



We Hold These Truths

Author(s): Mortimer J. Adler

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Mr. Adler celebrates the 200th anniversary of the Constitution of the United States by looking at its history, its meaning for Americans today, and its defects. He urges the schools to make certain that every citizen has read and understood the U.S. Constitution, the Declaration of Independence, and the Gettysburg Address — documents that state the ideas and ideals of our republic and thus form the American testament.

HOLD THESE TRUTHS

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BY MORTIMER J. ADLER

IN 1976 WE CELEBRATED what we called the bicentennial of the United States of America. But that is not the way it was. The United States of America did not come into existence in 1776. What existed then were 13 colonies of King George III who were at war with British troops on this continent. The fighting had begun almost a year before, but it was not until July 4, 1776, that the colonies declared their independence from Great Britain and gave their reasons for doing so.

What we celebrated on July 4, 1976, was the 200th anniversary of the promulgation of the Declaration of Independence. It was a bicentennial, indeed, but not of the United States of America, a single, sovereign nation, a federal republic.

Seven years later, in 1783, the 13 colonies, now emerging from a military victory as independent, sovereign states, entered into an agreement or contract with one another to remain loosely united in peace as they had been in war. The army that had successfully fought that war was called "the continental army," not the army of the United States.

The loose union into which they entered for peaceful relationships was expounded in the "Articles of Confederation." The subheading of this document reveals that these articles did not form or constitute a single, sovereign nation, for it reads: "Articles of Confederation and Perpetual Union Between the States. . . ," after which follows an enumeration of the names of the 13 colonies in an order dictated by their geographical location from north to south.

In 1787, after the loose union formed by these 13 sovereign states gave signs of ceasing to be perpetual, representa-

MORTIMER J. ADLER is chairman of the Board of Editors of the Encyclopaedia Britannica, director of the Institute for Philosophical Research in Chicago, and honorary trustee of the Aspen Institute for Humanistic Studies. Kappan Associate Editor Bruce Smith constructed this article from excerpts from Adler's book, We Hold These Truths (Macmillan, 1987). ©1987, Mortimer J. Adler.

tives of each state met once again in Philadelphia to form a more perfect union, one that had a greater likelihood of becoming perpetual and also of preserving peace on this continent. The document framing and formulating that more perfect union was titled "The Constitution of the United States of America." It was properly called a "constitution," for it did two things that a constitution should do.

In the first place, it did *constitute* a single, sovereign state, unlike the Articles of Confederation (and also unlike the Charter of the United Nations), which did no more than establish an alliance of a number of independent states, each of which remained sovereign in relation to all the others, as sovereign as each was before it agreed to become a member of the confederacy.

In the second place, it did what the Articles of Confederation (or the Charter of the United Nations) could not do: it established a government, outlined its purposes, limited its scope, indicated the several branches of that government, and defined the offices of each branch, saying how they shall be filled and how the authority and power vested in each shall be related to one another.

The words "United States" occur twice in the Preamble: first in that opening phrase, then in the closing, which says that we, the people, "do ordain and establish this Constitution for the United States of America."

In its first occurrence, "United States" would have been more accurately written "united states," for the same reason that it should have been written that way in the last paragraph of the Declaration of Independence, because the nation now known as the United States of America did not exist in 1787 any more than it did in 1776.

In its second occurrence, "United States" should be interpreted as having a prospective reference. It refers to the nation or national state that would come into existence only after the document drafted by the Constitutional Convention during the summer of 1787 was ratified or adopted by two-thirds of the 13 states to be united.

That did not occur until August of 1788. The remaining

states fell in line somewhat later than that. George Washington did not take office as the first President of the United States until March of 1789; not until that year did the first Congress of the United States assemble; and not until then were there ambassadors from the United States to the courts of the European nations.

In political as in biological life there is a period of gestation between conception and birth. What we are celebrating in the year 1987 is the bicentennial of the conception, not the birth, of the new nation that only from 1789 on could be properly referred to as the United States of America.

Flag-waving, however sincere; public convocations, however well designed; and political oratory, however thoughtfully delivered, will not by themselves suffice to celebrate the event of this nation's conception and birth, its two centuries of development, the civil crisis it survived 125 years ago, and the long, prosperous, and progressive future for which we all hope.

As individual celebrants of this occasion, the personal obligation of every citizen of the United States is to understand as well as possible the three documents that are our American testament — words that should be piously revered even though they are not in a strict sense this country's holy scriptures.

A MORE PERFECT UNION

The novelty of the American Constitution does not consist in its being the first constitution ever proposed to a people for adoption, nor even in its being the first ever to be drafted. The idea of constitutional government, as radically contrasted with royal or despotic regimes, is as old as ancient Greece.

The invention of constitutions by the ancient Greeks stands out as one of the greatest advances in the history of societies, certainly as great as the invention of the wheel or the domestication of animals in the history of technology. Until that invention occurred, all communities consisted of human beings governed either as subjects or slaves. Citizenship did not exist anywhere.

Hence it is clear that our Founding Fathers, however remarkable their work in drafting the Constitution of the Unit-

ed States, did not invent the first constitution and, with it, citizenship. Nor did the French revolutionists a few years later when they overthrew the despotism of their Bourbon kings and created the first French republic, thereby giving the word "citizen" the revolutionary meaning it so rightly deserves.

The Constitution of the United States was not the first constitution ever to have been drafted by a group of men assembled in what they themselves called a Constitutional Convention, an assemblage that had as its express purpose the putting on paper of a written constitution.¹ Nor was the Constitution of the United States the first explicitly formulated constitution. In a treatise on Greek constitutions Aristotle described and discussed more than one hundred of them. His account of only one — the constitution of Athens — has survived.

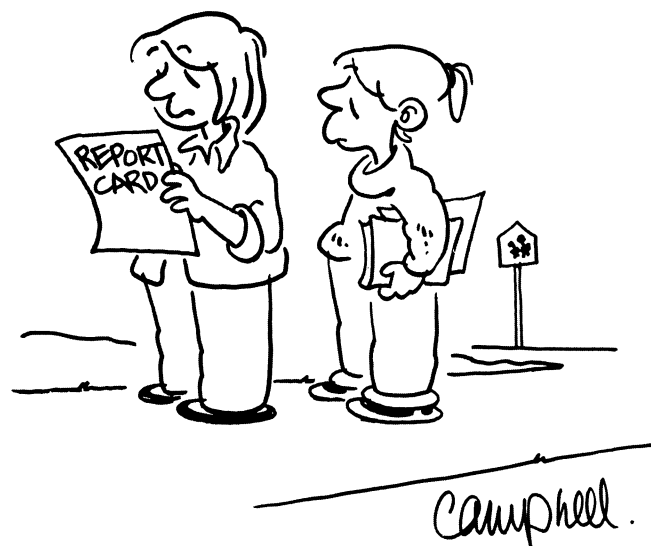
Republics existed in the ancient world, in Rome as well as in Greece. In the modern world, constitutional government did not begin with its establishment in the United States in 1787. It began in England in 1215 when the Magna Carta, which was the first step in the long series of enactments that limited the power of English kings, increased the power of representative parliaments, and made those who voted for members of parliament self-governing citizens as well as subjects of the kings.

Constitutional government began on this continent as the result of a single political action. It did not begin that way in the British Isles. There it developed over centuries in which successive acts of Parliament turned a government that was at first completely royal or despotic into one that was both royal and constitutional in everything except the vestigial symbols that surround the throne. Though the legislative enactments that, cumulatively, comprise British constitutional law are all written laws, we do not speak of England as having a written constitution, probably because its constitution cannot be found in a single document formulated by a constitutional convention at one time. That is one of the unique things about the American event of 1787.

But it is not the only thing that is unique about it. The American Constitution created the first federal republic in the history of the world. The first objective or aim mentioned in its Preamble, a purpose distinctly different from all the other objectives thereafter mentioned, is "to form a more perfect union." Union of what? Of the 13 sovereign states that, in the preceding five years, had been united under the Articles of Confederation.

What was more perfect about their union under the Constitution as compared with their union under the Articles of Confederation? The answer lies in one fact alone: Under the Articles of Confederation, each of the 13 states retained its individual sovereignty, diminished not one whit by its entering into a confederacy with the other 12. Under the Constitution, each of the 13 states surrendered all its external sovereignty — that is, its sovereignty in relation to other American states as well as to foreign states in the arena of international affairs. They did, however, retain their internal sovereignty. Each remained a sovereign state in relation to the citizens of the United States who lived within that particular state, for those people were not only citizens of the United States, they were also citizens of the state in which they voted for the governors and for the representatives to the legislative assemblies.

A federal republic is thus seen to involve a plurality of sovereignties: on the one hand, the sovereignty of one national



"I can see why people shred documents."

or federal government, and, on the other hand, the sovereignty of each of the several federated states, be it 13 as it was in 1787 or 50 as it is in 1987.

EVERY CITIZEN, BOTH YOUNG AND OLD

Most Americans, I fear, do not know or appreciate the fact that citizenship is the primary political office under a constitutional government. In a republic, the citizens are the ruling class. They are the permanent and principal rulers. All other offices that are set up by the constitution are secondary.

I am sorry to say that most Americans think of themselves as the subjects of government and regard the administrators in public office as their rulers, instead of thinking of themselves as the ruling class and public officials as their servants – the instrumentalities for carrying out their will.

It is of the utmost importance to persuade the citizens of the United States, both young and old, that they have misconceived their role in the political life of this country. If they can be persuaded to overcome this misconception, and come to view themselves in the right light, they will understand that their high responsibility as citizens carries with it the obligation to understand the ideas and ideals of our constitutional government.

SCHOOLING FOR CITIZENSHIP

Preparation for the duties of citizenship is one of the three objectives of any sound system of public schooling in our society. Preparation for earning a living is another, and the third is preparation for discharging everyone's moral obligation to lead a good life and make as much of oneself as possible. Our present system of compulsory basic schooling, kindergarten through the 12th grade, does not serve any of these objectives well.

The reasons why this is so and what must be done to remedy these grave deficiencies have been set forth in a series of books that have initiated much-needed reforms in our school system.² Here I will borrow from them only what is germane to the explanation of what must be accomplished educationally to make the future citizens of the United States better citizens than their elders.

I am going to state the educational objective in its minimal terms. The least to be expected of our future citizens (as well as the rest of us) is that they will have read the three documents that are our political testament – the Declaration of Independence, the Constitution of the United States, and Lincoln's Gettysburg Address – and that their reading of these three documents will have eventuated in their understanding the ideas and ideals of our Republic. While much more might be added, the primary concern here is the understanding of the ideas and ideals of the Constitution.

In the last four or five years, I have been engaged in the Paideia project to reform basic schooling in the United States. In the course of doing so I have had occasion to conduct many seminars with high school students in which the reading assigned for discussion was the Declaration of Independence. Taking part in the seminar resulted in their reading that document *for the first time*.

The discussions that followed revealed how little they *understood* the meaning of the Declaration's principal terms before the discussion began, and how much more remained to

Most Americans do not realize that citizenship is the primary political office under a constitutional government.

be done after the seminar was over to bring them to a level of understanding that, in my judgment, is the minimal requisite for intelligent citizenship in this country. The same can also be said with regard to the Constitution and the Gettysburg Address.

I am sure that the sampling of high school students I met in these seminars is representative of the general state of mind, and that a similar sampling of our college graduates would not change the picture.

Over the last 35 years, I have also conducted executive seminars under the auspices of the Aspen Institute for Humanistic Studies, in which the participants are graduates of our best colleges and universities and have reached positions of eminence in our society: the top echelons in industry, commercial establishments, journalism, the so-called learned professions, and government. Their understanding of the basic ideas in the Declaration and in the Preamble to the Constitution is not discernibly better than what I found among high school students.

On one very special occasion, I conducted a discussion of the Declaration with leading members of President John F. Kennedy's Cabinet and his political entourage. To my surprise and chagrin, the result was the same.

DEFECTS OF THE 18TH-CENTURY CONSTITUTION

Did the Constitution as drafted in 1787, ratified in 1788, and extended by the first 10 amendments before the close of the 18th century fully realize the ideals set forth in its Preamble and give full effect to the ideas it inherited from the Declaration of Independence? If not, how far did it go in that direction?

To answer the first question negatively and the second by saying not nearly far enough is not to detract from the magnificence of the achievement that we now see fit to celebrate. Perfection is not achieved on earth. It can never be closely approximated in one attempt.

What was achieved in the 18th century by American statesmen – a group of brilliant men unequalled since in this country's history – must be measured against the conditions and circumstances of the time in which they were living. Judged

A radical reform of basic schooling would have to precede any attempt to improve our system of government.

in that way, we can have nothing but high praise for what they then produced and handed down to succeeding generations as a basis for carrying their work forward.

There is only one way in which we can soberly assess how to give life to their ideas and how to realize the ideals they had in mind. To accomplish that we must recognize the defects in the Constitution they delivered to us who are alive many generations later.

Of the six objectives stated in the Preamble, the first — to form a more perfect union — was the one most completely realized by the adoption of the federal Constitution, which transformed a plurality of states into one: *E Pluribus Unum*. Let us consider the degree to which the Union was firm and solid before the Civil War and after it. Let us remember that Abraham Lincoln's controlling motive throughout those dire years was to preserve the Union. Thus we cannot fail to see that even that first objective was far from being consummated in the 18th century.

For largely the same reasons, domestic tranquillity was more threatened in the early years of the Republic than in later periods. The seeds of strife between the states, and even within the states, which undermined civil peace were removed — some completely, some partly — by the resolution of the conflict between the states and by the amendments that followed thereupon.

In addition, the indispensable instrument for law enforcement in a republic — a civil police force, not the paramilitary force of a despotic regime — was a mid-19th-century innovation. It is only in the 20th century that we have recognized the necessity for perfecting its operations as well as the means that must be employed to do so.

When we come to the establishment of justice, which certainly involves the equal treatment of equals, we are confronted with one of the two great defects of the 18th-century Constitution. Liberty, not equality, was foremost in the minds of our Founding Fathers. They may not have forgotten that the one clearly self-evident truth proclaimed in the Declaration was the equality of all human beings by virtue of their common humanity, but the self-evidence of that truth did not overcome the strong prejudices against equality rampant at the time.

We encounter the other of the two great defects when we come to the Preamble's aim to promote the general welfare. The general welfare, as a distinct component in the public common good, must be conceived as the economic welfare of the country as a whole and of its individuals. When the statesmen of the 18th century thought about inalienable human rights, they had only political rights in mind.

Not only those thinkers and leaders but also their 19th-century descendants were blind to the existence of economic rights in the inventory of inalienable human rights. They did not see that economic goods were needed by all to facilitate the pursuit of happiness, quite as much as were civil peace and political liberty. The recognition of economic rights as natural human rights did not occur until the 20th century, and that recognition was not even partially implemented by legislation until the midpoint of this century.

Certain provisions in the Constitution, taken together with the first 10 amendments — the Bill of Rights — took some of the steps necessary to protect individual freedom. Suspension of the writ of habeas corpus was forbidden except in cases of rebellion or invasion; bills of attainder and ex post facto laws were prohibited; trial by jury was required; unreasonable searches and seizures were not allowed.

So far so good, but not nearly far enough to protect individual freedom from unjustifiable governmental interference or constraint. Even more inadequate was the constitutional recognition in the 18th century of the inalienable right of all human beings to political liberty — all with the sole exception of those justly excluded from suffrage because of infancy, insanity, or felony. We began to remedy this inadequacy with the post-Civil War amendments, and we have continued in the same direction with amendments adopted in the 20th century, but we still have not gone the whole distance required to complete the job.

Of all the great ideas, and especially ones that protect ideals to be realized, those that fall in the sphere of politics are most subject to change in relation to differing circumstances in successive periods of time.³ To be deeply sensitive to the limitations of time and circumstance under which our Founding Fathers worked, one need only think of the subsequent developments in this country's life, and of the new institutions and the new problems that they did not contemplate and could not even imagine.

In the 18th century, there were few private corporations chartered by government; there were no labor unions having a status politically recognized; there was no public school system; there was no energy shortage; there was no threat to the healthfulness of the environment; there was no need for the Federal Reserve System.

In the 18th century, no one would have been able to imagine travel by any means other than by horse or foot on land or by boat on water; to imagine communication by any means other than by direct oral discourse or by the conveyance of handwriting or print on paper; to imagine the spread of industrialization from factories to farms; to imagine the economic interdependence of all the nations of the world; to imagine a national debt of staggering proportions; to imagine world wars and one that might result in a nuclear holocaust; to imagine the role that science and its technological applications might play in the operations of government, not only in providing for the common defense but also in promoting the general economic welfare.

WHAT REMAINS TO BE DONE?

To project all the steps that should be taken to improve the Constitution by further amendments and more fully to realize the ideal of democracy in its economic as well as its political aspects would require me to pretend to wisdom I do not possess. An even greater pretense to wisdom would be involved in attempting to describe the constitutional and legislative enactments needed to expedite the steps to be taken.

I therefore propose to proceed interrogatively by asking questions instead of proceeding declaratively as if I knew the answers. I dare not even claim to know all the questions that should be asked.

Some of these questions have been prompted by reflections about our government occasioned by the Watergate crisis. Only some are concerned with increasing the justice of the Constitution and making it better serve the ideals in the Preamble. Others look to the effectiveness and efficiency of the government's operations. As background for all the questions asked, readers should recall what was said above about novel circumstances and extraordinary innovations in the 20th century, of which our 18th-century ancestors and even those in the 19th century could have had no inkling.

Two things, in my judgment, are essential to the effectiveness of constitutional government, with respect to its being a government of laws rather than a government of men. One is the authority vested in judicial tribunals to declare the acts of government or the acts of public officials unconstitutional. The other is the power to remove from public office those officials either who have acted unconstitutionally or who have violated other laws of the land. (The constitutional government of Great Britain is defective in these respects.)

All the questions to be asked rest on the assumption that we are irrevocably committed to the presidential system of constitutional government and are not willing to replace it by the parliamentary system. That assumption requires us to re-examine the separation of powers and our system of checks and balances, which are supposed to make the rule of law effective. It also precludes us from asking whether it might not be a desirable innovation to have a head of state distinct from a chief of government, as is the case in other nations that have parliamentary systems of constitutional government.

The first group of questions look to making the rule of law more effective.

1. Should we introduce changes in the procedure for impeaching and convicting public officials aimed at making these procedures easier and speedier, yet without introducing undue instability in the administration of government? Should we, for example, substitute a congressional vote of no confidence for the impeachment of the President, leading to mandatory resignation?

2. Should we create one or more executive vice-presidents, as distinct from the one elected Vice-President who is successor to the President — these executive vice-presidents to be appointed by the President as members of his staff with the advice and consent of the Senate? Would not this type of organization have the advantage of replacing the rapidly growing White House staff with a set of public officials whose authority and power are constitutionally defined and limited, especially in relation to the officials who are members of the President's Cabinet and heads of departments in the executive branch of government?

3. Should we create a new constitutional office, that of Public

Prosecutor, unattached to the Department of Justice (and thus independent of the executive branch of the government), who shall be an officer of the courts appointed in the same fashion as federal judges, that is, with the advice and consent of the Senate, and who shall be charged with the prosecution of public officials suspected of unconstitutional acts, with the further provision that no office-holder shall be immune from prosecution by reason of special privilege?

A second group of questions concerns ways to make majority rule more effective.

1. Should we limit the President to a single six-year term in office in order to prevent the imbalance of power and opportunity that occurs in an electoral contest between an incumbent in that office and a contender for it?

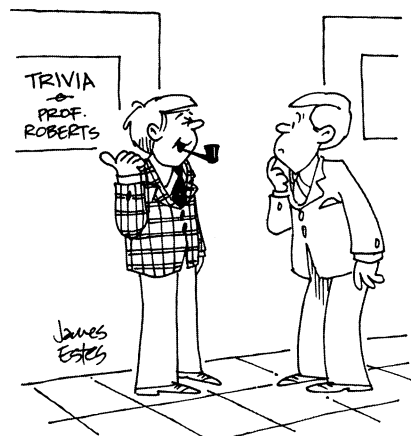
2. Should we set severe limits to the public funding of all electoral campaigns as well as shorten the period of such campaigns to six or eight weeks at the most, thereby preventing the undue influence exerted by private wealth on the outcome of the electoral process, and also giving access to the electorate through television by public financing in a manner that assures candidates of equal time and equal opportunity?

3. Should we introduce changes in the nominating procedures for President and Vice-President by instituting a nationwide uniform system of primaries, with expenses involved in primary campaigns limited and controlled so that undue influence by private or corporate wealth is prevented? Should we also require that candidates for Vice-President be nominated through the primaries instead of leaving the nomination to the Presidential nominee? Or should the individual who receives the second largest number of votes in a nominating convention be automatically selected as candidate for the office of Vice-President?

4. Should we abolish the electoral college and elect the President and the Vice-President by a majority or a plurality of the popular vote?

A third group of questions looks to implementing the realization of the democratic ideal that has so recently become an objective of our Constitution.

1. Should we reconsider the innovations proposed by Theodore Roosevelt in 1912 — namely, popular initiative, popular referendums or plebiscites, and popular recall from office of officials who have not been responsive to the majority of



"Enrollment has more than doubled since I changed the name of the course from 'History.'"

their constituents — in order to increase the participatory, as contrasted with the representative, aspect of our democracy? Some of these innovations have been adopted in particular states. Should all or some of them be adopted nationally by amendments to our Constitution?

2. Should we create a new constitutional office, that of Tribune of the People, whose duty it shall be to bring to the Supreme Court's attention cases involving the violation of inalienable human rights?

3. Should we attempt to develop new devices for civil dissent by dissident minorities that regard themselves as suffering serious grievances or injustices?

4. Should we attempt to enact a Bill of Economic Rights, as outlined by Franklin Roosevelt in 1944, in order to promote participation in the general economic welfare to a much greater extent than has so far been accomplished?

A fourth and final group of questions looks to the further implementation of natural human rights.

1. Should we persist in the effort to get the Equal Rights Amendment adopted, and to insure the full equality that is due all persons regardless of their gender?

2. Should we abolish the death penalty for all capital offenses, replacing it with life imprisonment, permitting no release from prison on parole?

3. Should we introduce an amendment that prevents states from passing laws that make crimes out of actions that involve no victims, thus curtailing the exercise of individual freedom in matters not affected with the public interest and not resulting in injury to others?

It is possible that some readers might answer all these questions, or at least a large number of them, affirmatively. I must confess that my own answers would tend to be in the same direction.

Anyone who is in this position must face a further question. Can the changes called for be accomplished by further amendments to the Constitution, or must we consider setting up a second constitutional convention to draft a new constitution?

I wish I could unhesitatingly recommend a second constitutional convention in light of novel conditions and innovations that exist today but did not exist in the preceding centuries and were not even imaginable or conceivable then.



"I don't see any sense in taking economics — I plan to be a congressman."

I cannot do so for three reasons. The first is the prevalence in our day of single-issue politics that would prevent a constitutional convention from concentrating on the public common good instead of trying to serve the interests or prejudices of special groups in the population.

My second reason also has to do with the adverse effect on a constitutional convention of certain aspects of contemporary society. The first constitutional convention was conducted in secrecy. No word of the proceedings reached the public until the work was done and the document drafted was ready for submission to the states for ratification. If there were to be a second constitutional convention, it probably could not be conducted in the same way. Its daily sessions would be exposed to the disturbing glare of nationwide publicity, including television broadcasts of the proceedings. Considering the kind of response that this would probably elicit from the general public, and the level of citizenship we now have in this country, it is highly doubtful that a second convention could do its work in an atmosphere conducive to rational deliberation, cool reasoning, and farsighted as well as prudent judgment.

My third and final reason is the absence in our society today of statesmen or persons in public life of a caliber comparable to those who assembled in Philadelphia in 1787. Why, it may be asked, can we not find in a population so many times larger than the population of the 13 original states a relatively small number who would be as qualified for the task as their predecessors?

I cannot give a satisfactory answer to this question except to say that the best minds in our much larger population do not go into politics as they did in the 18th century. Perhaps the much larger number of citizens in our present population are not nearly as well educated. Their minds are not as well cultivated and their characters not as well formed.

Even if a second constitutional convention were to assemble statesmen of a character comparable to those who met in Philadelphia in 1787, and even if that second convention could be conducted under circumstances favorable to a good result, the resulting constitution would not find a receptive and sympathetic audience among our present citizenry, to whom it would have to be submitted for adoption.

They would not have the kind of schooling that enabled them to understand its provisions and to appraise their worth. The vast majority would not even be able to read intelligently and critically the kind of arguments in favor of adopting the new constitution that were written by Alexander Hamilton, James Madison, and John Jay, and published in current periodicals in the years 1787 and 1788.

A radical reform of basic schooling in the United States would have to precede any attempt by whatever means to improve our system of government through improving its Constitution. That is also an indispensable prerequisite for making the degree of democracy we have so far achieved prosper, work better, or, perhaps, even survive.

1. Between 1776 and 1780, Virginia, Pennsylvania, Maryland, North Carolina, and Massachusetts held constitutional conventions.

2. The books are Mortimer J. Adler, *The Paideia Proposal* (New York: Macmillan, 1982); *Paideia Problems and Possibilities* (New York: Macmillan, 1983); and *The Paideia Program* (New York: Macmillan, 1984).

3. I have written a book about such ideas, which I titled *A Vision of the Future* (New York: Macmillan, 1984) because the ideas treated therein are better understood today than in the past and can expect a still better understanding in the years to come. K