is a network of State militias organized exactly as described in the "Organizing the Militia

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[384] Frederick C. Mish, Editor-In-Chief, "militia; *noun,*" *Merriam-Webster's Collegiate Dictionary, Eleventh Edition.* Springfield, MA: Merriam-Webster, Incorporated—2005), 738.
[385] "militia; *noun*," *OED Online* (Oxford, UK: Oxford University Press—September 2014); accessed 18 October, 2014: http://www.oed.com/view/Entry/118431?rskey=iy1uB6&result=1#eid
[386] James Madison, et al, "Article I, Section 8, Clause 18," *The Constitution of the United States* (Philadelphia, PA: The Secret Proceedings—17 September, 1787).

Clause." On the other hand, Congress has not faithfully observed the Constitutional mandate of a temporary army, as described in the "Army Clause" (the 12th clause); quite the contrary.

The "Army Clause" empowers Congress to "raise and support Armies, but no Appropriation of Money to that Use shall be for a *longer Term than two Years*"[387]—which would seem to preclude a standing army by limiting any army raised to a two-year existence. This bears repeating: the Constitution prohibits a standing army in the United States; its armies are to be temporary and raised on an as-needed basis. The network of State militias has no such limitations on its existence; the National Guard is designed to be the permanent self-defense force of the United States. Obviously, the fact that the United States has today a standing army of over 500,000 troops, as well as a standing Air Force and Navy of over 300,000 each, and 200,000 Marines, all augmented by approximately 350,000 "Reserves," demonstrates the enormous loophole in the Constitution that Congress found after the War of 1812: because the Constitution does not expressly forbid a standing army, it may simply be renewed every two years and need never be disbanded. President James Madison considered the State militias a miserable failure in 1812, and created an unconstitutional standing army in 1815, which has stood since. The cost of American "defense" has escalated every year thereafter, and the United States now has a "real defense budget" that tops $1 *trillion* per year;[388] which is larger "than the next eight nations *combined,*"[389] and arguably the primary source of the huge American "nation debt" of nearly $20 trillion.

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[387] James Madison, et al, "Article I, Section 8, Clause 12," *The Constitution of the United States* (Philadelphia, PA: The Secret Proceedings—17 September, 1787).

[388] Steve Clemons, "The Real Defense Budget," *The Atlantic* (Washington, DC: The Atlantic Monthly Group—20 February, 2012); accessed 21 July, 2016: http://www.theatlantic.com/politics/archive/2012/02/the-real-defense-budget/253327/

[389] Lauren Carroll, "Obama: US Spends More On Military Than Next 8 Nations Combined," *PolitiFact* (St. Petersburg, FL: Tampa Bay Times—Wednesday, 13 January, 2016, 00:29 ), *emphasis added*; accessed 21 June, 2016: http://www.politifact.com/truth-o-meter/statements/2016/jan/13/barack-obama/obama-us-spends-more-military-next-8-nations-combi/

The Second Amendment has absolutely no correlation with the freedom of an individual citizen to own a firearm; that freedom is part of a citizen's Personal Autonomy. Any armament falling under the Second Amendment must be "well-regulated" by Congress, which Congress refuses to do. Any personal weapon is subject to the same natural limitation as any other personal Liberty: whether or not it presents a clear and present danger to anyone else. The notion that the Second Amendment confers a sacrosanct "right" of an individual to own military grade weapons—or any weapons—is, at best, a misguided belief that became a mistake in law with a 5-4 majority of the Supreme Court in *District of Columbia v. Heller* (2008).[390] As the Supreme Court had previously, and correctly, concluded in *United States v. Miller* (1939): "[I]n the absence of any evidence tending to show that possession or use of a [sawed-off] shotgun . . . has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument."[391] It is difficult, if not impossible, to imagine the Second Amendment being repealed in the present political climate, but even it were, such a repeal could do nothing to reduce personal gun ownership, which falls under the Ninth Amendment and the First Principles. Such a repeal would not even eliminate State militias, which are authorized in Article I. In other words, the focus upon the Second Amendment is simply a highly effective misdirection that has been implanted in the American collective memory, but begs the question: "Why?"

[390] Justice Antonin Scalia, "Opinion," *District of Columbia v. Heller* [554 US 570]—2008.
[391] James C. McReyonlds, "Opinion," *United States v. Miller* (1939) [307 U.S. 174, 178]—1939.

# V: *Mandate of the Supreme Court*

*[The Constitution] has given, according to [John Marshall's] Opinion, to one [branch] alone, the right to prescribe rules for the government of the others—and [a branch that] is unelected by, and independent of the Nation…*[392] *to consider the judges the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed…Our judges are as honest as other men—and not more so.*

—Thomas Jefferson[393]

The Federalist *coup d'état* did not culminate with the imposition of the Constitution of the United States; that was simply the first stage. The second stage began when President John Adams appointed John Marshall, erstwhile *Coupiste*, arch-Conservative, ardent Federalist and Opulent, to the post of Chief Justice of the Supreme Court in 1801. Throughout his thirty-four-year tenure, the longest in Court history, the Marshall Court effectively re-wrote many portions of the Constitution that had been necessary for its ratification, but conflicted with Federalist agenda. The Court did so with the tacit approval of Federalists and other Opulents in Congress, and guided by the blueprint of the extra-Constitutional theories and doctrines expounded by Marshall's friend, Alexander Hamilton, in *The Federalist*. Marshall initiated a Court tradition of introducing unconstitutional extraneous material and theories into rulings in order to achieve the desired result, rendering each Supreme Court term essentially "a sitting constitutional convention"[394] that engages in the "re-writing of our Constitution by judicial fiat [*fiat justitia*]."[395] Marshall had "almost no formal schooling and

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[392] Thomas Jefferson, "Letter to Judge Spencer Roane, 6 September, 1819," in *The Works of Thomas Jefferson, Volume XII: Correspondence and Papers 1816-1826,* Paul Leicester Ford, Editor (New York, NY: G.W. Putnam & Sons—1905), 137.
[393] Thomas Jefferson, "Letter to William Charles Jarvis, 28 September, 1820," Ibidem, 162.
[394] James Joyner, "The Supreme Court as Sitting Constitutional Convention," in *Outside the Beltway* (Quantico, VA: James Joyner—Sunday, 28 June, 2015), accessed 07 September, 2015: http://www.outsidethebeltway.com/the-supreme-court-as-sitting-constitutional-convention/
[395] Christoper Hedges, "Speech: Defining the Moral Imperative of Revolt, 8 June, 2015" (Seattle, WA: Town Hall—8 June, 2015), 07:04; accessed 17 July, 2015: https://www.youtube.com/watch?v=iA41ggsdeXE

studied law for only six weeks,"[396] but he had an uncanny ability to ferret out weaknesses in the Constitution that allowed him to transform the Court into the most powerful branch of government; one that determines the meaning of every law, and the extent, or limit, of the power and duties of everyone and every entity in government—including the Court itself. It can even make a candidate President if he or she does not actually win an election.

The Supreme Court is commissioned by "Article III" of the Constitution—"The Judiciary"—which is comprised of just three brief sections containing a total of six clauses in nine sentences. It prescribes a Supreme Court that may be unrecognizable to anyone familiar with the modern Court. Article III stipulates "the Supreme Court shall have Appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and *under such Regulations as the Congress shall make*," and the justices "shall hold their Offices during Good Behavior, and shall, at stated times, receive for their Services a compensation which shall not be diminished during their Continuance in Office."[397] That is the extent of the duties of the Court and the Checks & Balances placed upon it by the Constitution. In other words, the lone constitutional check and balance upon the concentration of power within the Judicial Branch is the duty of Congress to "regulate" the Court. Such regulation has thus far been limited to the Eleventh Amendment in 1795, and fixing the number of justices; which was last done in 1869. Congress has otherwise inexplicably ignored its duty to regulate the Court and instead left it free to determine its own powers and procedures without interference, aided by the fact that "Justices of the Supreme Court are not formally bound by any code of conduct."[398]

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[396] Leonard W. Levy, "John Marshall," *The Reader's Companion to American History*, Eric Foner & John A. Garraty, Editors (Boston, MA: Houghton Mifflin Harcourt Publishing Company—1991), 703.
[397] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article III, Section 1.
[398] Christopher S. Murphy (D-CT), *S835: Supreme Court Ethics Act of 2017* (Washington, DC: United States Senate—Introduced 5 April, 2017), Section II (2).

The powers and parameters of the Supreme Court were effectively "defined"—the euphemism by which the process has come to be known—not by the Constitution, but by John Marshall, who was realizing ideas propagated by Alexander Hamilton: "Marshall was able to give an imprimatur to what Hamilton had earnestly commenced."[399] This defining was primarily achieved through invocation of extrinsic theories that have absolutely no constitutional basis, coupled with the importation into American law of English Common Law and Statutory Law, *in toto* and *inscriptus*.[400] Marshall institutionalized such importation inspired by Hamilton's Federalist #84: "the Constitution adopts, in their full extent, the Common and Statute Law of Great Britain, by which many other rights, not expressed in it, are equally secured."[401] However, this contention defies Article I, Section 1: "All Legislative Powers herein granted shall be vested in a Congress of the United States."[402] The importation of every British law dating back well over fourteen hundred years to the *Law of Æthelberht*[403] in the early seventh century, usurped the "Legislative Powers" of Congress; such laws had been passed by Parliament or kings, not by Congress. Some aspects of English law are undoubtedly useful, or even crucial, to American jurisprudence; but the Judicial Branch is not empowered to simply circumvent the responsibilities of the Legislative Branch via *fiat justitia.* Furthermore, "one of the objectives of the Revolution was to *get rid* of the English

[399] Broadus Mitchell, "Review—*John Marshall & Alexander Hamilton: Architects of the American Constitution*, by Samuel J. Konefsky," *The Yale Law Journal, Volume 75, Number 2* (New Haven, CT: The Yale Law Journal Company, Inc.—December, 1965), 357.
[400] Enrico Pattaro, "*Inscriptus* is a tricky Latin word…if understood as an adjective…[it means] *unwritten*," *A Treatise of Legal Philosophy and General Jurisprudence: Volume 1: The Law and the Right; A Reappraisal of the Reality that Ought to Be* (Dordrecht, NL: Springer—2005), 79.
[401] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[402] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article I, Section 1.
[403] Æthelberht (c. 560 to 24 February 616) is considered the first king to hold *imperium* over the other Anglo-Saxon kingdoms of Britain.

Common Law."[404] There was, and is, nothing preventing Congress from passing laws based upon English law if it deems them necessary and prudent, but the Marshall Court epitomized the concept popularized by President George W. Bush: "legislat[ing] from the bench."[405]

John Marshall not only imported the whole of English law, he also heavily relied in his decisions upon the theories of an English jurist, Sir William Blackstone, as expressed in a series of lectures compiled as *Blackstone's Commentaries on the Laws of England*:[406] "the seminal decisions of the Supreme Court under John Marshall were…steeped in Sir William Blackstone's *Commentaries on the Laws of England*."[407] It was almost as if Marshall were sitting in an English court, not an American one. Through his *Commentaries*, Blackstone had become a popular legal theorist amongst Marshall's fellow Federalists, Conservatives, and *Coupistes*, including such prominent American barristers and government officials as James Wilson, John Jay, and John Adams,[408] although Blackstone was poorly regarded by his peers in the English legal system: "As a judge, his rulings on circuit were set aside more frequently than those of any other judge of the courts in London."[409] The tradition of relying upon Blackstone established by Marshall persists to this day: "The United States Supreme Court still cites the *Commentaries* approximately ten times each year."[410]

It was the unconstitutional invocation of lifetime tenure and the attendant

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[404] Henry Schofield, "Freedom of the Press in the United States." *American Sociological Society Papers & Proceedings,* Volume IX (Chicago, IL: University of Chicago Press—December, 1914), p. 76 [emphasis added].
[405] President George W. Bush, "Remarks Announcing Nominations for the Federal Judiciary, 9 May, 2001," *Weekly Compilation of Presidential Documents, Number 37* (Washington, DC: Office of the Federal Register (OFR), National Archives and Records Administration (NARA)—2001), 724–25.
[406] Sir William Blackstone [1753], *Blackstone's Commentaries on the Laws of England in Four Books*, George Sharswood, Editor (Philadelphia, PA: J.B. Lippincott Company—1893), *passim*.
[407] Robert A. Ferguson, *Law & Letters in American Culture* (Cambridge, MA: Harvard University Press—1984), 11.
[408] Albert J. Beveridge, *The Life of John Marshall* (Boston, MA: Houghton-Mifflin Company—1919), 55-56.
[409] Sir James Prior, *Life of Edmund Malone: Editor of Shakspeare; With Selections From His Manuscript Anecdotes* (London, UK: Smith, Elder & Company—1860), 431-432.
[410] Albert Alschuler, "Rediscovering Blackstone," *University of Pennsylvania Law Review, Volume 145, Number 1* (Philadelphia, PA: University of Pennsylvania Law Review—November, 1996), 16.

unconstitutional notion of an "independent judiciary," both imported from England, which rendered John Marshall and the Supreme Court nearly invulnerable, and effectively accountable to no one. Judicial Independence frees the Court from any and all "consequences for the decisions they make."[411] This was another importation championed by Alexander Hamilton, who asserted without factual basis that the Constitution provided for "the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges, which must be essential to the faithful performance of so arduous a duty."[412] Hamilton glowingly extolled "The experience of Great Britain affords an illustrious comment on the excellence of the institution."[413] Hamilton's observations about the lifetime tenure for British jurists may or may not have been true, but Hamilton seemed oblivious to the fact that the system of "Checks & Balances" created by the Constitution is at considerable variance with the government structure and legal system of England, which are simply not directly applicable to the American system.

Prior to the 1701 "Act of Settlement," English judges were appointed and removed at will by the King of England, which meant British courts were not a separate branch of government, but rather an extension of royal power, and outcomes were frequently pre-determined by order of the monarch. The "Act of Settlement" was meant to insulate the British judiciary from such royal influence by granting judges lifetime tenure and thereby independence; the phrase "shall hold their Offices during Good Behavior"[414] in Article III,

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[411] Gray, Ritter & Graham, P.C., "Judicial Independence," *The Judicial Learning Center* (St. Louis, MO: The Judicial Learning Center—2015); accessed 20 January, 2017: http://judiciallearningcenter.org/judicial-independence/

[412] Alexander Hamilton ["Publius"], "The Judiciary Department," *The Federalist No. 78* in *McLean's Edition* (New York, NY: J. & A. McLean—28 May, 1788).

[413] Alexander Hamilton ["Publius"], "The Judiciary Department," *The Federalist No. 78* in *McLean's Edition* (New York, NY: J. & A. McLean—28 May, 1788).

[414] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article III, Section 1.

Section 1, of the Constitution, coupled with the "Act of Settlement," are used to justify lifetime tenure of the federal judiciary. However, the Constitution of the *United States* does not allow the President to remove a sitting justice for *any* reason; nor does the Constitution institute an "independent judiciary." Instead, the Constitution has the vaunted, if rather tepid, system of "Checks & Balances"[415]—the purpose of which is to ensure that *none* of the three branches is completely independent. Each of the three branches is prevented from exceeding its constitutionally assigned duties, and amassing concentrated power, via the checks provided by the obligations and powers of the other two branches. In other words, the Supreme Court is supposed to be regulated and accountable, not a completely autonomous entity.

Article III, Section 2, Clause 2, of the Constitution mandates the Supreme Court must operate "under such Regulations as the Congress shall make."[416] The nature of such regulation is left to Congress to determine, allowing Congress the latitude to set term limits and the size of Court, methods for recall and public accountability, ethics guidelines, schedule and the duration of sessions, as well as the number of cases heard per session. Yet, Congress accepted John Marshall's assertion of lifetime tenure for the Supreme Court and other lower federal courts without a whimper, and Congress has only ever nominally regulated the Court—and not for over one hundred years. The Eleventh Amendment, passed in 1794 and ratified in 1795, was adopted to overrule the *Chisholm v. Georgia*[417] decision of 1793, and ostensibly limits the power of the Judiciary Branch and re-affirms State sovereign immunity. However, Marshall later construed it to forbid states "to determine for themselves the extent

[415] Alexander Hamilton or James Madison ["Publius"], "The Structure of the Government Must Furnish the Proper Checks & Balances Between the Different Departments," *The Federalist No. 51* in the *New York Packet* (New York, NY: New York Packet—8 February, 1788).
[416] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article III, Section 2, Clause 2.
[417] Chief Justice John Jay & Associate Justices John Blair, James Wilson, & William Cushing, "Opinions," *Chisholm v. Georgia* [2 U.S. 419]—1793.

of the jurisdiction of federal courts."[418] Congress has regulated the size of the Court, which fluctuated in its first century, but the number of justices was fixed at nine in 1869 and was not modified thereafter. In all other instances, the Supreme Court has been allowed to regulate itself and has been immune from any sort of accountability to the *Dêmos* or to Congress, arguably making a mockery of the exalted system of Checks & Balances within the Constitution. The Court may be independent of Checks & Balances, but it is not independent of partisan and personal agenda; the Court has demonstrated throughout its history that no matter how a statute or the Constitution is written or amended by Congress, the Court will simply interpret it to suit the purposes of the Court's sitting majority.

In fact, whether or not it is ever possible to remove a sitting Supreme Court justice for any reason whatsoever is unclear, due to the vague wording of Article III. The term "Good Behavior" in Article III has always been problematic with respect to the Court; it is not defined anywhere in the Constitution and has been long been presumed to be defined as not being convicted of "Treason, Bribery, or other High Crimes and Misdemeanors."[419] Yet, that phrase is from Article II, and pertains to the Executive Branch; the Constitution in no way connects it with the Judiciary or the removal of sitting judges. The phrase "Civil Officers" in Article II, Section 4, cannot reasonably be extended to include judges—the term is not defined in the Constitution, it is so vague as to be almost meaningless, and Article II pertains to the Executive Branch, not the Judiciary. Even if a case could be made that judges and Justices are indeed Civil Officers, it is doubtful any Justice or Civil Officer would be impeached or removed today for infractions such as "trespassing," "disorderly conduct,"

[418] Samuel J. Konefsky, *John Marshall & Alexander Hamilton: Architects of the American Constitution* (New York, NY: The Macmillan Company—1964), 92.
[419] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article II, Section 4.

"possession of cannabis," "reckless driving," or "public intoxication."[420] There is a theory that "misdemeanors"[421] refers to felonies, which seems a facile neological interpretation with little credence; the terms "misdemeanor" and "felony" were well known in 1787 and not interchangeable. A felony is a "high crime;" a misdemeanor is a "low crime." At any rate, all such supposition is irrelevant because without regulation from Congress, the Supreme Court itself ultimately determines meaning of "Good Behavior" and "Civil Officers," and therefore decides whether or not any of its members can be removed.

Events in the first few years of the Marshall Court obviated any threat of fitness challenges and impeachments for members of the Supreme Court. The lone sitting Supreme Court justice ever to be impeached was charged in 1803, at the behest of President Thomas Jefferson, and acquitted in 1805 by a Senate with a solid Democratic Republican majority. The absolution of Samuel Chase, a rabid Federalist appointee of George Washington, who flouted judicial procedure and ethics with overt political partisanship and serial aggressive prosecutorial intervention in trials, so thoroughly disgusted Jefferson that he bitterly lamented what he perceived to be the unwise, undemocratic, and unconstitutional impunity of the Judiciary: "For experience has already shown that the [check] impeachment has provided is not even a scarecrow."[422] As a consequence, it was unnecessary for John Marshall to actively pursue eliminating the possibility of impeachment, conviction, and dismissal, for members of the Supreme Court—and the insulation from removal has endured.

John Marshall's was instead able to focus his efforts upon such manoeuvres as the

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[420] Gerald & Kathleen Hill, "misdemeanor," *The People's Law Dictionary* (New York, NY: MJF Books/Fine Communications—2002); accessed 20 July, 2016: http://dictionary.law.com/Default.aspx?selected=1259

[421] Ibidem.

[422] Thomas Jefferson, "Letter to Judge Spencer Roane, 6 September, 1819," in *The Works of Thomas Jefferson, Volume XII: Correspondence and Papers 1816-1826,* Paul Leicester Ford, Editor (New York, NY: G.W. Putnam & Sons—1905), 137.

unconstitutional and specious importation of "Judicial Review" from England. This stratagem was another first advocated by Alexander Hamilton, without supporting language in the Constitution: "…whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former."[423] The concept of Judicial Review stems from an opinion by Sir Edward Coke, Chief Justice of the Court of Common Pleas in England, in *Dr.Bonham's Case,* in 1610, in which he presages Hamilton's argument: "When an Act of Parliament is against Common Right and Reason, or repugnant, or impossible to be performed, the Common Law will controll it, and adjudge such Act to be void."[424] Judicial Review was institutionalized by Marshall's famous 1803 opinion in *Marbury v. Madison*: "It is emphatically the province and duty of the Judicial Department to say what the Law is…"[425] *Marbury v. Madison* is often lauded for its logic and its "genius,"[426] yet it is little more than a convoluted, obfuscatory rationalization of that which has no justification in the Constitution it is interpreting. Thereafter, Judicial Review in the United States has provided the Court with the exclusive and unregulated power to review the constitutional validity of every federal, state, and municipal statute, regulation, or action.

Certainly, determining what is constitutional, and what is not, ought to be a function of the Supreme Court as the final court of appeal. However, history has proven that without regulations from Congress limiting such interpretation to the Plain Meaning of the actual words and phrases in the Constitution and prohibiting reliance upon extraneous and unconstitutional material, Judicial Review effectively reduces the mandates of the

[423] Alexander Hamilton ["Publius"], "The Judiciary Department," *The Federalist No. 78* in *McLean's Edition* (New York, NY: J. & A. McLean—28 May, 1788).
[424] Sir Edward Coke, "Opinion," *Dr. Bonham's Case*, Court of Common Pleas [8 Co. Rep. ii4a, xInSa]—1610.
[425] Chief Justice John Marshall, "Opinion," *Marbury v. Madison*, [5 U.S. 137, 177], 1803.
[426] Alfred P. Carlton, Jr., "The Supreme Court's First Great Case: Marbury v. Madison" (Chicago, IL: American Bar Association—2003), iii.

Constitution to mere suggestions. As Charles Evans Hughes, who later became Chief Justice, remarked in a speech: "We are under a Constitution; but the Constitution is what the judges say it is."[427] The Federalist-dominated Congress did not act to regulate Judicial Review during either the Jefferson or Madison presidencies that spanned the sixteen years from 1801 to 1817, and the die was effectively cast ("jacta alea est"). Nothing prevents Congress from passing regulation of the Supreme Court at any time, except the possibility that the Court will rule that regulation of the Court itself is unconstitutional due to "Judicial Independence." Since *Marbury v. Madison*, the Supreme Court has interpreted laws in a way that essentially forces everyone in American society to conform to the social, political, economic, and moral vision of those sitting on the Supreme Court bench, often in contravention of the Unalienable Right of Personal Autonomy—by which each and every individual citizen follows their personal moral code. In short, modern American society is the product of the Supreme Court.

Another unconstitutional import from British Common Law is *stare decisis*—literally, "the decided stands"—meaning "to stand by decided cases; to uphold precedents; to maintain former adjudications,"[428] which makes the rulings of any Judicial Review exponentially more powerful and far-reaching. *Stare decisis* is fundamentally an *ad infinitum* perpetuation of judicial rulings, which enshrines any mistake in law made by any court in the country, which are thenceforth nearly impossible to undo, and in most cases obviates challenges, as it:

> …has come to take on a life of its own, with all precedents being presumed to be well-founded, unbiased legal decisions, rather than political decisions, and presumed to have both the authority of the constitutional enactments on which they are based, plus that of the precedents on which they are based…[429]

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[427] Charles Evans Hughes, "Speech Before the Elmira Chamber of Commerce, 3 May, 1907," *Addresses & Papers* (New York, NY: G.P. Putnam's Sons—1908), 139.
[428] Henry Campbell Black, M.A. [1891 & 1910], "stare decisis," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 1261.
[429] John Roland, "How *Stare Decisis* Subverts the Law," *constitutionsociety.org* (San Antonio, TX: Constitution Society—10 June, 2000); accessed 29 July, 2016: http://www.constitution.org/col/0610staredrift.htm

The ills of *stare decisis* were not well known in America when the doctrine was imported from England; *stare decisis* had a long history in English law of repressing the interests of the masses—Jonathan Swift famously railed against the practice in his classic 1726 satirical novel, *Gulliver's Travels*, which is still standard reading in many American college courses:

> [it is] a maxim amongst...lawyers, that whatever has been done before may legally be done again; and therefore they take special care to record all the decisions formerly made against common Justice and the general reason of mankind.[430]

The Supreme Court's own website crows: "Few other courts in the world have the same authority of constitutional interpretation and none have exercised it for as long or with as much influence."[431] Enumerable times in its nearly two centuries of existence, the Court has chosen Absurdity over the Plain Meaning of the words and phrases in the Constitution and the Declaration of Independence; it has relied in its opinions upon unconstitutional British Common Law and Statutory Law, and *stare decisis* from English Common Law; it has invented all manner of unconstitutional legal theories to reach foregone conclusions; and it has simply ignored all or large swaths of the Constitution, its amendments, and the First Principles. Although the Supreme Court has not yet undertaken a wholesale revision of the Constitution, such an overhaul is nonetheless *possible* and permissible under current Supreme Court interpretation of the Constitution and lack of Congressional regulation. Thus far, the Court's modification of the Constitution has been "gradually, and by insensible degrees,"[432] and may be imperceptible to some. Over the years, the combined personal beliefs and philosophies of the one hundred sixty justices who have served on the Court have been

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[430] Jonathan Swift [1726], *Gulliver's Travels* (New York, NY: Penguin Classics—2003), 210.
[431] Supreme Court, "The Court and Constitutional Interpretation," *supremecourt.gov* (Washington, DC: United States Supreme Court—2016); accessed 27 July, 2016: https://www.supremecourt.gov/about/constitutional.aspx
[432] Robert Yates [Brutus], "Brutus Number 14: To The Citizens of the State of New York," *New York Journal* (New York, NY: New York Journal—28 February, 1788).

methodically imposed upon the country. Whether a member of the Court is Conservative, Liberal, or Progressive, they have more in common with each other than with the citizens of the country. They are overwhelmingly Európan-American, male, graduates of Ivy League schools, and believers in some version or variation of the *status quo* that generally includes the oxymoronic and unconstitutional concept of an imagined "Ordered Liberty,"[433] championed by Justice Benjamin Cardozo.

Cardozo plucked the notion of Ordered Liberty from the work of Irishman Edmund Burke, founder of modern Conservatism and a Conservative icon on both sides of the Atlantic.[434] The term originated as the "Spirit of Rational Liberty,"[435] and there is a self-evident cognitive dissonance to Burke's notion of "Liberty connected with Order"[436] that must have nettled Patriot intellectuals such as Benjamin Franklin, Thomas Jefferson, Thomas Paine, and Patrick Henry. "Liberty" is freedom from any imposed subjective ideal of "Order." Ordered Liberty imagines there is a "compelling state interest"[437] to preserve the existing political, social, economic, and moral order, and that "Liberty" is limited by that arbitrary Order, rather than by the Liberty of others. John Stuart Mill countered with the observation that if there could exist such a thing as "Rational Liberty," it would be Liberty of the individual "over himself; over his own body and mind, the individual is sovereign."[438] Yet, the Supreme Court has never betrayed any discomfort with the nonsensical quality of the term Ordered Liberty, as it is delivered with equanimity by its members.

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[433] Benjamin Cardozo, "Opinion," *Palko v. Connecticut*, [302 U.S. 319, 325]—1937.
[434] Andrew Heywood, *Political Ideologies: An Introduction. Third Edition* (Hampshire, UK: Palgrave Macmillan—2003), 74.
[435] Edmund Burke [1790], "Reflections on the Revolution in France," *The Works of the Right Honorable Edmund Burke, Volume III* (London, UK: John C. Nimmo—1887), 235.
[436] Edmund Burke, "Speech Upon His Arrival at Bristol, 13 October, 1774," *Edmund Burke's Connection with Bristol: From 1774 Till 1780,* George Edward Weare, Editor (Bristol, UK: William Bennett—1894), 47.
[437] William J. Brennan, Jr., "Opinion," *Sherbert v. Verner* [374 U.S. 398, 398]—1963.
[438] John Stuart Mill [1859], *On Liberty* (London, UK: Longmans, Green Reader & Dyer, 1880), 29.

The Supreme Court relies upon myriad unconstitutional and extrinsic material, theories, and imagined concepts, in preserving an envisaged Ordered Liberty in American society. The Court imagines an "Original Intent" of the Framers that exists independent of the Plain Meaning of the words and phrases in the Constitution and the Declaration of Independence, one that trumps the actual written words. The Court imagines Consent where none exists. It imagines a law may be repealed merely by implication. It imagines that Equality and "Protected Classes" are not mutually exclusive. It imagines that preserving a "social interest in order and morality"[439] does not interfere with the First Amendment and the Ninth Amendment. It imagines the Constitution contains "implied powers" that exceed the duties expressly mandated. The Court arguably has imagined for two centuries a Constitution far different from the document residing under glass in the National Archives.

There may be no better example of the Court's indefatigable imagination than the disputed, neological political and legal theory of *imagined intent*, which is variously known as "Intentionalism," "Originalism," "Original Intention," or most commonly, "Original Intent." Original Intent posits "the historically demonstrable intentions of the Framers should be binding upon contemporary interpreters of the Constitution;" [440] whereas Originalism or Intentionalism focuses upon the "attempt to ascertain the meaning of a particular provision…by determining how the provision was understood at the time it was drafted and ratified."[441] The very idea of disregarding the Plain Meaning of words and phrases in favor of the divination of the intentions and understanding of the Framers is categorically absurd—if

[439] Zechariah Chafee Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press—1941), 150; first quoted by the Court in *Chaplinsky v. New Hampshire* [315 U.S. 568, 572]—1942.
[440] H. Jefferson Powell, "The Original Understanding of Original Intent," *Harvard Law Review, Volume 98, Number 5* (Cambridge, MA: The Harvard Review Association—March, 1985), 885-886.
[441] Jeffrey Lehman &, Shirelle Phelps, Editors, "Original Intent," *West's Encyclopedia of American Law, Edition 2* (Eagan, MN: West Group Publishing—1997), 109.

for no other reason than it directly conflicts with, and contradicts, the well-established twin legal precedents that harken back to the earliest of the English Common Laws imported by John Marshall: the *Plain Meaning Rule* and the *Absurdity Doctrine*. In concert, these tenets arguably form the basis of both American and English Common Law—and for good reason.

The Plain Meaning Rule, or "Literal Rule," directs that "when the language is unambiguous and clear on its face, the meaning of the statute…must be determined from the language of the statute…and not from extrinsic [sources]."[442] The Absurdity Doctrine "dictates that statutes are to be interpreted using the ordinary, Plain Meaning of the language of the statute…[unless it leads] to absurd or wholly impracticable consequences."[443] In at least one Supreme Court opinion, the Plan Meaning Rule has been directly affirmed, specifically with regard to the Constitution, but applicable to all Organic Laws: "[the Constitution] was written to be understood by the voters; its words and phrases were used in their normal and ordinary [meaning]—as distinguished from [any] technical meaning. Where the intention is clear, there is no room for construction and no excuse for interpolation or addition."[444] In fact, extraneous material is universally eschewed in serious textual analysis in any discipline or context; the meaning of any text is "both reducible to, and discoverable in, its explicit language."[445] The Plain Meaning of the words and phrases in the Declaration of Independence, the Constitution, and the Bill of Rights, have remained unchanged since 1776, 1787, and 1789, respectively; terms such as Equality, Liberty, Unalienable Rights, Consent, the General Welfare, Freedom of Speech, Freedom of the Press, and the Right to Peaceably

[442] Frederick C. Mish, Editor, "Plain Meaning Rule; *noun*" *Merriam-Webster's Dictionary of Law* (Springfield, MA: Merriam-Webster, Incorporated—1996), 365.
[443] John F. Manning, "The Absurdity Doctrine," *Harvard Law Review, Volume 116, Number 8* (Cambridge, MA: Harvard Review Association—June, 2003), 2389.
[444] Justice Owen J. Roberts, "Opinion," *United States v. Sprague*, [282 U. S. 716, 731]—1931.
[445] Jack N. Rakove, "The Original Intention of Original Understanding," *Constitutional Commentary, Volume 13* (Minneapolis, MN: University of Minnesota Law School—1996), 159.

Assemble, mean today exactly what they meant when the quill was originally put to parchment. This is not *mekh Rasnal* (ancient "Etruscan") or *eme'Ğir* (ancient "Sumerian"), but rather normal, ordinary, standard English, without colloquialisms.

Original Intent was concocted not because the words and phrases in the Constitution, the Bill of Rights, and the Declaration of Independence, could not be understood—but precisely because they *are* understood quite clearly. The Court is therefore compelled to devise ways to circumvent the Plain Meaning of words and phrases that interfere with a particular agendum of the justices, yet maintain its pretense of wisdom, integrity, and impartiality. Since the reign of Chief Justice John Marshall, the Court has sought through labyrinthine language and convoluted logic to disguise its partisanship, prejudice, and wont to preserve the existing political, social, economic, and moral order—and its suppression of the Plain Meaning of the Constitution. The Plain Meaning does not allow the existing order, to co-exist with Equality, Liberty, and Peaceable Assembly at any place and time; nor Rights to be alienated if they are Unalienable; nor dissidents such as Eugene V. Debs and Dashiell Hammett to be imprisoned if Freedom of Speech exists; nor special privileges and subsidies to be lavished upon the Opulent Minority if Congress is mandated to promote and provide for the General Welfare;[446] nor slavery, indenture, women as chattel, and the mistreatment of Indigenous Peoples, if every human is created Equal, with Equal privileges and immunities. Whenever it is in session, the Supreme Court is indeed a "sitting constitutional convention,"[447] engaged in the "re-writing of our Constitution by judicial fiat."[448] American

[446] Relatively equal benefit.
[447] James Joyner, "The Supreme Court as Sitting Constitutional Convention," in *Outside the Beltway* (Quantico, VA: James Joyner—Sunday, 28 June, 2015), accessed 07 September, 2015: http://www.outsidethebeltway.com/the-supreme-court-as-sitting-constitutional-convention/
[448] Christoper Hedges, "Speech: Defining the Moral Imperative of Revolt" (Seattle, WA: Town Hall—8 June, 2015), 07:04; accessed 17 July, 2015: https://www.youtube.com/watch?v=iA41ggsdeXE

law is exactly "what the judges say it is;"[449] and what judges say it is can be breathtaking in its departure from reason and the Plain Meaning of the written word.

There is no mystery about "the historically demonstrable intentions of the Framers" or what "was understood at the time [the Constitution] was drafted and ratified;" the mystery is what relevance can be ascribed to these intentions and understandings. The Opulent Minority of the late-eighteenth century—or of any time in American history—would arguably never of its own volition allow the People to have the rights guaranteed in either the Constitution or the Declaration of Independence. The Bill of Rights and incorporation of the First Principles through the Ninth and Tenth Amendments was the price the Opulent Minority had to pay for ratification of the Constitution. The original intention of the Federalist *Coupistes* was a country ruled by an elected monarch or kingly executive, with a dominant aristocracy, in which only men who owned property had political and civil rights, where Opulents could exploit slaves and indentures and keep women as chattel. However, such a country is simply not the structure created by the Constitution, and it is certainly not the society described by the Declaration of Independence and its First Principles.

Rendering Original Intent normative depends upon functional marginalization of the First Principles, enthusiastic society-wide ancestor worship of the Federalist *Coupistes* as wise and infallible "Framers" or "Founders," and veneration of the Constitution as sacrosanct. Marginalization of the First Principles has been accomplished by creating the perception they are "no more than aspirational goals"[450] rather than Organic Law, and have "purely symbolic

[449] Charles Evans Hughes, "Speech before the Chamber of Commerce, Elmira, New York, 3 May 1907," *Addresses and Papers of Charles Evans Hughes: Governor of New York, 1906–1908* (New York, NY: G.P. Putnam's Sons—1908), 139.
[450] Daniel Kornstein, *Kill All the Lawyers?: Shakespeare's Legal Appeal* (Lincoln, NE: University of Nebraska Press—2005), 48.

roles."[451] Although the Declaration of Independence is the *first* Organic Law, in *Cotting v. Godard* (1901) the Supreme Court simultaneously asserted the Declaration is *not* an Organic Law, but merely a "declaration of principles," as the Court affirmed Organic Law is the obtaining instrument in the United States: "such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty…[but] in all cases reference must be had to the organic law of the nation for such limits."[452] The hallowed Checks & Balances of the Constitution are presented as so finely calibrated, so wisely designed, that the slightest tampering will destroy the system's equilibrium and threaten the very existence of the Union it perfected and the prosperity it has wrought. Therefore, the intentions of the *Coupistes* must be scrupulously ascertained and followed devoutly—effectively placing the country in the perpetual grip of the cold dead hand of the past, fetishizing the imagined intentions of a cabal of a racist, misogynist, exploitative, élitist, and anti-democratic, wealthy male *Coupistes*, who imposed a Constitution that gave the Opulent Minority permanent dominance over the People.

Original Intent is brilliant in its insidiousness. Once it has been commonly accepted that words do not mean what they plainly say, and *imagining* what they say is not absurd, any passage may be imagined to say whatever suits the purposes of whoever on the Court is doing the imagining at the time. The opening phrase "*Congress* shall make no law," in the First Amendment to the Constitution, can be imagined to indicate the Bill of Rights does not apply to States, Regions, municipalities, or individuals, but only restricts acts of Congress. A law degree is not necessary to understand how such an interpretation effectively nullifies the Bill of Rights and the First Principles by making them virtually meaningless in the quotidian lives

[451] Justice John Paul Stevens, "Dissent," *Bowers v. Hardwick* [478 U.S. 186, Footnote 12]—1986.
[452] Justice David Josiah Brewer, "Opinion," *Cotting v. Godard*, [183 U.S. 79, 107]—1901.

of the *Dêmos* on the State, regional, and municipal level, without exposing the Supreme Court or Congress to political backlash by explicitly overturning or repudiating either the Bill of Rights or the Declaration of Independence. Certainly, nullifying the Bill of Rights is an absurd consequence that should have immediately disqualified such a specious interpretation, but Original Intent makes the absurd normative and marginalizes Plain Meaning.

To ensure inequality and the entrenched social order, the term "all *men* are created Equal" can be imagined to mean only males rather than the alternate meaning: "mankind." It can be further imagined that the definition of "man" is narrowly restricted—male slaves are not men because each slave is only "three fifths of all other Persons;"[453] males who do not own property are not men, and it is a State's right to use a means test to disenfranchise such males. Antonin Scalia, Supreme Court Justice and chief advocate of Originalism, maintained until his dying breath that: "the Constitution does not *require* discrimination on the basis of sex. The only issue is whether it prohibits it; it doesn't."[454] Clearly, institutionalizing inequality is an absurd consequence, if for no other reason than ranking humans on any basis whatsoever is merely subjective preference and inherently invalid. The only way to achieve a result other than absurdity is to interpret "men" as synonymous with "mankind."

Yet, the Supreme Court has demonstrated time and again it is unperturbed by Absurdity or Plain Meaning, nor does it consider itself bound in any substantial way by the legislation of Congress. The events leading to, surrounding, and succeeding, the Fourteenth Amendment present a perfect example of this. The Fourteenth Amendment, passed in 1866 and ratified in 1868, was designed by its author, Representative John Armor Bingham (R-OH)

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[453] James Madison, et al, "Article 1, Section 2, Paragraph 3," *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787).

[454] Antonin Scalia, quoted in Amanda Terkel, "Scalia: Women Don't Have Constitutional Protection Against Discrimination," *HuffingtonPost.com* (New York, NY: Huffington Post—3 January, 2011); accessed 1 August, 2015: http://www.huffingtonpost.com/2011/01/03/scalia-women-discrimination-constitution_n_803813.html

to, in part, address the absurd Court interpretations that effectively nullify the Bill of Rights by exempting States, regions, municipalities, and individuals, from observing them. The Fourteenth Amendment did so by expressly extending "the privileges or immunities" equally to the citizens of every State and the jurisdictions within them, and defining a citizen:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[455]

The very idea such an amendment could be considered necessary should have been absurd, given that Equal Rights for every person/citizen permanently exist; the Plain Meaning of the Constitution, the Bill of Rights, and First Principles of the Declaration of Independence, is quite clear. However, the Equal Rights guaranteed in these documents were tempered, or contravened, by a Constitution that simultaneously institutionalizes slavery, indenture, and the domination of the Opulent Minority, as well as by the laws and practices of the States and their various jurisdictions. Nonetheless, with the passage and ratification of the Thirteenth Amendment—"Neither slavery nor involuntary servitude, *except as a punishment for crime* whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction"[456]—such contradictions were eliminated, leaving the guarantee of Equality without contradiction. That is, with the exception of slavery as punishment for a crime; by any objective measure, slavery qualifies as "cruel and unusual punishment" and therefore conflicts with the Eighth Amendment. In other words, a Thirteenth

[455] Rep. John Armor Bingham (R-OH), "Fourteenth Amendment," *United States Constitution* (Washington, DC: Thirty-ninth Congress of the United States—passed 18 June, 1866; ratified 28 July, 1868), Article 1.
[456] Rep. James Mitchell Ashley (R-OH), Representative James F. Wilson (R-IA), Senator John B. Henderson (R-MO), "Thirteenth Amendment," *United States Constitution* (Washington, DC: Thirty-eighth Congress of the United States—passed 31 January, 1865; ratified 6 December, 1865), Article 1; *emphasis added*.

Amendment designed to ensure the States cannot ignore the Bill of Rights, violates one of the protections in the Bill of Rights, and is followed by a Fourteenth Amendment that promises "equal protection" to all citizens in Article 1, yet Article 2 only penalizes States for denying the votes to men over twenty-one, providing no penalty for denying the vote to women.

The Fourteenth Amendment notably does not *prohibit* women from voting, it merely does not penalize a State for denying them the franchise; twenty-six States and territories granted women some form of suffrage prior to the ratification of the Nineteenth Amendment in 1920, beginning with the territory of Wyoming granting full suffrage in 1869.[457] The solution of the Supreme Court, the States, and jurisdictions within the States, to the internal contradictions of the Fourteenth Amendment and its conflicts with the Constitution and Declaration, was to ignore the Fourteenth Amendment as if it never existed. The Supreme Court and the States also continued to do the same with the Bill of Rights, the Declaration of Independence, and any sections of the Constitution that mandate Equality. The Fifteenth Amendment,[458] apparently designed to impress upon the States that Congress really meant the Fourteenth Amendment to apply to men of African descent, was just as roundly defied. People of African descent were prevented from suffrage until the Voting Rights Act of 1965—ninety-seven years after the Fourteenth Amendment was ratified and ninety-five years after the Fifteenth Amendment was ratified. Senator Aaron A. Sargent (R-CA) originally introduced the Nineteenth Amendment in 1878, in order to rectify the omission of women from the Fourteenth and Fifteenth Amendments; the amendment would be introduced unsuccessfully each year for the next forty years. After forty-one years had elapsed, in 1919,

[457] National Constitution Center, "Map: State Grant Women the Right to Vote," *Centuries of Citizenship: A Constitutional Timeline* (Philadelphia, PA: National Constitution Center—2006); accessed 22 April, 2017: https://constitutioncenter.org/timeline/html/cw08_12159.html

[458] Rep. George Washington Julian (R-IN), "Fifteenth Amendment," *Constitution of the United States* (Washington, DC: 40th Congress of the United States—passed 26 February, 1869; ratified 3 February, 1870).

the Nineteenth Amendment was finally submitted to the states for ratification, and it was ratified one year later, in 1920. The Supreme Court did not begin to heed part of the Fourteenth Amendment, and gradually "incorporate" the protections of the Bill of Rights into the obligations that bind all States and the various jurisdictions with the States, until *Gitlow v. New York* (1925)[459]—*one hundred and thirty-four years* after ratification of the Bill of Rights. Nearly a century later, the Supreme Court has yet to incorporate all ten Amendments of the Bill of Rights in their entirety.

For the Supreme Court, the States, and their various jurisdictions, the notion of Equality was clearly unthinkable; "States Rights" was a euphemism for the notion that States have the right to deny Rights to their citizens and other inhabitants who are not male, "White," Anglo-Saxon, and Protestant ("WASP"). This particular theory of "States Rights" is argued unsuccessfully by the Plaintiff, Oscar Leser, in *Leser v. Garnett* (1922),[460] in a case regarding the Rights of women; it is one favored by Justice Antonin Scalia who maintained to his dying day that the Constitution does not forbid discrimination against women.[461] In fact, the Supreme Court has still not come to terms with Equality; it has tenaciously clung to inequality as the American way of life.

During World War II, when faced with claims of Equal Protection in *Hirabayashi v. United States* (1944)[462] and *Korematsu v. United States* (1944),[463] the Supreme Court went so far as to establish the judicial precedent of allowing discrimination—that is, unequal, unjust, or prejudiced, treatment of any sort—to be perpetrated against "suspect classifications." If

[459] Justice Edward T. Sanford, "Opinion," *Gitlow v. People of State of New York* [268 U.S. 652], 1925.
[460] Oscar Leser, "Plaintiff," *Leser v. Garnett* [258 U.S. 130]—1922.
[461] Antonin Scalia, quoted in Amanda Terkel, "Scalia: Women Don't Have Constitutional Protection Against Discrimination," *HuffingtonPost.com* (New York, NY: Huffington Post—3 January, 2011); accessed 1 August, 2015: http://www.huffingtonpost.com/2011/01/03/scalia-women-discrimination-constitution_n_803813.html
[462] Chief Justice Harlan F. Stone, "Opinion," *Hirabayashi v. United States*, [320 U.S. 81]—1943.
[463] Justice Hugo Black, "Opinion," *Korematsu v. United States* [323 U.S. 214]—1944.

there are "Suspect classifications" or "Suspect Classes," then there are logically also "Protected Classes," which gradually began to proliferate in Congressional legislation as demands for Equality for all citizens became increasingly widespread and vehement. In the American tradition, Rights were simply not handed out to *everyone*, only to those who were organized to fight for their Rights or were subjectively deemed the most important. The 1964 Civil Rights Act, bars *some* discrimination based upon "race, color, religion, sex, or national origin."[464] Because the Act does not include the disclaimer "including, but not limited to," when listing groups or circumstances, it has the ostensibly unintended consequence of implicitly legitimizing unequal treatment of anyone who does not neatly fit into one of these groups, in one of the situations described in the statute (such as employment or housing). In other words, if the law does not *specifically* prohibit a certain form of discrimination to a certain group of people, such unjust conduct is *legal* within American jurisprudence that ignores the Plain Meaning of the Constitution.

The number of Protected Classes in the United States has continued to increase: age, physical or mental disability, veteran status, genetic information, pregnancy, familial status, and citizenship, are now included in that number. Many federal, State, and local statutes now provide increased penalties for crimes against such additional Protected Classes as law enforcement, federal employees and officials, and victims of "hate crimes." However, political beliefs, height, weight, unattractiveness, non-conformity, a criminal background, and innumerable other variations of the human condition that are likely targets of discrimination, are *not* considered Protected Classes. It may seem almost unimaginable to some that the Supreme Court has not yet "found poverty to be a classification, like race, that deserves

[464] President John F. Kennedy (D-MA) & Rep. Emanuel Celler (D–NY), "Discrimination Because of Race, Color, Religion, Sex, or National Origin, Sec. 703," *Civil Rights Act of 1964* (Washington, DC: 88th United States Congress—2 July, 1964), 12.

searching equal-protection analysis."[465] The United States Department of Justice has argued that the 1964 Civil Rights Act does not reach "sexual orientation discrimination," claiming such interpretation by the Supreme Court "has been settled for decades."[466] The Department of Justice has claimed such unequal treatment is acceptable and fair—even *desirable*.[467]

It ought to be readily apparent to even the casual observer that the terms "Equal Protection of the laws" and "Protected Classes" are mutually exclusive. Either a person has Equal Protection under the laws, or he or she must be a member of a Protected Class in order to be protected—and it is impossible to imagine or enumerate sufficient Protected Classes to protect all the classes of people that exist today or will exist in the future, in the United States and in the world. Contemplation of such a list is, however, unnecessary. The Fourteenth Amendment is clear that every citizen of the United States belongs to a single protected class: citizen of the United States. The First Principles of the Declaration of Independence go even further; every person on Earth belongs to a single protected class: human being.

The existence of Protected Classes contributes to a commonly internalized mythology that discrimination has been adequately addressed in the United States, which in turn gives rise to a sense of relief and achievement within those who are unlikely to experience discrimination—an attitude that is essential to minimizing erosion of the patriarchal hierarchy and preserving the existing political, social, economic, and moral order. A case may be made that Protected Classes are both misdirection and placation, diverting the attention of citizens from ideas that could lead to unrest or outright revolt. Protected Classes, *stare decisis*,

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[465] Mario L. Barnes & Edwin Chemerinsky, "The Disparate Treatment of Race and Class in Constitutional Jurisprudence," *Law & Contemporary Problems, Volume 72, Number 4* (Durham, NC: Duke University School of Law—Fall 2009), 109.
[466] Alan Feuer, "Justice Department Says Rights Law Doesn't Protect Gays." *New York Times* (New York, NY: The New York Times Company—27 July, 2017); accessed 29 July, 2017: https://www.nytimes.com/2017/07/27/nyregion/justice-department-gays-workplace.html
[467] Ibidem.

Ordered Liberty, Judicial Independence, Original Intent, Originalism, and States Rights, are several of many legal theories that work in concert to preserve the existing order and construct a mythology of placation that can be commonly internalized.

Another such legal theory is the notion that the *Dêmos* of the United States has fully consented to the entirety of the existing American political, social, and economic organization, through the theory of "tacit consent." According to *Black's Law Dictionary*, "tacit consent is consent inferred."[468] Tacit consent may be more properly termed "imagined consent" because the Consent of the People is not only imagined to have been given, it is imagined to automatically renew *ad infinitum*, without any involvement or knowledge upon the part of any of the people who are theoretically giving Consent. Those doing the inferring of Consent are invariably not amongst those who are imagined to have Consented, but rather such inference is made by members of the power structure, who obviously approve of the system they dominate and are intent upon keeping intact the pretense Consent has been obtained—thereby legitimizing the existing "political, social, [economic, and] moral order."[469] Tacit consent is most often associated with Consent being inferred by the fact that citizens merely remain within the borders of a given polity, frequently due to a lack of viable alternatives—generally few, if any, of those supposedly providing such "Consent" are even aware residence may be considered a form of Consent.

Imagined repeal or "implied repeal"—*"leges posteriores priores contrarias abrogant"* ("later laws abrogate prior contrary laws")—is a legal theory whereby a law that conflicts with an earlier law takes precedence over that law, and the conflicting parts of the earlier law

[468] Henry Campbell Black, M.A. [1891 & 1910], "tacit consent," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 1302.
[469] Paul Lagassé, Editor, "Censorship," *The Columbia Encyclopedia, Sixth Edition* (New York, NY: Columbia University Press—2001).

are imagined to be automatically repealed. Imagined repeal is generally a disfavored doctrine in American law because it is in fact a court imagining the intention of a legislative body in lieu of express repeal of legislation.[470] Imagined repeal has another troubling aspect: the implication that a given legislature either did not conduct adequate due diligence[471] when crafting a law, or such legislature has passed laws too numerous to be effectively catalogued. Imagined repeal may also be abused if it allows legislatures to circumvent negative political repercussions that may arise from the express repeal of a law. Imaging the imposition of the Constitution inferentially repeals the Declaration of Independence, the Articles of Confederation & Perpetual Union, and the North-West Ordinance, may be convenient for those who would deny that the Organic Laws still obtain, but it is a mistake in law; the repeal of a permanent law cannot merely be implied—it must be expressly repealed and removed from its "permanent" status as Organic Law by Congress.

Related to imagined repeal is imagined expiration, or *désuétudo*, a concept that entered English Common Law as a means by which to prevent abusive application of obscure laws that have not been repealed in order to persecute citizens or political foes. *Désuétudo,* or "desuetude," is based upon ancient Roman legal precept: "a law has been nullified through disuse."[472] However, in addition to its invocation to prevent injustice, *désuétudo* may also be misapplied in an attempt to invalidate laws that have been long ignored because they are politically inconvenient or threatening to those in power. Such disregard seeks to effectively

[470] Jesse W. Markham, Jr., "The Supreme Court's New Implied Repeal Doctrine," *Gonzaga Law Review, Volume 45, Number 2* (Spokane, WA: Gonzaga School of Law—2010), 437-484.
[471] Henry Campbell Black, M.A. [1891 & 1910], "due diligence: "Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 411.
[472] Daniel Kornstein, *Kill All the Lawyers?: Shakespeare's Legal Appeal* (Lincoln, NE: University of Nebraska Press—2005), 47-48.

reduce such laws to "no more than aspirational goals."[473] However, *désuétudo* cannot and does not apply to *any* Organic Law no matter how long it may have been ignored or subverted; the Organic Laws of the United States are, in fact, "permanent"[474] and have remained valid and enforceable since they were written. Although the North-West Ordinance may be obscure, and the Article of Confederation relatively so, that is not the case for the Declaration of Independence, the Bill of Rights, and ignored sections of the Constitution proper. The principle that "no one acquires a vested or protected right in violation of the Constitution by long use [or disuse], even when that span of time covers our entire national existence and indeed predates it,"[475] applies to all Organic Laws. Such is the nature of Organic Laws; such is the meaning of "permanent." A permanent Organic Law cannot be voided merely by the misapplication of *désuétudo*. Again, in order for an Organic Law to be invalidated, Congress must expressly repeal it and remove it from Organic Law status.

Perhaps the Supreme Court's most pernicious molding of the social order is not a legal theory *per se*, but rather a *sotto voce*[476] disdain for the First Principle of Personal Autonomy; that is, "Life, Liberty, and the Pursuit of Happiness." Although the Court has never addressed the issue directly, in unequivocal and plain language, it has consistently ruled that the government—which the Court consistently equates with "society"—effectively *owns* its citizens body and soul, in the same way English monarchs quite literally owned their subjects and slaveholders owned their slaves. The notion of ownership of the individual may be best demonstrated in the Supreme Court's rulings on abortion throughout the years. Liberal and

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[473] Daniel Kornstein, *Kill All the Lawyers?: Shakespeare's Legal Appeal* (Lincoln, NE: University of Nebraska Press—2005), 47-48.
[474] Office of the Law Revision Counsel ("OLRC"), *United States Code* (Washington, DC: U.S. House of Representatives—2015); accessed 15 July, 2015: http://uscode.house.gov/about_code.xhtml
[475] Chief Justice Earl Warren, "Opinion," *Walz v. Tax Commission of the City of New York* [397 U.S. 664, 678], 1970.
[476] Latin: "soft voice" or "undertone."

Conservative justices alike have taken it as a *fait accompli* that the government has the prerogative to commandeer a woman's body at a shifting point during her pregnancy, overrule physicians and the wishes of the woman, and exert the full force of government to "legitimately" force her to have a child against her will. The question for the Court has only been: At what point does the government assume complete control? These rulings have much broader implications than are rarely acknowledged in any discussion of the issue; if the government owns and controls a woman's body, and soul, then it also owns the body and soul of every male citizen. Dating back to at least the Uniform Militia Acts of 1792, the government has taken the position that it can forcibly conscript *all* men—and possibly women—to fight wars of imperial conquest as well as defensive wars. In modern times, the government has with complete impunity taken to unilateral, extra-judicial assassinations of American citizens abroad, who have secretly been deemed by the Executive Branch to be a threat to the existing American social and political order, or the existing World Order.

From the Marshall Court on, the Supreme Court has also considered itself the American *custos morum,*[477] preserving what it imagines to be a "social interest in order and morality;"[478] a self-appointed last bastion against the disaster it imagines would result from dissembling the existing social, political, economic, and moral order. Historian Mark Warren Baily terms this role: "Guardians of the Moral Order."[479] Yet, such a notion is entirely contrary to the Constitution and the First Principles; there is *nothing* in the Constitution that could be construed as implicitly or explicitly charging the Court with safeguarding order and

[477] Maurice Waite, Editor, "*custos morum*; noun—a guardian of (public) morals," *Oxford English Dictionary Online* (Oxford, UK: Oxford University Press—2017); accessed 20 April, 2017: www.oed.com
[478] Zechariah Chafee Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press—1941), 150; first quoted by the Court in Justice Frank Murphy, "Opinion," *Chaplinsky v. New Hampshire* [315 U.S. 568, 572]—1942.
[479] Mark Warren Bailey, *Guardians of the Moral Order: The Legal Philosophy of the Supreme Court 1860-1910* (DeKalb, IL: Northern Illinois University Press—2004).

morality. In fact, the Constitution does not contain either the term "moral" or "morality;" neither does the Constitution make reference to social or moral order.

To the contrary, the First Amendment mandates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Such explicit prohibition of a federal religion is usually referenced as "a wall of separation between Church & State."[480] The reason for the "Establishment Clause" and the attendant idea of a wall of separation between Church & State is that both order and morality are entirely subjective concepts, and have no objective standard. Such separation places morality squarely in the province of individuals and any religious institution to which an individual may give allegiance and faith. Any morality a government might establish would be an arbitrary imposition of a value system that is unlikely to co-incide with the value systems of many, if not most, citizens. As the *Stanford Encyclopedia of Philosophy* notes: "From the beginning of Western thought, religion and morality have been closely intertwined. This is true whether we go back within Greek philosophy or within Christianity and Judaism."[481] Thomas Henry Huxley states flatly that "religion is for morality"[482]—that is, the establishment of moral dogma and morality is the province of religious organizations and the Constitution clearly separates religion and government.

The wall of separation has historically been only a nominal impediment to the agenda of the Supreme Court; the Court has consistently split hairs with respect to the Establishment

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[480] Thomas Jefferson, "Letter to Messrs. Nehemiah Dodge and Others: A Committee of the Danbury Baptist Association in the State of Connecticut, 1 January, 1802," *The Library of Congress Information Bulletin: June 1998* (Washington, DC: Library of Congress—June, 1998); accessed 7 August, 2016: https://www.loc.gov/loc/lcib/9806/danpre.html

[481] Edward N. Zalta, Editor, *Stanford Encyclopedia of Philosophy* (Stanford, CA: The Metaphysics Research Lab, Stanford University Center for the Study of Language and Information—1 October, 2010); accessed 17 January, 2015: http://plato.stanford.edu/entries/religion-morality/

[482] Stephen Jay Gould, *Rock of Ages: Science and Religion in the Fullness of Life* (New York, NY: Ballantine Books—1999), 41.

Clause. Clearly, in the view of the Court, protecting "the social interest in order and morality"[483] does not technically establish a religion, but merely protects the imagined values of society: "from the ratification of the Constitution until [at least] 1992, the Supreme Court upheld morality as a proper base for law. It was not even questioned by a *minority* of the Court…"[484] Justice Sandra Day O'Connor, the first female to serve on the Supreme Court, who was not known for Progressive views, contradicted the entire history of the Supreme Court's stance on Liberty and morality in a succinctly expressed 1992 opinion: "At the heart of Liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."[485]

Guarding the "social interest in order and morality" did not, however, end with Justice O'Connor's stirring words. For instance, in his *Lawrence v. Texas* (2003) dissent,[486] Justice Antonin Scalia doggedly clings to the notion of government mandated morality, quoting earlier decisions that are anathema to the Constitution—two of which are from of lower courts—in a prime exemplar of circular logic; the judiciary allows legislatures to legislate morality, then it sites such rulings as precedent for legislating morality. The notion that "Legislatures are permitted to legislate with regard to morality rather than confined to preventing demonstrable harms"[487] has been created out of whole cloth, as has the idea that "[t]he crafting and safeguarding of public morality...indisputably is a legitimate government

[483] Zechariah Chafee Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press—1941), 150.
[484] John P. Safranek, "The Contradiction of Liberalism," *The Myth of Liberalism* (Washington, DC: Catholic University Press—2015), 58.
[485] Sandra Day O'Connor, Anthony Kennedy, David Souter, "Opinion," *Planned Parenthood v. Casey* [505 U.S. 833, 852]—1992.
[486] Justice Antonin Scalia, "Dissent: I (3)," *Lawrence v. Texas* [539 U.S. 558]—2003.
[487] Judge Richard A. Posner, "Opinion," *Milner v. Apfel*, 148 F.3d 812, 814 (CA, 7th Circuit—1998).

interest"[488] and the contention that there exists "a substantial government interest in protecting order and morality."[489] The notion of a "social interest in order and morality" comes not from the Constitution or any other Organic Law; rather it springs from the pen of Zechariah Chafee, Jr., writing in *Free Speech in the United States*. Justice Frank Murphy first introduced Chafee's words into Supreme Court precedent through a quotation in *Chaplinsky v. New Hampshire* (1942),[490] and the "quote has been cited favorably in ten subsequent Supreme Court decisions."[491] Apparently, although *Congress* "shall make no law," nothing prevents States and other jurisdictions from passing such laws or the Supreme Court from imposing *its* collective, and rather prudish, moral values upon the country via *fiat justitia*.

The Supreme Court boasts on its website that "[the Constitution] permits a balance between society's need for order and the individual's right to freedom,"[492] without citing the passages in the Constitution that confers upon nine unelected members of the Legal Class the position as sole arbiters of how society ought to be ordered and how much freedom an individual ought to have. It bears frequent repeating that the opposite is true: Unalienable Rights have been placed outside the reach of the Supreme Court or anyone else. The Court's circularity of logic in upholding and preserving the existing social and moral order, as the Court itself has arbitrarily and unconstitutionally created a great deal of that existing order, could be considered its hallmark. Such logic is particularly apparent in the willful ignorance of the Due Process clauses of the Fifth Amendment and the Fourteenth Amendment:

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[488] Judge Susan Harrell Black, "Opinion," *Williams v. Pryor*, 240 F. 3d 944, 949 (CA11—2001).
[489] Chief Justice William Rehnquist, "Opinion," *Barnes v. Glen Theatre, Inc.* [501 U.S. 560, 569]—1991.
[490] Justice Frank Murphy, "Opinion," *Chaplinsky v. New Hampshire* [315 U.S. 568, 572]—1942.
[491] John P. Safranek, "The Contradiction of Liberalism," *The Myth of Liberalism* (Washington, DC: Catholic University Press—2015), 127.
[492] Supreme Court, "The Court and Constitutional Interpretation," *supremecourt.gov* (Washington, DC: United States Supreme Court—2016); accessed 27 July, 2016: https://www.supremecourt.gov/about/constituti"SPonal.aspx

> Due Process of law demands that legislation have a proper public purpose; only an apparent, rational, utilitarian social purpose satisfies Due Process. A state may not legislate merely to preserve some traditional or prevailing view of private morality…[493]

Yet, the Supreme Court has long seen fit to invalidate Due Process with respect to morality, by incorrectly interpreting the nature of both the law and the Constitution: "The law, however, is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed."[494] This is yet another instance of circular logic with a completely nonsensical argument; the law is only based upon notions of morality because the Court has held it to be so. The absence of laws governing morality cannot possibly result in increased criminality or litigation; quite the contrary: one-third of those incarcerated in the United States are held for victimless crimes[495]—that is, laws governing morality. In other words, doing away with laws governing personal morality would *reduce* crime and prison populations by as much as a third, and save taxpayers an untold fortune in prison costs and law enforcement expenses, such as the misbegotten, unconstitutional, and phenomenally expensive, "War On Drugs."

It may be quintessentially ironic that Antonin Scalia, the man perhaps most identified with searching high and low through American and British case law, as well as the correspondence and private papers of the Framers he worshiped, for any word that could be imagined as intent, in furtherance of his extreme agenda, complains: "It would be hard to count…the opinions that have in fact been rendered not on the basis of what the Constitution originally meant, but on the basis of what the judges currently thought it desirable for it to

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[493] Louis Henkin, "Morals and the Constitution: The Sin of Obscenity," *Columbia Law Review*, Vol. 63, No. 3 (Manhattan, NY: Columbia Law Review Association—March, 1963), 402.
[494] Justice Byron White, "Opinion," *Bowers v. Hardwick* [478 U.S. 186, 196]—1986.
[495] Peter Wagner & Bernadette Rabuy, "Mass Incarceration: The Whole Pie, 2017," *Prison Policy Initiative* (Northampton, MA: Prison Policy Initiative—14 March, 2017) ; accessed 21 May 2017: https://www.prisonpolicy.org/reports/pie2017.html

mean."[496] A potentially disastrous implication of Article III—a rogue Supreme Court—was contemplated during and after the ratification debates in the States, but they continued to be roundly ignored. The "Federal Farmer," Melancthon Smith, warned: "we may fairly conclude we are more in danger of sowing the seeds of arbitrary government in this department [Judiciary] than in any other."[497] Richard Yates, writing as "Brutus," predicted the Court:

> …will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the Constitution...the Constitution is not to receive an explanation strictly according to its letter; but more power is implied than is expressed[498]…They will be able to extend the limits of the general government gradually, and by insensible degrees...when this power is lodged in the hands of men independent of the People and of their representatives, and who are not constitutionally accountable for their opinions, no way is left to control them...[499]

Thomas Jefferson is perhaps the most piercing critic of Article III and the Supreme Court, although his critiques rarely—if ever—seem to have been made publicly; his criticisms are mostly found within the copious number of letters he wrote almost until the moment of his death at age 83 in 1826. During his presidency, Jefferson was mightily frustrated by the fact that the Federalist administrations of George Washington and John Adams had "packed" the federal courts with judges and justices who claimed lifetime tenure and could not be replaced. He engineered the one and only impeachment in the history of the Court, against Samuel Chase in 1803—which failed. Writing his friend and confidante, Abigail Adams, wife of his political nemesis and intermittent friend, he first expressed what was to become a common theme; which he continued in a missive to John Wales Eppes four years later:

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[496] Antonin Scalia, "Originalism: The Lesser Evil, 16 September, 1988," William Howard Taft Constitutional Law Lecture at the University of Cincinnati, *University of Cincinnati Law Review 57* (Cincinnati, OH: University of Cincinnati—1989), 849.
[497] Melancton Smith [Federal Farmer], "Letters from the Federal Farmer, Number 15," *Poughkeepsie Country Journal* (Poughkeepsie, NY: Poughkeepsie Country Journal—18 January, 1788.
[498] Richard Yates [Brutus], "Brutus Number 11: To The Citizens of the State of New York," *New York Journal* (New York, NY: New York Journal—31 January 1788).
[499] Ibidem, "Brutus Number 14: To The Citizens of the State of New York," (28 February, 1788).

> The *Constitution*...meant that its co-ordinate branches should be checks on each other—but the opinion [*Marbury v. Madison*] which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action, but for the Legislature and Executive also in their spheres, would make the Judiciary a despotic branch[500]…The original error [in] establishing a judiciary independent of the nation, and from the citadel of the law can turn its guns on those they were meant to defend, and control and fashion their proceedings to its own will.[501]

Jefferson wrote numerous letters lambasting the inherent fatal flaws of Article III and its interpretation by the Supreme Court, contending that the sweeping power, lifetime appointments, and immunity from removal, are not prescribed in the Constitution and creates a panel of insolated and invulnerable despots:

> Over the Judiciary department, the Constitution [has] deprived [the nation] of their control…it has given, according to [John Marshall's] opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scarecrow; that such opinions as the one you combat, sent cautiously out, as you observe also, by detachment, not belonging to the case often, but sought for out of it, as if to rally the public opinion beforehand to their views, and to indicate the line they are to walk in, have been so quietly passed over as never to have excited animadversion, even in a speech of any one of the body entrusted with impeachment. The *Constitution*, on this hypothesis, is a mere thing of wax in the hands of the Judiciary, which they may twist, and shape into any fom1 they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law. My construction of the *Constitution* is very different from that you quote. It is that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the *Constitution* in the cases submitted to its action; and especially, where it is to act ultimately and without appeal…[502]

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[500] Thomas Jefferson, "Letter to Abigail Adams, 11 September, 1804," *The Writings of Thomas Jefferson, Volume XI: Memorial Edition,* Andrew Adgate Lipscomb & Albert Ellery Bergh, Editors (Washington, DC: The Thomas Jefferson Memorial Association—1904), 51.

[501] Thomas Jefferson, "Letter to John Wayles Eppes, 28 May, 1807," *The Works of Thomas Jefferson, Volume X: Correspondence and Papers 1803-1807,* Paul Leicester Ford, Editor (New York, NY: G.W. Putnam & Sons—1905), 413.

[502] Thomas Jefferson, "Letter to Judge Spencer Roane, 6 September, 1819," *The Works of Thomas Jefferson, Volume X: Correspondence and Papers 1803-1807,* Paul Leicester Ford, Editor (New York, NY: G.W. Putnam & Sons—1905),, 137.

> …considering] judges the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men—and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. Their maxim is *"boni judicis est ampliare jurisdictionem*," and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The *Constitution* has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves...[503]
>
> A judiciary independent of a king or executive alone is a good thing; but independence of the will of the nation is a solecism—at least in a republican government.[504]
>
> This member of the Government was at first considered as the most harmless and helpless of all its organs; but it has proved that the power of declaring what the law is, *ad libitum,* by sapping and mining slyly and without alarm the foundations of the *Constitution*, can do what open force would not dare to attempt.[505]

Since its inception, the Supreme Court has thwarted Liberty and Equality far more often than not. It has kept Democracy at bay; which was certainly the intent of John Marshall, and much to the approbation of the Opulent Minority, then and now. Sitting upon the Supreme Court bench does not require empathy, logic, consistency, ethics, impartiality, wisdom, or even a law degree. Yet, the Court is mythologized as a great bastion of Liberty; apparently because it occasionally deigns to return to Americans a crumb of the full loaf of Rights it has rudely wrenched from them. The American populace has internalized the idea that the Supreme Court is heroic, but make no mistake; the Supreme Court is the sovereign—not the People, not the President, not Congress. The appointment of Supreme Court justices is quite simply the most important and impactful act performed in American government.

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[503] Thomas Jefferson, "Letter to William Charles Jarvis, 28 September, 1820," *The Works of Thomas Jefferson, Volume XII: Correspondence and Papers 1816-1826,* Paul Leicester Ford, Editor (New York, NY: G.W. Putnam & Sons—1905), 162.
[504] Thomas Jefferson, "Letter to Thomas Ritchie, 25 December, 1820," *The Writings of Thomas Jefferson, Volume XV: Memorial Edition,* Andrew Adgate Lipscomb & Albert Ellery Bergh, Editors (Washington, DC: The Thomas Jefferson Memorial Association—1903), 298.
[505] Ibidem, "Letter to Edward Livingston, 25 March, 1825," *Volume XVI: Memorial Edition*, 114.

# VI: *Duties of Congress*

*Why declare that things shall not be done which there is no power to do?*

—Alexander Hamilton[506]

Sections 8 and 9 of Article I of the United States Constitution mandate that Congress perform specific and extremely limited duties and functions, restricted by the prohibitions found in Sections 9 and 10. On the other hand, the Bill of Rights is an enumeration of what Congress is expressly precluded from doing: "Congress shall make no law."[507] Similar to the invocation *primum non nocere*,[508] the subtext of Article 1 is that Congress must demonstrably "promote…[and]…provide for the General Welfare,"[509] but "in the manner most beneficial to the People"[510]—that is, no action Congress undertakes is supposed to inure primarily to the benefit of only a few individuals or corporate entities, but rather must provide relatively equal benefit for the entire *Dêmos* and society. As Thomas Paine asserted: "Man did not enter into society to become *worse* than he was before, nor to have fewer rights than he had before; but to have those rights better secured."[511] The test for any action Congress takes is therefore: Does it promote and provide for the General Welfare? If it does not, it is simply unconstitutional. In point of fact, every duty enumerated in Article 1 *does* promote or provide for the General Welfare; Sections 8 and 9 actually seem like something Benjamin Franklin would have written, rather than James Madison—particularly the charge to establish a Post

[506] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[507] James Madison, et al, "First Amendment," *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787).
[508] Latin: "first, do no harm."
[509] Gouverneur Morris, James Madison, et al, "Preamble" & "Section 8," *United States Constitution* (Philadelphia, PA: Secret Proceedings, 17 September, 1787).
[510] Chief Justice John Marshall, "Opinion," *McCulloch v. Maryland* [17 U.S. 316, 421], 1819.
[511] Thomas Paine [1791], *Rights of Man* (Mineola, NY: Dover Thrift Editions—1999), 30.

Office, build infrastructure, and promote science and the arts. Notably absent from the enumerations of Article 1 is a single instruction related to restricting the Personal Autonomy of citizens. Both Congress and the President have what are fundamentally administrative functions in peacetime; Congress is charged with the financial management and funding of the Executive's operation of the country.

Congress must "lay and collect taxes," and borrow sufficient monies to finance the day-to-day operations of the country. Every act and action of Congress must promote and provide for the relatively equal benefit of the entire *Dêmos* and American society; that is, the General Welfare. Some institutions that do so are enumerated in Article I; some are not. Any suggestion that Congress can promote or provide for something by privatizing it is semantic slight-of-hand; directing another entity to provide something is not the same as Congress itself providing for it. The Plain Meaning of Article I is that it is simply unconstitutional to privatize any institution that *Congress* is mandated to provide, such as establishing and maintaining: an infrastructure for the country, which would today undoubtedly include a state-of-the-art electrical grid and communication systems such as high speed fibre optic networks and a universal countrywide cell phone network; roads, highways, and bridges; a Post Office system; public buildings and structures; docks and ports; a countrywide judicial system inferior to the Supreme Court; the establishment of a copyright and trademark system; the promotion of science and the arts; the establishment of an immigration and naturalization system; the establishment of sufficient military services to "provide for the common defense" of the United States; the development of a monetary system; the regulation of interstate and international commerce, finance and bankruptcy; and management of what is now the District of Columbia. Institutions not constitutionally mandated that inure to the benefit of every

citizen and promote and provide for the General Welfare are: free public education; universal healthcare; a universal retirement system. War does not promote or provide for the General Welfare unless it is a defensive response to an attack; yet, there have been far more American military aggressions than there have been attacks upon American soil or against Americans abroad. Empire ultimately fails any cost/benefit analysis.

It is noteworthy that modern Conservative ideology seeks to eliminate or privatize most of the duties assigned to Congress—as Grover Norquist has so ineloquently phrased it: "I simply want to reduce [government] to the size where I can drag it into the bathroom and drown it in the bathtub."[512] Yet, most of the Conservative schemes for government reduction involve the elimination or privatization of functions that serve the General Welfare and are mandated by the Constitution. In other words, eliminated the Post Office or even transforming it into a "corporation" or "Postal Service" would actually require a Constitutional Amendment; privatizing infrastructure requires a Constitutional Amendment and failing to maintain it is dereliction of duty; eliminating or inadequately funding the Arts and science—including NASA, observatories, planetariums, museums, and individual artists—requires a Constitutional Amendment. Congress is Constitutionally *mandated* to regulate domestic and international trade, as well as the financial industry and banking—so the entire notion of "de-regulation" and a "self-regulating" free market is unconstitutional and requires a Constitutional Amendment. Justice, whether social or jurisprudent, has certainly never been established in the United States and has not yet become a priority; which is also a dereliction of duty upon the part of every Congress since 1787.

On the other hand, Congress has been allowed by the Supreme Court to enact laws and

[512] Grover Norquist, "Interview by Mara Liasson, 25 May, 2001," on NPR's *Morning Edition* (Washington, DC: National Public Radio—25 May, 2001).

behave in ways that expressly violate its Constitutional prohibitions. At the same time, Congress has for all intents and purposes abrogated its duty to regulate the Supreme Court. Members of Congress have historically grown wealthy through profiting from "insider knowledge" gained in the performance of their duties. Congress routinely grants special privileges such as tax breaks and subsidies to corporations and individuals, as well as to States and municipalities. Although there is no peerage in the United States, it would seem incontrovertible that the Opulent Minority is the country's *de facto* nobility that James Madison sought to permanent entrench as the country's ruling class, and Congress has certainly facilitated that entrenchment. The "regular Statement and Account of the Receipts and Expenditures of all public Money" from the House of Representatives systematically disguises and conceals expenditures and costs in order to prevent them from becoming public knowledge—for instance, military and "security" expenditures may actually be nearly double the official "Defense Budget." To quote an exposé in *The Atlantic* on the matter: "the truth is, when one scratches beneath the bureaucratic veneer, 'national security' spending is much larger—nearly double the amount US citizens are told."[513] Pulling back the veil covering anything Congress does, reveals corruption and scandal far more extensive than the public is ever led to believe. By any measure, Congress has not kept within the parameters established for it by the Constitution; it has rarely acted for the General Welfare. In many ways, Congress displays the worst in humanity on a daily basis. Clearly, the system of Checks & Balances has neither checked nor balanced Congress.

[513] Steve Clemons, "The Real Defense Budget," *The Atlantic* (Washington, DC: The Atlantic Monthly Group—20 February, 2012); accessed 21 July, 2016:
http://www.theatlantic.com/politics/archive/2012/02/the-real-defense-budget/253327/

# VII: *The Imperious Presidency*

*Well, when the President does it, that means that it is* not *illegal.*

—Richard M. Nixon[514]

Article II of the Constitution of the United States focuses upon "The Executive Branch." Section 1 states: "Executive Power shall be vested in a President of the United States of America;"[515] An executive is someone "with administrative or managerial responsibility."[516] The Constitution assigns the President limited administrative and managerial duties: some powerful; some mundane; most with Checks & Balances counterweight. Section 2, designates the President as the civilian Commander-In-Chief of the armed services with sole responsibility for the negotiation of international treaties; but only Congress may authorize war, the Senate must approve treaties, and there is no standing army. The President is also organizer and administrator of the entire American bureaucracy; but the Senate must approve appointments unless Congress designates some positions do not need approval—and Congress may de-fund any portion of the government at any time. The President has the power to veto any bill; but Congress may override a veto with a two-thirds majority. The President is the chief law enforcement officer in the country by virtue of the fact that the President "shall take Care that the Laws be faithfully executed,"[517] and also "shall have Power to Grant Reprieves and Pardons for Offenses against the United States, *except in*

[514] Richard M. Nixon, *The Nixon Interviews with David Frost, Part III* (London, UK: David Paradine Productions, Ltd.—19 May, 1977); printed in *The New York Times* (New York, NY: The New York Times Company—20 May, 1977), A16.
[515] James Madison, et al, "Article II, Section 1," *Constitution of the United States* (Philadelphia, PA: Secret Proceedings—1787).
[516] Frederick C. Mish, Editor in Chief, "executive; *noun*," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 405.
[517] James Madison, et al, "Article II, Section 3," *Constitution of the United States* (Philadelphia, PA: Secret Proceedings—1787).

*Cases of Impeachment*;"[518] but the President is disqualified from public service by the commission of *any* crime, and removed through the impeachment process. That process makes the ex-president ineligible for a presidential pardon; he or she reverts to being simply a member of the public.[519] Finally, the President must present a State of the Union report to Congress each year; but a President may convene Congress for any reason at any time.

*Nothing* in the Constitution explicitly or implicitly immunizes nor insulates the President from the laws that apply to all other citizens; quite the contrary; the Constitution does not entitle the President to any special privileges, whatsoever, and instead insists the office of the President be above reproach. "Section 4—Disqualification" stipulates a President must be removed from office and permanently disqualified from holding a subsequent position in the government if convicted of "treason, bribery, or other high crimes [felonies] and misdemeanors"[520]—which covers every possible crime. Infractions such as traffic violations, littering, or jaywalking, are considered civil offenses not crimes. Felonies and misdemeanors were illegal for all citizens in 1787, and remain so today. A President cannot be pardoned once impeached, as there is a pardon exception "in Cases of Impeachment."[521] Once removed from office, the ex-President is an ordinary person not entitled to special protections and "shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law."[522] In other words, an ex-President is liable and subject to the same treatment under the law as any other American citizen, but is ineligible for a presidential pardon; the granting of such a pardon would imply or exemplify corruption.

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[518] James Madison, et al, "Article II, Section 1," *Constitution of the United States* (Philadelphia, PA: Secret Proceedings—1787), *emphasis added*.
[519] Ibidem, "Article II, Section 4: Disqualification."
[520] Ibidem, "Article II, Section 4: Disqualification."
[521] Ibidem, "Article II, Section 2."
[522] Ibidem, "Article I, Section 3."

The threat of bribery and corruption is addressed more than once in the Constitution. Insofar as the President is concerned, a President is forbidden in Article I, Section 9, and Article II, Section 1, from holding any other office simultaneously and from receiving "emoluments"[523] from any individual State, any other federal entity, or any foreign entity or person. Implicit in such language is the prohibition of any source of income for a President other than the salary of the office. The practice of a President establishing a blind trust and subsequent divestiture of all assets is not merely a quaint custom; it avoids even a hint of undue influence or conflict of interest that would come from emoluments of any sort. To argue that a President may continue to operate business enterprises or profit from investments after installation in office is to attempt a re-write of the Constitution and normalize corruption.

The Constitution does not create a monarchy or other absolute leadership—far from it. The Plain Meaning of the Constitution in part reflects a political reality of the time in which it was written: the Opulent Minority was ever-fearful that the Exploitable Majority might revolt should a *fac simile* of the monarchy and empire they had fought for eight years, four months, and fifteen days, be blatantly imposed upon them. After the Secret Proceedings in Philadelphia had ended, James Madison went into seclusion a defeated man; he felt he had not achieved his cherished goal of a presidency with "a negative in all cases whatsoever on the legislative acts of the States, as heretofore exercised by the Kingly prerogative, [which] appears to me to be absolutely necessary."[524] Yet, history has proven that Madison needn't have fretted; the Plain Meaning of many of the actual words of the Constitution have been effectively over-written by Supreme Court fiats and the willful neglect of those holding other

[523] Frederick C. Mish, Editor in Chief, "emolument; *noun*: compensation or perquisite," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 378.
[524] James Madison, "Letter to George Washington, 16 April, 1787," *The Papers of James Madison*, *Volume IX: 9 April 1786-24 May 1787 with Supplement 1781-1784*, William T. Hutchinson, William M.E. Rachal, & Robert A. Rutland, Editors (Chicago, IL: University of Chicago Press—1975), 382-385.

federal offices. Madison's design has, intentionally or unintentionally, allowed the office of President to gradually usurp power with the acquiescence of, and collaboration with, the Supreme Court and Congress, in much the same way those two bodies have increasingly seized additional authority for themselves, despite the fact "there is no power to do."[525]

The Supreme Court and Congress arguably guard their own power jealously but, almost from the moment they were created, they have routinely facilitated the escalation of executive power if they perceive the result likely to augment the power and prestige of their respective branches. The unparalleled modern global colonial, financial, and hegemonic empire American presidents have gradually built with the financial support of Congress and the judicial blessings of the Supreme Court has brought incalculable wealth, power, and prestige, to the Congress, the Court, the entire American political class, and the Opulent Minority. In order to provide presidents the latitude to realize the country's self-styled Manifest Destiny,[526] Congress and the Supreme Court choose to selectively refrain from exercising their Checks & Balances responsibility to hold presidents accountable for actions that violate the First Principles, and the Constitution. As Arthur M. Schlesinger noted in his seminal work, *The Imperial Presidency*, any expansion of presidential power comes "at the expense of presidential accountability," at which point "the presidency can be said to become imperial."[527] An effective empire arguably requires an imperial leader with the power to strike at will, who does not need permission to expand the empire.

Yet, the Declaration of Independence is a clear indictment of empire, and of the

[525] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," in *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[526] Frederick C. Mish, Editor in Chief, "Manifest Destiny; *noun*: an ostensibly benevolent or necessary policy of imperialistic expansion," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 707-708.
[527] Arthur M. Schlesinger, Jr. [1973], "Introduction to the Mariner Edition," *The Imperial Presidency* (New York, NY: Mariner Books/Houghton Mifflin Company—2004), ix.

imposition of will upon people without their Consent. It is for this reason that Presidents and all members of the American political class are loath to so much as hint at the existence of an American empire; the United States also cannot ingenuously claim Exceptionalism and moral authority if it is a voracious empire. This denial of the obvious has prompted observers who do not quite recognize the source of this apparent hypocrisy to dub the United States "an empire in denial"—a phrase apparently coined by historian Niall Ferguson: "The United States is the empire that dare not speak its name; it is an empire in denial."[528] American history is rife with denials of empire by its political class and presidents. At the height of the American occupation of Iraq, Secretary of Defense under George W. Bush, Donald Rumsfeld, famously quipped to al-Jazeera: "We don't *do* empire."[529] Bush himself campaigned with a speech that included the equanimous, non-sensical contention: "America has never been an empire. We may be the only great power in history that had the chance and refused—preferring greatness to power, and justice to glory."[530] Denials notwithstanding, by any reasonable measure the office of President has built the most powerful, wealthiest, and multi-faceted, empire in the history of the world. American territory has expanded exponentially since the independence of the original Thirteen Colonies set the sun for the first time on one segment of the British Empire—thereby inspiring revolutions around the world.

Presidents have long rationalized territorial acquisitions by purchasing them; that is, rather than gaining colonies through conquest, paying other colonial empires for the "rights" to colonies inhabited by Indigenous Peoples, often after a military victory. Thomas

[528] Niall Ferguson, "Address at the Guardian Hay Festival, 1 June, 2003;" Fiachra Gibbons, "The US is an Empire in Denial," *The Guardian* (London, UK: The Guardian—2 June, 2003), 26.
[529] Bernard Porter, *Empire and Superempire: Britain, America, and the World* (New Haven, CT: Yale University Press—2006), 1.
[530] Governor George W. Bush, "A Distinctly American Internationalism, 19 November, 1999," Campaign Speech (Simi Valley, CA: Ronald Reagan Presidential Library—1999).

Jefferson's Louisiana Purchase was made in 1803 for $15 million from a cash-strapped Napoleone di Buonaparte, who was about to lose Saint-Domingue to the *Revolisyon Ayisyen* slave revolt; not a penny was paid to the Indigenous owner/occupants. James Monroe bought the "Spanish Cession" in 1819 for $5 million; James K. Polk bought the "Mexican Cession" for $18.25 million in 1848 after the Mexican-American War; and Franklin Pierce made the "Gadsden Purchase" for $10 million 1853, which was the last substantial territory purchase in the contiguous United States. After the 1898 American victory in the Spanish-American War, William McKinley spent $20 million for the rights to *Borinquén* ("Puerto Rico"), Cuba, the *Pilipinas* ("Philippines"), and the *Chamorras* ("Mariana Islands," including *Guåhån,* or "Guam"); the acquisition of the Pilipinas resulted in an indigenous insurgency and the deaths of tens of thousands of Pilipini combatants, as well as the killing of approximately two hundred thousand civilians.[531] Cuba and the Pilipinas have since achieved independence, although the United States maintains the Guantanamo Bay Naval Base and Prison on Cuba, as well as military bases in the Pilipinas. McKinley also annexed the archipelago of Hawai'i in 1898—which had been seized from Indigenous rulers through a *coup d'état* in 1893—eventually overrunning the islands with Európan-Americans until it was made a state in 1959. From the mid-nineteenth century on, the United States has collected colonies on atolls, islands, and archipelagos, in the Pacific Ocean and the Caribbean Sea, including the Virgin Islands, Sāmoa, Palau, Micronesia, and *Aolepān Aorōkin Ṃajeḷ* (the "Marshall Islands").

The standard colonial practice is to invade, conquer, pacify, build cities and plantations, then enslave the Indigenous People, but leave Indigenous villages in the countryside intact throughout the rest of the territory. This model has been followed by the

[531] John M. Gates, "Chapter 3: The Pacification of the Philippines," *The U.S. Army & Irregular Warfare* (Westport, CT: Greenwood Press—1973), *passim*.

United States outside the contiguous States, the current *Han Dìguó* ("Han Chinese Empire") and *Rossiyskaya Imperiya* ("Russian Empire"), as well as by the erstwhile *Badjawín Khilāfa* ("Arab Caliphate") in North Africa, *Imperio Español* ("Spanish Empire"), *Empire Colonial Français* ("French Empire"), and *Império Português* ("Portuguese Empire"). However, in the contiguous States, the United States pursued a policy that made the horrors of the Belgian Congo under Leopold pale by comparison: expropriating every inch of Indigenous lands and the near complete extirpation of its Indigenous owners in the "American Indian Wars." The few Indigenous Peoples who escaped slaughter in these wars were forcibly removed from their lands to concentration camps called "Reservations," where they were, and still are, subject to persecution, culturcide, and genocide, at the hands of the Bureau of Indian Affairs.

In addition to its extensive colonial holdings, the United States has "military bases in three-quarters of the countries of the world and thirty-one percent of all wealth."[532] The Gross Domestic Product of the United States is nearly double that of the next largest imperial economy, Han Dìguó, and ten times that of Rossiyskaya Imperiya. America spends more on its military than the eight next largest military budgets combined,[533] and the American arms industry—what Dwight D. Eisenhower called the Military-Industrial complex—is "the world's pre-eminent exporter of arms with more than fifty percent of the global weaponry market."[534] The United States "is the only [country] that polices the world through five global military commands; maintains more than a million men and women at arms on four

[532] Niall Ferguson, "Address at the Guardian Hay Festival, 1 June, 2003," Fiachra Gibbons. "The US is an Empire in Denial," *The Guardian* (London, UK: The Guardian—2 June, 2003), 26.
[533] Lauren Carroll, "Obama: US Spends More On Military Than Next 8 Nations Combined," *PolitiFact* (St. Petersburg, FL: Tampa Bay Times—Wednesday, 13 January, 2016, 00:29); accessed 21 June, 2016: http://www.politifact.com/truth-o-meter/statements/2016/jan/13/barack-obama/obama-us-spends-more-military-next-8-nations-combi/
[534] Denver Nicks, "The U.S. Is Still No.1 at Selling Arms to the World," *Time.com* (New York, NY: Time, Inc.—26 December, 2015); accessed 21 June, 2016: http://time.com/4161613/us-arms-sales-exports-weapons/

continents; deploys carrier battle groups on watch in every ocean; guarantees the survival of countries from Israel to South Korea; drives the wheels of global trade and commerce; and fills the hearts and minds of an entire planet with its dreams and desires."[535] Indeed, presidents have unilaterally deployed troops, established military bases around the globe, and engaged in deadly military conflicts anytime, anywhere, on Earth. The United States now has approximately 800 military and naval bases in over 150 countries around the world.[536] It is not unusual for a President to simultaneously engage the country in several unprovoked armed forces aggressions and dozens of "covert operations" without any authorization from Congress. Although presidents have engaged the United States in armed conflicts around the world almost perpetually since the end of World War II, the United States Congress has only formally declared war *five times* in history: the War of 1812, the Mexican-American War, the Spanish-American War, World War I, and World War II.

Presidential aggressions have been accompanied by crimes and atrocities committed and authorized by presidents. Such transgressions are so numerous they may perhaps fill several thick volumes; yet no American president has ever been prosecuted for any crimes committed whilst in office or after exiting. Perpetrating such acts has somehow gradually become a normative part of the job of President; simply business-as-usual. Richard M. Nixon was the only President seriously threatened with prosecution during and after his term, but Gerald R. Ford unconstitutionally granted Nixon a presidential pardon after Nixon was about to be impeached and resigned in disgrace—which elevated the recently-appointed Ford to President. On 11 May, 2012, George W. Bush, Dick Cheney, Donald Rumsfeld and their legal

[535] Michael Ignatieff, "The American Empire: The Burden," *New York Times Magazine* (New York, NY: The New York Times Company—5 January, 2003).
[536] United States Department of Defense, Counts of Active Duty and Reserve Service Members and APF Civilians By Location Country, Personnel Category, Service and Component (as of December 31, 2016)," *Defense Manpower Data Center* (Washington, DC: US Department of Defense—February 27, 2017).

advisers Alberto Gonzales, John Yoo, David Addington, William Haynes, and Jay Bybee, were convicted in absentia in Malaysia as "war criminals guilty of torture and cruel, inhumane, and degrading treatment."[537] However, unless any of the guilty journey to Malaysia, they are effectively immune from punishment related to that conviction.

Slavery and genocide enthusiast Andrew Jackson arguably began the tradition of significant public presidential atrocities with the death of 4,000 Cherokees on the "Trail of Tears" in 1838. Most recently, President Barack H. Obama developed the euphemistically named "Disposition Matrix," or "kill list"—a database of information for the extra-judicial tracking, capturing, "extraordinary rendition,"[538] and targeted killing via drones, of suspected or imagined enemies of the United States federal *government*.[539] Under Obama and Bush II, "The number of militants and civilians killed in the drone campaign" around the world exceeds 3,000.[540] After 9/11, Bush began a campaign of extraordinary rendition, torture, and unrestricted false imprisonment that was continued in one form or another by the Obama administration. Ronald Reagan colluded with Iran to win election in 1980; Richard M. Nixon colluded with North Vietnam to win election in 1968. Dwight D. Eisenhower ordered the assassination of Patrice Lumumba and covertly enabled the *coups d'état* in Iran, Guatemala,

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[537] Yvonne Ridley, "Bush Convicted of War Crimes in Absentia," *Foreign Policy Journal* (Washington, DC: Foreign Policy Journal: 12 May, 2012); accessed 21 April, 2017: https://www.foreignpolicyjournal.com/2012/05/12/bush-convicted-of-war-crimes-in-absentia/

[538] "Extraordinary rendition" is a euphemism for government-sponsored abduction and extra-judicial transfer of a person from one country to another (usually to be tortured) that has predominantly been carried out by the United States government with the consent of other countries. See Max Fisher, "A Staggering Map of the 54 Countries that Reportedly Participated in the CIA's Rendition Program," *The Washington Post* (Washington, DC: WP Company, LLC—5 February, 2013); accessed 21 April, 2017: https://www.washingtonpost.com/news/worldviews/wp/2013/02/05/a-staggering-map-of-the-54-countries-that-reportedly-participated-in-the-cias-rendition-program/?utm_term=.49a94a633f26

[539] Greg Miller, "Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names to Kill Lists," *The Washington Post* (Washington, DC: WP Company, LLC—23 October, 2012); accessed 21 April, 2017: https://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408fbe6a4b_story.html?utm_term=.c89b3ac8a139

[540] Ibidem.

Indonesia, and Congo. Subsequent presidents enabled *coups* in Bolivia (twice), Brasil (twice), Ghana, Chile (including the assassination of Salvador Allende), Türkiye, and Honduras; multiple American attempts at regime changes also failed over the years. Harry S. Truman was the only person on Earth to ever order the use of nuclear weapons when he unnecessarily dropped atomic bombs on Hiroshima and Nagasaki in Nihon ("Japan"). Franklin Delano Roosevelt extra-judicially confiscated the property of American citizens and held them in concentration camps for the duration of World War II. Warren G. Harding presided over what many consider the most corrupt and scandal-ridden presidency in history.

The notion of an imperial American presidency that is above the law has gradually become commonly internalized; it seems to be the consensus opinion of the modern legal, academic, and political Establishment, and the public appears to have accepted this view of the presidency—or at least resigned themselves to it. In the past few decades, attorneys, scholars, and pundits, appearing on political television shows and writing in peer-reviewed law journals have repeatedly expressed this view. Commentator Fareed Zakaria typifies the attitude in one of his television editorials: "there is one gaping hole in the system: the President…the President, in effect, sits above the law…Most lawyers say…the rules don't really apply to the President."[541] Zakaria went so far as to claim Richard M. Nixon was *correct* when he famously said in a 1977 interview with David Frost: "Well, when the president does it, that means that it is *not* illegal."[542] The din of rationalization drowns out those voices on both the Right and the Left decrying "a system dominated by judges and executive officers acting arbitrarily in pursuit of their own political ends, even as they are

[541] Fareed Zakaria, *GPS* (Atlanta, GA: CNN—14 May, 2017), 00:02.
[542] Richard M. Nixon, *The Nixon Interviews with David Frost, Part III* (London, UK: David Paradine Productions, Ltd.—19 May, 1977); printed in *The New York Times* (New York, NY: The New York Times Company—20 May, 1977), A16.

shielded from effective political pressure."[543] Defenders of the imperial presidency aver that conflicts of interest, corruption, nepotism, collusion with foreign governments, and murder, are not illegal for a President. As no sitting or former President has ever been prosecuted, there is an open question of whether or not Congress considers a President prosecutable at all; Congress unconstitutionally grants a President immunity from prosecution and effective immunity upon leaving office. In pardoning Richard M. Nixon, Gerald R. Ford demonstrated the ability of presidents to pardon other presidents to ensure no president ever faces the penalties mandated by the Constitution.

Apparently, the only difference between the American presidency and the rule of a monarch or emperor is that the office of President is not heritable. Some aspects of the presidency that may seem monarchal—such as Executive Orders,[544] legislative Signing Statements,[545] or Executive Waivers[546]—are absolutely integral to the quotidian function of the American bureaucracy and are often only temporary; any incoming President may countermand or rescind every extant presidential fiat. The American President does not have the ability to write laws that violate the First Principles and Organic Law, as does Congress;

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[543] Bruce P. Frohnen & George W. Carey, *Constitutional Morality and the Rise of Quasi-Law*, (Cambridge, MA: Harvard University Press—2016), 17.

[544] "The President of the United States manages the operations of the Executive branch of Government through *Executive Orders*. After the President signs an Executive Order, the White House sends it to the Office of the Federal Register (OFR). The OFR numbers each order consecutively as part of a series, and publishes it in the daily Federal Register shortly after receipt." "Executive Orders," *Office of Federal Register* (Washington, DC: The National Archives and Records Administration—2017); accessed 12 March, 2017: https://www.federalregister.gov/executive-orders

[545] "*Signing Statements* have been used since the early nineteenth century by Presidents to comment on the law being signed. Such comments can include giving the President's interpretation of the meaning of the law's language; asserting objections to certain provisions of the law on constitutional grounds; and stating the President's intent regarding how the President intends to execute, or carry out, the law [or not], including giving guidance to executive branch personnel." "Presidential Signing Statements," *The Law Library of Congress* (Washington, DC: United States Library of Congress—2017); accessed 12 March, 2017: https://www.loc.gov/law/help/statements.php

[546] "An *Executive Waiver* is an administrative tool used by presidents of the United States, and other of its Federal executives, permitting the selective enforcement of some laws." Joel D. Aberbach & Mark A. Peterson, "Waivers," *The Executive Branch* (Oxford, UK: Oxford University Press—2005), 508-511.

neither is the President able to re-write the Constitution and legislation, as does the Supreme Court. What Presidents have done, and continue to do, is leverage their position as Commander-In-Chief of both the armed services and all federal law enforcement agencies, in conjunction with the notion of "Separation of Powers," to invoke a "National Security Privilege," or what is essentially a Kingly Prerogative through the exercise of "Executive Privilege." The Supreme Court reified this notion in 1974: "Certain powers and privileges flow from the nature of enumerated powers."[547] Unlike Congress, but like an emperor, the President has no specified Constitutional mandate to further the General Welfare; that duty is only implied, in the Preamble. Historically, most actions by a President have benefited the few at the expense of the many. The imperial presidency engages in covert and extra-judicial activities domestically and internationally in order to protect what the President and the Opulent Minority perceive as "American interests" and "legitimate government interests"—interests that rarely have any relation to the legitimate interests of average Americans.

Although the American presidency is now by law limited to consecutive four-year terms, for all intents and purposes the office has been elevated to a lifetime "get out of jail free card."[548] Evidently, the lack of accountability for the commission of atrocities, high crimes, and misdemeanors, does not seem to have weighed too heavily upon the consciences of Presidents occupying the office after Warren G. Harding, who died after twenty-nine months in office at the age of 57. Herbert Hoover, Gerald R. Ford, Ronald Reagan, Jimmy Carter, and George H.W. Bush, all survived well into their 90s; Richard Nixon died at 81, Dwight D. Eisenhower at 78, and Harry S. Truman at 88.

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[547] Chief Justice Warren Berger, "Opinion," *United States v. Nixon* [418 U.S. 683, 705], 1974.
[548] "*Get-out-of-jail-free-card* refers to an element of the board game *Monopoly*...[which] has become a common idiomatic metaphor…to refer to any situation in which a person evades ordinary expectations or penalties," L. David Ritchie, "Metaphors In Politics," *Metaphor* (Cambridge, UK: Cambridge University Press—2013), 174.

# VII: *Practical Application*

*We have it in our power to begin the world over again.*

—Thomas Paine[549]

The First Principles of the Declaration of Independence are a call to action for all American citizens, a definition of citizenship and humanity, and a standard by which to measure the legitimacy of any society. By any objective measure, American society fails to meet that standard; violations of the First Principles, the Constitution, and its Bill of Rights, are so pervasive and innumerable they have become normative. Practical Application of the First Principles, the Constitution, and the Bill of Rights, necessitates sober prioritization in order of importance—and indomitable will in the face of fierce and powerful opposition and repression. It is vital for citizens to understand the actual implications of the Declaration of Independence, the Constitution, and the Bill of Rights, and to what they entitle the *Dêmos*. In order to do so, the sword of reality and the spear of knowledge must pierce the veil of "collective memory," or internalized mythology. Forcing the Opulent Minority to follow the rules it made for itself is a deliberate first step of one First Principle, or one Constitutional stipulation, at a time. Retrieving the Rights, protections, and mandates, promised within the Organic Laws of the United States will allow its citizens, the People, to determine whether or not the Organic Laws that are supposed to animate the American social organization do, indeed, suit the People who comprise the *Dêmos*. If, in realizing such promises, the *Dêmos* is displeased with them, the Organic Laws allow the People to Alter or Abolish the existing Organic Laws and replace them with Organic Laws that do suit them.

[549] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Thrift Editions—1997), 52.

Using the Organic Laws of the United States to demand and obtain Consent is the most crucial political activity in which citizens of the United States can, and must, engage; the Consent of the People tips the balance of power in American society from the Opulent Minority to the Exploitable Majority, and lessens the vulnerability of that Majority. If a *Dêmos* has an Unalienable Right of Consent, *nothing* may be done without their Consent. Yet, currently *everything* in the United States is done without the Consent of the People. Next would be the demand to overturn all unconstitutionally imported English Common and Statutory Laws. Such action ought to be followed by a demand for true Personal Autonomy through the invalidation of all laws that unconstitutionally regulate personal, victimless behavior, which are also in contravention of the First Principles. Next in importance is the demand to force Congress to promote and provide for the General Welfare as mandated by the Constitution, and to invalidate all laws that do not. Next on the agendum must be forcing Congress to exercise its constitutional mandate to regulate the Supreme Court and make it accountable, by instituting Checks & Balances on the sole branch of government that Congress has left unchecked and without counterweight.

The demand for Consent requires a critical examination of what constitutes both Consent and the lack of Consent, as well as of other First Principles such as Unalienable and Equal Rights, and the Pursuit of Happiness. In an American society that is dominated by the most powerful iteration of the Capitalist economic system in history, it is also imperative to critically examine whether or not Capitalism is compatible with not only the First Principles, but also with Democracy. For that matter, it is also vital to critically consider the compatibility of the concept of Democracy and the concept of government, as understood today. The notions of Consent, Personal Autonomy, Unalienable Equal Rights, the Pursuit of

Happiness, Capitalism, Democracy, and government, cannot simply be reduced to aspirational words heard so often they lose their meaning and ability to inspire or be challenged.

The rules the Opulent Minority has made for itself, imposed upon the country, and enshrined as Organic Law—particularly the First Principles, the Constitution, and the Bill of Rights—must be used to force the Opulent Minority to adhere to those very rules. Once the rules are followed, the People will be in a position to determine and decide if any of these rules suit them and should be retained; or if the People should exercise their Duty to Alter of Abolish any part, or all, of the American social organization. One thing is certain: the government and society created by the Constitution, the permutations to both that have taken place since that creation, as well as the existing political, social, economic, and moral order, are substantially at odds with the social organization described by the First Principles and mandated by the Constitution. The Practical Application of the First Principles and all Organic Laws entail upon the part of the People of the United States a quotidian involvement and political decision-making more extensive than has never existed in any society; true Self-Determination is an enormous, and frequently daunting, responsibility that could at any time begin anew the American corner of the world.

# *Consent*

Consent of the People is the veritable lynchpin of any Practical Application. Consent is the First Principle from which all others flow, because it addresses the fundamental issue of all human social organization: free will versus the imposition of will. Consent has at least seven requisites that must be met in order for it to be *bona fide*. Consent must be *explicit* and unambiguous, "positive, direct, unequivocal;" [550] it cannot be *imagined* or inferred and requires "no inference or implication to supply its meaning." [551] Those who determine their Consent must be *informed* as to exactly what the issue and the perspectives might be. Consent must be *voluntary* and therefore cannot be coerced. Consent is *conditional* and therefore must be *readily revocable*. It is *not heritable* and therefore must be *regularly renewed*. Lastly, Consent must be given *personally* rather than through a representative or by proxy.

There is but one reliable, valid means by which to obtain Consent from a *Dêmos*: a society-wide, expanded and augmented plebiscite.[552] To obtain *bona fide* Consent, a Consent Plebiscite must be far more complex than the standard "yes" or "no," "take-it-or-leave it," form that is merely searching for affirmation; such proposals simply present the single idea or viewpoint of whomever commissioned them, and are typically drafted by members of the Opulent Minority without the slightest involvement of the *Dêmos*. A *Dêmos* may have as many views as it has people, and such views cannot be given voice via a standard "yes or no" plebiscite; a *bona fide* and fair Consent Plebiscite must present a *Dêmos* with a reasonable array of options, including the option to select "None of the Above" if they find all other

[550] Henry Campbell Black, M.A. [1891 & 1910], "consent; noun," *Black's Law Dictionary, Fifth Edition* (St. Paul, MN: West Publishing Company—1979), 276.
[551] Ibidem, 276.
[552] Frederick C. Mish, Editor in Chief, "plebiscite; *noun*: a decree of the common people [plebs]," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 893.

options wanting. If no clear favorite emerges, additional Consent Plebiscites would continue to be held until an unambiguous selection is made; for any subsequent plebiscite, proposals may be withdrawn, revised, or combined, and new proposals added.

In other words, a Consent Plebiscite for a Constitution might include the current Constitution, several alternatives submitted by such groups and individuals as Common Cause, Public Citizen, the National Organization for Women, the League of Women Voters, the American Civil Liberties Union, the Heritage Foundation, the Hoover Institution, the Libertarian Party, the Republican Party, the Democratic Party, the Green Party, Noam Chomsky, the Koch Brothers, and the opportunity for citizens or entities to place other possibilities on the ballot through initiatives—as well as "None of the Above." In 1787, a Consent Plebiscite may have featured the current Constitution, plus James Madison's dream version, and one each from Thomas Jefferson, Thomas Paine, Benjamin Franklin, Patrick Henry, Alexander Hamilton, John Adams, Gouverneur Morris, and John Jay—plus the ubiquitous "None of the Above" that might indicate the People felt they were all on the wrong track. A Consent Plebiscite in 1776 for the Declaration of Independence could have also included: Thomas Jefferson's original anti-slavery version of the Declaration; a defiantly pro-slavery proposal from the southern States; an Opulent Minority proposal; a Puritan proposal; a Quaker proposal; and perhaps one from Thomas Paine.

Consent Plebiscites must be held regularly to furnish voters the opportunity to re-affirm or change their minds, and give new voters an opportunity to weigh in. The occasion must be a universal yearly holiday in order to provide every citizen the opportunity to vote, and would guarantee that every living citizen had a chance to either Consent or dissent to the political system, economic system, and social organization. Ultimately, a Consent Plebiscite

may simply become a formality, as "all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed"[553]—but it would be an important formality. Moreover, a new crop of citizens may see things differently than previous generations and may Alter or Abolish any existing system or organization. Without such regular Consent Plebiscites, no polity can legitimately claim to have the Consent of the People. It is significant that no government in the world regularly obtains the *bona fide* Consent of the People they rule—and none claim to do so—but only the United States has an Organic Law and First Principle that obligates such Consent.[554] Yet, a countrywide plebiscite *has never been held* in the United States for any reason whatsoever; the United States is one of only six major self-described democracies that have never held a countrywide plebiscite—the others being the Nederlands, Deutschland ("Germany"), Nihon, Bhārata ("India"), and Yisra'el.[555]

Before American citizens can win the opportunity to vote in Consent Plebiscites, they must first recognize they are entitled to such plebiscites. However, internalized mythology makes such recognition problematic. A Rasmussen Report on Consent notes that during a Democratic administration, *half* of all likely Democratic voters believed the government has their Consent, but only eight percent of Republicans believe this. The ratio may reverse during a Republican presidency. All told, "twenty-two percent of the nation's likely voters believe the government today has such Consent;"[556] not co-incidentally, in another poll,

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[553] Thomas Jefferson, "Preamble," *Declaration of Independence* (Philadelphia, PA: Second Continental Congress—1776).
[554] Concepts in this section regarding consent are refinements of material from: Piêtro G. Pôggi, "On Tacit Consent," *Constitutional Law POL5310* (San Rafael, CA: Dominican University—Fall 2014), *passim*.
[555] Economist Staff, "Politics Brief: The People's Voice," *The Economist* (London, UK: The Economist—14 August, 1999).
[556] Rasmussen Reports, "22% Believe Government Has Consent of Governed" (Asbury Park, NJ: Rasmussen Reports, LLC—Sunday, 4 June, 2012); accessed 20 April, 2017: http://www.rasmussenreports.com/public_content/politics/general_politics/june_2012/22_believe_government_has_consent_of_governed

Rasmussen reported a similar percentage of likely voters (twenty-four percent) felt the country was on the "right track."[557] Given such dovetailing figures, it seems reasonable to assume that those polled did not, or could not, distinguish between possibly agreeing with government policies or the American system, and formally giving informed Consent to be governed or to the status quo. The poll did not enquire as to the particulars of the Consent that had been given; if it had, perhaps the results would have been altered when people could not supply any details whatsoever regarding the event of their Consent. Asking questions about the event of Consent may potentially spur citizens to contemplate exactly what Consent entails and realize they have not truly Consented to any part of the American social organization. A telephone poll conducted with one thousand likely voters is certainly not in any way equivalent to over 200 million eligible American voters casting an official ballot.

It would seem obvious why governments the world over avoid seeking any sort of Consent from their citizens or subjects—the result could be potentially embarrassing and even lead to the fall of governments, and the collapse of entire social organizations, were majorities able to indisputably refuse their Consent. It is clear that the EU would undergo an extensive re-alignment; which would likely be the case in the United Sates, as well. In America, the Opulent Minority has any number of System Justifications to feign Consent of the People, thereby maintaining the pretense Consent exists, and has always existed, and perpetuating the established "political, social, [and] moral order,"[558] through such notions as: tacit consent; residential consent; historic consent; the act of voting in any election as consent; and representational, assigned, or third party, consent.

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[557] Rasmussen Reports, "Right Direction or Wrong Track" (Asbury Park, NJ: Rasmussen Reports, LLC—10-14 April, 2016); accessed 20 April, 2017: http://www.rasmussenreports.com/public_content/politics/mood_of_america/right_direction_wrong_track_apr17

[558] Paul Lagassé, Editor, "Censorship," *The Columbia Encyclopedia, Sixth Edition* (New York, NY: Columbia University Press—2001).

The American legal class—which includes the judiciary—developed the specious legal theory known as "tacit consent." Tacit consent is alternately known as: "implied consent," "imagined consent," "inferred consent," "presumed consent," "hypothetical consent," "pretend consent," or "magical consent." According to *Black's Law Dictionary*, "tacit consent is consent inferred from the fact that the party kept silence when he had an opportunity to forbid or refuse."[559] Those doing the inferring of Consent are invariably those who benefit from the fiction that Consent of the People exists and is renewed *ad infinitum* without any actual involvement of those who are imagined to Consent. Tacit consent is most often associated with consent being inferred from the fact that citizens merely reside within the borders of a given polity; it is more than likely few people are aware that their residence is being construed as evidence of *bona fide* Consent.

The idea of residential consent is perhaps first voiced nearly two and a half millennia ago by Pláton via his philosophical alter ego, Sokrátes, in *Critón*—"he who has experience of the manner in which we order justice and administer the State, and still remains, has entered into an implied contract that he will do as we command him"[560]—and residential consent has been a popular theme with philosophers beholden to a sovereigns or oligarchies thereafter. Sovereigns, oligarchs, and Opulents, also favor the notion. However, the idea was disingenuous in 320 BCE, and no matter how often it is revived, it has not gained the slightest credibility since. In 1651, Conservative icon Thomas Hobbes, echoed Platón as he famously asserted that a man is bound by residence "whether his Consent be asked or not, he must either submit to their decrees or be left in the condition of warre he was in before; wherein he

[559] Henry Campbell Black, M.A. [1891 & 1910], "tacit consent," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 1302.
[560] Platón [360 BCE], *Critón* ["Crito"], Translated by Benjamin Jowett (Oxford, UK: Clarendon Press, 1871), 153.

might without injustice be destroyed by any man whatsoever."[561] In 1689, John Locke opined that "every man, that hath any possession, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government."[562] David Hume ridiculed the circuitous logic of those who promoted perpetual tacit consent on the part of people who are without the wherewithal to move, and lacking the information that their residency could be misinterpreted as Consent:

> Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given his *tacit consent* to his authority, and promised him obedience? It may be answered, that such an *implied consent* can only have a place, where a man imagines that the matter depends upon *his* choice. Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean, and perish the moment he leaves her.[563]

System Justification by the American political and legal classes substantially relies upon the theories of Platón, Hobbes, and Locke—and eschews the logic of Hume—in presuming every citizen within the borders of the United States has a *reasonable* opportunity to speak out or opt out, and the means by which to do so. The obvious fallacy of the idea is illustrated by events in the city of New Orléans as Hurricane Katrina approached; no one could reasonably contend that the poorest people who died as a result actually possessed the means to flee the city and were therefore tacitly consenting to their own deaths through inaction. Women, indentured servants and slaves in ancient *Athína* ("Athens") or

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[561] Thomas Hobbes [1651], "Chapter XVIII: Of the Rights of Sovereigns by Institution," in *Leviathan: The Matter, Forme and Power of a Common Wealth, Ecclesiasticall and Civil* (Oxford, UK: Oxford University Press—1909), 135.
[562] John Locke [1689], "Second Treatise On Civil Government," in *Two Treatises of Government* (New Haven, CT: Yale University Press—2003), Chapter VIII, Section 119.
[563] David Hume [1742], "Of the Original Contract," Part II, Essay XII, *Essays: Moral, Political, and Literary*, Eugene F. Miller, Editor (Indianapolis, IN: Liberty Fund, Inc.—1987), 475; *emphasis added*.

Revolutionary America did not tacitly consent to their servitude simply because they were unable to extricate themselves from the control of their masters, husbands, families, or the power structure of the country. In 2014, over 41 million non-elderly Americans were so impoverished they could not afford healthcare,[564] much less a move out of the United States. Forty-five percent of American children lived in poverty[565] in 2014, but did not consent to do so simply because they do not run away from home or leave the country.

In the United States, if someone is born into abject poverty or an untenable living situation, yet is somehow able to acquire the means to leave, she or he would still encounter similar language and customs barriers that peasants and artisans faced in 1787 and throughout history. Today, there are also international exclusionary policies that did not exist in the late eighteenth century. For example, the United Kingdom requires more than $10,000 verifiably on deposit in a bank for three months before a person may temporarily reside there; permanent residence requires considerably more personal wealth. Australia only invites immigrants with special skills that are needed there; the same is true for Canada. There is freedom of movement within the European Union, but emigration rules in each country are daunting. In other words, if an ordinary American citizen is dissatisfied with the American system, leaving it is rarely an option—and that has been the case throughout the world, throughout history. The notion of tacit consent through residence is akin to parents telling a 10-year-old child that if they do not like rules they are free to leave; for adult citizens, it is akin to being told: "America: love it or leave it."

Residential consent has much in common with the notion of hereditary consent,

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[564] Henry J. Kaiser Family Foundation, "Key Facts About the Uninsured Population 2014," *kff.org* (Menlo Park, CA: Henry J. Kaiser Family Foundation—29 October, 2014); accessed 14 August, 2015: http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/

[565] National Center for Children in Poverty, "Child Poverty" (New York, NY: Columbia University—2014); accessed 31 October, 2014: http://www.nccp.org/topics/childpoverty.html

whereby the fact the Founding Fathers consented in 1776 and the *Coupistes* consented in the Secret Proceedings of 1787 supposedly binds all future generations to carry on the traditions so established. Hereditary consent imagines the current system is a perfectly functioning legacy and the Framers of the Constitution were wise and prescient beyond question; the argument contends this legacy has allowed American society to become the most prosperous and stable in the history of the world, and any attempt to tamper with it will be disastrous. The fact that the Supreme Court, Congress, and the President tamper with the Constitution on an almost daily basis is willfully ignored in this argument. The small group of wealthy Anglo-Saxon men, who a quarter of a millennium ago devised a system to permanently advantage them and their progeny, have now become the infallible objects of American ancestor worship; any suggestion of altering the system in any meaningful way is blasphemy in this *de facto* religion. Were this and other irrational American traditions and myths observed in another society by Americans, Americans would likely regard that society as "primitive." A case can perhaps be made that no one other than a male member of today's Opulent Minority would regard such hereditary consent as fair, or a good idea. The notion is quite preposterous when considered in the cold light of day; unfortunately for Americans, it rarely is.

Political theorists have considered the idea of historical consent preposterous for as long as it has been advanced, although such discouraging words are rarely found in history books, textbooks, or modern political discourse. Scottish philosopher David Hume lambasts hereditary consent that he reckons "supposes the consent of the fathers to bind the children, even to the most remote generations" and asserts "it is not justified by history or experience, in any age or country of the world."[566] Thomas Jefferson was adamant that "by the law of

[566] David Hume [1742], "Of the Original Contract," Part II, Essay XII, *Essays: Moral, Political, and Literary*, Eugene F. Miller, Editor (Indianapolis, IN: Liberty Fund, Inc.—1987), 471.

nature, one generation is to another as one independent nation is to another,"[567] and "I set out on this ground, which I suppose to be self-evident, 'that the Earth belongs in *usufruct* to the living;' that the dead have neither powers nor rights over it."[568] Jefferson also had quite definite ideas concerning the upper limits of the lifespan and legitimacy of constitutions and laws: "Every constitution, then, and every law, naturally expires at the end of nineteen years. If it be enforced longer, it is an act of force and not of right."[569]

Another form of circuitous System Justification in the imagining of Consent is the notion that by virtue of the simple act of voting, Americans are both demonstrating their Consent, and automatically renewing it with each election. If Americans had any meaningful influence upon the options presented in any election, such rationalization might have some credence; if an election were a Consent Plebiscite, Consent would be incontrovertible. As it is, Americans have virtually no influence upon what, or who, is presented to them for a vote. American voter apathy has become so pervasive that participation of eligible voters typically hovers around fifty percent for presidential elections and sinks to a percentage in the mid-thirties in non-presidential years.[570] In other words, in the majority of elections, the majority of Americans usually do not vote, which would seem to make a *prima facie* case that adults in the United States do *not* Consent at all to the system. Moreover, those citizens who do vote may merely be voting for what they consider the "lesser of two evils" rather than whole-heartedly supporting a particular candidate or measure. American ballots never include the option for "None of the Above," which could potentially dramatically increase voter turn-out,

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[567] Thomas Jefferson, "Letter to James Madison, 6 September, 1789," in *The Works of Thomas Jefferson*, Volume VI, Paul Leicester Ford, Editor (New York, NY: G.P. Putnam's Sons—1904), 8.
[568] Ibidem, 3-4.
[569] Ibidem, 3-4.
[570] Michael P. McDonald, "Voter Turnout," *United States Election Project* (Gainesville, FL: University of Florida Department of Political Science—); accessed 14 March, 2017:
http://www.electproject.org/home/voter-turnout/voter-turnout-data

but would also have the potential to greatly embarrassment the American government on the world stage if elections were routinely won by "None of the Above."

Once a candidate is elected, the theory of "representative consent" comes into play; that is, the idea that anyone who is elected represents all or a segment of the People and therefore has effectively been granted the Power of Attorney[571] to act for such constituency during their term in office. The notion that Consent may somehow be consigned or assigned to a third party is belied by the fact that Consent is both a First Principle and an Unalienable Right that *cannot* be consigned or assigned for any reason whatsoever. The idea that an elected representative has dispensation to act contrary to the will of the People during a term in office, and provide average citizens with virtually no opportunity to meaningfully influence such actions, is also patently unconstitutional.

[571] Henry Campbell Black, M.A. [1891 & 1910], "Power of Attorney: The instrument by which authority of one person to act in place and stead of another as attorney in fact is set forth," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 118.

# *Unalienable Rights*

Something that is *Unalienable* is "inviolable, absolute, sacrosanct;" it is also cannot be "revoked or abridged," and "is incapable of being surrendered, waived or transferred"[572] by the person endowed with them, or by any other person, group, entity or government—under any circumstances *whatsoever*. The significance and inviolability of *Unalienable* is a Self-Evident Truth that cannot be overstated. Thomas Jefferson affirmed the importance of Unalienable Rights throughout his life: "Nothing then, is unchangeable but the inherent and Unalienable Rights of man."[573] In other words, it is not legitimately possible for a citizen to renounce any part of any Unalienable Right, nor can such Rights be curtailed or revoked, waived or assigned, to an elected representative (for which one may, or may not, have voted) or to a third party. The notion of sacrificing an Unalienable Right to obtain some imagined protection or illusory security clearly violates the First Principles as well as the famous admonishment from Benjamin Franklin: "Those who would give up essential Liberty to purchase a little temporary Safety, deserve neither Liberty nor Safety."[574]

Of course, virtually all crime and any disruption of the established political, social, economic, and moral order, could be forestalled through around-the-clock surveillance of every action of every citizen and the complete curtailment of all Personal Autonomy—but that would completely contravene the First Principles of the Right to Life and Liberty, as well as the Bill of Rights. Such a surveillance state may protect a *government* and better enable it

[572] Frederick C. Mish, Editor in Chief, "unalienable; adjective," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 586.
[573] Thomas Jefferson, "Letter to Major John Cartwright, 5 June, 1824," *Jefferson: Political Writings*, Joyce Appleby & Terence Ball, Editors (Cambridge, UK: Cambridge University Press—1999), 386.
[574] Benjamin Franklin, "Pennsylvania Assembly: Reply to the Governor, 11 November, 1755," *Votes & Proceedings of the House of Representatives,* 1755-1756 (Philadelphia, PA: Pennsylvania Assembly—1756), 19-21.

to control its subjects, but that is not the system created by the Constitution. Modern American society has reversed the Personal Autonomy and functioning of the political system prescribed in the Declaration of Independence; the American government has near complete access to virtually every aspect of the lives of every one of its citizens, yet citizens have almost no access to virtually every aspect of the operation of the United States government. Whatever the government does reveal often conceals or disguises the true nature of its inner workings. The Plain Meaning of the words and phrases of the First Principles prescribe a social and political organization that is not designed to make control of citizens easier, but rather to facilitate citizen's control of the government. "Legislative powers exist in our system to protect, not to destroy, the inalienable rights of men."[575] Privacy and anonymity are important components of Personal Autonomy; they may it more difficult to catch those who violate laws, but that is the price of freedom—and that is why the essential Right to Life and Liberty was designated both a Self-Evident Truth and Unalienable when Benjamin Franklin added those words to Thomas Jefferson's draft Declaration of Independence.

[575] Rep. William Lawrence (R-Ohio), "December, 1865," *The Reconstruction Amendment Debates*, Alfred Avins, Editor (Richmond, VA: Virginia Commission on Constitutional Government—1967), 212.

# *Personal Autonomy*

The Right to Life and Liberty may also be described as Personal Autonomy. Autonomy is "self-directing freedom, especially moral independence."[576] The concept of Personal Autonomy is so far-reaching, and so fundamental, to both human nature and human flourishing, that all other Unalienable Rights—such as Equality, collective Self-Determination (*political* autonomy), and Consent—are essentially inter-related subsets of Personal Autonomy. The Right to Life is the Right to *sole ownership* of one's *own life* and body; whereas Liberty is the independence to conduct that Life however one sees fit, free from interference or intrusion or endangerment from any person or entity or society or environmental peril. Personal Autonomy is therefore a "negative right," meaning its continued existence requires inaction or refraining from action upon the part of a society; except when the need to protect it arises. Nonetheless, Personal Autonomy has inherent and Self-Evident natural limitations: "rightful Liberty is unobstructed action according to our will within limits drawn around us by the Equal Rights of others."[577] Such limitations recognize that in order to have a society in which everyone successfully enjoys Personal Autonomy, there must be mutual dependence; that is, the common human cultural denominator of reciprocity,[578] with its attendant common respect for the Rights of others.

The common human cultural denominator of reciprocity obviously appears in every human society, and is clearly related to "The Golden Rule" and its fraternal twin, the "Law of

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[576] Frederick C. Mish, Editor in Chief, "autonomy; *noun*," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 79.
[577] Thomas Jefferson, "Letter to Isaac H. Tiffany, 4 April 1819," *Thomas Jefferson Papers at the Library of Congress* (Washington, DC: Library of Congress), accessed 20 July, 2015: http://rotunda.upress.virginia.edu/founders/default.xqy?keys=FOEA-print-04-02-02-0303
[578] George P. Murdock, "The Common Denominator of Culture," *The Science of Man in the World Crisis*, Ralph Linton, Editor (New York, NY: Columbia University Press—1945), 124.

Reciprocity,"[579] but it is neither altruistic nor selfish; there is no direct *quid prō quō*,[580] nor is there sacrifice. As Thomas Paine noted in the *Rights of Man*: "A Declaration of Rights is, by reciprocity, a Declaration of Duties also. Whatever is my Right as a man is also the Right of another; and it becomes my duty to guarantee, as well as to possess."[581] The natural limitation of Liberty is related to the *Harm Principle* of John Stuart Mill: "The only purpose for which power can be rightfully exercised over any member of a civilised community, against his [or her] will, is to prevent harm to others."[582] However, the duty Paine describes is ultimately not imposed by society, but engaged in freely by, and amongst, equal individual members of society. As the Marquis de Condorcet (Marie Jean Antoine Nicolas de Caritat, Marquis de Condorcet) notes: "Either no individual of the human species has any true rights, or all have the same; and he or she who votes against the right of another, whatever the religion, colour, or sex of that other, has henceforth abjured his own."[583]

In other words, Personal Autonomy within a society is a collaborative venture; autonomous persons organized to achieve collectively in a society what could not be accomplished individually; such natural limitations upon Liberty make possible the successful co-existence and collaboration of humans. Obviously, the social model prescribed by the First Principles is not compatible with the tenets of greed, selfishness, and aliened individuality, promulgated by Capitalism. In a legitimate society as measured by the First Principles, no individual will can be more valuable or privileged than the will of another. Hence the Self-Evident Truth and First Principle that each autonomous human being is "created Equal"—that

[579] Simon Blackburn, *Ethics: A Very Short Introduction* (Oxford, UK: Oxford Univ. Press—2001), 101.
[580] Latin *idiom*: "this for that."
[581] Thomas Paine [1791], *Rights of Man* (Mineola, NY: Dover Thrift Editions—1999), 69.
[582] John Stuart Mill, *On Liberty* (London, UK: Longmans, Green Reader & Dyer—1880), 6.
[583] Nicolas de Condorcet (Marie Jean Antoine Nicolas de Caritat, Marquis de Condorcet) [1790], "Sur l'Admission des Femmes au Droit de Cite" ["On the Admission of Women to the Rights of Citizenship"], Translated by Dr. Alice Drysdale Vickery (Letchworth, UK: Garden City Press, Limited.—1893), 5-6.

is, of Equal intrinsic value. It is indisputable that the value ranking of human beings endemic to Capitalism is *entirely subjective* and can in no way be objective; there is simply no empirical or objective evidence to support the assignment of any sort of value rankings to human beings. Any social hierarchy is a subjective valuation based upon the personal preferences of those doing the valuation. Any interpretation of the term "all men are created Equal" other than as "all human beings are inherently of Equal Value" would result in "absurdity and injustice…so monstrous, that all mankind would, without hesitation, unite in rejecting [it]."[584] The pretense that any person or group of people intrinsically possesses superior will or value to that of any other individual or group of individuals is just such a monstrous absurdity.

Nonetheless, the First Principle that all humans are of Equal Value ought not to be interpreted as an assertion that every human has equal capabilities or equal talent or equal appeal to fellow humans. Rather, it is a reminder to all that those lucky enough to be born rich or powerful or talented or clever or attractive or tall—or anything else prized in American society—are not *better* than those who are not, and therefore such individuals do not deserve special privileges; they are already graced with a genetic largesse few receive and are thus more likely to be accorded a disproportionate share of life's blessings in many human societies. The First Principle of Equal Value warrants that humans under the jurisdiction of the United States ought not, under any circumstances, be subjectively valued and treated unjustly as a result. Equal Rights, fairness, and Justice are guaranteed to every person, regardless of any and every imaginably or unimaginable variation of humanity and human activity, such as: age, religious belief, personal wealth or poverty, genetic information,

[584] John F. Manning, "The Absurdity Doctrine," *Harvard Law Review, Volume 116, Number 8* (Cambridge, MA: Harvard Review Association—June, 2003), 2388.

pregnancy, weight, height, appearance, physical or emotional scars, political activity or beliefs, rights claims or union activity, infirmity or disability, race or ethnicity. *Every* human, every lifestyle, and every modus operandi is of equal value, at the federal level and in every state and every jurisdiction. If such Equality did not extend to every level of society and government, the notion of Equality would be an empty promise. The fact that there is not, and has never been, true Equality in the United States does not diminish or invalidate the Principle, it diminishes and indicts a system that has yet to honor its own First Principles.

# *The Pursuit of* Eudaimonja

One aspect of the human condition that occurs equally within all humans is the desire to pursue Happiness. "The Pursuit of Happiness" is therefore perhaps the most insightful, innovative, and radical phrase contained within the Declaration of Independence; the wellbeing of a *Dêmos* had never before been an express written commitment of any political unit in the course of human events. The revolutionary and unprecedented concept of the Pursuit of Happiness as a Self-Evident Truth and Unalienable Right implicitly recognizes that Happiness is not only the over-arching goal of all human existence and the inexorable pursuit of human nature, but also that Happiness is the most reliable source of social cohesion and stability. People who are generally happy, contented, and flourishing, simply do not harm other people or property; an unhappy, immiserated *Dêmos* produces an unstable, volatile society. Happiness is so crucial to humans that it may easily obscure everything else in life; if someone is truly flourishing, nothing else seems quite so important. Happiness, and the potential for Happiness, are arguably what makes human life worth living. If someone believes Happiness is impossible to find or achieve, they generally feel they have no reason to live. With few exceptions, everything a person does in life is in furtherance of proximate personal Happiness or in anticipation of future personal Happiness—even if it is an act of altruism, and even if a person does not realize the truth of this fact. As Thomas Jefferson noted less than a year after leaving the presidency: "The Freedom and Happiness of [humans are] the sole objects of all legitimate [societies]."[585]

Thomas Jefferson did not produce a body of philosophical works on the level of

[585] Thomas Jefferson, "Letter to Tadeusz Kosciuszko, 26 February, 1810," in *The Papers of Thomas Jefferson, Retirement Series, Volume 2, 16 November 1809 to 11 August 1810*, J. Jefferson Looney, Editor (Princeton, NJ: Princeton University Press—2005), 257-261; accessed 29 June, 2015: http://founders.archives.gov/documents/Jeffeson/03-02-02-0211

Thomas Paine, but he was nonetheless an Enlightenment philosopher who was extremely well-educated and well-read. His philosophical thought is primarily found in the copious number of letters he wrote and the political documents he drafted, rather than in essays, pamphlets, or treatises. His thinking often synthesized and built upon ideas that had been circulating within the intelligentsia of Európa and America during *le Siècle des Lumières*, which is what Európan philosophers have always done. Borrowing philosopher John Locke's phrase "Life, Liberty, and Estate,"[586] for the Declaration of Independence, Jefferson replaced the word "Estate" (sometimes referenced as "Property") with "the Pursuit of Happiness," creating a phrase that Patriots transformed into a "natural right and a national motto."[587]

The importance of substituting "the Pursuit of Happiness" for "Estate" cannot be overemphasized. Whether by design or simply by instinct, Thomas Jefferson's use of "the Pursuit of Happiness" resonated with an Exploitable Majority that was denied suffrage because it had no "estate" and had little chance of obtaining it. Retaining the term "Estate" would have resonated with the Opulent Minority, the people who actually *owned* property; it would have signaled to people without property, and clearly unhappy with their lot, that the new country was going to be much like the existing colonies and the British Empire, and nothing for which to fight and die. The substitution of "the Pursuit of Happiness" for "Estate" leaves no doubt the Declaration of Independence is an Enlightenment document, and the new country is one that intended Equality for all its citizens—whose support would undoubtedly be needed to defeat the British Empire.

The exact source from which Thomas Jefferson appropriated the term "the Pursuit of

[586] John Locke [1689], *Two Treatises of Government* (New Haven, CT: Yale University Press—2003), Chapter VII, Section 87-89.
[587] Jack N. Rakove, *Revolutionaries: A New History of the Invention of America* (Boston, MA: Houghton Mifflin Harcourt—2010), 302.

Happiness" remains a subject of debate, but it did not originate with him. The actual phrase "the Pursuit of Happiness," and several variations, appeared in a number of philosophical works in the seventeenth and eighteenth centuries. Sir Richard Cumberland's *De Legibus Naturae* was published in 1642, one hundred and thirty-four years before the Declaration of Independence, wherein he used the phrase: "pursuit of our own Happiness."[588] Cumberland's work is replete with familiar Enlightenment concepts, such as: "to take care of the Welfare of all Men…and to do good to Men,"[589] the "Welfare of the Whole…so they are designed and obliged, faithfully to take care of, and co-operate to, the Welfare of the Whole…The Publick and Universal Good."[590] He notes "the Welfare of all Mankind, which is most often connected with the Common Good,"[591] "the Publick Happiness of all Mankind,"[592] and "promoting the Welfare of the Civil Society."[593] William Wollaston later used the phrase: "The Pursuit of Happiness by the practice of Truth and Reason."[594] Historian Jack N. Rakove posits that use of the Pursuit of Happiness "arguably owed more to Jefferson's reading of Swiss jurist Jean-Jacques Burlamaqui;"[595] that is, a 1763 English translation of Burlamaqui's *Principles of Natural and Politic Law,* the opening chapter of which discusses natural rights as it extolls the "noble pursuit" of "true and solid happiness."[596] It is quite possible Jefferson was conversant with all three texts; it is unlikely he was unfamiliar with any of them.

The notion of "the Pursuit of Happiness" harkens back to the concept with which all

[588] Sir Richard Cumberland [1642], *De Legibus Naturae ["A Treatise of the Laws of Nature"*] (Indianapolis, IN: Liberty Fund—2005), 523-524.
[589] Ibidem, xxxix.
[590] Ibidem, xx-xxi.
[591] Ibidem, 347.
[592] Ibidem, 352.
[593] Ibidem, 163.
[594] William Wollaston, [1722], *The Religion of Nature Delineated, Eighth Edition.* (London, UK: Samuel Palmer—1759), 90.
[595] Jack N. Rakove, *Revolutionaries: A New History of the Invention of America* (Boston, MA: Houghton Mifflin Harcourt—2010), 300.
[596] Jean-Jacques Burlamaqui [1747], *The Principles of Natural & Politic Law,* translated by Thomas Nugent [1763] (Indianapolis, IN: Liberty Fund—2006), 31.

Enlightenment philosophers, including Thomas Jefferson, were undoubtedly well-acquainted: the ideal of reaching a state of *Eudaimonja*, proponed by Aristotéles in *The Nicomachean Ethics*.[597] Until quite recently, the standard English translation of "Eudaimonja" in all editions of *The Nicomachean Ethics* was "Happiness;" however, either "individual well-being" or "human flourishing" is now considered to better capture the essence of *Eudaimonja*. The distinction between "Happiness" and "Eudaimonja" is considerable: "Happiness" has several interpretations, the most common being transitory amusement, or "a pleasurable or satisfying experience."[598] Aristotéles is careful to repeatedly emphasize that *Eudaimonja "*does not consist in amusement,"[599] but rather is a state of wellbeing, of flourishing, that ultimately "depends upon ourselves"[600] because it requires active *pursuit* and engagement rather than passivity. Aristotéles contends that *Eudaimonja* "is the end of all that man does."[601]

Although *Eudaimonja* is a much richer and more nuanced term than "Happiness," and assuming Jefferson was familiar with the original text and not the English translation, its use would likely have substantially diluted the impact upon those unfamiliar with the work of Aristotéles in its original language—but it is also unlikely that Jefferson's primary editors, Benjamin Franklin and John Adams, would have let the term pass without objection for that very reason. The "Pursuit of Happiness" expresses a thoroughly humanist Enlightenment *weltanschauung*[602]—and the phrase resonates because every human is seeking Happiness and *Eudaimonja*, whether or not they realize they are doing so.

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[597] Aristotéles [c. 350 BCE], Book X, Chapter 6, *Ethika Nikoumakeja* ["The Nicomachean Ethics"], Translated by F.H. Peters, MA (London, UK: Kegan Paul, Trench, Trübner & Co., Ltd—1893), 335.
[598] Frederick C. Mish, Editor in Chief, "unalienable; adjective," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), 586.
[599] Aristotéles [c. 350 BCE], Book X, Chapter 6, *Ethika Nikoumakeja* ["The Nicomachean Ethics"], Translated by F.H. Peters, MA (London, UK: Kegan Paul, Trench, Trübner & Co., Ltd—1893), 336.
[600] Ibidem, Book X, Chapter 6, 336.
[601] Ibidem, Book X, Chapter 6, 335.
[602] Deutsch: "world view."

With his theory of *Eudaimonja*, Aristotéles is arguably wrestling with concepts that in the mid-twentieth century were primary features of the "Human Potential Movement"—also called "Self-Actualization" in the work of Carl Gustav Jung—although Aristotéles himself labored under the decidedly unenlightened notion that women and slaves are not quite fully "human" and thus do not possess the human potential to achieve *Eudaimonja*. Jung expanded upon Aristotéles' basic concept of *Eudaimonja* in not only including women, but also identifying the "human longing for happiness, satisfaction, and security in life."[603] Jung may have been nearly as cavalier as Aristotéles in advocating the theory that "every human life contains a potential; if that potential is not fulfilled, then that life was wasted"[604]—certainly, many people who have not reached their full potential have not wasted their lives.

Current understanding recognizes that in order for humans to physically and intellectually flourish, certain habitational conditions must exist. Humans are generally unable to create or maintain such habitational conditions individually, which is why humans organize into societies. Because *Eudaimonja* fundamentally "depends upon ourselves,"[605] it is a state of being that may have as many permutations as there are people. It is therefore not possible for a society to simply provide *Eudaimonja* for its citizens; a society is only able to create or facilitate the conditions wherein *Eudaimonja* has the potential to blossom within every citizen who pursues it. Such blossoming requires that a society both scrupulously maintain certain conditions conducive to the Pursuit of *Eudaimonja*, and facilitate *reliable* accesses to the means by which citizens may obtain whatever elements are necessary to such pursuits, that are not possible for society to provide directly:

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[603] Carl Gustave Jung [1933], *Modern Man In Search of a Soul* (Orlando, FL: Harcourt—1955), 169.
[604] Carl Gustav Jung, as quoted in James Fadiman & Robert Frager, *Personality and Personal Growth*, 6th Edition, (New York: Pearson Prentice Hall—2005), 56.
[605] Aristotéles [c. 350 BCE], Book X, Chapter 6, *Ethika Nikoumakeja* ["The Nicomachean Ethics"], Translated by F.H. Peters, MA (London, UK: Kegan Paul, Trench, Trübner & Co., Ltd—1893), 336.

- Personal Autonomy—sole ownership of one's own life and body; and the Liberty to conduct one's life as one sees fit, without interference or threat;
- Liberty—the freedom to do everything which injures no one else;"[606]
- Social Justice (Equality)—reliable fair, just, and equal treatment;
- Territorial Security ("Safety")—a habitational environment reliably free from such threats as violence, crime, terrorism, forced labor or slavery, environmental degradation and toxicity, pollution, resource depletion, and preventable or mitigable natural disaster;
- Political Security—a political system reliably free from political or cultural repression, torture, extra-judicial imprisonment or assassination, and other human rights abuses;
- Water Security—reliable access to adequate potable water for drinking, cooking, and sanitation;
- Health Security—reliable access to adequate and affordable health care and freedom from disease vectors, pathogens, and toxins;
- Food Security—reliable access to sufficient nutritionally adequate and socially acceptable food for an active, healthy life;
- Shelter Security—reliable access to adequate permanent shelter from the elements;
- Clothing Security—reliable access to sufficient clothing that provides adequate protection from the elements.[607]

No credible case may be made that the United States reliably provides *any* of these conditions universally for its Exploitable Majority, and even the inordinate concentrated wealth of the country's Opulent Minority cannot protect Opulents from global climate disintegration or the political instability of mass unhappiness. The "2017 World Happiness

[606] Thomas Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine [1789], "Article IV," *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"] (Paris, FR: Assemblée Nationale Constituante—26 Auguste, 1789).

[607] A composite of the work done by psychologists Carl Gustav Jung, Abraham H. Maslow, Ivan Terrell & Joe Griffin, and the United Nations Development Programme and the UN Office for the Coordination of Humanitarian Affairs, Humanitarian Support Unit (OCHA HSU):
Carl G. Jung [1933], *Modern Man In Search of a Soul* (Orlando, FL: Harcourt—1955), *passim*;
Abraham H. Maslow, "A Theory of Human Motivation," *Psychological Review,* Volume 50, Number 4 (Washington, DC: Psychological Review—1943), 370-96, *passim*;
Abraham H. Maslow, *Motivation and Personality* (New York, NY: Harper & Brothers—1954), *passim*;
Inge Kaul, Director, *Human Development Report of 1994* (New York, NY: United Nations Development Programme/Oxford University Press—1994);
Ivan Tyrrell & Joe Griffin, *Human Givens: A New Approach to Emotional Health and Clear Thinking* (Brighton, East Sussex, UK: HG Publishing—2004), *passim*.

Report" ranked the United States *fourteenth*, behind mostly Nordic countries such as Norge ("Norway"), Danmark, Sverige ("Sweden"), Suomi ("Finland"), Ísland ("Iceland"), the Nederlands, and Helvetica ("Switzerland"), but also behind Australia, New Zealand, Canada, Yisra'el, Costa Rica, and Österreich ("Austria").[608] It is noteworthy that, at least in the upper quantile, the World Happiness rankings roughly correspond to the "Corruption Perception Index 2017"[609]—except the United States drops from its rank as the fourteenth happiest country in the world to the eighteenth least corrupt. In other words, countries with the least corruption tend to have the happiest citizens.

The United States is unquestionably the wealthiest country in the world, but it also has the most unequal distribution of wealth in the world. In America, wealth clearly does not overcome corruption or inequality, and attaining Happiness is problematic, at best. Professor Ruut Veenhoven, of Erasmus University in Rotterdam, conducted extensive research in sixty countries regarding income growth and its correlation with Happiness, that demonstrates an increase in Happiness follows the same growth curve as income until it reaches a level that meets basic needs, provides comfort and long-term security, allows time for leisure and contemplation, and provides the wherewithal to explore personal interests. Beyond that point, Happiness plateaus even as income continues to rise. If people become pre-occupied with the pursuit of accumulation and status, Happiness *declines*.[610]

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[608] John Helliwell, Richard Layard, & Jeffrey Sachs, "Figure 2.2: Ranking of Happiness (Part 1)," *World Happiness Report 2017* (New York, NY: Sustainable Development Solutions Network—2017), 20.
[609] José Ugaz, Chair, "Corruption Perception Index 2016," *Transparency International* (Berlin, DE: a Transparency International—2016); accessed 21 April, 2017: https://www.transparency.org/news/feature/corruption_perceptions_index_2016
[610] Rutt Veenhoven, "The World Database of Happiness: The Continuous Register of Scientific Research on Subjective Appreciation of Life," *Happiness Research Organization* (Rotterdam, NL: Erasmus University—2015); accessed 30 December, 2016: http://www1.eur.nl/fsw/happiness/

# *Captured by Capitalism*

Capitalism is no more natural to human existence than social hierarchies. In fact, hierarchical social organization is a function of Capitalism, which is a direct and more refined descendant of Feudalism. Capitalism, at its essence is neo-feudalism with far more seductive perquisites than the original iteration. The barons of industry are the Owner Class harvesting the labor of the Exploitable Majority, taking the lion's share of the yields and leaving the neo-serfs scrambling to survive on the chaff. The Declaration of Independence gave Americans the expectation of pursuing and achieving Happiness; in the American version of Capitalism, Happiness and wealth are equated; that is, wealth buys Happiness—although wealth and power actually damage the brain's capacity to empathize with other humans.[611] The Pursuit of Capital is conflated with the Pursuit of Happiness; yet, any Happiness in America is merely an occasional and incidental by-product of the quest for wealth. It is arguably Capitalism that is pursuing and seducing workers with the normalization of greed and selfishness accompanied by promises of lucre more enticing than seventy-two *houris* in paradise.[612] The reality of Capitalist society has, as Marx noted, alienated or estranged its members from their *Gattungswesen* ("species-essence"),[613] with predictable results such as: an opioid "epidemic," mass shootings, increased suicides, declining life expectancy, and increased homelessness.

Although frustration is likely to result when substantial wealth and privilege do not produce a commensurate increase in Happiness, the lack of social mobility in American

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[611] Jerry Useem, "Power Causes Brain Damage," *The Atlantic* (Washington, DC: The Atlantic Monthly Group—July/August 2017); accessed 21 June, 2017: https://www.theatlantic.com/magazine/archive/2017/07/power-causes-brain-damage/528711/

[612] 'Female companions' in heaven; the Sunni Muslím reward for martyrs— Jami' at-Tirmidhi, "Chapter 25: Regarding The Rewards For The Martyr," *The Book on Virtues of Jihad*, *Volume III, Book 20,* Edited by Abu `Isa Muhammad ibn `Isa at-Tirmidhi (Cardiff, UK: Principality Publishers—1999), Hadith 1663.

[613] Karl Marx [1844], "Estranged Labor," *Economic and Philosophic Manuscripts of 1844*, Translated by Martin Milligan (Moskva, CCCP: Foreign Language Publishing House—1961), 67-83.

society makes disillusionment with success much less of an issue than disillusionment from the "failure" to transcend the circumstances of birth. "Old Right" thinker Frank Chodorov contends Americans have been pacified by internalizing the easily refuted premise that anyone can rise from humble beginnings in the United States by working their way "up the ladder by sheer ability, self-reliance, and perseverance, in the face of hardship. In short…to be self made."[614] In fact, according to a study by Michael D. Carr and Emily E. Wiemers, the overwhelming majority of people in the United States end life in exactly the same class in which they began; the odds are that hard work, and the oft-cited "playing by the rules" that are never actually specified in writing, will not be rewarded. Approximately five percent of those born in the lower forty percent of wealth distribution are able to rise to the top twenty percent, and only about a quarter of those from the bottom were are able to move into the middle forty percent; but twenty percent from the middle forty percent regress to the lower forty percent, and less than ten percent of that middle forty percent are able to rise to the top twenty percent of wealth holders.[615]

The practical effect of an internalized mythology that conflates Capital/money with Happiness is that it guarantees perpetual unhappiness to the vast majority of individuals in the United States. With median wealth (not income) in the United States at just under $45,000,[616]those who do not belong to the Opulent Minority have little realistic hope of spending their way to Happiness, or even making ends meet. Most of the Exploitable Majority is struggling to merely survive, and the idea of pursuing Happiness or enough money to buy

[614] Frank Chodorov, "Chapter XIX: The Radical Rich," *Out of Step: Autobiography of an Individualist* (New York, NY: The Devin-Adair Company—1962), 187.
[615] Michael D. Carr & Emily E. Wiemers, "The Decline in Lifetime Earnings Mobility in the U.S.: Evidence from Survey-Linked Administrative Data," *Working Paper Series* (Washington, DC: Washington Center for Equitable Growth—2016), 14-18.
[616] Ibidem, 98.

it, is effectively meaningless. The quotidian attempt to attain the means to acquire basic needs expends so much effort and energy that none remains for any other purpose. People who are chronically unhappy often turn to drugs or commit suicide; drug use and joblessness lead to homelessness.[617] The top 0.1% of Americans controls as much wealth as the bottom 90%;[618] "the three wealthiest people in the United States—Bill Gates, Warren Buffet, and Jeff Bezos—now own more wealth than the entire bottom *half* of the American population combined, a total of 160 million people or 63 million households;"[619] and "the bottom 40% of Americans have a combined *negative* net worth."[620] Such a societal model is fundamentally unstable, and predictably so. After all, the nature of Capitalism is self-evidently exploitative and without compunction.

As Walter Benjamin puts it, Capitalism is *sans trêve et sans merci* ("without respite and without mercy").[621] Capitalism is, of course, an economic system, but it is also very much an ideology. Above all, it is a form of social organization that requires a rigid coercive hierarchy featuring a large Exploitable Majority and a very small, oligarchic, Opulent Minority to exploit them. American Capitalism has re-purposed the entire *raison d'être* of human social organization from one of collaboration, in which everyone contributes to society to the best of their ability, to one that demonizes co-operation and unity and promotes an

[617] Rutt Veenhoven, "The World Database of Happiness: The Continuous Register of Scientific Research on Subjective Appreciation of Life," *Happiness Research Organization* (Rotterdam, NL: Erasmus University—2015); accessed 30 December, 2016: http://www1.eur.nl/fsw/happiness/
[618] Emmanuel Saez & Gabriel Zucman, "Wealth Inequality in the United States Since 1913: Evidence From Capitalized Income Tax Data," Working Paper 20625 (Cambridge, MA: National Bureau of Economic Research—2014), 22.
[619] Chuck Collins & Josh Hoxie, "Billionaire Bonanza: The Forbes 400 and the Rest of Us," (Washington, DC: Institute for Policy Studies—2017), 2.
[620] Lori Robertson, "Sanders' Wealth Inequality Stat," *FactCheck.org* (Philadelpphia, PA: Annenberg Public Policy Center—8 January, 2016) *emphasis added*; accessed 21 April, 2017: http://www.factcheck.org/2016/01/sanders-wealth-inequality-stat/
[621] Walter Benjamin [1921], "Capitalism As Religion," *Selected Writings Volume 1: 1913-1926*, Translated by Rodney Livingstone (Cambridge, MA: Belknap Press—1996), 288.

"individualist economy,"[622] that fetishizes "power" (over others), as it reifies and exalts the Hobbesian notion of ruthless competition amongst and between individuals: "every man is enemy to every man."[623] Workers, or "Units of Labor,"[624] far outnumber jobs in an optimal Capitalist society—part of what Friedrich Engels called a "Reserve Army of Workers"[625]—a circumstance that compels an immiserated and desperate labor force to compete with each other for employment and survival. Capitalism favors virtually unlimited immigration in order to continually expand the pool of the immiserated and desperate. Capitalism is most lucrative for Capitalists if Units of Labor have no negotiating leverage; slavery has historically been the preferred option, but in lieu of slavery Capitalists as a matter of course go to extraordinary lengths in order to maintain dominance over workers.

Although the Civil War to preserve slavery was lost by Capitalists in the South, Jim Crow apartheid and the neo-feudalist system of "sharecropping" replaced slavery and kept African-Americans as virtual slaves, but externalized[626] their living costs to the sharecroppers themselves rather than to the landowners who were formerly slave holders. In the North, the most common form of human trafficking was indentured servitude, which continued until the Thirteenth Amendment outlawed it in 1865. From the 1870s through the 1930s, Capitalists faced with labor unrest routinely engaged operatives of the Pinkerton National Detective Agency—what today would be considered private mercenaries—to "partner with local law

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[622] Harold J. Laski, "American Labor," *The American Democracy: A Commentary & An Interpretation* (London, UK: George Allen & Unwin, Ltd—1949), 239.
[623] Thomas Hobbes [1651], "Chapter XIII: Of the Natural Condition of Mankind as Concerning Their Felicity and Misery," in *Leviathan: The Matter, Forme and Power of a Common Wealth, Ecclesiasticall and Civil* (London, UK: Oxford University Press—1909), 96.
[624] Karl Marx used Labor as the unit of value in his theories, a practice that has now been adopted in statistical calculations by such Capitalist bastions as the United States Department of Labor and the Organisation for Economic Co-operation & Development (OECD).
[625] Friedrich Engels [1845], *The Condition of the Working Class in England in 1844* (London, UK: David Price—1892), 235.
[626] Avoiding payment of the full costs of operations by transferring some of those costs to external sources.

enforcement"[627] for labor spying, protection of strikebreakers, and the deployment of "goon squads" to violently suppress union movements and strikes with impunity. Pinkertons became so notorious for seriously injuring, killing, and disappearing labor leaders and union members that the federal Anti-Pinkerton Act of 1893 was passed. After World War II, private mercenaries will still engaged, but President Harry S. Truman ordered the armed forces to suppress strikes, and the Taft-Hartley Act was passed in 1947 to unconstitutionally restrict union activities. Police, the National Guard, and the Federal Bureau of Investigation suppressed labor movements and protest movements from the 1960s through such recent movements as Occupy and Black Lives Matter. Private paramilitary forces working with local law enforcement to repress civil rights have enjoyed a resurgence; Tiger Swan was hired by the owners of the Dakota Access Pipeline (DAPL) to work with local police and sheriff departments to brutally protect the "interests" of investors and violate the civil rights of Indigenous Peoples protesting its construction. The one constant throughout American history is that local and federal law enforcement *always* protect the "interests" of Capitalists, and never protect the Exploitable Majority from physical attack by agents of Capitalists; the People are, indeed, the enemy of their government, of its law enforcement arms, and of the Opulent Minority that ultimately controls both.

American Capitalists now prefer a form of enslavement in which the upkeep of the worker is externalized—such as prison labor or contract indentured labor in foreign countries. Such "competition" from low-wage labor artificially suppresses American wages until such time as the American labor force can be substantially eliminated through the implementation of mechanization, automation, self-driving vehicles, and artificial intelligence (AI). Removing

[627] Unattributed, "History," *pinkerton.com* (Ann Arbor, MI: Pinkerton Consulting & Investigations, Inc.—2017); accessed 21 April, 2017:https://www.pinkerton.com/about-us/history/

humans as workers from the equation means no scheduling conflicts, no sick family members, no days off or sick days, no vacations, no strikes, no on the job injuries, no lawsuits. What should be obvious is that American society has been structured almost from the beginning to depend upon the undependable. American society is therefore essentially a house of cards; Capitalists may, and do, withdraw the means for survival of the workers in any region of the United States whenever it suits the Capitalist, thereby collapsing the economy of that region. The realization of the precarious nature of the position of individual members of the Exploitable Majority has resulted in a new class designation: *Precariat*,[628] workers whose precarious existence is without any sort of security, who are discarded without compunction if a cheaper source of labor is found, or new technology is developed. The notion of perpetually retraining these workers for the next precarious occupation is simply a cruel canard.

Although Capitalism exerts virtually impregnable control over the daily lives of American citizens, whose compulsory participation in the labor market to serve the needs and wishes of the Opulent Minority is, by design, the only means of survival in a Capitalist society, Capitalism has no legal obligation or *de facto* allegiance to any society or its Units of Labor. Under American law, corporations have a fiduciary responsibility to maximize and optimize return for shareholders and investors at all costs, as the tax code has historically encouraged and rewarded offshoring of both American corporate headquarters and jobs held by American workers. For instance, Anheuser-Busch has long been associated with St. Louis, Missouri, and its name adorns Busch Stadium there, but it is now legally based in Leuven, Belgium; Seagate Technologies is headquartered in Cupertino, California, but the company has offshored its legal home to Dublin, Ireland.

[628] Amamiya Karin, "Suffering Forces Us to Think Beyond the Right-Left Barrier," *Mechademia 5: Fanthropologies*, Frenchy Lunning, Editor, (Minneapolis, MN: University of Minnesota Press—2010), 252.

The degree to which Capitalism controls American society may surprise many Americans. American employers effectively pick the societal winners and losers from amongst approximately ninety-four percent of Americans who are Units of Labor; the caprices of an employer determine whether or not a worker will have the means to obtain adequate shelter, food, and clothing. No matter how successful or comfortable an employee may be, there is always the imminent possibility of job loss and financial ruin. Employers and the Investor Class determine how labor is divided—that is, what occupations will maximize investment, profits, and efficiency, in what numbers and at what price—thereby limiting the career options of Americans and shaping their lives. Modern employers determine how many hours a position requires daily and weekly, when the employee should arrive and depart, how an employee should dress and groom themselves, workplace rules and etiquette, and whether or not an employee will receive benefits such as paid vacations, paid sick days, and adequate healthcare. An employer may designate an employee as an "independent contractor" and thereby deprive that employee of benefits altogether. Employers often dictate employee conduct outside work hours and on vacation, and limit or forbid the political activities of an employee. Employers may prevent or impede union and guild activities. Some of America's largest corporations, as well as some small independent local businesses, routinely defraud consumers and systematically engage in wage theft, compulsory overtime, and coercion. The practice of "externalizing costs"[629] is endemic; for example, programs such as food stamps and Medicaid subsidize low wages and lack of benefits, and employers are allowed tax deductions for employee benefits and executive salaries.

Capitalism is inherently acquisitive and, although it depends upon the competition

[629] When a company avoids paying the full costs of its operations by overtly or covertly transferring some of those costs to society.

amongst and between Units of Labor, the system itself loathes competition; Capitalists ineluctably seek to eliminate all competition through merger, purchase, or marginalization. Capitalism is relentlessly moving to privatize every inch of land on Earth and every resource on or in that land, as well as every nautical mile of ocean and every drop of fresh water. It wants to eliminate the Commons and all public spaces such as parks, and all public infrastructure—such as roads, bridges, transit, and airports. It wants to privatize and monopolize all drinking water, and monopolize the entire food supply system. Capitalism seeks the impunity to fell every tree, remove every mountain top, mine every mineral and fossil fuel contained in Earth's lithosphere until the ground collapses, spew unlimited amounts of greenhouse gases to the atmosphere, poison every ounce of water, kill every animal, and ultimately make Earth uninhabitable for virtually all life. Inordinate wealth often privatizes culture and art that are culturally significant treasures, thus diminishing the culture and those who are part of it. A case in point is the sale of artist Amedeo Modigliani's *Nu Couché* ("Reclining Nude") in 2015, for $170 million, to the Long Museum[630]—a private art museum in Shanghai, *Han Dìguó*, founded by Liu Yiqian, a billionaire investor, and his wife Wang Wei—on the other side of the world from Le Bateau-Lavoir in Montmarte, Paris, where *Nu Couchée* was painted. Capitalists seem to be gambling that they will die in privatized luxury before the Earth dies; the fate of their progeny or the species appears irrelevant.

Contrary to American internalized mythology, it is not "the Market" that determines the value of Labor in a Capitalist society; rather, it is the top of the coercive hierarchy, the

[630] Jussi Pylkkänen, "Modigliani's Nu couché (Reclining Nude) Leads a Night of Records in New York: Five World Auction Records for an Artist Set in *The Artist's Muse Sale*, as Modernist Masterpiece Sells for Second Highest Price Ever Paid at Auction," *The Artist's Muse: A Curated Evening Sale* (New York, NY: Christie's—15 November, 2015); accessed 15 May, 2016: http://www.christies.com/features/modigliani-nu-couche-reclining-nude-leads-a-night-of-records-in-new-york-6782-3.aspx

Opulent Minority, that sets the market for labor. Not surprisingly, the Opulent Minority deems its own activities to be the most valuable and rewards them most spectacularly, even if—or perhaps because—such activities make no discernable contribution to society at large. As a result, the United States now has the largest wealth inequality in the modern world. CEO compensation is beyond all reasonable proportion; lucrative corporate board memberships require little work or involvement with the functioning of the corporation; Wall Street traders, investment bankers, and those who "creatively" manipulate financial markets, are rewarded with the lucre of financial royalty. The salaries of the CEOs of Discovery Cable, Chipotle, CVS, and Walmart, are more than *one thousand times* those of the Units of Labor they command.[631] Of course, there are Capitalist enterprises that do not succeed, or barely succeed, and perhaps some that do not exploit workers, but the system is designed for the Ownership and Investor classes to progressively increase their wealth whilst paying Units of Labor the absolute minimum practicable. In a true "market economy," the best-paid jobs would be jobs no one is willing to perform; yet those jobs are typically the worst paying. No matter how incompetent the CEO, they are invariably rewarded with a "golden parachute" compensation package that is beyond the wildest dreams of the individual Unit of Labor employed by the corporation, and is usually many multiples of the lifetime earnings of the average worker.

The top 0.1 percent of American families now hold a portion of the country's wealth approximately equal to that held by the bottom ninety percent of Americans.[632] In fact, just *eight* men—Bill Gates, Warren Buffet, Jeff Bezos, Mark Zuckerberg, Larry Ellison, Charles

[631] Dr. Andrew Chamberlain, "CEO to Worker Pay Ratios: Average CEO Earns 204 Times Median Worker Pay," *glassdoor.com* (Mill Valley, CA: Glassdoor, Inc.—25 August, 2015); accessed 21 April, 2017: https://www.glassdoor.com/research/ceo-pay-ratio/

[632] Emmanuel Saez & Gabriel Zucman, "Wealth Inequality in the United States Since 1913: Evidence From Capitalized Income Tax Data," Working Paper 20625 (Cambridge, MA: National Bureau of Economic Research—2014), 22.

Koch, David Koch, and Michael Bloomberg[633]—control between them assets in excess of $500 Billion; more than what is owned by the bottom fifty percent of Earth's 7.5 billion inhabitants.[634] Moreover, the median wealth in the United States is slightly below $45,000;[635] thirty-five percent of adult Americans have a net worth of less than $10,000;[636] and twenty-two percent of American adults are in *lowest global wealth quintile*.[637] It may seem incomprehensible to some that "the bottom 40% of Americans have a combined *negative* net worth;"[638] collectively the poorest Americans are essentially a domestic Least Developed Country ("LDC") within the richest empire in world history. The bottom "3.5 billion adults, or [47%] of the global population…accounts for only 2.4% of global wealth; in contrast, dollar millionaires comprise 0.7% of all adults, but collectively own 46% of all assets."[639]

Such massive wealth inequality is compounded by the fact that literally *everything* in American society is monetized. A future in which every inch of all clothing is covered with advertising, like NASCAR driver uniforms, is imminently foreseeable. Americans will rarely perform any task without being "financially incentivized," and they expect money to compensate for any transgression or injury; they would be foolish to behave in any other manner in such a society. The Capitalist system abhors altruism; any affinity for the Common Good or General Welfare can be a slippery slope leading to the erosion of the cult of greed

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[633] Luisa Kroll & Kerry A. Dolan, "Forbes 2017 Billionaires List: Meet The Richest People On The Planet," *Forbes* (Jersey City, NJ: Forbes Media LLC—23 March, 2017); accessed 21 April, 2017: https://www.forbes.com/billionaires/list/

[634] Anthony Shorrocks & Jim Davies, *Credit Suisse Global Weath Databook, 2016* (Zurich, CH: Credit Suisse Research Institute—2016), 104.

[635] Ibidem, 98.

[636] Anthony Shorrocks & Jim Davies, *Credit Suisse Global Weath Databook, 2016* (Zurich, CH: Credit Suisse Research Institute—2016), 151.

[637] Ibidem, *emphasis added*, 125.

[638] Lori Robertson, "Sanders' Wealth Inequality Stat," *FactCheck.org* (Philadelpphia, PA: Annenberg Public Policy Center—8 January, 2016); accessed 21 April, 2017: http://www.factcheck.org/2016/01/sanders-wealth-inequality-stat/

[639] Anthony Shorrocks & Jim Davies, *Credit Suisse Global Weath Databook, 2016* (Zurich, CH: Credit Suisse Research Institute—2016), 104.

and selfishness, lessening the ability of the system to control its denizens through those impulses. Ayn Rand, the philosophic darling of the so-called "Alt-Right," proclaims: *"*if civilization is to survive, it is the altruist morality that men have to reject."[640] Rand uses "civilization," the way it is used in most history books: as synonymous with empire—in this case, imperial global Capitalism. She subjectively presumes its survival to be objectively desirable. In short, Capitalism is oppositional to the social nature of humans; human social organization requires pervasive altruistic behavior in order to successfully function and survive. As noted historians Joyce Appleby, Lynn Hunt, and Margaret Jacobs describe in *Telling the Truth About History*:

> One of the distinguishing features of a free-enterprise economy is that its coercion is veiled...The fact that people must earn before they can eat is a commonly recognized connection between need and work, but it presents itself as a natural link embedded in the necessity of eating rather than as arising from a particular arrangement for distributing food through market exchanges…Presented as natural and personal in the stories people tell about themselves, the social and compulsory aspects of capitalism slip out of sight and out of mind…Far from being natural, the cues for market participation are given through complicated social codes. Indeed, the illusion that compliance in the dominant economic system is voluntary is itself an amazing cultural artifact.[641]

There exists in academia what could be described as an "industry," sculpting perceptions of a Capitalist, coercive, hierarchical society until it takes shape as natural, evolutionary, and normative: "One of the greatest puzzles of human evolutionary history concerns the how and why of the transition from small-scale, 'simple' societies to large-scale, hierarchically complex ones."[642] The existence of a coercive hierarchical status quo in Capitalist societies is frequently given in evidence as proof of its necessity. The implication is

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[640] Ayn Rand (Alisa Zinov'yevna Rosenbaum), *The Virtue of Selfishness: A New Concept of Egoism* (New York, NY: New American Library—1964), 27.
[641] Joyce Appleby, Lynn Hunt, & Margaret Jacob, *Telling the Truth About History*, (New York, NY: W.W. Norton & Company—1995), 120-121.
[642] Peter Turchin & Sergey Gavrilets, "Evolution of Complex Hierarchical Societies," *Social Evolution & History. Volume 8, Number 2* (Volgograd, Russia: Uchitel Publishing House—September 2009), 167.

that there came a point in time when humans collectively threw up their hands in frustration at the difficulty of life and demanded a leader, a *Leviathan*,[643] to command their existence and remove them from any substantive decision-making, to perpetually mire "common people" in lives that are "solitary, poore, nasty, brutish, and short."[644] In return, leaders and Opulent Minorities would forever luxuriate in wealth as a just reward for relieving people of the burden of Self-Determination, and for creating jobs in which those people must toil in order to create that wealth. Over two millennia ago, Aristotéles endorsed subjugation: "For that some should rule and others be ruled is a thing not only necessary, but expedient; from the hour of their birth, some are marked out for subjection, others for rule."[645] More than a century before Charles Darwin introduced the theory of evolution, Joseph Addison claimed *God* had set the natural order of society: "The obedience of children to parents is the basis of all government, and set forth as the measure of that obedience which we owe to those whom Providence has placed over us."[646] Simply put, modern coercive, hierarchical human societies did not naturally "evolve"—nor are they an act of God—they *developed* as a result of deliberate human actions, as *Cymru* ("Welsh") philosopher Raymond Williams describes:

> From inside and outside there was this remorseless moving-in of the *armed gangs*, with their titles of importance, their kingships and their baronies, to feed from other men's harvests—and the armed gangs became social and natural orders, blessed by their gods and their churches, with at the bottom of the pyramid, over a tale of centuries, the working cultivator, the human and natural man; sometimes finding a living space, a settled working area, as often deprived of it but, in any case, breaking the land and himself to support this rising social estate…[647]

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[643] Thomas Hobbes [1651], *Leviathan: The Matter, Forme, and Power, of a Common Wealth: Ecclesiasticall & Civil* (London, UK: Oxford University Press—1909), *passim*.
[644] Ibidem, "XIII: Of the Natural Condition of Mankind as Concerning Their Felicity and Misery," 97.
[645] Aristotéles [c. 330 BCE], "Book I—Slavery: Is It Also Natural?" *Politiká* ["Politics"], Translated by Benjamin Jowett, M.A. (Oxford, UK: Clarendon Press—1885), 7.
[646] Joseph Addison, "The Spectator No.189; Saturday, October 6, 1711" *The Works of Joseph Addison* (New York, NY: Harper & Brothers—1837), 280.
[647] Raymond Williams [1973], *The City & The Country* (New York, NY: Oxford University Press—1975), 38.

A linkage between Capitalism and conservative, austerity-minded Protestantism is detailed at length by sociologist Max Weber in *The Spirit of Capitalism and the Protestant Ethic*,[648] and Frank Chodorov also notes the connection that Weber had documented more than a half-century earlier: "The so-called Protestant Ethic…held that man was a sturdy and responsible *individual*, responsible to himself, his society, and his God. Anybody who could not measure up to that standard could not qualify for public office or even popular respect."[649] Success in business supposedly indicates God has smiled upon the enterprise, and Units of Labor serve God by creating wealth for the Owner and Investor classes. It is a remarkably self-serving and diaphanous ideology that nevertheless rarely sparks enduring outrage.

The First Amendment erects what Thomas Jefferson calls "a wall of separation between Church and State."[650] Yet, a somewhat nebulous amalgam of Capitalism and conservative Christianity has arguably torn that wall asunder and become a *de facto* state religion. It is a religion that has no houses of worship, save stock exchanges and corporate boardrooms; services are conducted by politicians who extoll belief in competition, whilst expressing faith in the "Invisible Hand"[651] and the perfect infallibility of "The Market." A Supreme Court acts as the religion's *custos morum*,[652] its "Guardians of the Moral Order."[653] In this role, the Court has seen fit to fervently preserve the "social interest in order and

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[648] Max Weber [1904-1905], *Die Protestantische Ethik und der Geist des Kapitalismus [The Protestant Ethic and the Spirit of Capitalism]* (New York, NY: Chas. Scribner's Sons—1959), *passim*.
[649] Frank Chodorov, "Chapter XIX: The Radical Rich," *Out of Step: Autobiography of an Individualist* (New York, NY: The Devin-Adair Company—1962), *emphasis added*, 187.
[650] Thomas Jefferson, "Letter to Messrs. Nehemiah Dodge and Others: A Committee of the Danbury Baptist Association in the State of Connecticut, 1 January, 1802," *The Library of Congress Information Bulletin: June 1998* (Washington, DC: Library of Congress—June, 1998); accessed 7 August, 2016: https://www.loc.gov/loc/lcib/9806/danpre.html
[651] Adam Smith, Book IV, Chapter II, Paragraph IX, *An Inquiry into the Nature and Causes of The Wealth of Nations, Volume II* (London, UK: William Strahan & Thomas Cadell—1776), 32.
[652] Maurice Waite, Editor, "*custos morum*; noun—a guardian of (public) morals," *Oxford English Dictionary Online* (Oxford, UK: Oxford University Press—2017); accessed 20 April, 2017: www.oed.com
[653] Mark Warren Bailey, *Guardians of the Moral Order: The Legal Philosophy of the Supreme Court 1860-1910* (DeKalb, IL: Northern Illinois University Press—2004).

morality;"[654] that is, the coercive, hierarchical order and a conservative Christian morality that suits the sensibilities of Justices, who are invariably educated in élite universities and indoctrinated with the values of the Opulent Minority. Almost every person born or raised in the United States has internalized the Protestant Ethic to one extent or another. Serving the interests of Capital is promulgated as the highest human glory; hard work is understood to be intrinsically virtuous and the *duty* of every American citizen[655]—presumably for low wages in the employ of a Capitalist. Traits such as selfishness, narcissism, greed, and coercion, are given probity and celebrated when Capitalists possess them; on the other hand, workers are slothful, envious, ungrateful sinners. Philosopher and social critic Walter Benjamin minces no words: "Capitalism is a purely cultic religion, perhaps the most extreme that ever existed."[656]

When rationalizing public subsidies for private enterprises owned by the Opulent Minority, American political icon and beloved representative of that Opulent Minority, President John Fitzgerald Kennedy, popularized the metaphoric phrase that became a prominent part of the Capitalist liturgy: "a rising tide lifts all boats."[657] A rising tide may lift all boats, but in American Capitalism only the Opulent Minority *has* boats. Everyone else is adrift at sea, either drowning or barely bobbing their heads above water. Some are clinging to flotsam and jetsam; some are on sinking rafts; some are in leaky dinghies. Except for a few strong swimmers who try to make landfall, the only way to survive is to work on a boat owned by the Opulent Minority—but there are far more people floating in jeopardy than there are jobs on these boats. Everyone working on a boat knows they can be back in the drink in a

[654] Zechariah Chafee Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press—1941), 150; first quoted by the Court in Justice Frank Murphy, "Opinion," *Chaplinsky v. New Hampshire* [315 U.S. 568, 572]—1942.
[655] Max Weber [1904-1905], *Die Protestantische Ethik und der Geist des Kapitalismus [The Protestant Ethic and the Spirit of Capitalism]* (New York, NY: Chas. Scribner's Sons—1959), *passim*.
[656] Walter Benjamin [1921], "Capitalism As Religion, *Selected Writings Volume 1: 1913-1926*, Translated by Rodney Livingstone (Cambridge, MA: Belknap Press—1996), 288.
[657] Originally the slogan of the New England Council, a regional chamber of commerce.

heartbeat, and someone else will be hauled aboard to replace them. In a Capitalist society, the Exploitable Majority is not only exploitable; it is disposable.

Yet, about half of the Exploitable Majority seems to have internalized the notion that the Opulent Minority are their *benefactors*, rather than their oppressors. These workers express gratitude and fealty to the Opulent Minority for owning the boats and providing jobs, and they accept the status quo without question. They support the goals and activities of the Opulent Minority, and are often heard to spout such re-worked biblical phrases as "there will always be rich" and "the poor will always be with us."[658] They may believe in lower taxes for the wealthy in the belief they, too, may someday be rich. Although they may struggle financially, they revel in their hard work and nod in agreement if it is implied that the plight of the poor is self-inflicted: "I think poverty to a large extent is also a state of mind."[659] They identify with the Capitalist state in a way that transcends ordinary patriotism; they are personally invested in the American empire in a manner resembling a sports fan following a favorite team. They have internalized the notion of "American Exceptionalism"—"the belief that America's values, political system, and history are unique [and superior] and worthy of universal admiration"[660]—and they tamp any discouraging words with System Justification: "it has its flaws but it is better than any other system" or "our government has flaws and has responded and passed laws to make up for such flaws." Despite their personal circumstances, they feel powerful by virtue of the fact they are part of the most dominant country on Earth.

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[658] These are re-wordings of a phrases found in the Christian *Bible*: "there will always be poor in the land," Deuteronomy 15:7-11; "the poor you will always have with you," Matthew 26:11, *Holy Bible: King James Version, Old & New Testaments* (Cambridge, UK: Oxford University Press—1611), 149 & 781.

[659] Allen Smith, "Housing Secretary Ben Carson Says He Thinks Poverty is 'a State of Mind'," *businessinsider.com* (New York, NY: Business Insider, Inc.—24 May, 2017); accessed 2 June, 2017: http://www.businessinsider.com/ben-carson-poverty-state-of-mind-2017-5

[660] Stephen M. Walt, Robert & Renée Belfer, "The Myth of American Exceptionalism," *Foreign Policy* (Washington, DC: The FP Group—10 November, 2011); accessed 20 October, 2016: http://www.foreignpolicy.com/articles/2011/10/11/the_myth_of_american_exceptionalism?page=0,0

The nature of the functioning of Capitalism in general, and the specific facts of Capitalism as practiced in American society, cannot be credibly disputed; but how these facts are interpreted may be quite disparate. Those who benefit from Capitalism and sit atop the coercive American social hierarchy tend to have a very positive view of Capitalism and American social organization; so much so that they may actually consider it and all its institutions the most "perfect" ever devised by mankind. Those whose labor creates wealth for the Opulent Minority, wealth that does not "trickle down"[661] to bring comfort and Happiness, may tend to be displeased with the massive wealth inequality and social injustice that is a hallmark of the American empire. The near inseparability of the Capitalist economic system from the American political State, and the dominance of Capitalism in every aspect of American society, have prompted some to label the United States political system as "fascist."

Before leaping to such a pejorative determination, it is instructive to consider how American social organization compares to the definition of a Fascist society by Benito Mussolini, *il Duce del Fascismo*, the man responsible for popularizing the term "Fascismo" and creating the *Fascisti* political movement, *il Partito Fascisti Nationale*: "We control political forces, we control moral forces, we control economic forces, we are therefore fully a Fascist, corporatist State."[662] Under Mussolini, Italia was controlled by a single party; virtually every citizen was an adherent of *Ecclesia Catholica* ("Roman Catholicism"), the state religion solidly aligned with the *Fascisti*, as were the country's corporatists and virtually all other élites. All elements of the *Minoranza Opulenta Italiana* ("Italian Opulent Minority") were effectively combined into a single political, social, and economic entity, which also

[661] Will Rogers, "And Here's How It All Happened," *St. Petersburg Times* (St. Petersburg, FL: St. Petersburg Times—Sunday, 27 November, 1932), 19.
[662] Benito Mussolini, "XII: The Tasks of the New Italia; Roma, 7 Aprile, 1926," *Discorsi del 1926* (Milano, IT: Alpes—1927), 120-121 (translated by the author).

included the military and paramilitary. Opposition was not tolerated; a case in point being Giacomo Matteotti, a Socialist leader and former friend and colleague of Mussolini, who was kidnapped and assassinated by *Fasicisti* operatives after publically denouncing *il Partito Fascisti Nationale* prior to the 1924 elections—three years after Mussolini became *il Duce del Fascismo* and two years after he became Prime Minister for life.

In the United States, it is unlikely the government and military will be able to exercise dominant control of the country's the economic forces as Mussolini was able to do; instead, America's economic forces, in the form of global corporations, in concert with the country's Opulent Minority—that includes its Investor Class and Owner Class—already dominate America's political forces. In fact, the Political Class is actually a subset of the Opulent Minority. As Capitalism is truly the *de facto* American religion, the country's economic force and its moral force, such as it is, are one and the same. Many make the case that because both the Republican Party and the Democratic Party are beholden to the same corporate and wealthy donors, the two parties are virtually interchangeable. There is, thus far, a distinct difference between the two parties: whereas the Republican Party platform usually reads like a Capitalist and Evangelical Christian wish list, the Democratic Party makes at least a nominal effort to support the First Principles and address issues important to the Exploitable Majority, even as it also panders to wealthy corporate masters and observant Christian voters. However, the American Legislative Exchange Council (ALEC), a *sub rosa* extra-institutional, non-governmental organization, is aggressively pursuing the role of single controlling party in the United States. ALEC's membership of lobbyists, corporations, as well as federal and State legislators, collaborate to draft and introduce model legislation and policies, with the implicit aim of transforming the country into a fully corporate Fascist state.

Nonetheless, the United States—and the entire world—is on a trajectory to ultimately be dominated by the aggregate multi-national corporations. Multi-national corporations are essentially countries without territory, they plant their flags everywhere and nowhere, they can go anywhere, and have allegiance only to their investors, and fealty only to profits; they have private security and may employ private mercenary armies, but historically have usually had the United States military do their bidding, as it did for the United Fruit Company (UFCO) in Guatemala in 1954,[663] and International Telephone & Telegraph (ITT) in Chile in 1973.[664] Countries, on the other hand, are bound to land that is increasingly under siege by global climate disintegration that is raising sea levels rising and poisoning the supply of fresh potable water, with populations that live increasingly precarious existences. There are two powerful unelected extra-state entities that represent the interests of multi-national corporations and the international Opulent Minority that own them: the World Economic Forum (WEF) and the World Trade Organization (WTO). The WEF famously meets each year at Davos, in the Confoederatio Helvetica ("Switzerland"), and claims to be "committed to improving the state of the world by engaging business, political, academic, and other leaders of society to shape global, regional, and industry agendas."[665] The WTO claims it "operates a global system of trade rules, acts as a forum for negotiating trade agreements, and settles trade disputes between its members."[666]

Yet, it is the international legal system that was created fifty years ago to protect the

[663] Peter Chapman, *Bananas: How the United Fruit Company Shaped the World* (Edinburgh, UK: Canongate Books—2007), 127.
[664] U.S. Department of State, "Hinchey Report (CIA Activities in Chile)" *Transnational Institute* (Amsterdam, NL: Transnational Institute—2011); accessed 19 April, 2017: https://www.hsdl.org/?view&did=438476
[665] The World Economic Forum, "Our Mission," *weforum.org* (Genevra, CH: The World Economic Forum—2017); accessed 21 May, 2017: https://www.weforum.org
[666] The World Trade Organization, "About," *WTO.org* (Genevra, CH: World Trade Organization—2017); accessed 21 May, 2017: https://www.wto.org/english/thewto_e/thewto_e.htm

rights of foreign investors that is propelling multi-national corporations to world domination; all the political units on Earth are collectively on a course to eventually be little more than vassals of the world's multi-national corporations. The mechanism of the international legal system known as Investor-State Dispute Settlement (ISDS) allows multi-national corporations to sue sovereign governments in the International Centre for the Settlement of Investment Disputes (ICSID), claiming damages for a wide range of government actions that they allege have resulted in lost profits or loss of "expected future profits"—such actions as environmental protection laws, minimum wage laws, and workplace health and safety laws:

> The number of suits filed against countries at the ICSID is now around 500 – and that figure is growing at an average rate of one case a week. The sums awarded in damages are so vast that investment funds have taken notice: corporations' claims against states are now seen as assets that can be invested in or used as leverage to secure multimillion-dollar loans. Increasingly, companies are using the threat of a lawsuit at the ICSID to exert pressure on governments not to challenge investors' actions.[667]

With government indulgence, multi-national corporations have also directly targeted activism and individual activists such as Water Protectors at Standing Rock in South Dakota, Rain Forest Protectors in the Amazon, and Berta Cáceres, the assassinated co-founder and coordinator of the *Consejo Cívico de Organizaciones Populares e Indígenas de Honduras* (Council of Popular and Indigenous Organizations of Honduras or COPINH). Thus far in the United States, dissent is still tolerated from the public at large and from late night comedians, but activism is repressed and veridical facts are under attack. Yet, dissent, protest, and independent reportage, are also officially and unofficially constrained in various ways; how long these exercises of the First Amendment will continue to be allowed in any form is

[667] Claire Provost & Matt Kennard, "The Obscure Legal System That Lets Corporations Sue Countries," *TheGuardian.com* (London, UK: The Guardian—Wednesday, 10 June 2015 01.00 EDT); accessed 11 April, 2016: https://www.theguardian.com/business/2015/jun/10/obscure-legal-system-lets-corportations-sue-states-ttip-icsid

unpredictable. Every president in American history has, to date, willingly relinquished the presidency when a term expires or another candidate is elected—but it is entirely within the realm of possibility that one day a president whose party controls both houses of Congress and the Supreme Court will refuse to leave office, and will be supported in doing so by the most powerful military in history, as well as by corporations and the Opulent Minority.

Direct and open rule of states by multi-national corporations would indeed be Fascism on a regional or planetary level. Although Capitalism and Fascism are ideally suited to one another—whereas true Democracy and Capitalism are ultimately incompatible—in the United States there has long been a commonly internalized mythology that purports a symbiosis between Capitalism and Democracy. As former Secretary of Labor in the Clinton Administration and University of California at Berkeley Professor, Robert Reich, describes it: "Capitalism and democracy, we've long been told, are the twin ideological pillars capable of bringing unprecedented prosperity and freedom to the world."[668] Democracy and Capitalism are certainly not two sides of the same coin or two pillars of anything still standing. The lifeblood of Capitalism is its control of a large immiserated underclass with a pervasive and stultifying inequality and lack of freedom. As *Français* philosopher Simon Nicolas Henrí Linguet observed nearly a decade prior to the Declaration of Independence:

> It is want that compels them to go down on their knees to the rich man in order to get from him permission to enrich him...what effective gain [has] the suppression of slavery brought [him?] He is free, you say. Ah! That is his misfortune...These men...[have] the most terrible, the most imperious of masters, that is, need...They must therefore find someone to hire them, or die of hunger. Is that to be free?[669]

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[668] Robert B. Reich, "How Capitalism Is Killing Democracy," *ForeignPolicy.com* (Washington, DC: Foreign Policy—12 October, 2009); accessed 21 March, 2017: http://foreignpolicy.com/2009/10/12/how-capitalism-is-killing-democracy/

[669] Simon Nicolas Henrí Linguet, *Théorie des Loix Civiles, ou, Principes Fondamentaux de la Société*, *Volume 1* (à Londres, UK: Linguet—1767), 472.

Shortly before the Declaration of Independence in the United States, Adam Smith fiercely indicted greed and hierarchy in *The Wealth of Nations*: "All for ourselves and nothing for other people, seems, in every age of the world, to have been the vile maxim of the Masters of Mankind."[670] Yet, Capitalists who read his book only process the passages they feel glorifies Capitalism. The United States may never become a fully corporate, Fascist state, but neither is it a fully democratic state. Whether or not it ever becomes a Democracy remains an open question.

[670] Adam Smith, "Book III, Chapter 4: How the Commerce of the Towns Contributed to the Improvement of the Country," *An Inquiry into the Nature and Causes of the Wealth of Nations, Volume I* (London, UK: William Strahan & Thomas Cadell—1776), 500.

# *Whither Democracy?*

With the Constitution, James Madison and his fellow *Coupistes* created a *representative republic* specifically designed to thwart democracy and the demands of an Exploitable Majority "sighing for a more equal distribution of [life's] blessings."[671] The notion that the United States is a democracy has been internalized by seemingly everyone on Earth, and the United States relentlessly self-identifies as "the oldest democracy" in the world.[672] Although it is undoubtedly true that "democracy is far more than elections and multi-parties [and majority rule],"[673] the idea that the United States is a democracy persists. The Brennan Center for Justice at New York University asks: "Is our democracy broken?"[674] An interminable number of American media pundits posit there is a danger of losing "our democracy." Harvard Professor Lawrence Lessig suggests ways in which citizens can "get our democracy back."[675] Yet, so long as the United States has a Constitution that plainly guarantees each State "a Republican Form of Government,"[676] the United States will not be, cannot be, and has never been, a democracy.

Yet, the First Principles of the Declaration of Independence describe and promise a democracy—that is, an egalitarian political and social organization, not one ruled by a social hierarchy, imperious masters, and social inequalities, that are endemic to Capitalism—

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[671] James Madison [Tuesday, 26 June, 1787], in *The Records of the Federal Convention of 1787, Volume I*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 422.
[672] Paul Ryan, "Paul Ryan Claims the US is the 'Oldest Democracy' in the World. Is He Right?" Sarah Hauer, *PolitiFact.com/Wisconsin* (St. Petersburg, FL: Tampa Bay Times—Monday, 11 July, 2016).
[673] Samir Amin, "African Economist Samir Amin on the World Social Forum, Globalization & the Barbarism of Capitalism," *Democracy NOW!* (New York, NY: Democracy NOW!—27 March, 2015), 49:26.
[674] Uncredited, "Donation Solicitation," *William J. Brennan Center for Justice* (New York, NY: NYU School of Law—2017), *passim*.
[675] Lawrence Lessig [3 February, 2010], "How to Get Our Democracy Back," *The Nation* (New York, NY: The Nation Company, L.P.—22 February, 2010); accessed 14 December, 2016: https://www.thenation.com/article/how-get-our-democracy-back/
[676] James Madison, et al, "Article IV: Section 4," *United States Constitution* (Philadelphia, PA: Secret Proceedings, 17 September, 1787).

although the term "democracy" does not appear once therein. The word "democracy" is derived from *dêmokrátja*, a "Classical Greek" portmanteau of *dêmos* and *krátos*. A "Dêmos" is the aggregate members of a society;[677] the term "krátos" translates as "state."[678] Although *krátos* is most frequently translated as "rule or control," it is the suffix "-archy," as in monarchy and oligarchy, that means "rule" or "control." A reasonable English rendering of *dêmokrátja*—that is, Democracy—is "a state of, by, and for, the *Dêmos;*" which is exactly what the Declaration promises. Democracy is one of four possible basic forms of human social organization, the other three forms of organization being: control by a single person, such as a monarch, dictator, or emperor (*autocracy*); control by a minority (usually an *oligarchy* or *plutocracy*); and control by a majority ("majority rule"). *Anarchy* is what occurs when the social organization of a state has completely broken down and no longer exists.[679]

With Democracy, responsibility is shared relatively equally amongst its members; whereas the other three forms involve some sort of hierarchy and inequitable distribution of power and resources. Democracy alone eschews hierarchy and requires that every human be valued equally; that they enjoy Isonomy, which is relatively equal political influence,[680] and are able to exercise such influence *directly*;[681] that they have Self-Determination of their own political, economic, social, and cultural systems, as well as full participation in all aspects of their lives;[682] and that resources be equitably distributed. The term "democracy" is so closely

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[677] Unattributed, "dêmos; *noun*," *kypros.net* dictionary (Kupros ("Cyprus"): Kypros.Net—2016); accessed 23 August, 2015: http://www.kypros.org/cgi-bin/lexicon
[678] Ibidem, "krátos."
[679] Unattributed, "autocracy," "oligarchy," "democracy," "anarchy," *kypros.net* dictionary (Kupros ("Cyprus"): Kypros.Net—2016); accessed 23 August, 2015: http://www.kypros.org/cgi-bin/lexicon
[680] George Henry Liddell & Robert Scott, "Isonomía/Isonomy," *Greek-English Lexicon, Seventh Edition* (New York, NY: The American Book Company—1901), 710.
[681] Frederick C. Mish, Editor-In-Chief, "democracy; noun," *Merriam-Webster's Collegiate Dictionary, Eleventh Edition.* Springfield, MA: Merriam-Webster, Incorporated—2005), *emphasis added*, 331.
[682] United Nations, Section 1, 8, "Vienna Declaration and Programme of Action," *World Conference on Human Rights* (Vienna, AT: United Nations—1993), 3.

related to "justice" that one of the *Oxford English Dictionary* entries for "democracy" may also best define justice: "a situation in which everyone is treated equally and fairly."[683] As influential American political theorist, Dr. Sheldon Wolin, resonantly notes:

> Democracy implies involvement, shared power, dispersed power and—above all—a significant equality…Democracy is incompatible with hierarchy because hierarchy means inequality—inequality of power. Hierarchies are also fundamentally élitist in character; they involve a definition of who should lead or control based upon criteria that can only be met by a relative few [rather than by all]; it becomes a way of excluding.[684]

Hierarchies are arbitrary, subjective, self-serving value rankings of the primary and secondary social groups that humans naturally form as social beings; such rankings are the source of social inequity. One example of hierarchy is to "color-code" human skin tone variations and rank the colors, putting the lightest at the top and the darkest at the bottom—something that is a hallmark of Európan colonialism. The primary form of human social organization begins with the nuclear family; a *clan* is the extended family (aunts, uncles, cousins, nieces and nephews, grandparents, etc.). A group of clans is a *tribe*, and a group of tribes is a *nation* (or ethnic group). A group of ethnic nations is a linguistic group, such as Romanx or Bantu or Dravidian. Linguistic groups are part of language families, such as Európan or African or Afro-Asiatic. Primary human social organization is bottom-up, not top-down. Humans also form secondary social groups with people unrelated to them, to pursue shared interests and/or shared immediate or long-term goals. Unions and guilds, political parties, fan clubs, and social media, are all examples of secondary social groups. Each of these primary and secondary social groups is vulnerable to ranking and negative valuation

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[683] Michael Proffitt, Editor-In-Chief, "democracy; noun," *Oxford English Dictionary—OED Online* (Oxford, UK: Oxford University Press—June, 2014), accessed 1 July, 2014: http://www.oed.com/view/Entry/49755?redirectedFrom=democracy

[684] Sheldon S. Wolin, "Sheldon Wolin: The State of Democracy," *A World of Ideas with Bill Moyers* (New York, NY: Doctoroff Media Group, LLC—Broadcast: 10 October, 1988), 4:01-7:30.

from a majority, another minority, individuals, and entities such as corporations, hate-groups, government, or empires. Democracy obliges guaranteed protection for minority opinions, minority groups, and minority individuals, from the will—or tyranny—of the majority, other minorities, individuals, and entities. Humans need perhaps the most protection from *government*; yet being dominated by a government is so widely prevalent it has become normalized for most humans on Earth.

# *Democracy & Government*

It is not anarchic to note that the very concept of Democracy is incompatible with the notion of "government" as commonly understood today, or as understood in 1776, because government is inherently hierarchical. It is arguably somewhat incongruent that in the three-paragraph "Preamble" of the Declaration of Independence, "government" or "governments" appears five times, and "the Governed" once. To *govern* is: "to *rule* over…to exercise continuous sovereign authority over;"[685] to *rule* is: "to exercise authority or power over, often harshly or arbitrarily; to *dominate*; to *command*;"[686] *government* is: "authoritative direction or control."[687] The entire Declaration of Independence is nothing if not a celebration of Self-Determination and a condemnation of the idea of one group of people, or an empire, imposing its will upon people who do not wish to be ruled, dominated, commanded, or authoritatively controlled. In the case of the Thirteen Colonies, such rule was through an imperial colonial government. The American Revolution was not fought in order to exchange one form of government domination for another; the Declaration of Independence proffers an untested, Enlightened social organization later described by Benjamin Franklin as one in which "the 'rulers' are the servants—and the People their superiors and sovereigns."[688] The Declaration may perhaps be better understood if "political system" is substituted for "government" throughout, and "the People" replaces both "the Governed" and "men." The "Preamble" of the Declaration of Independence would then instead read, in part:

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[685] Frederick C. Mish, Editor in Chief, "govern; verb," *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (Springfield, MA: Merriam-Webster, Incorporated—1994), *emphasis added*, 504.
[686] Ibidem, "rule; verb," *emphasis added*, 1023.
[687] Ibidem, "government; noun," 504.
[688] Benjamin Franklin [26 July, 1787], *The Political Thought of Benjamin Franklin*, Edited by Ralph Ketchum (Indianapolis, IN: Hackett Publishing Company—2003), 398.

> …to secure these Rights, *political systems* are instituted amongst *People*, deriving their just powers from the Consent of the *People*...whenever any *political system* becomes destructive of those ends, it is the Right of the People to Alter or Abolish it, and to institute a new *political system*…Prudence will dictate that *political systems* long established should not be changed for light and transient causes… When a long train of abuses and usurpations…evinces a design to reduce [the People] under absolute despotism, it is their Right—it is their Duty—to throw off such a *political system* and provide for new guards for their future security…

In drafting the Declaration of Independence, Thomas Jefferson borrowed extensively from John Locke's, *The Second Treatise of Civil Government*,[689] for many of the concepts used; it may not have occurred to him, or his editors Benjamin Franklin and John Adams, to use a term other than "government"—or that one might be necessary in the future. As far back as the works of Aristotéles and Platón, the default term for the operation of a polity has been "government," and polities have historically been coercive, hierarchical organizations. Although some erroneously believe the original Bolshevik Soviet Union, and the Cultural Revolution and the Red Guard of *Han Dìguó*, were non-hierarchical, there has never, in fact, been a political unit in recorded history that was bottom-up and non-hierarchical; humans have been attempting to revive the egalitarian social organization of Hunter-Gatherers since it was destroyed after the Agricultural Revolution ten to twelve thousand years ago. It should not then be surprising that a term for the quotidian administrative structure of an egalitarian, isonomic, Democratic society has not come into common usage; few, if any, would seem to have an idea of exactly how such a structure would be designed or function on a daily basis. When Jefferson drafted a constitution for the State of Virginia in June of 1776, he had proposed calling the head of that State the "Administrator" rather than the "Governor,"[690] an

[689] John Locke [1689], "Book II, Chapter VII, Section 87-89," *Two Treatises of Government*, Thomas Hollis, Editor (London, UK: A. Millar, H. Woodfall, et al—1764), 269-272.
[690] Thomas Jefferson [June, 1776], "Proposed Constitution for Virginia 1776" Thomas Jefferson, *The Works of Thomas Jefferson, Volume IV: Notes on Virginia II, Correspondence 1782-1786,* Paul Leicester Ford, Editor (New York, NY: G.P. Putnam's Sons—1905), 147.

indication he was conscious that titles of dominance such as "Governor" or "President" might be inappropriate in a bottom-up egalitarian and isonomic Democracy.

The fact that all political systems throughout recorded history are or have been hierarchical, unequal, and exclusionary, with both coercive governments and strong heads of state, cannot reasonably be construed as conclusive *prima facie* evidence humans are incapable of Self-Determination and therefore require powerful leaders and coercive hierarchies in order to function—anymore than the ubiquity of electronic devices is evidence they are necessary to human survival. Certainly, modern societies would function quite differently without direction from governments and leaders, but that does not preclude the viability of Democracy. The number of Self-Determination movements and battles for social justice across the globe is sufficient to repudiate the notion that hierarchical societies are natural. Research indicates "humans, as a species, evolved to be egalitarian, and not hierarchical,"[691] and human "social organization…is characterized by…relatively egalitarian social relationships...[which are] core features of human sociality.[692] American linguist and political dissident Noam Chomsky notes that it is the preservation of their very artificiality and illegitimacy that makes governments aware "the primary enemy is their own population."[693] More than two centuries earlier, Scottish philosopher David Hume reminds that government, rulers, and social hierarchy, have come at the point of a spear, sword, or gun: "Almost all the governments which exist at present—or of which there remains any record in story—have been founded originally either on usurpation or conquest, or both,

[691] David Erdal & Andrew A. Whiten, "Egalitarianism and Machiavellian Intelligence in Human Evolution," *Modelling the Early Human Mind*, Paul Mellars & Kathleen R. Gibson, Editors (Oakville, CT: University of Cambridge, MacDonald Institute for Archeological Research Monograph Series—1996), 139-160 abstract.
[692] Hillard S. Kaplan, Paul L. Hooper, & Michael Gurven "The Evolutionary and Ecological Roots of Human Social Organization," *Philosophical Transactions of the Royal Society of London B: Biological Sciences,* (London, UK: Royal Society of London—12 November, 2009), 364 [Abstract].
[693] Fiona Harvey, "NSA Surveillance is an Attack on American Citizens, says Noam Chomsky," *The Guardian* (Manchester, UK: The Guardian—19 June, 2013).

without any pretense of a fair Consent, or voluntary subjection of the People."[694] Nineteenth century philosopher and politician Pierre-Joseph Proudhon is more blunt in his consummate indictment of government:

> To be governed is to be watched, inspected, spied upon, directed, law-driven, numbered, regulated, enrolled, indoctrinated, preached at, controlled, checked, estimated, valued, censured, commanded, by creatures who have neither the right nor the wisdom nor the virtue to do so…To be governed is to be at every operation, at every transaction noted, registered, counted, taxed, stamped, measured, numbered, assessed, licensed, authorized, admonished, prevented, forbidden, reformed, corrected, punished. It is, under pretext of public utility, and in the name of the general interest, to be placed under contribution, drilled, fleeced, exploited, monopolized, extorted from, squeezed, hoaxed, robbed; then, at the slightest resistance, the first word of complaint, to be repressed, fined, vilified, harassed, hunted down, abused, clubbed, disarmed, bound, choked, imprisoned, judged, condemned, shot, deported, sacrificed, sold, betrayed; and to crown all, mocked, ridiculed, derided, outraged, dishonored. That is government; that is its justice; that is its morality. [695]

The notion that the human species requires direction from 'leaders' legitimizes hierarchies and government. It has become an internalized assumption illustrated by the oft-parodied phrase "take me to your leader."[696] When the Declaration of Independence was written, the colonies were fighting to escape the grasp of a capricious emperor; Patriots had no intention of being under the thumb of another. A year later, a Confederacy was imposed, featuring power shared between the States and Congress rather than a head of state. Benjamin Franklin, who first conceived of such a confederation, had envisioned a revolutionary society in which "the 'rulers' are the servants—and the People their superiors and sovereigns."[697] Self-Determination is a theme of *Common Sense* and the Declaration of Independence, and

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[694] David Hume [1742], "Of the Original Contract," *Essays: Moral, Political, and Literary*, Eugene F. Miller, Editor (Indianapolis, IN: Liberty Fund, Inc.—1987), 471.
[695] Pierre-Joseph Proudhon [1851], "Epilogue," *The General Idea of the Revolution in the Nineteenth Century*, Translated by John Beverly Robinson (London, UK: Freedom Press—1923), 294.
[696] Alex Graham, "Kindly take us to your President," *The New Yorker* (New York, NY: Conde Naste—21 March, 1953), 43.
[697] Benjamin Franklin [26 July, 1787], *The Political Thought of Benjamin Franklin*, Edited by Ralph Ketchum (Indianapolis, IN: Hackett Publishing Company—2003), 398.

was later echoed by union organizer and Equality advocate, Eugene V. Debs: "I do not want you to follow me or anyone else…I would not lead you into the promised land if I could, because if I led you in, someone else would lead you out."[698]

A *republic* is a form of government in which supreme power "is exercised by elected officers and representatives"[699]—in the United States that translates to literally thousands of 'leaders.' Although Article IV, Section 4, of the Constitution guarantees a "Republican Form of Government,"[700] the cynical pretense that the United States is a Democracy has given rise to the term "Representative Democracy" when referring to the American form of government. A more accurate term is "Representative Oligarchy," with the oligarchy being the Opulent Minority. The American *Dêmos* is allowed to choose which agents of the oligarchy's opposing factions will rule over the *Dêmos* or "lead" them for a fixed term. The power of the *Dêmos* is essentially limited to its ability to collectively vote representatives in and out of office. The elected representative agents of the Opulents are theoretically obligated to intercede with the Opulents on behalf of the 'constituents' the agents ostensibly represent, but once elections are over and the representative becomes part of the ruling government, influence over elected representatives is virtually non-existent for a member of the Exploitable Majority. Intercession with the Opulents is rarely attempted, unless citizens organize massive protests that may occasionally be somewhat effective in swaying the actions or inactions of representatives or of the government itself. The ability to choose the leaders who will exercise nearly absolute control over those they "lead" is simply not Democracy; the fact that so many people across the world believe it is, ought to be disturbing to every human.

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[698] Eugene V. Debs, "Biography," *Debs: His Life, Writings and Speeches; with a Department of Appreciations,* Compiled and Edited by Bruce Rogers (Girard, Kansas: The Appeal to Reason—1908), 71.
[699] Mish, "republic; noun," *Merriam-Webster's Collegiate Dictionary*, *Tenth Edition*, 994.
[700] James Madison, et al, "Article IV: Section 4," *United States Constitution* (Philadelphia, PA: Secret Proceedings, 17 September, 1787).

Since the conclusion of the American War for Independence, American politicians, philosophers, theorists, academics, and pundits alike, have decried the incompetence of the average citizen, the "mobility"[701] (mob), and the imagined ills of true Democracy. True Democracy is now euphemized as "Direct Democracy" or "Pure Democracy." The insistence that Democracy cannot succeed is a *fait accompli* amongst the Opulent Minority. Arguments against Democracy are always the same sort of System Justification: the People are like children and unable to manage their own affairs; they are uneducated; they are too easily duped; they will strip the wealthy of their riches; they will murder the wealthy; the known is better than the unknown; they will de-stabilize society; a complex society requires hierarchy. Little has changed since Joseph Addison wrote over three centuries ago: "The obedience of children to parents is the basis of all government, and set forth as the measure of that obedience which we owe to those whom Providence has placed over us."[702] Alexander Hamilton referred to "the People" as the "Great Beast,"[703] and contended: "The People are turbulent and changing; they seldom judge or determine right." [704] Elbridge Gerry was equally dismissive: "the People do not want virtue, but are the dupes of pretended patriots."[705] Roger Sherman was no less fearful: "the People should have as little to do as may be about the Government; they…are constantly liable to be misled."[706] James Madison expressed similar anxieties about commoners as he was in the thick of the bloodless *coup d'état* that resulted in the imposition of the *Constitution* upon an unsuspecting citizenry:

[701] A late seventeenth term for the masses, which later was shortened to "mob," and pejorated.
[702] Joseph Addison, "The Spectator No.189; Saturday, October 6, 1711," *The Works of Joseph Addison* (New York, NY: Harper & Brothers—1837), 280.
[703] Henry Adams, *History of the United States During the Administrations of Thomas Jefferson* (New York, NY: Literary Classics of the United States, Inc.—1986), 61.
[704] Alexander Hamilton, "Monday, 19 June, 1787," *The Records of the Federal Convention of 1787, Volume 1*, Max Farrand, Editor (New Haven, CT: Yale University Press—1911), 299.
[705] Elbridge Gerry, "Thursday, 31 May, 1787," Ibidem, 48.
[706] Roger Sherman, "Thursday, 31 May, 1787," Ibidem, 48.

> …if elections were open to *all classes of people*, the property of landed proprietors would be insecure…our government ought to secure [their] permanent interests…[and] be so constituted as to protect the *Minority of the Opulent* against the [Exploitable] Majority.[707]

Two hundred years later, Mary Frances Berry—former Chair of the United States Commission on Civil Rights, no less—feels it is of greater importance to "preserve the stability and continuity" of the existing American political system than it is to risk allowing the future of America to be determined by its citizens.[708] James Boyle, who wrote what appears to be a seminal work condemning Democracy, opines: "It is notorious that [common] men can be easily persuaded to sign petitions for almost anything,"[709] without addressing the more salient point of who determines who is allowed to make decisions for an entire *Dêmos*. The conservative-leaning *The Economist* has campaigned against 'Direct Democracy' for years, with hyperbolic misdirection, arrogance, often stunning cognitive dissonance, and a lack of understanding of the basic protections in the Constitution: "*too much* democracy threatens freedom…" [710] and "Direct Democracy overrules, and often undermines, Representative Democracy…Direct Democracy can threaten individual freedom."[711] *The Economist* considers California an exemplar of the very worst in Democracy, and has long attempted to persuade readers that California is somehow "dysfunctional," "ungovernable," and "a failed state."[712] The magazine contends California has been "destroyed" by citizen

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[707] James Madison, [Tuesday, 26 June, 1787], in *Notes of the Secret Proceedings and Debates,* Robert Yates (Louisville, KY: Alston Mygatt, 1844), 183.
[708] Mary Frances Berry, "Amending the Constitution: How Hard It Is To Change," New York Times (New York, NY: New York Times—13 September, 1987).
[709] James Boyle, *The Initiative & Referendum: Its Folly, Fallacies, and Failure* (Columbus, OH: A.H. Smythe—1912), 22.
[710] Economist Staff, "Democracy in America: When 'Too Much Democracy' Threatens Freedom," *The Economist* (London, UK: The Economist—17 December, 2009), *emphasis added*.
[711] Economist Staff, "Direct Democracy: The Tyranny of the Majority," *The Economist* (London, UK: The Economist—17 December, 2009).
[712] Economist Staff, "Global Issues in Context; The People's Will: California Dream, Current Edition" *The Economist* (London, UK: The Economist—29 April, 2015).

initiatives that have brought "fiscal ruin and incoherent, contradictory mandates"[713] to California, and the "genie of Direct Democracy is hard to re-bottle when released, even if the results prove dysfunctional or perverse"[714]—particularly if the citizens of California do not want it "re-bottled."

In reality, California has the sixth largest economy in the world,[715] larger than that of France, but with ten million less citizens. It is arguably the best-managed and most Progressive state in the Union. Despite the occasional misstep, such as Proposition 13[716] that was somehow affirmed by the Supreme Court, and the vanquished Proposition 8,[717] California has flourished with the initiative and referendum processes for over one hundred years. Missing from the hand-wringing about the dangers of Democracy is the fact that whether or not Self-Determination of a *Dêmos* meets some arbitrary external standard of "success" or competency is wholly irrelevant; Self-Determination is, "the free choice of one's own acts and conditions, without external compulsion."[718] Citizen initiatives, whether federal, statewide, regional, or municipal, are key hallmarks of Self-Determination and true Democracy.

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[713] Economist Staff, "Democracy in America: When 'Too Much Democracy' Threatens Freedom," *The Economist* (London, UK: The Economist—17 December, 2009).
[714] Economist Staff, "Direct Democracy: Vox Populi or Hoi Polloi? Does More Voting Necessarily Mean More Democracy? People Power Has Its Perils," *The Economist* (London, UK: The Economist—20 April, 2011).
[715] Dale Kasler, "California Economy Surges to No. 6 in Global Rankings," *sacbee.com* (Sacramento, CA: Sacramento Bee—14 June, 2016); accessed 4 December, 2016: http://www.sacbee.com/news/business/article83780667.html
[716] A 1978 ballot initiative that institutionalized unequal and discriminatory tax breaks to California commercial and residential property owners, and was declared constitutional by the Supreme Court in 1992.
[717] A 2008 California constitutional amendment that eliminated marriage equality in California, and was eventually invalidated after a five-year legal battle.
[718] Frederick C. Mish, Editor-In-Chief, "self-determination; noun," *Merriam Webster's Collegiate Dictionary, Eleventh Edition.* Springfield, MA: Merriam-Webster, Incorporated—2005), 1127.

# *Towards Self-Determination & Democracy*

It is a rather inconvenient truth that Self-Determination and Democracy are simply not possible in the United States under the present Constitution and the "representative republic" it establishes. However, if Self-Determination and Democracy are the goal, it is a perhaps more convenient truth that there is a path to both through the Plain Meaning of the Organic Laws of the United States; particularly the Constitution and the First Principles of the Declaration of Independence. Self-Determination and Democracy will require that every person in the United States be drawn into a discussion of the meaning and importance of the First Principles and the Constitution that becomes a permanent part of public discourse; these documents must never again been seen as mysterious, enigmatic legal instruments that are solely be the purview of the Legal Class and the Political Class of the Opulent Minority. Attaining adherence to the First Principles—and eventually Self-Determination and Democracy—will be incredibly difficult, expensive, and time-consuming, and it will require almost unprecedented collaboration amongst factions that have heretofore ignored their common interests. It may be ridiculed and dismissed, and will therefore necessitate a unity of purpose and resolve not seen in the United States since World War II, or perhaps a dedication not seen since the American War for Independence. After all, the locks have long been considered unbreakable and the doors considered impenetrable.

The United States boasts it is a 'country of laws,' and has done so as early as John Adams advocating nineteen months before the Declaration of Independence for "a government of laws, and not of men,"[719] which was also addressed by Thomas Paine in

[719] John Adams ["Novanglus"], "Response to an Article by a Loyalist, Massachusettensis [Judge Daniel Leonard], January, 1775," *Boston Gazette* (Boston, MA: Boston Gazette—1775), Number 7.

*Common Sense*: "in America, *the law is king*"[720] (not the whims of a monarch). Yet, the Opulent Minority routinely violates and willful disregards the rules it established for itself with the imposition of the Constitution and the other Organic Laws, and the design of the Constitution makes meaningful change through constitutional amendment nearly impossible. The only means through which the locks may be smashed, and the doors broken down, is the corrupt and hidebound American legal system; which will require the utmost in both perspicacity and ingenuity. Two tracks must be taken: a lawsuit demanding a series of federal plebiscites that finally allow every citizen of the United States to directly Consent or dissent to all four Organic Laws, or to Alter or Abolish them, coupled with an organized, concerted countrywide campaign to alert the *Dêmos* to the issue; and a series of other sustained legal actions in federal courts to force all branches and all levels of government to follow to the letter the Plain Meaning of the Constitution and the First Principles.

Whatever legal eventualities such federal lawsuits may encounter, it is most prudent to originate all petitions for redress before the United States District Court for the Northern District of California, in San Francisco. Any appeal would then be heard in the Ninth Circuit Court of Appeals, also in San Francisco. However, such lawsuits will encounter a situation that has never previously occurred in American jurisprudence: whenever one of such legal challenges avers systematic unconstitutionality of Supreme Court actions, the Supreme Court has a substantial conflict of interest. Even if current sitting members of the Court did not participate in any of the decisions in question, such petitions for redress challenge the Court's self-endowed powers; it would be absurd for the Court to rule on whether or not it has the constitutional authority to endow itself with powers. Normally, such a conflict would disqualify a judge or justice from hearing the matter, and he or she would recuse themselves,

[720] Thomas Paine [1776], *Common Sense* (Mineola, NY: Dover Publications—1997), *emphasis added*, 31.

but in these instances recusal applies to the entire Supreme Court. Recusal is not rare on the Court, but the entire Court has never recused itself simultaneously. The Ninth Circuit Court of Appeals in San Francisco would logically seem to be the final court of appeal were such an *en masse* recusal to occur, or perhaps it would be heard by Congress. However, predicting how events would unfold in such instances would be mere speculation.

In the best of all worlds, such petitions for redress would be filed by honest and scrupulous public servants or systematically and intrepidly fought through the legal system by public interest attorneys. As this is far from the best of all worlds, the power structure being challenged has a virtually unlimited source of funds—the taxpayer—and public servants are unlikely to have the latitude to challenge the system of which they are part. Public interest challengers are perpetually underfunded and usually barely able to survive upon the donations they raise; such circumstances make crucial the prioritization of challenges according to how egregious the transgressions may be, and how greatly a victory would benefit society—and edge it towards the goal of Self-Determination and Democracy.

# *Demanding Consent & Options*

Gaining Consent is the single most important political and social issue for the American *Dêmos*, or for any society—albeit one of which virtually every American citizen is unaware. Consent is the core First Principle; it is the primary means by which a society is legitimized, as described in the Declaration of Independence. The failure of the United States government to take even nominal steps to obtain legitimate Consent of the People for *anything* throughout its history is a clear violation of the Organic Laws of the United States; specifically, the First Principles of the Declaration of Independence and the Ninth Amendment to the Constitution. As no one in the United States has ever formally and directly Consented to its existing political, social, economic, and moral order, the quest for Consent ought to be the ultimate non-partisan issue with the potential to resonate with the entire Exploitable Majority; it is doubtful the notion will find much traction with the Opulent Minority. Obtaining Consent for the first time is the most fundamental action necessary for eventually achieving Self-Determination and Democracy, if that is the goal. However, obtaining Consent will require legal battles that must be fought as vigorously and as relentlessly as any in American history, until there is the institution of regular periodic federal Consent Plebiscites that present a variety of options to the *Dêmos* for a vote—including "None of the Above."

As with any petition for redress, it is most prudent to begin such legal battles at United States District Court for the Northern District of California. Once the case is heard, it will certainly be appealed by either side to the Ninth Circuit Court of Appeals, and then to the Supreme Court. However, any pleading so controversial and unprecedented may be dismissed time and again before it is heard in District Court; in which case it must be revised and re-

filed *ad infinitum*. If the Supreme Court ultimately decided to tell the American *Dêmos* that the People do not have the Right to Consent, it would likely be a galvanizing moment. It certainly would be a clear violation of Organic Law and thus a *mistake in law* that warrants filings of re-considerations, and possibly re-configured pleadings, until the mistake in law is corrected and regular Consent Plebiscites become an American institution.

The legal campaign must be accompanied by an equally diligent campaign to raise the consciousness of the Exploitable Majority with respect to the issue of Consent and its denial. As with any successful modern movement, the demand for Consent will benefit from pervasive media exposure, press releases, a website (consent.org), and social media presence. Ideally, it will evolve into a movement, whose members wear and sell tee-shirts that simply read: "CONSENT" or "I Do Not CONSENT." It is an issue of such importance that it may prompt the organization of regularly scheduled protests similar to "Moral Mondays."[721]

Certainly, not everyone will Consent to the same things; some may not Consent at all. It is possible that forty-nine percent of the electorate could disagree with a fifty-one percent majority on every single issue. At that point, there are four basic choices for the unhappy citizen or group of citizens: accept the results and learn to live with them; work to change the results in the next yearly plebiscite; move to another country or State with more appealing values and laws; divide into two or more countries that more closely reflect the values and desires of their citizenry. A country that is intractably divided with a sizable vehement minority is inherently unstable; it is a reasonable assumption that such a country could not have long-term viability—in which case it would be appropriate to separate into two or more political units. Separation or a return to a confederation of autonomous States is far more

[721] A grassroots, Progressive, civil disobedience movement in North Carolina, led by the Reverend William Barber; it protests for social justice every Monday at the North Carolina State Legislative Building, in the state capitol of Raleigh.

preferable than internal divisions that would essentially be a perpetual civil war with no possible political solution. A re-alignment would necessitate negotiated boundaries, division of the nuclear arsenal, apportionment of international treaties, and the opportunity for citizens to move to whichever political unit suits them, with full citizenship and moving expenses paid by the original government. If a two (or more) state solution is not agreed upon, it would behoove the country to re-settle, at its expense, any citizen who would prefer living elsewhere; including finding housing and negotiating citizenship for them in the new country. An insoluble, perpetual, internal civil war is not in the best interests of anyone. Certainly, Happiness or *Eudaimonja* cannot be pursued in such an environment.

Based upon the political landscape that has been evolving in the United States since the election of Ronald Reagan in 1980, separation would likely produce a small country organized as a representative republic under the present Constitution, and at least one organized under a new Progressive, Democratic constitution; perhaps two on the West Coast and at least one on the northern East Coast. However, between thirty and forty percent of American society—and perhaps the entire South, Great Plains, and Ohio basin—would seem destined to organize as an empire with an autocratic leader and an aristocratic Opulent Minority, an inordinately large military, no Consent, no Personal Autonomy or Unalienable Rights, greatly limited voting rights, few social services and no public education, no regulation of commerce or trade, no unions and no worker protections or benefits, no minimum wage or overtime pay, no environmental protections, almost unbearably high taxes on its Exploitable Majority and no taxes on its Opulent Minority and corporations. The notion that so many people would support such a society may seem implausible, but achieving such a society is the modern Republican Party platform.

# *Demanding Constitutional Laws*

It is never too late to demand the United States government adhere to the Constitution its members have sworn to uphold. Unless, or until, Congress amends the Constitution to make all extant unconstitutional laws and judicial rulings constitutional, it is entirely feasible to petition the federal courts for redress, demanding all such laws and rulings be overturned; which would include all Supreme Court decisions that rely in anyway whatsoever upon English Common Law, English Statutory Law, the opinions in *Blackstone's Commentaries*, and any other material and theories extraneous or contrary to the Plain Meaning of the words and phrases of the Constitution. Again, it is most prudent to originate such pleading before the United States District Court for the Northern District of California, in San Francisco. Because this federal lawsuit avers systematic, persistent unconstitutionality of Supreme Court actions—and although the present justices have not participated in all such actions—the Supreme Court has a substantial conflict of interest *vis-à-vis* this matter. The petitioner must pray the Court either be disqualified from hearing the case or the entire Supreme Court must voluntarily recuse itself, something that has never previously occurred. The petitioner must also pray that, in the event the entire Supreme Court be disqualified, the Ninth Circuit Court of Appeals in San Francisco be designated the final court of appeal.

Article I, Section 1, of the Constitution is clear: "*All* legislative Powers herein granted shall be vested in a Congress of the United States,"[722] *not* in a Supreme Court. In other words, any law or common law obtaining in the United States must originate in Congress, it cannot be imported or assumed from any other source by the Court, *The Federalist No. 84*

[722] James Madison, et al, *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787), Article I, Section 1.

notwithstanding. Therein, Alexander Hamilton makes the specious claim that: "the Constitution adopts, in their full extent, the Common and Statute law of Great Britain, by which many other rights, not expressed in it, are equally secured."[723] In point of fact, the Constitution does no such thing; neither does the Constitution empower the Supreme Court to do such a thing. Furthermore, the "Common and Statue law of Great Britain" goes back to at least the *Law of Æthelberht* in the early seventh century—nearly twelve hundred years prior to 1776—and prior to 1918 only property owners were allowed to even vote in England, let alone enter Parliament and influence the creation of its laws. Because the Constitution does not authorize or sanction the importation of English law, nor did Congress pass a law that allows it to do so, it begs the question of whether the importation of such laws has a "stop date;" that is, whether or not only British laws prior to 4 July, 1776, were imported. Perhaps it continued on to another, later date; perhaps it has never stopped. Yet, "one of the objects of the Revolution was to *get rid* of the English common law."[724]

Common law also has no formal codification, but rather are laws "which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs."[725] Navigating such a vast reservoir of law, custom, and precedent—combining over twelve hundred years of British law and nearly two hundred and fifty years of American law—resulted in the formation of an élite Legal Class that must be formally educated in a way that allows its members to call upon the *stare decisis* of both countries, as well as all the written

[723] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," in *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[724] Henry Schofield, "Freedom of the Press in the United States." *American Sociological Society Papers & Proceedings,* Volume IX (Chicago, IL: University of Chicago Press—December, 1914), 76.
[725] Henry Campbell Black, M.A. [1891 & 1910], "Common Law," *Black's Law Dictionary*, Fifth Edition (St. Paul, MN: West Publishing Company—1979), 250-251.

and unwritten laws of both countries, and learn to read and write a specialized argot that bears scant resemblance to the English language as it is commonly used. Such skills and the ever-complex series of laws and rulings in American jurisprudence are quite simply beyond the ken of the average citizen.

Such a Legal Class is contrary to American revolutionary values and the First Principles of the Declaration of Independence, because it removes the "country of laws" from the hands of its *Dêmos* and places it in the hands of those who make the laws, interpret the laws, and argue the laws. To incorporate extraneous, extra-constitutional material into an exposition of the Constitution—such as English Common and Statutory law, *Blackstone's Commentaries on the Laws of England*,[726] or the imagined intent of those who contributed to the drafting of the Constitution—is the very definition of "unconstitutional" and the antithesis of "Plain Meaning." Yet, the introduction of these adventitious elements in conjunction with the political and social agenda of Supreme Courts past and present has unconstitutionally re-written the Constitution to what ought to be an alarming degree to any citizen. The perceived merits or demerits of the Constitution notwithstanding, the Union cannot be "perfected" if it does not follow the very rules it has set out for itself.

[726] Sir William Blackstone [1753], *Blackstone's Commentaries on the Laws of England in Four Books*, George Sharswood, Editor (Philadelphia, PA: J.B. Lippincott Company—1893), *passim*.

# *Demanding Personal Autonomy*

It may seem as though the Rights, Privileges, and Immunities, of American citizens have been incrementally increasing since the country's inception. Yet, there is not a single Right, Privilege, or Immunity, that has been "given" to Americans that they did not already possess through the Constitution, the Bill of Rights, and the First Principles. In fact, all that has really occurred is that particular Rights, Privileges, or Immunities, which had been ignored by all levels of American government, are now recognized. With respect to the First Principle of Personal Autonomy, the commonly internalized mythology is that Americans enjoy nearly unprecedented and unlimited Personal Autonomy, which makes problematic any legal battle to attain the expansive Personal Autonomy described in the Declaration of Independence, the Constitution, and the Bill of Rights. As a result, it may be very difficult indeed to persuade Americans they need more Personal Autonomy; it will be far more difficult to persuade federal courts to invalidate all federal, state, regional, and municipal, statutes that regulate or restrain victimless personal behavior, and all Supreme Court decisions that do likewise. Some may argue such a suit is too broad in scope; yet limiting a challenge of systemic unconstitutionality and illegality to a single statute at a time is essentially a System Justification that only compounds the problem. The American *Dêmos* has endured the forbearance of true Personal Autonomy for almost two and one half centuries; forcing them to fight it one instance at a time is an onerous and unjust burden that could delay the attainment of Personal Autonomy for many more centuries.

The difficulty of challenging the legacy and the power of the Supreme Court and Congress cannot be overstated, and the conflict of interest the Court has with such a petition should be self-evident. As with all the petitions for redress, it is most prudent to originate it

before the United States District Court for the Northern District of California, in San Francisco. It would unquestionably move to the Ninth Circuit Court of Appeals, no matter which side prevails. Whether or not the petition moves to the Supreme Court, or the Court is disqualified or recused and the Ninth Circuit acts as the final court of appeal, is problematic. Certainly, it is an obvious and inherent conflict for the Supreme Court to hear petitions that seek to permanently limit its power and reverse much of its body of precedent; but Congress has historically allowed the Court self-regulate, and may continue to do so despite the impropriety. If the Court does not recuse itself or is disqualified, it would be unlikely to overturn a large swath of its precedent or invalidate all statutes in America that regulate or restrain victimless personal behavior. The Constitution is silent on the matter of *en masse* recusal/disqualification, apparently due to the fact that it does not confer the powers in question upon the Court in the first place; neither has the Court devised an alternative for such a heretofore-unprecedented event. It is also possible federal courts would summarily dismiss a petition for Personal Autonomy as frivolous; the petition may need to be brought many times, in concert with a national publicity campaign, before it is taken seriously. Fear of the imagined chaos and an end to the existing social and moral order that could potentially result from true Personal Autonomy would be almost palpable within the Opulent Minority.

Nevertheless, the Constitution does not contain *a single word* empowering Congress or the Supreme Court to legislate or regulate personal behavior; including the morality and values of citizens. In fact, the Constitution does quite the opposite, as does the Declaration of Independence. The legal theory that the "province of the Court is, solely, to decide on the rights of individuals,"[727] was invented by Federalist *Coupiste* and Chief Justice John Marshall in his *Marbury v. Madison* opinion, as a rationale for systematically curtailing the Personal

[727] Chief Justice John Marshall, "Opinion," *Marbury v. Madison* [5 U.S. 137, 166]—1803.

Autonomy of American citizens. The statutes and Court decisions to be challenged, that unconstitutionally regulate and limit victimless personal behavior, do exactly that "which there is no power to do,"[728] and are self-evidently unconstitutional, going far beyond the enumerated duties of Congress found in Articles I, Section 8, of the Constitution and the enumeration of the duties of the Supreme Court found in Article III, Sections 1 & 2, of the Constitution. They also violate the First Amendment, the Ninth Amendment, the First Principles of Life, Liberty, the Pursuit of Happiness, and Equality, as well as several other clauses and later amendments—such as the Fourteenth Amendment.

Although there is no explicit limitation upon Personal Autonomy in the Declaration of Independence (or the Constitution), Personal Autonomy implicitly carries an ineluctable responsibility: "A Declaration of Rights is, by reciprocity, a Declaration of Duties also. Whatever is my Right as a man is also the Right of another; and it becomes my duty to guarantee, as well as to possess."[729] Although Personal Autonomy is an Unalienable Right, it has an inherent natural limitation that enables a stable society: "Liberty consists in the freedom to do everything which injures no one else."[730] Colloquially, those natural limits have been described as "your right to swing your arms ends just where the other man's nose begins."[731] There is even a version of the term in Latine: *sic utere tuo ut alienum non laedas* ("so, use your own as not to injure another").[732] John Stuart Mill contends Personal Autonomy can only legitimately be curtailed under very specific circumstances, which is

[728] Alexander Hamilton ["Publius"], "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist No. 84* in *McLean's Edition* (New York, NY: J. & A. McLean—16 July, 26 July, and 9 August, 1788).
[729] Thomas Paine [1791], *Rights of Man* (Mineola, NY: Dover Thrift Editions—1999), 69.
[730] Thomas Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine [1789], "Article IV," *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"] (Paris, FR: Assemblée Nationale Constituante—26 Auguste, 1789).
[731] Zechariah Chafee, "Freedom of Speech in War Time," *Harvard Law Review*, Vol, 32, No. 8 (Cambridge, MA: The Harvard Law Review Association—June, 1919), p. 957.
[732] Justice Stephen Johnson Field, "Dissent," *Munn & Scott v. Illinois*, [94 U.S. 113, 125]—1877.

known as the *Harm Principle*: "The only purpose for which power can be rightfully exercised over any member of a civilised community, against his [or her] will, is to prevent harm to others."[733] The legal definition of harm is the "existence of loss or detriment in fact, of any kind, to a person, resulting from any cause;"[734] but in order for harm to be so objectionable it can reasonably be forbidden or punished, it must be intrusive and objectively *demonstrable* interference with, or disruption of, another person's Life and Liberty that cannot be avoided by a relatively easy action such as walking away, changing a channel, or pushing an "Off" button. No one is guaranteed a life free from momentary or passing unpleasantness or distaste, nor does such experience constitute harm.

Inherent within the "the freedom to do everything which injures no one else"[735] and the obligation to "prevent harm to others"[736] is the intrinsic Equal Value of all humans and a basic respect for the Personal Autonomy of every member of society. Personal Autonomy does not create a bubble around each individual, but rather coheres every individual in common respect that obliges consideration of the reasonably foreseeable consequences or potential harm from every action and behavior. The emphasis with such consideration is on the results of any and all conduct, not the imagined motivation behind it or the attachment of any subjective morality, virtue, or "virtue ethics." The end does not justify the means, but it may condemn them. In fact, humans have a natural inequity aversion; they are sensitive to inequities against them, but also to those in their favor.[737] Such aversion is expressed in the

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[733] John Stuart Mill, *On Liberty* (London, UK: Longmans, Green Reader & Dyer—1880), 6.
[734] Henry Campbell Black, M.A. [1891 & 1910], "Harm," *Black's Law Dictionary*, *Fifth Edition* (St. Paul, MN: West Publishing Company—1979), 646.
[735] Thomas Jefferson & Marquis de Lafayette with Honoré Mirabeau & Thomas Paine [1789], "Article IV," *Déclaration des Droits de l'Homme et du Citoyen* ["Declaration of the Rights of Man and the Citizen"] (Paris, FR: Assemblée Nationale Constituante—26 Auguste, 1789).
[736] John Stuart Mill, *On Liberty* (London, UK: Longmans, Green Reader & Dyer—1880), 6.
[737] Elaine Walster, G. William Walster, & Ellen Berscheid, *Equity: Theory & Research* (Boston, MA: Allyn & Bacon—1978), *passim*.

common human cultural denominator of reciprocity[738] that is found in the traditional ethical system of every human society.[739] This mutual dependence is often termed "The Golden Rule," or the "Law of Reciprocity," and iterations are found in the *Bible*—"Do unto others as you would have them do unto you"[740]—in the work of *Kŏng Fūzĭ* ("Confucius"), in Immanuel Kant's Categorical Imperative, and in Thomas Paine's *Common Sense* ("and with respect to his neighbour, to do as he would be done by"[741]). However, the reciprocity of Personal Autonomy is reciprocity of consideration, not the *quid pro quo* of the maxim *do ut des* ("I give so you may give [in return]"). It is a basic respect for the other members of a shared society, more than a "commitment to the well-being of others, without the expectation of anything in return."[742] It is a recognition that "Either no individual of the human species has any true rights, or all have the same; and he or she who votes against the right of another, whatever the religion, color, or sex of that other, has henceforth abjured his own."[743]

Clearly Personal Autonomy, respect, and reciprocity, are not, and have never been, integral to the Capitalist society of the United States, substantially owing to the Supreme Court decisions and Congressional legislation that are the basis of the petition for redress that demands invalidation of such decisions and legislation. Congress and the Supreme Court have historically commandeered ownership of the lives of the *Dêmos* by applying subjective

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[738] George P. Murdock, "The Common Denominator of Culture," *The Science of Man in the World Crisis*, Ralph Linton, Editor (New York, NY: Columbia University Press—1945), 124.
[739] Simon Blackburn, *Ethics: A Very Short Introduction* (Oxford, UK: Oxford University Press—2001), 101; and George P. Murdock, "The Common Denominator of Culture," *The Science of Man in the World Crisis*, Ralph Linton, Editor (New York, NY: Columbia University Press—1945), 124.
[740] Luke 6:31; Matthew 7:12, *Holy Bible: King James Version, New Testament* (Cambridge, UK: Oxford University Press—1611), 811 & 762.
[741] Thomas Paine, *Rights of Man* (Mineola, NY: Dover Publications—1999), 30.
[742] Stephen J. Pope, "The Moral Primacy of Basic Respect, 10 June, 1997," *St. Paul Seminary School of Divinity, University of St. Thomas, St. Paul, MN* (Huntington Valley, PA: The Free Library—22 March, 1999); accessed 21 April, 2017: https://www.thefreelibrary.com/The moral primacy of basic respect-a054482234
[743] Nicolas de Condorcet (Marie Jean Antoine Nicolas de Caritat, Marquis de Condorcet) [1790], "Sur l'Admission des Femmes au Droit de Cite" ["On the Admission of Women to the Rights of Citizenship"], Translated by Dr. Alice Drysdale Vickery (Letchworth, UK: Garden City Press, Limited.—1893), 5-6.

limitations upon the behavior of all citizens. In doing so, Congress and the Court place the capricious preferences of those in the Opulent Minority above the will of those in the Exploitable Majority, thereby inhibiting the free conduct of a citizen's life and making impossible the Pursuit of Happiness—and belying any claim of Liberty and Equality. In this ethos, harm is irrelevant; respect and reciprocity are for the idealistic. Only laws are relevant, which is the huge built-in Biblical loophole in the American system—"where no law is, there is no transgression"[744]—which is colloquially expressed in the attitude that *anything* may be done so long as there is *no law against it*. This loophole guarantees social injustice in perpetuity and fosters an anti-social, individualistic, Hobbesian culture in which "every man is enemy to every man."[745] It is arguably the antithesis of respect and reciprocity. It may pay lip service to safety, "law and order," and preventing harm to others, and it is belligerently "tough on crime"—but that has simply made the United States the world's jailer, with the highest incarceration rate in the world and prisons in "the land of the free" are criminally overcrowded.[746] Yet, approximately one-third of those incarcerated are being punished for victimless crimes; that is, the unconstitutional subjective trespasses of exercising Personal Autonomy.[747] Life in such a system can be very "solitary, poor, nasty, brutish, and short."[748]

In the American version of Capitalist society, doing harm to others is actually

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[744] Romans 4:15, *Holy Bible: King James Version, New Testament* (Cambridge, UK: Oxford University Press—1611), 887.
[745] Thomas Hobbes [1651], "Chapter XIII: Of the Natural Condition of Mankind as Concerning Their Felicity and Misery," in *Leviathan: The Matter, Forme and Power of a Common Wealth, Ecclesiasticall and Civil* (London, UK: Oxford University Press—1909), 96.
[746] Tracey Kyckelhahn, Ph.D., "Justice Expenditures and Employment, FY 1982-2007 - Statistical Tables (NCJ 236218)," *Office of Justice Program, Bureau of Justice Statistics* (Washington, DC: U.S. Department of Justice—December 2011).
[747] Peter Wagner & Bernadette Rabuy, "Mass Incarceration: The Whole Pie, 2017," *Prison Policy Initiative* (Northampton, MA: Prison Policy Initiative—14 March, 2017) ; accessed 21 May 2017: https://www.prisonpolicy.org/reports/pie2017.html
[748] Thomas Hobbes [1651], "Chapter XIII: Of the Natural Condition of Mankind as Concerning Their Felicity and Misery," *Leviathan: The Matter, Forme and Power of a Common Wealth, Ecclesiasticall and Civil* (London, UK: Oxford University Press—1909), 97.

celebrated when it increases wealth; lying, cheating, coercion, bullying, manipulation, deception, and usury, are not only considered acceptable, they are encouraged and admired as virtuous. It is no wonder "the secret of every great fortune is a great crime"—a simplification of an Honoré de Balzac quote—is so often repeated. The full quote is even more damning: "*Le secret des grandes fortunes sans cause apparente est un crime oublié, parce qu'il a été proprement fait*" (The secret of a great fortune made without apparent cause is soon forgotten, if the crime is committed in a respectable way).[749] The Capitalists who harm are rarely prosecuted, and even more rarely convicted; but harm is often not illegal. American laws are always written and passed in overwrought response to an existing perceived problem, so laws lag behind injury and it is not possible to anticipate the deviousness of all future acts. Moreover, hastily written laws ostensibly designed to prevent harm inevitably contain oversights, or "loopholes," that may be exploited in order to mitigate or negate a law.

Petitioning for Personal Autonomy and the invalidation of all laws regulating victimless personal behavior, if done properly, ought to immediately place the focus of American society upon Personal Autonomy and reciprocal consideration. Victory is likely to cause substantial social upheaval and much handwringing; Americans would be forced to actually consider their fellow citizens, the consequences of their own actions, and what preventing harm actually entails. Instead of extant reams of statues and codes, and centuries of common law, all invalidated laws that regulate personal behavior could be replaced by a single law: "Citizens are free to do anything that harms no one else." After more than two centuries of selfishness and greed as a way of life, a new American *Weltanschauung* would not be an easy transition.

[749] Honoré de Balzac [1834], "Le Père Goriot," in *La Comédie Humaine*, Translated by Katharine Prescott Wormeley (Boston, MA: Hardy, Prat & Co.—1900), 142.

# *Demanding the General Welfare*

Americans are not only simultaneously denied the ability to Consent and deprived of true Personal Autonomy, a case may also be made that the United States government is following what is essentially a "Constitution in Reverse"—that is, Congress and the Supreme Court usurp powers the Constitution does not confer, yet shirk or moderate the duties assigned to them by the Constitution they are sworn to uphold. In other words, there are almost an incalculable number of additional violations of Organic Law that are worthy of petitioning the government for redress; none more so than the failure of Congress to promote and provide for the General Welfare. The Preamble of the Constitution promises "to promote the General Welfare;"[750] Article I, Section 8, mandates Congress "provide for the General Welfare."[751] In point of fact, all federal legislation that does not promote and provide for the *General Welfare* is unequivocally unconstitutional; Congress is forbidden from passing legislation that inures solely or disproportionately to the benefit of one segment of society and disadvantages others. If the system of Checks & Balances worked properly with respect to promoting and providing for the General Welfare, the President would veto any legislation that did not; if signed by the President, the Supreme Court would invalidate it under legal challenge. Sadly, the General Welfare is rarely exonerated by the exercise of Checks & Balances. As the concept of General Welfare has never been commonly internalized in the United States, petitioning the government for redress, with a demand to invalidate every law that does not promote and provide for the General Welfare, will also require introducing the country to the notion.

[750] Gouverneur Morris, "Preamble," *United States Constitution* (Philadelphia, PA: Secret Proceedings—17 September, 1787).
[751] James Madison, et al, "Article I: Section 8," *United States Constitution* (Philadelphia, PA: Secret Proceedings, 17 September, 1787).

The Plain Meaning of "General Welfare" is simply not a credible subject of debate. The term "general" is indisputably "involving, applicable to, or affecting, the whole…universal rather than particular."[752] The General Welfare is plainly the universal welfare of the entire *Dêmos*; promoting and providing for the General Welfare means acts, actions, and legislation, that inure to the benefit of the general population relatively equally, not inordinately benefit a particular segment of the population—such as the Opulent Minority or corporations. Petitioning for redress in this case is one of the rare instances in which the Supreme Court has already held, in *United States v. Butler* (1936), that promoting and providing for the General Welfare is a fundamental duty of Congress, which is "limited only by the requirement that [its duty] shall be exercised to provide for the General Welfare of the United States."[753] In fact, it would seem that *United States v. Butler* has declared unconstitutional all legislation not inuring to the General Welfare, and the mandate that Congress may legislate only for the General Welfare is now indisputable—there ought not be any need to petition the government for redress in this matter; it should be settled law.

Unfortunately, all laws that do not benefit the General Welfare did not disappear after *United States v. Butler,* and Congress did not begin legislating solely for the General Welfare. It is as though *United States v. Butler* had never been before the Supreme Court; which makes this particular petition for redress different from the others contemplated herein. It would still begin in the United States District Court for the Northern District of California in San Francisco, but it would not seek to overturn Supreme Court decisions; rather it would pray the Court to re-affirm its judgment and order Congress and other jurisdictions to finally comply with *United States v. Butler*. It would also demand that all legislation originating in Congress

[752] Frederick C. Mish, Editor, "general; *adjective*" *Merriam-Webster's Collegiate Dictionary, Tenth Edition* (Springfield, MA: Merriam-Webster, Inc.—1994), 484.
[753] Justice Owen J. Roberts, "Opinion," *United States v. Butler* [297 U.S. 1, 65-66]—1936.

henceforth include an abstract summarizing exactly how it promotes and provides for the General Welfare. Such abstracts should also be attached to all laws that would remain in the *United States Code*; no doubt this would be a monumental task, but it would be time and money well spent—and it would ultimately benefit the General Welfare.

To be sure, there are laws and programs that *do* benefit the General Welfare, such as: Social Security, MediCare, the National Park System, the Environment Protection Agency, infrastructure, and the United States Post Office. However, the programs and agencies inuring to the benefit of the General Welfare are perpetually underfunded and ever the target of increasing budget cuts; usually in order to benefit the Opulent Minority and increase spending on the military industrial complex. There is a persistent drumbeat to increase subsidies to the wealthy, institute more regressive taxes, lower taxes on the wealthy and corporations, and facilitate the externalization of corporate liabilities. Going back to, at least, the first bankruptcy legislation—the temporary *Bankruptcy Act of 1800* "was motivated to permit the release of Robert Morris…from debtor's prison, [and was repealed after his release]"[754]—Congress has written laws to specifically benefit a single person. The Opulent Minority and corporations already receive innumerable tax breaks not available to the Exploitable Majority; even the very way income is taxed provides huge benefit to the wealthy—*investment* income is currently taxed at a single "preferential rate" of 15%, which is roughly *half* the rate of income derived from *labor* for those making over $37,950.

Perhaps one of the most egregious exemplars of subsidies to corporations with no benefit to the General Welfare is the Federal Reserve System. The Federal Reserve loans *taxpayer money* to financial institutions for a negligible interest that is arguably effectively *zero*. From 2008 until 2015—seven years—the Fed Funds Rate was 0.25%; it rose to 0.50%

[754] Thomas L. Purvis, *A Dictionary of American History* (Malden, MA: Blackwell Publishers, Inc.—1995), 29.

in in 2016. The Fed Discount Rate was 0.50% in 2008 and 2009, and 0.75% from 2010 until 2015. Financial institutions are free to use this largesse in anyway they see fit: investments, financial manipulation, market manipulation, commercial or retail loans, or offering such lucrative consumer products as credit cards—which charge consumers between 12.99% and 29.99% annual interest. *Taxpayers* are not allowed to borrow this *taxpayer money* directly from the Federal Reserve for 0.25%, or even 3.25%. Instead, they must go through a financial institution and be charged a rate as much as *120 times* more than the rate that institution pays the Federal Reserve, assuming the consumer is approved for credit. Plus, if a financial institution somehow manages to approach insolvency, despite having the advantage of a game rigged to give them better odds than the house has at the most crooked casino in Las Vegas, *taxpayer* funds are then used to "bail out" the imprudent institution at similarly low rates. In other words, the entire American financial system is an elaborate artifice devised to divert taxpayer money to the creation of the most profitable global financial corporations, for the benefit of the shareholders and officers of those corporations, with at best tangential benefit to the General Welfare—entirely at the expense of the American taxpayer. Even the glibbest of the most corrupt cannot make a viable case that this scheme is socially just or promotes and provides for the General Welfare.

# *Demanding Court Checks & Balances*

The Supreme Court is designed to function "under such Regulations as the Congress shall make"[755]—from the number of justices, to the length of their terms, to the qualifications of a justice, to the Court's operating parameters, to preventing the Court from becoming unaccountable to any government entity or to the *Dêmos*—a duty Congress has completely abrogated since setting the number of justices at nine in 1869. The Constitution gives the Supreme Court very specific and limited powers; in believing the check of Congress would be sufficient, James Madison clearly did not anticipate the willful disregard of Article III by the Supreme Court and Congress. As a result, the Supreme Court is now entirely without accountability and its power is essentially unassailable. The Supreme Court is the one, true American royalty. The Court has given itself lifetime terms, re-written the Constitution at will, and unconstitutionally imported English Common Law and statutory law *in toto* into American jurisprudence. In short, the Court has far exceeded its very limited mandate: "the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."[756]

The notion that the Supreme Court is allowed to regulate itself should seem outrageous to anyone, whether or not the Constitution specifically delegates the responsibility of regulating the Court to Congress as part of the system of Checks & Balances. The inherent conflict of interest in the Court's self-regulation immediately offends the natural human aversion to inequity. The *only* check on the power of the Supreme Court today is unintended; compliance with Supreme Court rulings is essentially voluntary, unless enforced by the U.S.

[755] James Madison, et al, "Article III: Section 2," *United States Constitution* (Philadelphia, PA: Secret Proceedings, 17 September, 1787).
[756] Ibidem, "Article III: Section 2."

Marshalls or the Executive Branch. Yet, the Constitution does not create a Supreme Court that is a god-like body on an Olympian aerie, self-regulated and accountable to no one; nowhere does it provide even the vaguest suggestion the Court is empowered to re-write the Constitution at will, or serve as guardians of "the Moral Order"[757] to preserve the existing social "order and morality,"[758] or "decide on the rights of individuals."[759]

A petition for redress to demand Congress perform its duty of regulating the Supreme Court, prevent the Court from "regulating" itself, and undo all the Court has done with its usurped powers, presents another clear conflict of interest for the Supreme Court. Any such petition must pray the Court again be disqualified from hearing such a case, or recuse itself *en masse*. Once again, the opportune venue in which to originate the petition for redress is the United States District Court for the Northern District of California in San Francisco. However, a victory may not yield immediate results, depending upon who is in power at the time; there is simply no means provided in the Constitution by which to force Congress to write legislation. Nonetheless, a victory for Congressional regulation of the Supreme Court would at least open for the first time the possibility of Supreme Court accountability.

[757] Mark Warren Bailey, *Guardians of the Moral Order: The Legal Philosophy of the Supreme Court 1860-1910* (DeKalb, IL: Northern Illinois University Press—2004).
[758] Zechariah Chafee Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press—1941), 150; first quoted by the Court in Justice Frank Murphy, "Opinion," *Chaplinsky v. New Hampshire* [315 U.S. 568, 572]—1942.
[759] Chief Justice John Marshall, "Opinion," *Marbury v. Madison* [5 U.S. 137, 166]—1803.

# *Beginning Anew*

Nibbling at the edges of social inequity by working within the system on the micro level is simply too crucial to too many people to be abandoned, but it is not transformative—and the macro level is virtually ignored. Obtaining Consent, constitutional laws, Personal Autonomy, the promotion and provision of the General Welfare, and accountability for the Supreme Court, are all potentially socially transformative developments that disturb the *status quo* and could have the effect of essentially beginning the country anew. The only transformation now taking place in American society is the rapid shunting of the Exploitable Majority into an ever more insecure existence, that has actually given rise to the designation of a new social class leading an intentionally precarious existence, known as *Precariats*.[760]

Unalienable and Self-Evident First Principles are so insistently revolutionary notions that even today, the very thought of any *Dêmos* obtaining any such Rights is enough to create panic within every ruling élite around the world; hierarchal patriarchy cannot occupy the same space as Personal Autonomy, Equality, and Social Justice. The existing power structure will therefore use every means at its disposal to discredit the very idea that Americans have been denied Consent. The system will be vehemently justified, the denial will be denied and reviled by the political establishment and the media as a hoax, "fake news," "un-American," illegal, unconstitutional, and de-stabilizing. The *Dêmos* will be misdirected and distracted by the contention they lack standing; that the legal means by which to force all levels of government to follow the rules they are sworn to uphold is not through the courts, but rather through the ballot box—changing one representative at a time—a task so utterly impracticable and

[760] Amamiya Karin, "Suffering Forces Us to Think Beyond the Right-Left Barrier," *Mechademia 5: Fanthropologies*, Frenchy Lunning, Editor, (Minneapolis, MN: University of Minnesota Press—2010), 252.

interminable as to be a fool's errand. Those who comprise the power structure are well aware that periodically changing the odd brick does nothing to alter the basic structure.

Ultimately, it is entirely possible that half of the United States populace does not want to Consent, to have true Self-Determination. They may not want Personal Autonomy, a Congress that works for the General Welfare, or an accountable Supreme Court. They may look for a President, a leader, an imagined champion, to usher them to some mythological promised land. They may enjoy the transitory comforts living under the yoke of Capitalism affords them; indeed, they may prefer tyranny or oligarchy or theocracy. They may not worry the planet will soon be unable to sustain life. They may think that after more than two centuries of importing darker people to exploit, it is still possible to have a United States that is comprised only of heterosexual Protestants of Northern Eurápan descent. Nevertheless, it is clear few people are happy in the United States; even the Opulent Minority is unhappy the Exploitable Majority is insufficiently immiserated.

At some point, Americans may have to accept the possibility of a schism that simply cannot be sewn together or bridged. Certainly, a perpetual tug-of-war to impose the will of the "Red" team upon the "Blue" team, and vice-versa, is not only not Democracy, it is destabilizing and unsustainable. It is a problem with a geographic component that defies solution: cities in even the "reddest" of regions are mostly "Blue;" rural areas even in the "bluest" of regions are mostly "Red." It may result in mass migration to like-minded regions, geographic re-alignment, or a more de-centralized political organization. It would first behoove the country to live in the social organization promised by the Declaration of Independence and designed by the Constitution, to determine whether or not it is to their liking. Altering it, or Abolishing it, is then an option.

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