

Chapter 2

The Nature of the Republic

In his introduction to *The American Commonwealth*, James Bryce observed that "explanations drawn from a form of government, being easy and obvious, ought to be cautiously employed." This English student of our political institutions was well aware that such explanations should be particularly cautious with reference to the United States.

For this caution there are two reasons, one general and one particular. Nobody will contend that a written constitution can ever perfectly mirror the fluctuating spirit of the people whom it governs. And, in the case of the United States, there is the further fact that the governmental system is not so much positive as intentionally negative.

While this suspicion of temporal authority reflects a deep-rooted American characteristic, it also makes a study of our legal institutions inadequate for understanding the nature of the Republic. Many Americans, let alone foreigners, are surprised to find that the words "no" and "not," for the most part employed in restraint of governmental power, occur 49 times in the seven original articles of our Constitution. This negative approach to a positive objective also pervades the first ten amendments, composing the Bill of Rights, which culminate in two sweeping and ever memorable limitations on political authority:

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

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

To "secure the blessings of liberty" the founders of the Republic deemed it as necessary to restrain as to establish political authority. In American political thought, as distinct from that of the European continent, the State until recently was always regarded as a severely limited and artificial instrumentality. A form of government thus conceived is unlikely to repress the individual creative urge that impels men toward various forms of personal accomplishment.

Indeed it is impossible to read even the bare text of the Constitution at all carefully without realizing that the American Republic was specifically designed to safeguard individual enterprise *against* the State. The men who wrote this organic law were all convinced that natural impulsion would serve better than external government in the planting, the harvesting, and even in the equitable—which does not mean automatically equal—distribution of the fruits of labor.

Agricultural terminology is appropriate because the eighteenth century American lived close to the soil, or close to the sea or forest when husbandry took the form of fishing or hunting. At the time of the Constitutional Convention the country contained a fair number of small manufacturers and artisans. There was a sprinkling of substantial merchants and bankers and a rather high proportion of lawyers and ministers, as well as other professional men. But even Philadelphia, then the largest city, in 1787 had a population of less than 40,000. Whatever his calling, no American of that period was wholly aloof from the land. The pleasures and the penalties of the great metropolitan ganglia of today were alike unknown.

Nevertheless, it would be a serious mistake to conclude that the founders envisaged an indefinite continuation of the small rural economy they knew at first hand. In addition to an understanding

of history that was, in many cases, profound, these men possessed the imagination to visualize something of the complicated sociological future of their country.

As early as 1751 Franklin had anticipated that the American population "will in another century be more than the people of England."¹ And Madison, who in 1787 foresaw serious difficulties arising "from the connection between the great capitalists in manufactures and commerce, and the numbers employed by them," later estimated that the population of the United States might reach 192,000,000 by 1930. With these calculations before him he wrote: "To the effect of these changes, intellectual, moral and social, the institutions and laws of the country must be adapted, and it will require for the task all the wisdom of the wisest patriots."²

II

If the group that wrote the Constitution had not included a number of men with extraordinary foresight, the Republic would not have lasted, let alone prospered, as has been the case. But they were not mere theorists. Active leadership in their respective communities had also made these men hard-headed politicians. The unparalleled opportunity to establish a wholly new political system was seized, without ignoring the overshadowing problem of the day. There was nothing academic about this immediate dilemma. Under the Articles of Confederation the former colonies, having achieved their independence, were rapidly drifting into a condition approaching anarchy. Yet everything in the American tradition made centralized government repulsive to a large proportion of the population.

In the present period of governmental hypertrophy we tend to forget that those who made the American Revolution were by no means unanimous in wanting to establish another Nation-State. One of the newly independent colonies—Rhode Island—refused

¹ Carl Van Doren, *Benjamin Franklin*, p. 217.

² *The Madison Papers*, Allston Mygatt edition, Vol. III, Appendix 4.

to send delegates to Philadelphia even to discuss the subject of federal union. When the Constitution was finally hammered out, a strong minority of the delegates refused to sign, for the most part because they opposed the projected centralization of political power. In Virginia alone the opposition counted such outstanding men as George Mason, Edmund Randolph, and Patrick Henry, the last of whom had refused on principle to accept appointment to his state delegation. In New York, from which no delegate other than Alexander Hamilton would sign, the opposition was even stronger. We owe *The Federalist* essays, essentially a brilliant campaign document, to Hamilton's very reasonable fear that his own state would reject the Constitution.

Contemporary tension is reflected in the narrow margins by which the "Big Four" finally ratified the Constitution in the state conventions elected by popular vote to settle that single burning issue. Pennsylvania assented on December 12, 1787, by 46 to 23; Massachusetts on February 6, 1788, by 187 to 168; Virginia not until June 26, 1788—when nine states had acted favorably and the Constitution was therefore already in force for them—by 89 to 79. New York approved still later (July 26, 1788), by the even closer margin of 30 to 27.

Eighteenth century Americans, valuing individual liberty above all else, simply would not construct a Nation-State without simultaneously making it part of the record that concentrated political power is, and continuously should be, suspect by those whom it subjects. In consequence, with the need for central government and the determination to preserve local government sharply at variance, it was foreordained that the Constitution would contain elements of compromise.

Evidence of this is apparent in the text, as in the provision giving every state equal representation in the Senate to offset representation proportionate to population in the House. Contemporary attacks on this and other instances of expediency were numerous and vociferous. They were effectively answered by Alexander Hamilton, who had himself wanted a much stronger central government, in the closing number (85) of *The Federalist*. There Hamilton appositely quoted David Hume, whose

death in 1776 had spared him the charge of partisanship as to the philosophic merits of the American Constitution:

To balance a large State or Society, whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgements of many must unite in the work; experience must guide their labor; time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they *inevitably* [Hamilton's emphasis] fall into in their first trials and experiments.

To determine the true nature of the American Republic one must therefore look deeper than the written Constitution, of which Washington wrote almost apologetically that "it is liable to as few exceptions as could reasonably have been expected." "Individuals entering into society," he said defensively, "must give up a share of liberty to preserve the rest."³

Nevertheless, the Constitution represents an unprecedented and unparalleled effort to integrate a system of government with an individualistic code of personal conduct. This explains the deep-rooted and continuing determination that in the United States political action shall not be allowed to regiment the individual. Most Americans are confused rather than convinced when smartly told that "rugged individualism" produces "ragged individuals." The observation is clever. But it seeks to puncture more than commercial platitudes. To attack the principles underlying free enterprise is to impugn the traditional morality of the American people.

It is, however, a fundamental of American political theory that the clash of opinion between individuals and groups and parties should be vehement and continuous. As long as the American people differ with each other there is no danger to the Republic, for its philosophy assumes that they will so differ and its structure encourages them to altercation. Difference of opinion becomes discord and the security of the Republic is threatened, not when

³ Max Farrand (Ed.), *The Records of the Federal Convention*, Vol. II, pp. 666-7.

there is cleavage among the governed, but when it develops over the issue of personal liberty, between those who do the governing and any sizable or otherwise significant minority of those who are governed. It was to avert this ever present danger that the Constitution was drawn to balance and restrain the powers of government, giving political substance to the assertion, in the Declaration of Independence, that governments derive "their just powers from the consent of the governed." And this means the acquiescence of the great body of the governed—not merely the consent of a bare majority.

David Hume, in the passage cited, suggested that time might achieve a condition of "perfection" for a government balanced on general laws. Clearly that will never be the case with the American Republic, so long as its citizens differ pronouncedly one from another in their ambitions, interests, and mentality. Perfection implies achievement and the Republic, for all the definition of its organic law, is designed not as an achievement, but for achieving. The nature of the Republic is as much dynamic as static. The individual citizens who give it substance are not regarded as mechanical robots, properly subject to "universal training." They are dignified as human beings whose claim to the expression of personality must never be arbitrarily denied by external government.

A *form* of government thus tailored to individualism can never attain perfection, because the human integer, which in the aggregate gives representative government its quality, is adversely affected by the failings of mortality. On the other hand it may reasonably be asserted that our governmental *system*, as such, does actually approach perfection, in so far as it is wholly competent to represent the quality of its citizens.

The operators, not the machinery, form the subject of concern. The human element holds the seed of life, and alternatively the germ of death, for the Republic.

III

We shall not understand the nature of our Republic if we fail to realize that its organic law was the product of concession. Indeed the record of the Philadelphia Convention is throughout one of adjustment of conflicting viewpoints.

At one extreme, in the deliberations from which a new Nation-State emerged, was the position of Alexander Hamilton. He thought that the President of the United States should hold office for life, with similar tenure for members of a Senate to be composed entirely of landowners. The British Crown, without the hereditary feature, and the House of Lords, deprived of patents of nobility, were model institutions in Hamilton's mind. His draft for the federal Constitution provided that: "The Senate shall exclusively possess the power of declaring war," in addition to that share of the treaty-making power actually concentrated in the upper chamber. Hamilton also strongly favored centralization of power at the expense of the states and would have had all the state governors, endowed with a comprehensive veto, appointed by the national government as its agents.⁴

At the other extreme were the adherents of Thomas Jefferson, serving as Minister Plenipotentiary in France at the time of the Philadelphia Convention. The decadence of the French court, as the monarchy drew to its turbulent end, made Jefferson the more anxious to prevent centralized government in the United States. Indeed it was largely because of the abuses of personal political power that he defined prerevolutionary France as "the worst-governed country on earth," and the government of Great Britain under George III as "the most flagitious which has existed since the days of Philip of Macedon."⁵ Therefore, it is not surprising that Jefferson advised from Paris, on August 4, 1787, "to make the states one as to everything connected with foreign nations, and several as to everything purely domestic."⁶

⁴ The text of Hamilton's draft constitution is printed as Appendix V of *The Madison Papers*. Hamilton's elaboration and defense of these views is minuted in the *Notes* for June 18, 1787.

⁵ Albert Jay Nock, *Jefferson*, p. 105.

⁶ Quoted by Gilbert Chinard, in *Thomas Jefferson*, p. 197.

The Constitution as adopted was for diametrically opposite reasons a disappointment both to Hamilton and to Jefferson. But the former swallowed his doubts to produce the brilliant advocacy of *The Federalist*. And Jefferson, not to be outdone in cooperation, magnanimously advertised these essays as "the best commentary on the principles of government ever written," frankly admitting that they had "rectified" him "on several points."⁷ The stature of its initial leadership helped to make judicious conciliation a part of the nature of the Republic.

Adjustment of conflicting opinions by reasonable modification is, moreover, implicit in the Constitution. If the United States were really a political democracy, as is so often loosely asserted, then this factor of conciliation would not be vital to successful government. The will of the majority would habitually override the will of the minority, to the extent that the representative process permitted formulation of this majority will. But the American system of government, in spite of suggestions to the contrary which demonstrate confusion in our political thought, is not that of an unbridled democracy. What we have is a representative republic and, in the language of *The Federalist*:

It is of great importance in a republic not only to guard the Society against the oppression of its rulers, but to guard one part of the Society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. . . . Justice is the end of government. It is the end of civil Society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a Society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger . . .⁸

Concessions to the minority are not necessary in a democracy. Concessions to the majority are not necessary in a tyranny. But in a republic, designed to prevent and not to induce tyranny, con-

⁷ *Ibid.*, p. 200.

⁸ No. 51: the authorship is attributed to Hamilton or Madison. The reasoning throughout seems more characteristic of the latter.

cessions by both majorities and minorities are as oil to the machinery of government. The majority must not dominate in an oppressive manner and the minority must not insist upon its guaranteed rights in a way that will perpetually frustrate the majority. The spirit of conciliation, in short, is an essential part of the nature of the Republic.

There is, of course, a point at which conciliation may begin to undermine principle, becoming compromise of a nature intolerable to honorable men. In the honest opinion of many on both sides that point was reached, and exceeded, in the issues of constitutional interpretation that led to the Civil War. Of course political concessions may and do impinge on principle. But an equally frequent victim of encroachment is self-interest, which likes to masquerade as principle.

There is no insurmountable difficulty in this matter when the individual himself conscientiously draws the boundary between honorable concession and dishonorable compromise. Conscience teaches us to distinguish the surrender of personal prerogative from the sacrifice of impersonal principles. In American politics, certainly, the art of conciliation, even to the degree of "log-rolling," has always been regarded as a proper practice. It could not be otherwise, since our system of government demands concession and would break down without that element.

IV

The manner in which the Bill of Rights was adopted provides a good illustration of the important role played by concession from the earliest days of the Republic. In order to obtain quickly what would now be called a "viable," or workable, national government, those who most strongly emphasized the blessings of liberty were nevertheless willing to submit the Constitution to the people without a catalogue of specific individual guarantees. Those who argued that such specification was "not only unnecessary in the proposed Constitution, but would even be dangerous"⁹ were nevertheless willing to modify that opinion.

⁹ Hamilton, *The Federalist*, No. 84.

This willingness was certainly not diminished by the many criticisms of the Constitution raised in most of the state conventions of ratification. It is significant that the first ten amendments, as eventually adopted, were modeled on those drafted by the minority in the Pennsylvania convention, for its demands contained the entire substance of our present Bill of Rights.¹⁰

North Carolina and Rhode Island had not ratified, and were therefore still outside the Union, when Madison on June 8, 1789, in the first session of the First Congress, moved the consideration of constitutional amendments which together would comprise a bill of rights. Reviewing the many criticisms directed against the Constitution as adopted, he gave his opinion that:

. . . the great mass of the people who opposed it, disliked it because it did not contain effectual provision against the encroachments on particular rights, and [for] those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercised the sovereign power . . .¹¹

In the same speech Madison declared that he himself did not consider a formal bill of rights essential for the protection of the individual against governmental authority. On the other hand, he could see no valid objection to emphasizing in this manner that "the great object in view is to limit and qualify the powers of government, by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode." These exceptions, he noted, are directed "sometimes against the abuse of the executive power, sometimes against the legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority."¹²

It is these constitutional limitations on the will of the majority that insure, for as long as the first ten amendments to the Constitution stand, that the United States shall *not* be a political democ-

¹⁰ McMaster and Stone, *Pennsylvania and the Federal Constitution*, 1888 edition, pp. 321-3; see also James Brown Scott, *The United States of America*, p. 327.

¹¹ *Congressional Register*, Vol. I, p. 426.

¹² *Ibid.*, pp. 430-31.

racy, if that signifies a system of government under which the will of the majority is in every circumstance supreme. And even if the American Republic should be thus corrupted, it could still be heralded that here was one government which in certain specified fundamentals actually met the challenging requirement of John Stuart Mill:

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.¹³

A doctrine as truly liberal as this could never be agreeable to all men, and least of all to those who have fantastically confused liberalism with the suppression of opinion distasteful to them. Fortunately, there was little self-righteous political thinking in the formation of the American system of government. Those most influential in that achievement were truly political philosophers, able to rise above personal prejudice in their effort to bring governmental practice into conformity with moral principles. Though Hamilton and Jefferson, as an outstanding illustration, disagreed sharply on the desirable means, they were nevertheless in full accord in their desire to "secure the blessings of liberty."

That objective requires restraint on the power of the State. As to the degree of the restraint there was, and is, room for wide difference of opinion. But adjustment of individual viewpoints on methods may reasonably be expected when there is firm agreement as to the objective sought. The men who wrote the Constitution counted heavily on good will to make their aspirations for the new form of government effective. So this conciliatory spirit came to be embedded in the nature of the Republic.

The practical importance of this may be emphasized by considering the sad frustration of a wholly different political system in which the desirability of conciliation was covertly denied. The Charter of the United Nations, which established a veto power for privileged Members, is a case in point, for none who really

¹³ *Essay on Liberty*, Ch. 2.

wish to further agreement will stipulate an insurmountable veto power in matters of operation. Partly because of this emphasis on the veto a constantly frustrated commission of the United Nations took nearly three years even to draft an international bill of rights, without binding force on any Member government.

The very first Congress of the United States, on the other hand, could move decisively toward the establishment of constitutional guarantees in this field. On September 25, 1789, just two years after the writing of the original Constitution had been completed, twelve amendments designed as a bill of rights were approved by Congress. The ten most significant were ratified by the states and were, on March 1, 1792, certified by the Secretary of State as an integral part of the Constitution. Only visionaries ever expected any such development in the case of the United Nations, because its nature, apparent to the discerning as early as the Dumbarton Oaks draft charter, was opposed to conciliation.

The conciliatory spirit that was so important in producing the Bill of Rights continues to be one of the great sources of strength in the American way of life. The diversity and variety of human personality renders it essential that any system of government cherishing the individual should make allowance for many conflicting viewpoints and should not impede their voluntary adjustment. The only workable alternative to a governmental system that encourages agreement is one that encourages repression. And the latter, no matter how fair its initial pretense, is in nature, and will therefore eventually become in action, a system of tyranny, whether the tyrant be an individual, an estate, a bureaucracy, or a mob.

Just as the form of the American Republic is directed against monopoly of any kind—social, religious, political, or economic—so, as a corollary, its nature demands an individual willingness to respect the opinions of others, and an aptitude for voluntary adjustment of individual viewpoints. In a democracy such adjustment may be demanded. In a republic, up to the point where moral principles are endangered, it is expected.

V

It is the nature of the Republic to encourage the harmonizing of conflicting viewpoints. But opportunistic compromise is not in the nature of a system of government based on moral principles. At any given moment right and wrong cannot be safely compromised. But neither, politically speaking, can right and wrong always be surely recognized.

So it is often difficult for even the most conscientious individual to decide whether he should concede or stand firm on a particular political issue. In the operation of representative government the decision would be practically impossible, were it not for the device of the party system. By their adherence to varying—perhaps opposing—principles, political parties enable the citizen to bring the moral element into politics. The party is one means through which the individual can project his standard of living outside his immediate circle, thereby influencing the life of the nation as a whole. "In America," Bryce concluded, "the government counts for less than in Europe, the parties count for more."

While the history of political parties in the United States has an English background, to be examined later, we must accept Bryce's verdict that the American party system really "begins with the Constitutional Convention of 1787." In *The American Commonwealth* Bryce warned his fellow countrymen against trying to find any basic similarities between English and American political parties, noting that the latter "are pure home growths, developed by the circumstances of the nation." He concluded that the origin of American party division is found in the clash of "the centrifugal and centripetal tendencies," so dramatically personified in the antagonism between Jefferson and Hamilton. "In a sort of general way," observes this English observer cautiously, "one may say that while one party [the followers of Jefferson] claimed to be the apostles of Liberty, the other [the Federalists] represented the principle of Order."¹⁴

In other words, the distinctive attribute of American political parties is that from the very outset—and at the outset more pro-

¹⁴ *The American Commonwealth*, Third Edition, Vol. II, pp. 5 and 6.

nouncedly than in later years—they have reflected differences of principle and have therefore been fundamentally philosophic in character. This important characteristic, much less pronounced in European party history, runs through the whole skein of American political organization. The names have changed; the major parties have even largely reversed their traditions, so that each has come to uphold principles it formerly opposed. But the connection with political principles, though often honored in the breach by party leaders, has never been wholly forgotten. Always one of the two major parties has laid primary emphasis on individual *liberty*; always the other has favored extension of governmental *authority*.

This division has been a matter of disagreement on means rather than of fundamental antagonism in regard to ends. While Hamilton is alleged to have called the public “a great beast,” it cannot be maintained that he was hostile to the cause of individual liberty. While Jefferson is quoted as having said that “the tree of liberty is watered in the blood of revolution,” he was actually as anxious to stabilize Society as were any of his contemporaries. The point is that political parties in the United States have generally stood for something deeper and more significant than privilege for a landed, a monied, or a proletarian class. On the other hand, no American political leader has ever successfully maintained that his party is identified with Good and the opposition with Evil. American thought is too wholesome and common sense to permit that hypocrisy.

Because liberty is impotent without order, and because order is stultifying without liberty, there is always room for adjustment between the viewpoints of political leaders who enlist under one or the other of these two banners. Nevertheless, an opposition between the two schools of thought is eternal and inevitable because, in Bryce's words, “it springs from differences in the intellect and feelings of men which one finds in all countries and at all epochs.”

None can precisely identify the factors that lead some to a pessimistic, others to an optimistic, judgment on the subject of human nature. But the facts that can be cited by the pessimist and

the faith that sustains the optimist are equally real. Moreover, the pessimist is seldom devoid of a form of faith and the optimist seldom at a loss for pertinent facts, to sustain their contrasting attitudes.

This duality is latent in every individual. We admit it by saying that people have "moods" and are at different times inclined or disinclined in a particular direction. Because of this duality no balanced intelligence can praise liberty without some mental reservations in behalf of authority, nor advocate authoritarianism without considering its depressing effect on liberty. To quote Viscount Bryce once more:

Every sensible man feels in himself the struggle between these two tendencies, and is on his guard not to yield wholly to either, because the one degenerates into tyranny, the other into an anarchy out of which tyranny will eventually spring. The wisest statesman is he who best holds the balance between them.¹⁵

VI

The alternation in human nature, and in the physical conditions of the surrounding universe, is a central problem of philosophy; just as the particular enduring conflict between Good and Evil is a central problem of religion.

If we examine the fragments of early Greek thought still extant, we find Heraclitus emphasizing the characteristic of ceaseless change: "You cannot step twice into the same river, for other and yet other waters are ever flowing on." But how, retorted contemporary Parmenides, "can a thing both be and not be"? Not change but its opposite, immutability, was to Parmenides the fundamental law.

So when Empedocles set out to reconcile the dynamic and the static viewpoints, he was forced, by the weight of evidence on both sides, to the conception of a twofold rhythm, a continuous tidal ebb and flow in the affairs of men. "In one movement a unity builds itself up out of a plurality into sole existence; in another

¹⁵ *Ibid.*, p. 19.

movement it disintegrates, to make a plurality out of a unity. . . . This perpetual alternation never ceases."

As Arnold Toynbee points out, in his examination of the origins of civilizations,¹⁶ the discovery of rhythm and the process of thesis, antithesis, and synthesis are not to be attributed exclusively to Hellenic reflection. Sinic philosophers quite independently depicted the alternating forces of Yin and Yang, representing shadow and sunlight, water and fire, rest and motion, or other interlocking opposites. It is not the province of this study to consider the universality, nor the grandeur, of the conception of eternal pulsation. But we do note that it has been discerned by a long series of profound thinkers, in every age and civilization, down to the contemporary English writer who reminds us that: "Life is a constant process of focus and expansion. This is the systole and diastole of Time itself, the alternating current that drives the Universe."¹⁷

Further excursion into the field of metaphysics would only emphasize what is too much ignored by contemporary Americans—that their Republic is far more than an administrative mechanism. The authors of the Constitution were eminently practical men. But to consider this political achievement critically is to see that they realized the distinction we have drawn between the *condition* of freedom and the *urge* of liberty; that they realized the impossibility of maintaining freedom unless those who are "at liberty" are able to exercise self-restraint; that their consequent objective was a political system permitting a happy balance and conciliation between the dynamic and the static. In short, the problem to which they resolutely addressed themselves was how to integrate a liberty of divine origin with an order of human manufacture.

This integration demands constant adjustment of individual prejudice. And for the continuous political operation of the conciliatory process it was also necessary to evolve the extraconstitutional machinery of party government. It is no accident that from the beginning one of our major political parties has tended to em-

¹⁶ *A Study of History*, Vol. I, Section II B.

¹⁷ Gerald Heard, *The Ascent of Humanity*, p. 260.

phasize what man can do by governing himself; the other, what can be done for man by governing him.

By the same token it is no accident that in the United States the popular instinct has sensed that the two-party system is in accordance with "the systole and diastole of Time itself," and therefore operates with a success the more striking by comparison with the disasters attendant upon the multiplicity of parties characteristic of European governments.

VII

In retrospect one can see clearly that the American system of government implied and demanded two organized parties—an administration and an opposition—for successful operation.

The supreme need for agreement, without which the Republic could never have been launched, prevented its founders from realizing the necessity of party organization. They had passed through an ordeal in which the most heroic effort by well-disposed men had barely succeeded in forming the federal union. They quailed at the thought of partisanship that would inevitably seek to promote, rather than to resolve, the natural divisions in public opinion.

This explains why we find Madison writing (*The Federalist*, No. 37) of "the pestilential influence of party animosities"; and why Washington, in his Farewell Address, took occasion to warn "in the most solemn manner against the baneful effects of the spirit of party."

It seems curious that men of such sagacity did not appreciate the full political implications of the representative system they had established. It seems curious, in view of the rise of the single dictatorial party in our day, that they did not visualize the importance of political division as an additional safeguard against concentrated tyranny. It seems curious, finally, that men who could so clearly see the importance of balanced powers did not conclude that two opposing parties were necessary to keep those powers balanced. But one could give many illustrations of the ease with which the presence of an immediate evil obscures political perspicacity. The very present danger to the men who wrote

the Constitution was what they frequently referred to as "faction," by which they seem to have meant what today we would call "pressure groups." That the self-interest of disciplined, nationally organized parties would, by open competition with each other, prove in the public interest was simply not anticipated.

For this lack of foresight there were reasons other than the immediate necessity of securing more unity among the scarcely united states. This union had to take form as a nation before national parties could in turn arise. Washington in particular, Madison not much less so, felt and was above domestic political rivalries. The first President in the field, the fourth President in the forum, had given all they possessed to harmonizing and conciliating for the general American welfare. It was impossible, because it would have seemed degrading, for these men to step down from national to party leadership.

Psychologically, moreover, both Washington and Madison were of the judicial rather than the opinionated type, of which Hamilton and Jefferson were in their opposite ways representative. Again, it would have demanded superhuman vitality for men who had spent so much of their controversial ability in the struggle for independence to take sides with equal fervor in comparatively uninspiring domestic antagonisms. Even Hamilton and Jefferson were party men in the field of political thought rather than in that of political action. So it is not really surprising that the revolutionary generation had passed away before party division, in the modern sense of the word, began to crystallize—just prior to and during the Administration of John Quincy Adams.

Nevertheless, this division was from the beginning inherent in the American form of government. For all his dislike of "the spirit of party" Washington could see, in the passage already noted, that: "This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind." What he did not see is that, if intelligently controlled, the passionate spirit of party will operate constructively. Nor did he realize that both partisanship and conciliation, the tendency to divide as much as the willingness to unite, are alike a part of the nature of the Republic.

The fact that the authors of the Constitution did not foresee the rise of party government is not surprising. In many respects they builded better than they knew. And what they created was not a dead structure, lacking the opportunity of development and growth. It was, on the contrary, a vital political system, attuned to the nature of man, with all the possibility of improvement pertaining to the nature of man.

VIII

Partisanship, on the one hand, and a conciliatory attitude, on the other, are not the only qualities inherent in the nature of the Republic, and therefore necessary to the character of its citizens, if this idealistic form of government is to be maintained. The existence and development of tolerance is also implied, and in an active rather than a passive sense.

The virtue of tolerance is of course averse to the spirit of partisanship—as it is allied to that of conciliation. The tolerant man will discount the excessive claims that rigid party division encourages and will simultaneously seek to emphasize that which is common in conflicting viewpoints, rather than that which is irreconcilable. Tolerance may therefore be called the balance wheel between divisive and unifying forces. It is, of course, a fundamental characteristic of the Christian religion. The New, as contrasted with the Old, Testament is rich in such admonitions as: “He that is without sin among you, let him first cast a stone . . .”

The Constitution places much reliance on the virtue of tolerance, not merely in defending specific individual rights against encroachment by the State or by the majority, but even more in the fundamental intent to “secure the blessings of liberty.” To attain this end for one individual without limiting it for others is a problem far easier to state than to solve. A prerequisite of solution is obviously a tolerant attitude toward viewpoints other than one’s own. To tolerate means to endure something actually disagreeable: a virtue always difficult to achieve. Too often, tolerance is regarded as nothing more than a somewhat contemptuous

indifference toward an unwelcome opinion. To be the active characteristic that is required by our system of government, toleration must have a positive content. It must at least admit the possibility of values in what may seem at first glance valueless.

In the *Essay on Liberty*, John Stuart Mill has made a universal case for what he well defines as "the duty of toleration." But the general logic of his reasoning has a particular applicability for Americans. Among a heterogeneous people, basing their claim to political independence on the assumption of a fundamental human equality, hostile to artificial privilege, opposed to preferential position for any church or estate, and committed by circumstance to the protection of minority interests—for such a people tolerance is actually more than a virtue, and more than a duty. It is a clear necessity.

Although this conclusion is intellectually obvious, it is by no means always emotionally acceptable. And difficulty here is exacerbated by the ease with which individual revulsion against intolerance may produce a different, but no less objectionable, form of the same characteristic. This inverted intolerance is often particularly apparent in racial issues, as in the admission of Negro students to private educational institutions that must (and should) place limits on their student load and are therefore sometimes prone to make race one criterion of limitation. In this issue it is not infrequently argued that Negroes should be admitted *as* Negroes, which is of course no less intolerant than exclusion for the same reason. Similarly, legislation like the pleasantly titled Fair Employment Practices Act would make the federal government as intolerant toward local customs as those customs are, undoubtedly, intolerant of more than lip service to equalitarian principles.

The continuous definition and application of tolerance is one of many responsibilities that were transmitted to posterity, along with more clear-cut objectives, by the founders of the Republic. Their work made it essential for all Americans to be tolerant, actively tolerant, if we wish to preserve our inherited form of government. The principles laid down are subject to contradictory interpretation, and in specific issues the guideposts are frequently obscure. But to be thus "at liberty" is of itself evidence

that the Republic is not unduly restrained or mortified by the dead hand of the past. Our political institutions are designed to focus and clarify, rather than to solve the countless problems of citizenship. That is well, because these problems are inseparable from—are indeed an index of—life and growth.

IX

The quality of democracy—using the word to describe a personal attitude rather than a political system—is also a part of the nature of the Republic. A generally democratic attitude, sharply different from that which prevailed in seventeenth and eighteenth century Europe, was indeed a well-developed American characteristic long before there was any concerted effort for political independence.

Democracy, as an equalitarian approach in all aspects of human relationships, results naturally from faith in the fundamental decency of human beings. Those with democratic instincts believe that individual conduct is of greater significance to mankind than is intellectual power, physical beauty, muscular strength, or any other personal attribute or inherited advantage. "Kind hearts are more than coronets, and simple faith than Norman blood." As is true of tolerance—to which the virtue of democracy is closely allied—the equalitarian attitude has been enormously strengthened by the teachings of the Christian religion.

This fact is so generally recognized as scarcely to need emphasis. "By this shall all men know that ye are my disciples, if ye have love one to another."¹⁸ But the encouragement that Christianity gives to the democratic attitude is many-sided; by no means dependent upon the insistence on human fraternity. There is the constant glorification of the humble: "Blessed be ye poor; for yours is the kingdom of God."¹⁹ There is the parallel condemnation of material accumulation: "Verily I say unto you, that a rich man shall hardly enter into the kingdom of heaven."²⁰

¹⁸ John 13:35.

¹⁹ Luke 6:20.

²⁰ Matthew 19:23.

There is the scorn of earthly power: "For what is a man advantaged, if he gain the whole world and lose himself . . .?"²¹ Finally there is the enduring challenge to official arrogance, chronicled by Mark and Matthew in practically identical words: "Render to Caesar the things that are Caesar's, and to God the things that are God's."

These texts, and many others of similar import, were as guiding lights to the resolute men and women who came to America not merely to worship as they wished, but even more to live, so far as humanly possible, in the manner that Christ ordained. And the conditions of living in the New World, where the co-operative attitude was as important as individual reliability, in turn strengthened democratic influences among a sincerely Christian people. Since Tom Paine can scarcely be charged with any excess of religious fervor, his evidence on this point is the more important:

As America was the only spot in the political world where the principles of universal reformation could begin, so also was it the best in the natural world. An assemblage of circumstances conspired, not only to give birth, but to add gigantic maturity to its principles. . . . The wants which necessarily accompany the cultivation of a wilderness, produced among them [the colonists] a state of Society, which countries, long harassed by the quarrels and intrigues of governments, had neglected to cherish. In such a situation Man becomes what he ought. He sees his species, not with the inhuman idea of a natural enemy, but as kindred; and the example shows to the artificial world, that Man must go back to Nature for information.²²

Faith in the underlying worth of men, as such, was unquestionably an important element in the demand for political separation from class-conscious England. With the achievement of independence, and the withdrawal of the royal representatives, the democratic passion flared high. It certainly played a substantial role in delaying the establishment of a national government. "The radical leaders of the Revolution," in the words of Charles A. Beard, "had not thrown off British agencies of economic coercion for the mere purpose of substituting another centralized sys-

²¹ Luke 9:25.

²² *The Rights of Man*, Part II, Introduction.

tem of legislative, executive, and judicial control.”²³ In 1786 the Massachusetts insurrection known as Shays’ Rebellion gave proof that democratic sentiments and Christian forbearance are not necessarily allied.

The oft-repeated assertion that the framers of the Constitution were anxious to check any further development of democratic “turbulence” is sustained by the records of the Convention. Intimations that they were primarily interested in their personal property rights are much more difficult to substantiate. Professor Beard has written scathingly that: “More than half the delegates in attendance were either investors or speculators in the public securities which were to be buoyed up by the new Constitution.”²⁴ Albert Jay Nock raised the percentage. “The Constitution,” he asserts, “had been drafted . . . by men representing special economic interests. Four-fifths of them were public creditors. . . .”²⁵

Actually, this only amounts to saying that most of the framers of the Constitution had supported the cause of independence to the extent of buying the War Savings Bonds of their day. That is a curious basis for impugning the quality of patriotism. There would seem to be at least as much reason for questioning the motives of those who had failed to make this investment—or speculation, as at the time it certainly was. Moreover, only a few years earlier, the hopelessly inflated American dollar had suffered a forty-to-one devaluation, ordered by Congress on March 18, 1780. This expropriation, of 97½ per cent, was at the expense of every “public creditor,” in proportion to his holding.²⁶

Much criticism of the “conservatism” of the Constitutional Convention is equally far-fetched. Of the delegates, Mr. Nock has charged that: “Not one of them represented the interest of production.” How that can be said of men like Washington, Franklin, and Madison, unless no intellectual worker is to be considered a producer, is incomprehensible. But criticisms of this

²³ Charles and Mary Beard, *The Rise of American Civilization*, Vol. I, p. 302.

²⁴ *Ibid.*, p. 311.

²⁵ *Op. cit.*, p. 176.

²⁶ The effects of this inflation and the abortive efforts to combat it by governmental price-fixing are well summarized by Irving Brant, in his biography of *James Madison*, Vol. I, Ch. 17.

character, from scholars as generally liberal in their thinking as Professor Beard and Mr. Nock, have done much to establish the belief that in its constitutional origin our government is tainted by a narrow self-interest.

This unsustainable argument has helped to obscure one of the most interesting and important characteristics of the Republic. It is designed to provide a people who are instinctively democratic with a government calculated to safeguard them from the excesses of democracy as a political system. Every adherent of Christianity must believe in democracy as a way of life. But every student of history knows that democracy, as a method of government, is affected with an instability that swings easily into tyranny. How to provide a democratic people with a stable republican government was the problem that confronted the founders at Philadelphia. The formula they found is not above criticism. But it has worked.

X

So the nature of the Republic is seen to require among its citizens the possession, exercise, and co-ordination of a number of seemingly conflicting qualities. These we have identified as partisanship balanced by the spirit of conciliation; as adherence to principle coupled with a tolerance sufficiently active to avert bigotry; as faith in democracy tempered by the critical faculty which teaches us that, if developed into a political system, democracy becomes a snare and a delusion, fatal to all the objectives that it seeks.

Many a writer has described the mechanical balance in our governmental system. But singularly few have emphasized that this balance cannot be maintained unless the system is supported by a sense of citizenship that is itself well balanced. No representative system can operate successfully if there is deterioration in the quality of the people whom it represents. If form ceases to animate system, the latter will cease to be malleable and will imperceptibly become brittle and breakable. That change is threatened for the United States.

When Madison said that we "rest all our political experiments

on the capacity of mankind for self-government," he spoke with precision. Every American citizen, as an individual, carries on his shoulders a full share of responsibility for the perpetuation of the Republic. To meet this responsibility he must constantly strive to develop the important qualities that are demanded by the nature of our political system. And the good citizen must further develop the powers of discrimination and moral courage—so that he will know when to emphasize one necessary quality above another and will possess the determination to do this in the face of a mass opinion that will always tend to condemn divergence from the momentarily popular pattern of thought. A people which has chosen the difficult road of Christianity, and built its government on that teaching, cannot be individually half-hearted in allegiance.

Self-government is the very heart and core of the American way of life. This is demonstrable in many ways, but perhaps most effectively by the fact that legal sovereignty cannot be located in any organ of the United States government. In Great Britain the majority in Parliament is clearly the absolute sovereign, "since every Act of Parliament is binding on every Court throughout the British dominions, and no rule, whether of morality or of law, which contravenes an Act of Parliament, binds any Court throughout the realm."²⁷ Similarly, legal sovereignty in Soviet Russia clearly vests in the Council of Ministers, of which the ruling dictator is chairman. The Constitution of the Union of Soviet Socialist Republics says (Article 67): "Decisions and orders of the Council of Ministers of the U.S.S.R. are binding throughout the territory of the U.S.S.R."²⁸

But, as many a lawyer and political theorist has pointed out, the American system of government makes it impossible to attribute a final authority to any official or organ of government. "Theoretically, therefore, the conception of sovereignty cannot apply to the United States since nowhere in its structure is it pos-

²⁷ A. V. Dicey, *The Law of the Constitution* (of Great Britain), Eighth edition (1915), p. 425.

²⁸ Official translation, published by the Washington Embassy of the U.S.S.R., December, 1947, p. 20.

sible to locate legally supreme and unlimited power.”²⁹ To put this very important point in the clear summarization of a great Russian jurist:

. . . it would be rather difficult to say where sovereignty, in the sense of habitual predominance, resides in . . . the United States of America. Not in Congress, because its enactments may be overruled by the Supreme Court as being contrary to the Constitution. Not in the Supreme Court, because its decisions are judicial and not governmental. Not in the people at large, because it is not a juridical, but a social and historical entity. Not in the Conventions for the reform of the Constitution, because they operate only on very exceptional occasions and are fettered in making their decisions by very restrictive rules as to majorities: and a sovereign trammelled in this way would be a contradiction in terms. *The truth seems to be that the basis of law is provided not by one-sided command, but by agreement.* (Emphasis supplied.)³⁰

This careful legal examination by Professor Vinogradoff brings us to the same conclusion reached by a more political analysis earlier in this chapter. Under a government in which legal sovereignty cannot be located, responsibility for reaching reasonable agreement is carried directly to the individual citizen. His disposition to agree is no mere convenience of social life; it is the actual basis of our constitutional law. To find what the Quakers so well describe as “the sense of the Meeting”—the formula whereby a conscientious group may “go forward with unity”—is an imperative and permanent quest for all Americans, not merely a part of the Discipline for members of that small sect, which has been influential beyond its numbers in American history.

The Christian virtues take shape as particular qualities. Each must be developed by the individual. They can never be inculcated by royal decree or sumptuary legislation. Legal sovereignty cannot be located in any organ of American government precisely because this Republic assumes that the individual, under divine guidance, is sovereign. It follows that the patriotic American,

²⁹ Huntington Cairns, *Law and the Social Sciences*, p. 226.

³⁰ Paul Vinogradoff, *Common-Sense in Law* (Home University Library Edition), pp. 34-35.

though law-abiding, will always be prepared to repudiate attempted extensions of the limited and contingent authority of the State. The Republic, based on individual willingness to resist governmental coercion of any kind, will endure as long as the essentially rebellious spirit of liberty remains alive in the hearts of its citizens.