
A RISING OR A SETTING SUN?

*A Study in Government
Contrasting Fundamental Principles
with Present Policies in the Light of
Authentic History.*

An Address

by

WILLIAM R. PERKINS

BEFORE
THE SPEEX CLUB,
Lynchburg, Va.
April 24, 1936

Gift: Noel

A RISING OR A SETTING SUN?

Mr. Chairman and Members and Guests of The SpheX Club:

Appearing before this gathering of distinguished citizens of my native City of Lynchburg is a pleasure and a privilege which I greatly appreciate, I assure you. I bring you a study in government, contrasting fundamental principles with present policies in the light of authentic history.

Madison records in his Debates of the Convention which framed our Constitution that:

“Whilst the last members were signing it Doctr. Franklin looking towards the President’s Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.”

From this memorable incident I take the title and the theme of my address this evening—A Rising or a Setting Sun? We are likewise agitated by the vicissitudes of hopes and fears—and rightly so. What will the issue be? Do we behold the dawn of a better day or the afterglow of a departing splendor?

“I have but one lamp by which my feet are guided,” said that inspired genius, Patrick Henry, “and that is the lamp of experience.” He spoke wisely. Human nature is old. Principles are old. The science of gov-

ernment is old. The recorded pages of history are an open book where we may learn and profit by the social lessons of the past, which tell us in no uncertain terms why nations have risen and fallen, whatever the form of their governments.

Guided by this lamp of experience, we know that our founders erected a government in this country that has attained results unparalleled in the history of the world. As by the touch of a magician's wand, in the short, indeed, insignificant period as history goes, of less than two centuries we have progressed from a spacious, uncharted wilderness to the very front rank of nations in all that makes for the comfort, culture, prosperity and prestige of a people. An outstanding fact of this progress is that nowhere has such advancement been shared so generally, so fully, by those in all walks of life, even the humblest of our people. We became the land of opportunity and on that account the wonder, the Mecca, and the envy of the world. This fact is beyond dispute.

André Siegfried, the distinguished French Professor, in his frank and searching appraisal, "America Comes of Age" [H. B. & Co., 1927, pp. 154-61], undoubtedly declared the simple truth when he said:

"A workman is far better paid in America than anywhere else in the world, and his standard of living is enormously higher. * * * It is impossible to describe the American standard of living without going into every detail of life. Let it suffice that European luxuries are often necessities in America, and where Europe, and especially Asia, will stint, America consumes without reckoning. One could feed a whole country in the Old World on what America wastes. American ideas of extravagance, comfort, and frugality are entirely different from European, as we soon discover if we ask what Amer-

icans mean by economy. In America the daily life of the majority is conceived on a scale that is reserved for the privileged classes anywhere else."

Of course, we have had our family quarrels, our ups and downs, but the American principles have heretofore proved themselves superior to such vicissitudes and made of them but stepping stones to a richer existence.

Guided further by this lamp of experience, we may ascertain with exactness just what these American principles are.

Do not make the mistake, which England grievously did, of thinking our founders rude colonials. Speaking of the Federal Convention, John Fiske, the eminent historian, says that:

"In its composition this group of men left nothing to be desired. In its strength and in its weakness it was an ideally perfect assembly. There were fifty-five men, all of them respectable for family and personal qualities—men who had been well educated and had done something whereby to earn recognition in those troubled times. Twenty-nine were university men, graduates of Harvard, Yale, Columbia, Princeton, William and Mary, Oxford, Glasgow and Edinburgh. Twenty-six were not university men and among these were Washington and Franklin." [The Critical Period of American History, pp. 265-72.]

When these men came to frame our Federal Government there had already been formed the governments of thirteen sovereign states, with their constitutions and declarations of rights.

Dr. Franklin, the sage of the Federal Convention, had been privileged to confer with Adam Smith in England

on the latter's great book, "The Wealth of Nations", which has had, perhaps, as much influence on the world as any other secular publication.

James Madison, who rightly became known as "the father of the Constitution", brought to the task not only a brilliant mind, but the results of a most intensive study of all available data. So did Hamilton. The "Federalist", mainly their production, is one of the finest treatises on government of all time. It easily ranks with the notable ancient as well as more modern authorities, such as the Writings of John Locke and the "Spirit of the Laws" by Baron de Montesquieu.

Early in 1787 John Adams had published his "History of the Republics of the World". This was truly a monumental work. In it with rare research he not only reviewed the pertinent literature on the subject, but assembled and analyzed all available instances of government, even the smallest, in order to ascertain and declare the true principles of government as exemplified by the experiences of mankind. It was able, exhaustive and timely, received unbounded praise, and profoundly influenced the Federal Convention [The Making of the Constitution (Warren), pp. 155-7, 815-8].

Among Washington's papers at Mount Vernon was found an abstract, in his own handwriting, of the terms of the Lycean, Amphictionic, Achaean, Helvetic, Belgic, and Germanic Confederacies, with a statement of what, in his opinion, were the defects in each and the consequences of these defects [Spark's Ed., IX, 521-8].

Our Constitution, therefore, was neither the groping of the ignorant, nor the imposition of the autocrat, nor the dream of the idealist. It was the deliberate product of those who came from all walks of life and by natural endowment, extensive research, actual experience and

earnest patriotism constituted the greatest galaxy of men ever assembled at any time in any country for such a purpose. They were informed men; they were serious men; they were practical men. They knew what they wanted, and were determined that what they wanted should be the fundamental principles of our Government for all time because they were fully persuaded that these principles were eternally right.

What were these fundamental principles thus desired and embodied in our organic law? As I see it, there were two such principles, to which all other provisions and considerations were subordinate and auxiliary.

The First Great Principle.

The first great principle is that every government is necessarily based upon, and must thoroughly recognize and preserve, the individuality of man.

Nature and history concur in establishing the truth of this statement. They demonstrate beyond question that this fundamental is easily the primal law and consideration of our social existence.

God created man in His own image, endowed him with divine faculties, and gave him dominion over all the earth, with the duty of earning his living by the sweat of his brow. These faculties make man a reasoning being, capable of choosing between right and wrong, the arbiter of his own destiny, with hopes, fears, faiths, loves and hates that constitute his personal attributes. Accordingly, the ambitions of man are personal, and therefore development, civilization, life itself in all its relations, are predicated upon the individuality of man, because these personal ambitions are the real incentives to initiative and endeavor.

Any government that does not properly recognize this essential fact in its structure and the administration of its affairs will fail as certainly, and as utterly, as any project that does not recognize the laws governing God's other creations. Circumscribe these motives of mankind, and we thereby limit progress. Dry up these springs of thought and action, and the result will be stagnation and decay. On the one side, familiar illustrations are our patent and copyright laws to encourage invention, discovery, authorship, business. On the other side, we have the known deterring effects of inordinate taxation and regulation and the total failure, wherever tried, of common ownership, community of interest, collectivism—the pet perennial of dreamers and theorists.

The early Christians at first “had all things in common” [Acts, II:44, IV:32], but found in a few years that religion contemplates, its zeal is not a substitute for, this individuality of man.

Some months ago I had the privilege of talking with a gentleman who had made several trips to Russia and about it written a book. I asked him if the Russian people had been led to embrace the Soviet regime because of the severity of the Czaristic government, and he replied in the affirmative. I next asked him if the Russian people had not found, much to their disappointment, that the Soviet regime was a severer government than the Czaristic government had been, and he again answered in the affirmative. I then asked him if the reason for this added severity was not because the Soviet regime had eliminated personal ambition as a motivating influence with the result that force had to be substituted for it, and he said that was the fact.

But we do not need to go beyond our own shores for full substantiation of this great principle of the government established by our founders. In the first volume of

his “Life of Washington” Chief Justice Marshall sketches the settlement and growth of the American Colonies and in so doing perfectly illustrates what I mean by several unmistakable examples. Speaking of Jamestown, he says:

“Heretofore no separate property in lands had been acquired, and no individual had laboured for himself. The lands had been held, cleared, and cultivated in common, and their produce carried into a common granary from which it was distributed to all. * * * Its effect was such as ought to have been foreseen. Industry, deprived of its due reward, exclusive property in the produce of its toil, felt no sufficient stimulus to exertion, and the public supplies were generally inadequate to the public necessities.

“To remove this cause of perpetual scarcity Sir Thomas Dale divided a considerable portion of land into lots of three acres and granted one of them in full property to each individual. Although the Colonists were still required to devote a large portion of labour to the public, a sudden change was made in their appearance and habits. Industry, impelled by the certainty of recompense, advanced with rapid strides; and the inhabitants were no longer in fear of wanting bread either for themselves or for the emigrants from England.” [pp. 42-3.]

Of Plymouth he remarks:

“Misguided by their religious theories, they fell into the same error which had been committed in Virginia and, in imitation of the primitive Christians, threw all their property into a common stock, laboured jointly for the common benefit and were fed from the common stores. This regulation produced even in this small and enthusiastic society, its constant effect. They were often in danger of

starving; and severe whipping, administered to promote labour, only increased discontent." [p. 77.]

So, too, he states, in Georgia:

"The tenure of lands drove the settlers into Carolina where that property might be acquired in fee simple. * * * The Colony languished; while South Carolina, not unlike Georgia both in soil and climate, advanced with considerable rapidity. Although emigration was encouraged by paying the passage money of the emigrants, by furnishing them with clothes, arms, ammunition and implements of husbandry, by maintaining their families for the first year and in some instances by furnishing them with stock, yet the unwise policy which has been mentioned more than counterbalanced these advantages and for ten years, during which time the exports from Carolina more than doubled, the settlers in Georgia could with difficulty obtain a scanty subsistence." [pp. 253-5.]

The dismal failures of these attempts were blessings in disguise. By actual trial they conclusively demonstrated that the rule of individuality is the natural law of society, the home, sports, school, business, government; and this has become so generally accepted that, like the law of gravity, we are hardly conscious of its existence and rarely realize its force or worth. Yet undoubtedly it lies at the bottom of our achievements as a people. It alone evokes in largest measure that greatest and most wonderful of all human qualities, the spirit of man, which has its full fruition only in an atmosphere of freedom, where what the individual accomplishes is his own in name and in fact, and the only limit to his strivings is that he strive honestly.

Of course, men's motives have led them into wrong. Love may be of evil and liberty degenerate to license.

But we cannot abolish love or liberty; neither can we incentive or ambition. Once impair the principle, nothing will escape—not even government itself.

Those who advocate the contrary have ever been grandly oblivious to the consequence and facile at exceptions where their own interests are involved. Let me illustrate as to the profit motive by an incident so ludicrous its serious aspect may escape us. Some while back the Congregational Church in general conference at Oberlin, Ohio, voted condemnation of the profit motive (as have also, I may add, some leaders and conventions of the Northern Methodist Church). Now a good friend of mine in New York happened to be chairman of a committee for handling some of the Church's funds. So he wrote the Church authorities, asking in substance two questions: (1) Should he now invest only in securities that do not yield a return; (2) should he select the securities of concerns not actuated by the profit motive?

I need not tell you the answer. Your own common sense has already supplied it. Those who preach these abstract doctrines must know, if they pause to think, that churches, schools and other philanthropies will fail if they succeed. But even more than that, if possible, great as have been the magnificent philanthropies of our captains of industry, which all rightly praise, they rendered a far greater service to their country by their business-building and the people derived a far greater benefit from the denounced personal fortunes paid such men for their business-building than from many, many times those amounts spent by or through any governmental agency. Who but they developed and established this great country of ours commercially? Except through their creations of wealth, whence would come the billions of dollars, now being derived from taxes and bond sales, to defray our staggering expenditures? Indeed, but for them our vociferous modern

sophists would have little or no market in which to cry their wares.

God help any nation whose people put their trust in legislative fiat or favor rather than their own capacity and endeavor! Said a great statesman and philosopher:

“Our rulers will best promote the improvement of the people, by strictly confining themselves to their own legitimate duties, by leaving capital to find its most lucrative course, commodities their fair price, industry and intelligence their natural reward, idleness and folly their natural punishment—by maintaining peace, by defending property, by diminishing the price of law, by observing strict economy in every department of the State. Let the Government do this—the people will assuredly do the rest.” [Macaulay.]

Let no one minimize this essential truth. Be not deluded by those who, styling themselves progressives, would increase the power of government at the expense of the individual. They are the false reactionaries—the real enemies of those they most would help.

Progress through the years for the high and the low has been the transition from the divine right of rulers to the divine rights of the ruled, the emergence of the individual man to the submergence of overweening authority, whereby public officials became the servants instead of the masters of the people.

Time was when monarchs deemed themselves the representatives of God in temporal affairs, the right to rule was a chattel which descended from father to son, and the people were but serfs and vassals who existed to do their bidding. The upward path from this servile condition was long and difficult, the work of centuries, but the rights of the individual gradually triumphed, to the glory of God and humanity.

Take for example England, our motherland. There Magna Charta, the very palladium of our liberties, was secured, Parliament grew in power, an unwritten constitution, in principle like our own, developed, and of the effect one of England's noted authors writes:

“The history of England is the history of this great change in the moral, intellectual and physical state of the inhabitants of our island. * * * To us, we will own, nothing is so interesting and delightful as to contemplate the steps by which the England of Domesdaybook, the England of the Curfew and the Forest Laws, the England of crusaders, monks, schoolmen, astrologers, serfs, outlaws, became the England which we know and love—the classic ground of liberty and philosophy, the mart of all trade.” [Macaulay].

Too true it is, the lengthening years have dimmed the historic events that wrought this change. But these were grim, tragic realities to our forefathers—as some day they may be again. They, or their near ancestors, had felt the force of oppression and sought in the New World a haven where fortune did not hang on princes' favors and their faculties could find the freedom their spirits craved. It is not exaggeration, but only the literal truth, to say that to them life, liberty and property constituted for mankind a trinity second only to the Trinity of God.

There be those these days who would disrupt this trinity by a differentiation between what they term the human and the material rights. Thereby they seek to magnify life and liberty while they minimize property. No such distinction exists. History abundantly demonstrates that rights of life and liberty have been recognized only as rights of private property have been recognized. These three great principles are mutually dependent and useless each without the others. State

control of farms would make the farmer but a serf or vassal again. State censorship of the press would again render freedom of speech impossible. State domination of churches would again destroy religious tolerance. That is why life, liberty and property were inseparably linked by our forefathers in the Government they founded.

What else meant our Declaration of Rights and of Independence, and the first Ten Amendments to the Federal Constitution, known as the American Bill of Rights, which provide as strict limitations on the Federal powers that: No law may be passed which abridges freedom of religion, of speech, of the press, or peaceably to assemble and petition for redress of grievances. No person may be deprived of life, liberty or property without due process of law or subjected to unreasonable searches and seizures. Private property may not be taken for public use without just compensation. The right of jury trial shall be inviolate. No person may be twice put in jeopardy or be compelled to testify against himself in a criminal case, or subjected to excessive bails or fines or cruel and unusual punishments.

I wish time availed to dwell upon each of these rights, telling you its history and significance, that you might realize, as I fear many of us do not, what its establishment cost, its possession means, its impairment will entail. By them alone are humans free—free as to conscience, free as to thought, free as to labor and its rewards. Thereby servitude, confiscation, repudiation, in whatever form, are banned. Each man is made the architect of his fortune, with his home his castle and his talents and accomplishments dedicated to his own.

“Time has proven the discernment of our ancestors,” said the Supreme Court in our Civil War crisis; “for even these provisions, expressed in such plain English words, that it would seem the ingenu-

ity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measure to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrevocable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence.” [*Ex parte Milligan*, 4 Wall. at 120].

The Second Great Principle.

The second great principle is the balance of government, by which I mean a structure that will assure its being maintained and administered for the just good of all, and not perverted by any man or group of men into an instrument for their own personal advantage.

This is the soul of free government. The reason is admirably stated by Montesquieu in his “*Spirit of the Laws*” [Book XI]. He affirms as fundamental that the three great divisions of governmental powers—executive, legislative and judicial—must be kept not only separate but entirely independent of each other in origin

and function, for the reason that if any two of them unite freedom will be destroyed by the minority becoming subject to the will of the majority, whatever it may be, and if all three of them unite there will result an absolute government, by whatever name it may be called.

Blackstone [Commentaries (1765), Intro. Sec. II, 51] lauds this balance as the strength and glory of the English Constitution. Pointing out that these three great divisions of governmental power are distributed among the king as hereditary sovereign, the House of Lords where membership arises from birth and is for life, and the House of Commons elected by the people, he declares that:

“The constitutional government of this island is so admirably tempered and compounded, that nothing can endanger or hurt it, but destroying the equilibrium of power between one branch of the legislature and the rest. For if ever it should happen that the independence of any one of the three should be lost, or that it should become subservient to the views of either of the other two, there would soon be an end of our constitution.”

Nowhere is the necessity of this balance of government more strongly advocated than by Hamilton and Madison in the Federalist. They devote many articles to its consideration. Declaring that if men were angels no government would be required and if men were governed by angels no checks and balances in government would be necessary, they say [LI]:

“In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself”;

“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”;

“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.”

Our founders fully accepted this principle and sought as far as humanly possible to incorporate it into the Government they erected. They distributed the Federal powers among three independent departments—legislative, executive, judicial—whose respective functions are what the names imply, and no one of which may delegate its own powers or usurp the powers of another. It divided the legislative department into two branches—the Senate and the House—with concurrence of both necessary to enactment of legislation.

The members of the executive department—President and Vice-President—were to be chosen by an Electoral College, who might select without any reference to the direct vote of the people. The members of the Senate were to be chosen by the Legislatures of the several States. The members of the judiciary were to be appointed by the President with the advice and consent of the Senate. Only the members of the House of Representatives were to be elected by direct vote of the people—be it most carefully observed.

To perpetuate these principles a step was taken which is unique in the annals of history. The Federal Government was made the creature of a written Constitution. This not only set up its structure but defined its powers, subordinated them to the rights of the people which I have described, and reserved to the States or to the people respectively all the powers not prohibited

by it to them or conferred by it on the Federal Government. Thus there was established the great division of powers between the United States and the States which left the States completely sovereign and in control of their internal affairs.

Still further, the Constitution was made the supreme law of the land. Each official had to take an oath to support it. And the judiciary became the great umpire to enforce compliance with it through authority to declare non-conforming laws unconstitutional.

Washington wrote Lafayette [Feb. 7th, 1788] that the proposed constitution is

“provided with more checks and barriers against the introduction of tyranny and those of a nature less liable to be surmounted than any government hitherto instituted among mortals hath possessed. We are not to expect perfection in this world; but mankind, in modern times, have apparently made some progress in the science of government. Should that which is now offered to the people of America be found an experiment less perfect than it can be made a constitutional door is left open for its amelioration.”

The Subsequent Years.

One would think that principles so just, so rational and so safeguarded would command universal respect and be rightly regarded as beyond the reach of impairment—that in this enlightened era the maintenance of such principles would be a point of the very highest interest and honor, and so recognized by all.

Yet we are seriously concerned. It is not exaggeration to say that over our country there is spreading real alarm.

Consider the vital subject of finances. Our obligations have been repudiated. Our gold and silver have been conscripted. Our currency has been debased. Cost of government now amounts annually to the combined earnings of 10,000,000 men, working 6 days each week at \$5 a day. Taxes exceed what we pay for food or rent or raiment. Yet unemployment has not been relieved. Our budget goes unbalanced. Our debt increases by leaps and bounds. For our huge expenditures there is no real accounting. We seem utterly to have forgotten that pay-day—and by all instead of a few—is inevitable.

We know that real progress and prosperity can come only through private enterprise. Government is not a substitute. It cannot support the people. Governmental attempts to advance the various members of the body politic at the expense of industry through impositions, regimentation and competition, may be properly likened to endeavors to strengthen the members of the physical body through impoverishment of the stomach which is the source of their nourishment. Only by the wonderful use of machinery has industry been able to bear up under such burdens and handicaps. True, machinery has displaced some labor; but it has prevented a far greater displacement of labor which these policies by their increase in cost would have otherwise occasioned. For by use of machinery industry has been able to maintain a low price notwithstanding high taxes and wages, and thus promote a consumer demand and standard of living which has literally been the marvel of the world [see Siegfried's "America Comes of Age", p. 158].

This most constructive result, happy alike in its consequences to agriculture, labor, consumer, investor, Government, should have brought unbounded praise and thanks. Yet industry seems to be the one thing that is anathema. There is never a kind word for it. Businessmen are denounced officially as "organized greed",

“unscrupulous money changers” who “gang up” on the liberties of the people. When they resist laws they deem unsound they are blazoned as corrupt lobbyists and subjected to merciless inquiry. Their private communications are wantonly seized. Prominent and professional men who publicly voice their protest are bitterly assailed as the high-hat tools of capitalism. The dragon teeth of class hatred are being sown with a vengeance.

This catering to the masses is having its usual fruit. We are literally ruled by the well organized blocs of voters—labor, farming, office holders, war veterans, silver, teachers, social workers. Their leaders are welcomed and largely work their will. That they lobby is well known, but never questioned, much less investigated. These prodigal sons can outvote the productive fathers. That they have grown and will grow in number, power and demands is apparent. Our vast unemployed are already being thus organized. The Social Security Act, by putting this humane purpose into politics, is preparing the way for other like blocs. Even the great unorganized masses—the white-collar and consuming public—will inevitably have to organize for self-protection. Factions beget factions. Demands breed demands. Labor, farmer, consumer, taxes, all act and react on each other. The vicious spiral winds and mounts and grinds.

Federal legislation on this account has taken largely the form of vast social programs for domination from Washington of business, agriculture, labor and other essential activities. NRA and AAA are major and familiar examples. Put forward under the pleasing name of “planned economy”, they are but bureaucratic dictation in disguise; they require both a plan and its enforcement. Proclaimed as a new deal, they really hark back not only to the disastrous similar edicts of Diocletian but from translations of excavated clay tablets [Dr. Waldo H. Dubberstein, of the Oriental Institute of the

University of Chicago] we now find that like methods for regulating production, wages and prices, for pensions, for managed finance, with metal standards and hoarding, for banking and credit, were attempted ages before Christ, in the Babylonian Empire. Further, and a strikingly salutary lesson for us, these clay tablets show, as common sense affirms, that that empire had its greatest prosperity when these artificial measures interfered least.

What is more, these purposes and policies are being pursued in entire disregard of the Constitution. Such concentration and use of power clearly ignore the rights of States and individuals so carefully preserved in that great charter of freedom. On that account the Supreme Court has already held void NRA, the Farm Mortgage Act, the Railroad Retirement Act, and the AAA.

In this the Supreme Court but performed its solemn obligation; which alone makes our Constitution possible—there is no middle ground [*Marbury v. Madison*, 1 Cranch. 176-7]. The decisions should have been accepted in good spirit, as our constitutional method of orderly government, with changes still desired sought through the process of amendment which makes the voice of the people really supreme.

Far from this orderly course, last July [6th 1935] the President himself wrote Representative Hill, of the important House Ways and Means Committee: “I hope your Committee will not permit doubts of constitutionality, however reasonable, to block the suggested legislation.” That officially asked Congress to violate its oath and ignore the Constitution [Cooley, Const. Lim., 7th Ed., 254]. The result has been enactments which by mere change of form, without change of substance, seek to defy the Courts and do the very things these decisions held Congress could not do, such as the new Farm Control Act, the Guffey and Wagner Acts, etc.

Still further, the Courts have been subjected to a most flagrant campaign of disparagement and intimidation, designed to break down their prestige with the people. So far has this gone that Secretary Wallace actually charged the Supreme Court with authorizing "the greatest legalized steal in the history of this country"—simply because it would not allow the Federal Courts to collect exactions under AAA for the Treasury after that Act had been held unconstitutional and on that account the Treasury Department had stopped its own agents from making such collections. With like disrespect to the most primary constitutional rights, the executive and legislative departments are using their utmost endeavors to retain the billion dollars of invalid collections the Treasury had made under the unconstitutional AAA and to recover the funds returned by the Courts, though repayment of this money to the taxpayers is the most sacred obligation a nation can owe a people—its retention is real confiscation [*Bull v. United States*, 259 U. S. 260-1].

Of necessity, these things challenge one's attention. It is open rebellion by the executive and legislative departments against the Constitution and the Courts. Naturally, therefore, we ask—what is the explanation, the probable consequence? Is it only the demagoguery we have seen come and go before, or has it a deeper significance, a more serious potentiality?

It is my considered conclusion that we are confronted by a situation of the very gravest moment, occasioned by the fundamental changes that have occurred in the Government framed and launched by our founders. Both houses of the legislative department are now elected by direct vote of the people. The executive department is also thus elected, the Electoral College is but a rubber stamp, the President is the active head of his political party. We have the most universal suffrage the world has ever known, with a primary system that frequently

requires a twofold campaign of the successful candidate. Taxation, especially graduated taxes on incomes, rests wholly in the discretion of the executive and legislative departments which also fill vacancies in the judicial department. Thus these two departments have been furnished with the need of seeking and the means of satisfying the vote of the masses. It is the breakdown of balance in our Government and that fact is having its accustomed effect according to all the experiences of history.

This is one of the very things our founders most feared and sought to prevent by the balance of government they created. For while they wished also to avoid the greed of an aristocracy and the mailed fist of a dictator, they well knew the truth to be that the shame and the shambles of earth have been created just as much by the wiles of the demagogue who, with pious phrases, but for his own personal glory, does that most despicable and devastating of all things—incites class against class, plunders the rich to purchase the poor—and thus under the guise of love for mankind kindles fires of hate that bring high and low into a common ruin of dissension, bankruptcy and revolution.

The Federalist warned that our chief danger lay in this direction [LXIII]. A most profound young man named deTocqueville prophesied of this country in 1835, in his "Democracy in America" [p. 273]: "If ever the free institutions of America are destroyed, that event may be attributed to the unlimited authority of the majority." Lord Macauley said in his famous letter in 1857 to Randall: "It is plain that your government will never be able to restrain a distressed and discontented majority. For with you the majority is the government and has the rich, who are always a minority, absolutely at its mercy."

John Adams, in his "History of the Republics," which so influenced the Constitutional Convention, had likewise said, and supported with conclusive precedents, that in such a government, where the people were unchecked:

"Perhaps, at first, prejudice, habit, shame, or fear, principle or religion, would restrain the poor from attacking the rich, and the idle from usurping on the industrious; but the time would not be long before courage and enterprise would come, and pretexts be invented by degrees, to countenance the majority in dividing all the property among them, or at least in sharing it equally with its present possessors. Debts would be abolished first; taxes laid heavy on the rich, and not at all on the others; and at last a downright equal division of everything be demanded, and voted. What would be the consequence of this? The idle, the vicious, the intemperate, would rush into the utmost extravagance of debauchery, sell and spend all their share, and then demand a new division of those who purchased from them. The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. If 'THOU SHALT NOT COVET,' and 'THOU SHALT NOT STEAL,' were not commandments of Heaven, they must be made inviolable precepts in every society before it can be civilized or made free." [III, 216-7.]

One can but shudder when he remembers that Adams wrote his book to combat the espousal of such a democracy by Turgot. For Turgot was a comptroller-general under Louis XVI and Queen Marie Antoinette, whose extravagant reign soon thereafter bankrupted France, engendered the French Revolution, and brought them both to execution. Jefferson, who spent those fateful years in Paris, wrote of the King: "He is better, but not well; no malady requires a longer time to ensure against

its return than insanity" [Fed. Ed. V, 469]. Of the tragic end he said: "I should have shut up the Queen in a convent, putting harm out of her power, and placed the King in his station, investing him with limited powers" [Fed. Ed. I, 150].

Rome fell from the same cause. The historians, Dr. Swift [Discourses on the Dissensions in Athens and Rome] and Gibbon [The Decline and Fall of the Roman Empire, Chap. III, LXIX, LXX, LXXI] as well as Duruy and Ferrero, tell us that the commons by degrees overturned the balance of government, leaving all doors open to popular and ambitious men, who thereby destroyed the wisest republic and enslaved the noblest people that ever entered upon the stage of the world [Adams' History of Republics, I, 101].

Greece is another striking example. The pages of Thucydides and Diodorus Siculus are full of the grim details [Adams' History of Republics, Pref., pp. vi to viii]. The well-known historians, Grote [IV, 206-7] and Duruy [Sec. 2, Vol. III, 655-6; Vol. IV, 540] entirely concur, as does Lord Acton.

The result is not that social betterment through equalization which the people are led to expect. They simply commit waste on the estate of mankind and transmit it to posterity impoverished and desolated [Macaulay on Mill]. No one is helped—it is sheer destruction for all—that is the pathetic, historic fact.

The Outlook Serious.

Now, call me an alarmist, if you will; but I cannot contemplate what is happening and compare it with these lessons of history without realizing that our Nation is again facing a major test, one which if lost, will rend it in pieces as certainly as any it has ever faced. The battle

lines have changed. The weapons are different. But the testing is unmistakable.

The world has made great progress in many wonderful ways. Think what discovery and invention have done for transportation, communication, field, factory, home. The science of medicine has made tremendous strides, not only in diagnosis and cure, but more, even, in preventive hygiene.

But the science of government is a very different story. Diseases of the body politic are well defined. Yet those rigidly careful about food and drink for the body are quite complacent about the much more important food and drink for the mind [see Socrates' conversation in Plato's Protagoras]. We think our mental selves—even of ignorant adults and inexperienced youths—impervious to error or contamination. And so we witness the preaching of ancient social heresies by those who style themselves liberals, progressives, and thereby present the same spectacle as would a modern medical practitioner who advocated blood-letting and incantations.

Vessels navigate by accurate charts, under trained pilots. But our ships of state still must sail, after all these years, as if the science were unexplored; and so we are buffeted by the same whirlpools, steer towards the same reefs, that wrecked the argosies of France, Rome, Greece and other nations.

Lest some think I misconceive or overstate, let me make myself perfectly plain by a frank illustration—and I close.

Thomas Jefferson wrote from Paris that from the first moment he saw the Constitution he wanted "a bill of rights to guard liberty against the legislative as well as

the executive branches of the government" [to Hopkinson, Fed. Ed. V, 457] and he recorded in his Autobiography:

"It is not by the consolidation or concentration of powers, but by their distribution, that good government is effected. Were not this great country already divided into states, that division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority. Every state again is divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed each by its individual proprietor. Were we directed from Washington when to sow and when to reap we should soon want bread." [Fed. Ed. I, 122-3.]

Andrew Jackson emphasized in his Farewell Address:

"It is well known that there have always been those amongst us who wish to enlarge the powers of the General Government, and experience would seem to indicate that there is a tendency on the part of this Government to overstep the boundaries marked out for it by the Constitution. Its legitimate authority is abundantly sufficient for all the purposes for which it was created, and its powers being expressly enumerated, there can be no justification for claiming anything beyond them. Every attempt to exercise power beyond these limits should be promptly and firmly opposed, for one evil example will lead to other measures still more mischievous; and if the principle of constructive powers or supposed advantages or temporary circumstances shall ever be permitted to justify the assumption of a power not given by the Constitution, the General Government will before long absorb all the powers of legislation, and you will have in effect but one consolidated government. From the extent of our country, its diver-

sified interests, different pursuits, and different habits, it is too obvious for argument that a single consolidated government would be wholly inadequate to watch over and protect its interests; and every friend of our free institutions should be always prepared to maintain unimpaired and in full vigor the rights and sovereignty of the states and to confine the action of the General Government strictly to the sphere of its appropriate duties." [III, Richardson's Messages and Papers of the Presidents, 298-9.]

Woodrow Wilson wrote in his "Constitutional Government":

"It would be fatal to our political vitality really to strip the States of their powers and transfer them to the Federal Government. It cannot be too often repeated that it has been the privilege of separate development secured to the several regions of the country by the Constitution, and not the privilege of separate development only, but also that other more fundamental privilege that lies back of it, the privilege of independent local opinion and individual conviction, which has given speed, facility, vigor, and certainty to the processes of our economic and political growth. To buy temporary ease and convenience for the performance of a few great tasks of the hour at the expense of that would be to pay too great a price and to cheat all generations for the sake of one." [1908 Ed., 170-2 and 191-2.]

Such are our dearest, most fundamental principles of government. Such has been their enthusiastic support by the historic Democratic Party. No one of that party more fully endorsed these principles than Mr. Roosevelt. As Governor of New York, on March 2nd, 1930, he asserted with respect to the problems occasioned by the depression:

"The preservation of this home rule by the states

is not a cry of jealous commonwealths seeking their own aggrandizement at the expense of their sister states. It is a fundamental necessity if we are to remain a truly united country."

"It is obvious that almost every new or old problem of government must be solved, if it is to be solved to the satisfaction of the people of the whole country, by each state in its own way."

He assured us that

"to bring about government by oligarchy masquerading as democracy, it is fundamentally essential that practically all authority and control be centralized in our national government. * * * We are safe from the dangers of any such departure from the principles on which this country is founded just so long as the individual home rule of the states is scrupulously preserved and fought for whenever they seem in danger."

And he indignantly declared:

"The doctrine of regulation and legislation by 'master minds,' in whose judgment and will all the people may gladly acquiesce, has been too glaringly apparent at Washington in the last ten years. Were it possible to find 'master minds' so unselfish, so willing to decide unhesitatingly against their own personal interests or private prejudices, men almost god-like in their ability to hold the scales of justice with an even hand—such a government might be to the interests of this country—but there are none such on our political horizon, and we cannot expect a complete reversal of the teachings of history."

Yet no sooner had Mr. Roosevelt been elevated to the Presidency than he adopted, and has steadfastly pursued, a course that would manifestly erect the very oligarchy, bring about the very regimentation and legislation by

“master minds”, in Washington which he thus so bitterly condemned. I have placed the record before you—the various enactments upon which he insisted—the extent to which he goes in that insistence. You know that he has kept as his most influential advisers those, like Wallace, Ickes, Tugwell, Perkins, Hopkins, who are crusaders for this course, daily advocating it to the people. You must realize that we have been saved from such Federal domination only because the Supreme Court of the United States has courageously seen and done its duty under the very harshest criticism.

This complete about-face by Mr. Roosevelt has been ascribed to various motives—humanitarian, political, socialistic, delusions of grandeur, a Messianic mission. To me the motive is utterly immaterial—it does not alter the essential facts or their vital consequences. These are the change and that thereby we face a determined effort to establish permanently at Washington a bureaucratic oligarchy which will subject our affairs to the unrestrained powers of a pure democracy. The measures being advocated have that purpose and effect. The appeals for such a form of government are insistent, insidious, not to say inflammatory.

Last October, in the Olympic Auditorium at Los Angeles, Dr. Tugwell delivered an address whose temper and purpose are aptly shown by the following excerpts:

“How deep are the sources of your indignation? Do they lie on the surface and are they at the command of those who would have you turn against a national government which has invaded the modern strongholds of privilege? Or do they lie deeper so that your wrath may sustain a genuine reconstruction of American life? For the sickness of our system is not yet cured. We have made some diagnoses; we have got some partial remedies; we have made a good beginning.”

“What we are witnessing now is the death struggle of industrial autocracy and the birth of democratic discipline. * * * We have no reason to expect that the disestablishing of our plutocracy will be pleasant. These historical changes never are. We have, however, the duty of avoiding violence as the process goes on. And this is why I regard the coming months as among the critical ones of our history. For the movement will go on in any case; it lies in the brains and the blood of a people bringing into substance the stuff of old racial dreams.”

“If this requires the removal of barriers, that is historically unimportant. We need only care as human beings how it is done. The autocrats must get out of the way along with the moral system which supports them; but it is our duty to prevent that being done with violence. That is why I regard the coming campaign as so important. It may very well determine whether, some years from now, we shall do as other nations have—throw over completely the democratic and evolutionary process—or whether we shall find then that our leadership, our administration and our discipline have been equal to the task of creating institutions suited to the world in which they are expected to operate.”

“It is well enough known by now what the leadership of President Roosevelt commits America to; it is also well enough known by what methods further achievements will be made. If on this record and with these methods the progressives of this country are unwilling to form themselves into the necessary army of victory, no plan would have that effect. We must never forget that we are always a powerful potential majority, that all the weight of democratic mass is on our side * * *. Our best strategy is to surge forward with the workers and the farmers of this nation, committed to general achievements, but trusting the genius of our leader for the disposi-

tion of our forces and the timing of our attacks. I do not need to remind you of his genius for this task, nor of his devotion to the cause of overthrowing industrial autocracy and the creation of the democratic discipline."

Far from repudiating this interpretation, this pledging, of him to the people by his intimate friend, Dr. Tugwell, within three months the President broadcast to the people his formal report on the state of the Union, in which he told them:

"In March, 1933, I appealed to the Congress and to the people in a new effort to restore power to those to whom it rightfully belonged. The response to that appeal resulted in the writing of a new chapter in the history of popular government. You, the members of the legislative branch, and I, the Executive, contended for and established a new relationship between government and people."

"To be sure, in so doing, we have invited battle. We have earned the hatred of entrenched greed."

"But the challenge faced by this Congress is more menacing than merely a return to the past—bad as that would be. Our resplendent economic autocracy does not want to return to that individualism of which they prate, even though the advantages under that system went to the ruthless and the strong."

"They realize that in thirty-four months we have built up new instruments of public power. In the hands of a people's government this power is wholesome and proper. But in the hands of political puppets of an economic autocracy such power would provide shackles for the liberties of the people."

We cannot pass over these utterances as mere political harangues. Their source is too high, their terms too

plain and strong, their import too serious, especially in the light of the measures Mr. Roosevelt has advocated.

Undoubtedly these are appeals for support of the masses, born of the essential fact that our executive and legislative departments have come to be elected wholly by direct vote of the people. In tone, manner and substance they are the perfect fruit of the kind of tree we then planted, according to all the experiences of mankind.

Obviously by these appeals to "the weight of democratic mass" to establish "a people's government" possessed of these "new instruments of public power" they seek to erect at Washington, as their measures and impatience of Constitution and Courts had already made manifest, a parliament of the people, unrestrained except by its own moderation. Yet this is but the old, old rule of numbers, a form of government which proved the scourge of national existence and became thoroughly discredited long, long ago for an unanswerable reason. It vests complete, direct power in those who are least endowed, least informed, have least, and thereby reduces government to the lowest common denominator. Such is the inescapable fact of human nature which those who patronize such a social theory have sought in vain to avoid. Thus Sparta assembled the male children in barracks, where the good were culled and reared, the bad put away, while Plato for his Ideal Commonwealth would go a logical step further in this selective process—have wives in common—that is, through free love breed humans, as we do dogs, cattle and horses [see *Meyer v. Nebraska*, 262 U. S. at 402].

Obviously, also, these appeals for mass control thereby strike at the very heart of our institutions, attack the very essence of our ideals, by destroying all semblance of that balance of government which our Constitution

strove to create and which history and common sense alike tell us is indispensable to the stability, progress and prosperity of a people. In this respect they are utterly un-American; for similar preachings we must go to the writings of a Marx or a Sismondi, who, to the unending turmoil and suffering of Europe, likewise taught the proletariat to use their numerical superiority.

I presume Thomas Jefferson would be selected as the one of our forefathers most jealous of the prerogatives of the people. Yet he agreed only with the greatest reluctance to election of members of the House of Representatives by direct vote of the people—and they, you will remember, were the sole Federal officials to be thus elected. Writing to Madison on December 20th, 1787, he said:

“I like the organization of the Government into Legislative, Judiciary & Executive. I like the power given the Legislature to levy taxes, and for that reason solely, approve of the greater House being chosen by the people directly” because “I think a House chosen by them will be very illy qualified to legislate for the Union, for foreign nations, &c.” [Fed. Ed. V, 370].

With unanswerable logic Madison declared [Fed. X]:

“No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators, but advocates and parties to

the causes which they determine?” *i. e.*, taxes, debts, pensions, subsidies, hours, wages, rates, prices.

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

Forget self, faction, section, votes, party—think only in terms of our country, its future highest and best, in the light of unquestioned history—and you must realize the truth of these statements—that such measures and policies are intensely reactionary, defy the most absolute social laws and lessons, would hazard the destiny of a great people, sell their priceless birthright for an ancient mess of alien pottage our forefathers so earnestly and rightly labored to preclude.

A rising or a setting sun? Writing of similar events which laid enlightened Greece low, Grote finds the true hope of national salvation is to

“create in the multitude, and through them to force upon the leading ambitious men, that rare and difficult sentiment which we may term a constitutional morality—a paramount reverence for the forms of the constitution, enforcing obedience to the authorities acting under and within those forms”;

“Because we are familiar with it,” says he, “we are apt to suppose it a natural sentiment; though there seem to be few sentiments more difficult to

establish and diffuse among a community, judging by the experience of history. We may see how imperfectly it exists at this day [1846] in the Swiss Cantons; and the many violences of the first French revolution illustrate, among various other lessons, the fatal effects arising from its absence, even among a people high in the scale of intelligence. Yet the diffusion of such constitutional morality, not merely among the majority of any community, but throughout the whole, is the indispensable condition of a government at once free and peaceable" [IV, 206-7].

Grote is right. Constitutional morality is the watchword. It alone affords real liberty—just, secure, inspiring. But plainly constitutional immorality is in the saddle and riding furiously. The weight of democratic mass controls. Its factions vie for privilege and power, impatient of opposition or restraint. They are urged on by office seekers who court their support with lavish dispensations of public funds and favors. Theorists delude with Utopian schemes for better times, by sharing wealth, limiting effort, an ideal state. Foreign infiltrations seize the occasion to foment trouble. Impairment of established principles, demolition of required safeguards, impoverishment through wasteful dissipation of our patrimony, debauching of the electorate, breakdown of moral fibre, proceed apace. The stage is set for another drama of the avid, credulous, unchecked multitude. The air is filled with portents of the coming national storm!