

## Democracy in the American Tradition

By T. SWANN HARDING

OF THE MANY who discuss the subject, it is a rare few, indeed, who ever bother to scrutinize what we are wont to call Democracy. *What is the essential American tradition insofar as it can be discerned intellectually?*

The answer to that question requires a look into history. What were the basic trends of thought of the oft-quoted and frequently misinterpreted Founding Fathers, as expressed in their speeches and writings? Can the thread of this thought be discerned as it comes on down to our own time?

A little study reveals that this thought had half a dozen or so outstanding characteristics. Naturally things have changed. Some of the matters that so deeply interested or disturbed the Founding Fathers have lost significance. Some problems have disappeared.

Nevertheless it is remarkable that so many questions which agitated them assume importance today. This is given added emphasis when we consider that our country stands in a chaotic world and is itself beaten by many diverse winds of strange and, it seems, alien doctrines.

### Fear of Monarchy

DISTRUST OF MONARCHY was powerful among early Americans. This was perhaps not so characteristic of Alexander Hamilton as of Thomas Jefferson. George Washington distrusted monarchy rather less because he appears to have anticipated its inevitable return in America. Nevertheless there was much outcry against forms and ceremonies that were regarded as monarchical.

Great fear was also expressed about continued re-election of Presidents. Jefferson especially considered this a most

dangerous precedent. While it is a fact of historical record that Washington retired from the Presidency as a matter of expediency, and because his estates urgently needed his personal attention, Jefferson retired after his second term as a matter of sacred principle and sought to establish a precedent. There is no evidence that Washington sought to establish such a precedent.

Writing to James Madison, Jefferson said, in criticism of the newly-proposed Constitution:

The second feature I dislike, and strongly dislike, is the abandonment, in every instance, of the principle of rotation in office, and most particularly in the case of the President. Reason and experience tell us, that the first magistrate will always be re-elected if he may be re-elected. He is then an officer for life. This once observed, it becomes of so much consequence to certain nations, to have a friend or a foe at the head of our affairs, that they will interfere with money and with arms.<sup>1</sup>

In a letter to David Humphreys,<sup>2</sup> Jefferson was still of the same opinion. He still thought that the President should be perpetually ineligible instead of perpetually re-eligible for election. However, three states out of eleven had declared against his theory, so he reluctantly said "we must suppose we are wrong," since the majority should rule.

#### Hatred of Monopoly

SECONDLY, THE FOUNDING FATHERS greatly feared monopolies, though many leading citizens, who form the nucleus around which organizations of superpatriots elaborate themselves, have viewed them with such sympathy as deeply to revile any who would regulate them. Yet Washington so hated monopolists, and what he regarded as privileged classes, that he once angrily exclaimed:

It is much to be lamented that each state, long ere this, has not hunted them down as the pests of society and the greatest enemies we have to the

<sup>1</sup> From Paris, Dec. 20, 1787.

<sup>2</sup> From Paris, March 18, 1789.

happiness of America. I would to God that one of the most atrocious in each state were hung in gibbets upon a gallows five times as high as the one prepared by Haman.

Washington's friend Jefferson was somewhat milder and somewhat less in favor of lynchings. But he wrote Elbridge Gerry: "I sincerely believe, with you, the banking establishments are more dangerous than standing armies."<sup>3</sup> Writing Madison regarding the new Constitution,<sup>4</sup> Jefferson said: "The saying there shall be no monopolies, lessens the incitements to ingenuity, which is spurred by the hope of a monopoly for a limited time, as of fourteen years; but the benefit of even limited monopolies is too doubtful, to be opposed to that of their general suppression."

Obviously if the mere monopoly a patent gave an individual aroused Jefferson's apprehension he would have opposed the great unregulated monopolies of later times. Daniel Webster carried this philosophy a little further when he said: "The freest government cannot long endure when the tendency of the law is to create a rapid accumulation of property in the hands of a few and to render the masses poor and dependent." The late Calvin Coolidge restated this tradition when he held<sup>5</sup> that "The Government of the United States is a device for maintaining in perpetuity the rights of the people, with the ultimate extinction of all privileged classes."

#### Distrust of Law

THIRD, DISTRUST OF LAW was a fundamental part of early governmental theory in the United States. Disrespect for law was not only countenanced; it was advocated. The broad form of this doctrine occurs in Thoreau's words: "It is not desirable to cultivate respect for the law, so much as for the right. The only obligation I have a right to assume,

<sup>3</sup> Jan. 28, 1799.

<sup>4</sup> From Paris, July 31, 1788.

<sup>5</sup> In a speech in Philadelphia, Sept. 25, 1924.

is to do at any time what I think right." Surely the vigilantes would also have deported Thoreau.

Writing on law to William Johnson,<sup>6</sup> Jefferson said:

Laws are made for men of ordinary understanding, and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything mean everything or nothing, at pleasure. It should be left to sophisms of advocates, whose trade it is, to prove that a defendant is a plaintiff. . . .

Naturally Jefferson feared and distrusted the Supreme Court. Yet he wrote the following to Madison:<sup>7</sup>

The instability of our laws is really an immense evil. I think it would be well to provide in our constitutions, that there shall always be a twelve-month between the engrossing a bill and passing it; that it should then be offered to its passage without changing a word; and that if circumstances should be thought to require a speedier passage, it should take two-thirds of both Houses, instead of a bare majority.

#### Usurpation of Power

JEFFERSON AND HIS FOLLOWERS felt that there was great danger in usurpation of power by the Supreme Court and its ultimate dictatorship. Writing to William Johnson,<sup>8</sup> the aged statesman said:

. . . There is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court. . . . I must comfort myself with the hope that the judges will see the importance and duty of giving their country the only evidence they can give of fidelity to its Constitution and integrity in the administration of its laws; that is to say, by every one's giving his opinion *seriatim* and publicly on the case he decides. . . . The very idea of cooking up opinions in conclave, begets suspicions that something passes which fears the public ear, and this, spreading by degrees, must produce at some time abridgment of tenure, facility of removal, or some other modification which may promise a remedy.

<sup>6</sup> From Monticello, June 12, 1823.

<sup>7</sup> In a postscript to a letter from Paris, Dec. 20, 1787.

<sup>8</sup> From Monticello, March 4, 1823.

It will be remembered that Jefferson was President when the famous *Marbury v. Madison* decision was rendered by John Marshall. Writing to William Johnson<sup>9</sup> about three years before his death, Jefferson reviewed this case, though his aged memory tricked him once or twice. He was still concerned about the manner in which justices of the Supreme Court blandly "advanced beyond its constitutional limits." He accused John Marshall of making many extrajudicial statements in his opinions and then went on:

This practice of John Marshall, of travelling out of his case to prescribe what the law would be in a moot case not before the court, is very irregular and very censurable. I recollect another instance, and the most particularly, perhaps, because it in some measure bore on myself. Among the midnight appointments of Mr. Adams, were commissions to some federal justices of the peace for Alexandria. (District of Columbia?) These were signed and sealed by him, but not delivered. I found them on the table of the Department of State, on my entrance into office, and I forebade their delivery. Marbury, named in one of them, (and several others?) applied to the Supreme Court for a mandamus to the Secretary of State, Mr. Madison, to deliver the commission intended for him. The Court determined at once, that being an original process, they had no cognizance of it; and therefore the question before them was ended. But the Chief Justice went on to lay down what the law would be, had they jurisdiction of the case, to wit: that they should command the delivery. The object was clearly to instruct any other court having the jurisdiction, what they should do if Marbury should apply to them. Besides the impropriety of this gratuitous interference, could anything exceed the perversion of law? For if there is any principle of law never yet contradicted, it is that delivery is one of the essentials to the validity of a deed. Although signed and sealed, yet as long as it remains in the hands of the party himself, it is *in fieri* only, it is not a deed, and can be made so only by its delivery. In the hands of a third person it may be made an escrow. But whatever is in the hands of the executive offices is certainly deemed to be in the hands of the President; and in this case, was actually in my hands, because, when I countermanded them, there was as yet no Secretary of State. Yet this case of *Marbury and Madison* is continually cited by

<sup>9</sup> June 12, 1823.

bench and bar, as if it were settled law, without any animadversion on its being merely an *obiter* dissertation of the Chief Justice.

This ancient brand of Americanism discouraged rather than inculcated respect for law, as evidenced by Thoreau above. Emerson not only wrote that "hence, the less government we have, the better—the fewer laws, the less confided power," but also: "Every actual State is corrupt. Good men must not obey the law too well." During the Mexican War it was Theodore Parker, no less, who declared: "I think lightly of what is called treason against a government. That may be your duty today, or mine."

Fourth, John Adams as well as Founding Fathers Washington, Hamilton and Jefferson vastly distrusted the common people. When they spoke of democracy they did not, any of them, mean the "rabble." Writing to John Melish,<sup>10</sup> Jefferson said that George Washington was neither Federalist, separatist, Angloman, nor monarchist. "He sincerely wished the people to have as much self-government as they were competent to exercise themselves." But Washington differed strongly with Jefferson on only one point: "I had more confidence than he had in the natural integrity and discretion of the people, and in the safety and extent to which they might trust themselves with a control over their government."

Washington, therefore, was not especially democratic. Jefferson, in turn, was distrustful of all who worked in manufacturing. While he would have been willing to extend the power of the vote to many agriculturalists who would have been denied this by others, he felt manufacturing so degrading to man that workers in factories could scarcely be regarded as competent human beings.

#### Security of Property

YET JEFFERSON HELD property sacred, though he did change

<sup>10</sup> From Monticello, Jan. 13, 1813.

the expression to "pursuit of happiness," in writing the Declaration of Independence. The ideas of the American Revolution centered around property as the key to happiness. Locke and Rousseau were its apostles. As William Kay Wallace puts it: "Locke's principle that government exists to secure property, and Rousseau's doctrine that men are born equal in the sense of being endowed with equal rights to 'life and liberty,' were combined in the popular mind so as to form a single principle, tersely expressed in the American Declaration of Independence as the 'pursuit of happiness.'"

Adams held to the philosophy of "natural aristocracy." Those mentally equipped to rise would become leaders in any society no matter what its restraints. Oddly enough, modern biology and genetics confirm the half-truths behind this dogma. Children of different genetic heritage are known to react utterly differently to the same training, environment, and opportunities. It is known also that the inherent intellectual capacity of an individual cannot be very greatly increased by any known means of mental training at any period of mental development.

Differences in school children are now known to be due to a greater extent to differences in inherited nature than to differences in environment and educational opportunity. Some will achieve under the same circumstances which leave others in dolage. It goes against the grain to believe that all men are not born equal, but it is genetically true nevertheless. Of course, personality is the result of the interaction of heredity and environment.

Possibly Washington also had an inkling of the fact that there would be many more dolts than persons of achievement. In any case, he was himself singularly distrustful of democracy. We have Jefferson's word for this and Jefferson knew Washington as well as any man. Writing to one Walter Jones,<sup>11</sup> Jefferson gave a résumé of George Washing-

<sup>11</sup> On Jan. 2, 1814.

ton's character as he understood it. The following words are extremely important:

He has often declared to me that he considered our new Constitution as an *experiment* on the practicability of republican government, and with *what dose of liberty man could be trusted for his own good*; that he was determined *the experiment should have a fair trial*, and would lose the last drop of his blood in support of it. And these declarations *he repeated to me oftener and more pointedly*, because he knew my suspicions of Colonel Hamilton's views, and probably had heard from him the same declarations which I had, to wit, "that the British constitution, with its unequal representation, corruption and other existing abuses, was the most perfect government which had ever been established on earth, and that a reformation of those abuses would make it impracticable government." *I do believe that George Washington had not a firm confidence in the durability of our government.* He was naturally distrustful of men, and inclined to gloomy apprehensions; and I was ever persuaded that a belief that we must at length end in something like a British constitution, had some weight in his adoption of the ceremonies of levees, birthdays, pompous meetings with Congress, and other forms of the same character, calculated to prepare us gradually for a change which he believed possible, and to let it come on with as little shock as might be to the public mind.

Note the words underscored by the present writer. George Washington was far from democratic. He looked with much distrust upon democratic processes. Only in later days did he come around to sound Americanism. In his Farewell Address he said:

The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. . . . If, in the opinion of the people, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates.

#### Distrust of Government

OBVIOUSLY IT WOULD BE DIFFICULT to define either the government or the constitution in static terms. Vigilante oaths are hence absurd insofar as they pretend to bind anyone to past beliefs about such instruments. Indeed no less a



dignitary than Washington expressed great distrust of government, a fifth doctrine of the Founding Fathers, saying, in 1785: "Government is not reason, it is not eloquence, it is force! Like fire it is a dangerous servant and a fearful master; never for a moment should it be left to irresponsible action." Thoreau naturally would go further for he was an anarchist. He it was who declared:

I heartily accept the motto—"That government is best which governs least"; and I should like to see it acted up to more rapidly and systematically. Carried out, it finally amounts to this, which I also believe—"That government is best which governs not at all"; and when men are prepared for it, that will be the kind of government which they will have. Government is at best but an expedient; but most governments are usually, and all governments sometimes, expedient.

Woodrow Wilson adhered strictly to this basic philosophy when, in an address to the foreign-born in Philadelphia,<sup>12</sup> he said: "You have just taken an oath of allegiance to the United States. Of allegiance to whom? Of allegiance to no one unless it be God. Certainly not of allegiance to those who temporarily represent the Great Government." In another address,<sup>13</sup> he said: "Liberty has never come from government. Liberty has always come from the subjects of it. The history of liberty is a history of resistance. The history of liberty is a history of the limitations of government power, not the increase of it."

Hence, from the standpoint of superpatriotism, such persons as Washington, Thoreau, Emerson, and Wilson should have had their treatment with traditional tar and feathers, and then should have been beaten, jailed, and, if possible, deported. But worse is yet to come. The "Essential American Tradition"—the phrase was once used by Jesse Lee Bennett as a book title—not only countenanced, but advocated, open rebellion. Citizens were encouraged to rebel against

<sup>12</sup> March 10, 1915.

<sup>13</sup> To the New York Press Club, Sept. 9, 1921.

what they regarded as bad government, even to destroy it by violent revolution if that seemed necessary.

In 1774 Samuel Adams declared that when the people thought their rulers had prostituted the power entrusted to them, and were oppressive and subversive, instead of supporting a free constitution, "they are no longer to be deemed magistrates vested with a sacred character, but become public enemies and ought to be resisted." Thomas Jefferson, writing to David Hartley in 1787, greeted news of a recent insurrection in Massachusetts with much satisfaction.

Writing Madison<sup>14</sup> the same year, Jefferson said:

I own, I am not a friend to a very energetic government. It is always oppressive. It places the governors indeed more at their ease, at the expense of the people. The late rebellion in Massachusetts has given more alarm, than I think it should have done. Calculate that one rebellion in thirteen states in the course of eleven years, is but one for each state in a century and a half. No country should be long without one. Nor will any degree of power in the hands of government, prevent insurrections.

This close friend and confidant of George Washington wrote even more emphatically to Judge Tyler in 1804:

God forbid we should ever be twenty years without such a rebellion. The people cannot be all, and always, informed. The part which is wrong will be discontented in proportion to the importance of the facts they misconceive. If they remain quiet under such circumstances, it is a lethargy, the forerunner of death to the public liberty.

The Constitution of the State of Maryland (1776) actually advocates armed revolt against bad government in these words: "The doctrine of no-resistance, against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind." William Ellery Channing in 1812 declared: "So far is the existing government from being clothed with an inviolable sanctity, that the citizen, in particular circumstances, acquires the right, not

<sup>14</sup> From Paris, Dec. 20, 1787.

only of remonstrating, but of employing force for its destruction."

Abraham Lincoln, addressing the first Republican convention in Illinois in 1865, said: "This country, with its institutions, belongs to the people that inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember and overthrow it." How did we attain today's effete condition in which we regard a constitutional amendment as in bad taste, affect to look up to the Supreme Court as infallible, and view armed rebellion against bad government with horror?

#### Changes in Fundamental Law

SUPERPATRIOTISM as well as adoration of the existing Constitution were always suspect. Curiously enough, those arch enemies, Alexander Hamilton and Thomas Jefferson, were in closer agreement about such matters than most people today are aware. Hamilton held<sup>15</sup> that "people have the right to alter or to abolish the established Constitution whenever they find it inconsistent with their happiness." Jefferson declared<sup>16</sup> that "no society can make a perpetual constitution or even a perpetual law." He went on that any law or constitution expired naturally in about thirty-four years; its enforcement thereafter amounted to an unjustifiable act of force.

In denouncing alien and sedition acts Madison made it plain also that, had sedition acts forbidden attacks upon the existing government in the days of the Confederation, the United States might still have languished under that inept form of government. Webster not only said "Repression is the seed of revolution," but also tolerantly held that quite other forms of government than ours might exist elsewhere,

<sup>15</sup> In *The Federalist* in 1787.

<sup>16</sup> In a letter to Madison in 1789.

and that that preference should be enjoyed by other peoples free from molestation.

According to Merle Curti,<sup>17</sup> conservative elements among the Founding Fathers also believed in the revolutionary principle. This belief had an English background. The doctrine of the necessary overthrow of tyrannical kings and governments formed part of the philosophy of Natural Rights. Hamilton declared that the people, if betrayed by their representatives should exert their original rights and overthrow the usurpers.

John Adams confided in his diary in the year of Dan Shays' rebellion that a revolution is one of the strongest proofs of the virtue and good sense of a people though he later qualified this by saying that revolutions must never be undertaken rashly or without deliberate consideration and sober reflection. Madison, another leader of reactionary or conservative forces against attacks on property interests during the post-Revolutionary period, declared that the people "have an indubitable, inalienable and infeasible right to reform or change their government, whenever it may be found adverse or inadequate to the purposes of its institution."

#### The Lost Right to Revolt

JEFFERSON'S VIEWS are indicated above. Daniel Webster held that the people may overthrow their government if they choose to do so. In debate with Hayne he said that while civil institutions were established by peoples for public benefit, "when they cease to answer the ends of their existence, they should be changed."

Lincoln declared that people everywhere had the right to rise up and shake off existing government and form a new one if it suited them better. Indeed, he remarked that "any portion of such people that can, may revolutionize and make their own of so much of the territory as they inhabit."

<sup>17</sup> "Our Revolutionary Tradition," *Social Frontier*, December, 1943.

Presidents McKinley, Theodore Roosevelt, and Taft did not follow this traditional attitude, however. Its last statement was made by President Woodrow Wilson when he upheld the right of revolution at San Francisco in 1919. By 1921, thirty-four States had made advocacy of violent overturn in government a penal offense,<sup>18</sup> and so passed another fundamental doctrine of the revered Founding Fathers. To-day "The Revolution" is something long past to which even venerable members of the Daughters of the American Revolution may refer with pious and devotional sanctimony. It has no place in our current thinking as it had in that of our forefathers.

We live in a country whose tradition also favors unqualified freedom of expression, unlimited respect for free inquiry and liberal education, and absolute tolerance for opposing opinion. Only thus can the democratic process function. Evidence for this tradition is so overwhelming and prolific we can do no more than skim it.

We might begin with Thomas Paine's aphorism: "He that would make his own liberty secure, must guard even his enemy from oppression, for if he violates this duty he establishes a precedent which will reach himself." Jefferson, writing to William Charles Jarvis,<sup>19</sup> held: "I know no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education."

#### The Rights of Free Speech and Free Inquiry

J. A. ANDREWS, an early governor of Massachusetts, said:

I care not for the truth or error of the opinions held or uttered, nor for the wisdom of the words or time of their attempted expression, when I

<sup>18</sup> The Supreme Court has held, however, that such advocacy must constitute a present danger to the government or public order to be punishable by law.

<sup>19</sup> Sept. 28, 1812.

consider this great question of fundamental significance, this great right (of free expression) which must be secure before free society can be said to stand on any foundation, but only on temporary and capricious props.

In his first inaugural address Lincoln voiced his own Americanism by saying: "A government had better go to the very extreme in toleration than to do aught that could be construed into an interference with or to jeopardize in any degree the common rights of citizens." The early American scientist, Thomas Cooper, who died in 1839, held that "no doctrine, of whatever nature it be, or whatever its tendency, ought to be suppressed. For it is either manifestly false, or its truth is dubious." If true it must be made operative. If false it convicts itself without suppression. But if dubious then only the freest possible discussion can establish its true value.

Channing held:

The progress of society depends on nothing more than on the exposure of time-sanctioned abuses which cannot be touched without offending multitudes, and on the promulgation of principles which are in advance of public sentiment and practice and which are, consequently, at war with the habits, prejudices, and immediate interests of large classes of the community.

To this sentiment Wendell Phillips added his voice:

How shall we ever learn toleration for what we do not believe? The last lesson a man ever learns is that liberty of thought and speech is the right for all mankind; that the man who denies every article of our creed is to be allowed to preach just as often and just as loud as we ourselves.

We detect here an echo of the doctrine so long attributed to Voltaire but so far not found in his writings: I disagree absolutely with what you have to say but shall defend to the death your right to say it freely. In modern times this classic doctrine has often been embodied in the opinions of leading American jurists. Judge Augustus Hand, in the case of Max Eastman, held it the right of every citizen freely to express

his opinions about the Great War, about this country's participation therein, about the desirability of making peace, the demerits of conscription, or the claims made by conscientious objectors to war.

This held true, Judge Hand said, even when these opinions "are opposed to the opinions and policies of the Administration; and even though the expression of such opinion may unintentionally and indirectly discourage recruiting and enlistment." Judge Pound, in a "Red" case, used the doctrine, saying: "Although the defendant may be the worst of men; although Left Wing Socialism is a menace to organized government; the rights of the best of men are secure only as the rights of the vilest and most abhorrent are protected."

Charles Evans Hughes, speaking of the ouster of the Socialist assemblymen from Albany in 1920, said: "It is the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion nor to mere intent in the absence of overt acts." We should expect Justice Oliver Wendell Holmes to espouse the doctrine with his own tincture of wit which he did, saying: "With effervescing opinions, as with the not yet forgotten champagne, the quickest way to let them get flat is to let them get exposed to air." In many opinions, of course, he advocated freedom of expression.

#### The Essence of Americanism

WHAT THEN ARE THE ESSENTIALS of traditional Americanism, if we may presume to judge it as expounded by leading American citizens from the time of the Revolution on? They appear to be somewhat as follows:

There was strong distrust of monarchy and it was rather generally felt that Presidents should not be re-elected. Monopolies and privileged classes should be abolished. There should be as little government as we can possibly get along

with, and as little respect for law as can be contrived without relapse into open anarchy. The common people were not to be trusted; rule should really be in the hands of a sort of intellectual aristocracy.

It would not be a bad thing at all if the people rebelled against government by force every now and then, staged a new revolution as needed by new generations, and set up a government more pleasing to them. This involved the afore-said distrust of government generally. In fact it was suggested that the Constitution be constantly readapted to new needs, and be completely revised by each new generation which felt that necessary.

Finally, it was held that there should always be unqualified and unlimited freedom in the expression of opinion by every means, and regardless of its character. This involved extension of the most liberal education possible, and the establishment, preservation, and utilization of the spirit of free inquiry, which were thought to be the sole agents capable of promoting proper functioning of the democratic process.

Is this something to tie to? It is about what we get when we consider the deliberate opinions of those who best represent the essential American tradition. Is this sufficient bulwark against the incursions of communistic or totalitarian ideals of government? How many good average Americans are really acquainted with the basic philosophic beliefs and traditions underlying their system of government? Familiar and unfamiliar statements of great Americans have been given here to acquaint them with this tradition.

*Washington, D. C.*