

Tyranny, Natural Law, and Secession

A Thesis
Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Master of Arts

in

The Department of Political Science

by
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B.A., Louisiana State University, 2002
August 2004

Acknowledgments

Until I undertook to write this thesis, I had never written a paper over thirty pages long. Needless to say, this has been a learning experience for me. Though the usual disclaimer regarding any and all errors remaining in this thesis applies, I could not have completed it without the advice and support of my major professor, Dr. James Stoner. I have also benefited immeasurably from the advice and expertise of the other members of my thesis committee, Dr. Ellis Sandoz and Dr. Cameron Thies. Despite our many differences, Dr. Mulcahy has become a loyal friend and I treasure our spirited debates on matters of the mind. I must also acknowledge my parents, family, and friends, without whom I would not be who I am today. Last but certainly not least, my lovely fiancée, Sajida Begum, has been my island of sanity while writing this thesis, especially during those times when it seemed I was in over my head. My deepest thanks to all of you for your encouragement and support, and for putting up with an intransigent wild-eyed radical such as myself.

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Abstract

This thesis is an examination of the problem of tyranny from the perspective of radical libertarianism. History is to be seen as a race and conflict between liberty and power. After a brief introduction, the second section of this thesis is devoted to sketching out a natural law and natural rights theory. With this as the foundation, the third section analyzes the seminal work of Étienne de la Boétie's *The Discourse of Voluntary Servitude* in which he elucidates the nature of tyranny and the psychology of subjection. All governments, even the worst tyranny, rest upon general popular acceptance. Religious and political ideologies serve as the justification and motivation for resisting tyranny. The role of ideology in revolutions, and the perennial conflict between liberty and power, are illustrated in the fourth and fifth sections in the context of the American Revolution and Founding, and Civil War. The sixth section sketches a radical libertarian critique of the State as inherently tyrannical and counterproductive to the goal of securing individual rights and social prosperity.

I. Introduction

But O good Lord! What strange phenomenon is this? What name shall we give it? What is the nature of this misfortune? What vice is it, or, rather, what degradation? To see an endless multitude of people not merely obeying, but driven to servility? Not ruled, but tyrannized over? These wretches have no wealth, no kin, nor wife nor children, not even life itself that they can call their own. They suffer plundering, wantonness, cruelty, not from an army, not from a barbarian horde, on account of whom they must shed their blood and sacrifice their lives, but from a single man; not from a Hercules nor from a Samson, but from a single little man.

– Étienne de la Boétie, *The Discourse of Voluntary Servitude*, c. 1552-53¹

WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute a new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security.

– Thomas Jefferson, *Declaration of Independence*, 1776

Lord Acton once said, “Power tends to corrupt, and absolute power corrupts absolutely”; he continued, “Great men are almost always bad men.”² This last might strike one as a curious statement, until one remembers that even Nero and Julius Caesar were deeply mourned by their people. Tyrants are not always recognized as such by their own people or even by subsequent generations. This can be explained by a failure to

¹ Étienne de La Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude*, translated by Harry Kurz with an introduction by Murray Rothbard, (New York: Black Rose Books, 1997), pp. 47-48. Boétie is pronounced “Bwettie” with a hard *t*.

² Lord Acton, letter, 3 April 1887, to Bishop Mandell Creighton (published in *The Life and Letters of Mandell Creighton*. Louise von Glehn Creighton, ed. New York: Longmans, Green, and Co., 1913).

understand the nature of tyranny and the value of liberty, which brings us to the underlying theme of this essay: the problem of tyranny. To quote Murray Rothbard, “*why in the world do people consent to their own enslavement?*”³ For this is the fundamental insight of the sixteenth century Frenchman, Étienne de la Boétie, and the driving concern of his *Discourse of Voluntary Servitude*, that *all* governments are grounded on the consent of the governed, on general popular acceptance, even the worst tyranny.⁴

Tyranny is a perennial danger for mankind, recurring again and again throughout history, and it has been a subject of discourse for many great thinkers from the ancient Greeks to the present. The traditional conception of tyranny is twofold; it is either 1) the usurpation of rightful power (typically the usurpation of a republic), or 2) government against the “laws” (defined variously as customary law, divine law, or natural law), or both. This traditional conception of tyranny focuses on the means by which the ruler acquires power and the use made of that power. As we shall see, La Boétie goes beyond this traditional conception and implicitly gets to the heart of the nature of power itself: that the power of man over man is tyrannical. My own thoughts on liberty and tyranny, liberty and power, exactly follows that of Murray Rothbard’s as expressed in the preface to his four-volume work on American history from colonial times to the Revolution,

Conceived in Liberty:

³ Murray N. Rothbard, “The Political Thought of Étienne de La Boétie,” in *The Politics of Obedience: The Discourse of Voluntary Servitude*, p. 13 (emphasis in original). I tend to agree with Rothbard that La Boétie cuts to the heart of not merely the central problem of tyranny, but “of what is, or rather should be, the central problem of political philosophy: the mystery of civil obedience” (Ibid.).

⁴ David Hume independently discovered this principle two centuries later: “Nothing appears more surprising to those who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers. When we enquire by what means this wonder is effected, we shall find, that, as Force is always on the side of the governed, the governors have nothing to support them but opinion. It is therefore, on opinion only that government is founded; and this maxim extends to the most despotic and military governments, as well as to the most free and most popular.” (David Hume, “Of the First Principles of Government,” in *Essays, Literary, Moral and Political* (London: Oxford University Press [1966, c1963])).

My own basic perspective on the history of man, and *a fortiori* on the history of the United States, is to place central importance on the great conflict which is eternally waged between Liberty and Power, a conflict, by the way, which was seen with crystal clarity by the American revolutionaries of the eighteenth century. I see the liberty of the individual not only as a great moral good in itself (or, with Lord Acton, as the highest political good), but also as the necessary condition for the flowering of all the other goods that mankind cherishes: moral virtue, civilization, the arts and sciences, economic prosperity. Out of liberty, then, stem the glories of civilized life. But liberty has always been threatened by the encroachments of power, power which seeks to suppress, control, cripple, tax, and exploit the fruits of liberty and production. Power, then, the enemy of liberty, is consequently the enemy of all the other goods and fruits of civilization that mankind holds dear. And power is almost always centered in and focused on that central repository of power and violence: the state. With Albert Jay Nock, the twentieth-century American political philosopher, I see history as centrally a race and conflict between “social power” – the productive consequence of voluntary interactions among men – and state power. In those eras of history when liberty – social power – has managed to race ahead of state power and control, the country and even mankind have flourished. In those eras when state power has managed to catch up with or surpass social power, mankind suffers and declines.⁵

In the following pages I attempt to sketch a radical libertarian natural law and natural rights social ethic as I understand it. In doing so I do not claim to speak for all libertarians; indeed, many libertarians would no doubt find something to disagree with in this essay.⁶ I then give an explication of La Boétie’s analysis of the nature of tyranny and voluntary servitude. In the two subsequent parts I attempt to illustrate the conflict between liberty and power with an examination of events surrounding the American Revolution and Founding, and Civil War. And finally, I sketch a radical libertarian critique of the State.

⁵ Murray N. Rothbard, *Conceived in Liberty Vol. I: The American Colonies in the Seventeenth Century* (New Rochelle, NY: Arlington House Publishers, 1975), pp. 9-10.

⁶ The libertarian movement, not counting the anarchist socialists who also claim the label libertarian, is divided into two groups: the minarchists, who support a limited government as either good or a necessary evil, and the anarchists, who consider the State to be an unnecessary evil.

II. Natural Law and Natural Rights

The program of liberalism, therefore, if condensed into a single word, would have to read: *property*, that is, private ownership of the means of production... All the other demands of liberalism result from this fundamental demand.

– Ludwig von Mises, *Liberalism*⁷

What motivated early Americans to resist English tyranny? How is such resistance, whether violent or nonviolent, justified? I think these questions are related, not merely because human beings act for reasons and need to justify their actions. I could merely describe the motivations of the early Americans, and indeed I do so in part five of this essay; but my intention here is also to demonstrate the justification for resistance to tyranny in terms of a universally applicable ethical theory. This justification can be found in the political ideology of the early Americans, which is the political philosophy of (classical) liberalism. Libertarianism is a younger variant of liberalism that has taken its fundamental principles to their logical conclusion.

Liberalism recognizes the principle that governments are founded upon the consent of the governed. Indeed, liberalism not only recognizes this principle but carries it further, arguing that the only just government is one that is formed voluntarily by the people in order to protect their natural rights. This political philosophy has been most popularly epitomized in the Declaration of Independence, quoted at the beginning of this essay.⁸ Those who take a natural law⁹ approach to liberalism, rather than a merely

⁷ Ludwig von Mises, *Liberalism: A Socio-Economic Exposition* (Mission, KA.: Sheed Andrews and McMeel, 1978 [1962]), p. 19.

⁸ The original draft of the Declaration, while more philosophically precise, appears to have been changed for stylistic rather than substantive reasons. Regarding rights, it read as follows: “We hold these truths to be sacred and undeniable: that all men are created equal and independent; that *from that equal creation* they derive rights inherent and inalienable, among which are the preservation of life, and liberty, and the pursuit of happiness.” (See Roderick T. Long, “Equality: The Unknown Ideal,” The Ludwig von Mises Institute: www.mises.org/fullstory.asp?control=804, 2001.)

⁹ I take a *supply-side* virtue ethics approach to natural law here as opposed to traditional consequentialist and deontological (“duty-centered”) *demand-side* approaches. The former, which has its roots in ancient Greek (particularly Aristotelian) thought, focuses on the *agent* of moral activity, whereas the latter focus on

utilitarian one, recognize that every individual has an absolute ethical duty to deal with others in a manner suitable for the life of a human being qua human being, that is, noncoercively.¹⁰

Natural law holds that what is good and bad for Man is determined by his nature. Man is defined by his essential characteristic, which is his faculty of reason; in other words, Man is a rational being. He is neither omniscient nor omnipotent nor infallible and possesses no innate instinctual knowledge, and because of this he must use his mind to discover the ends he should pursue and the means by which to pursue them.

Self-ownership is the basis of liberal/libertarian natural law and natural rights theory. In contradistinction to classical natural law theory, which “placed the locus of the

the *patient* of moral activity. For the former, the central question of ethics is not “What consequences should I promote?” or “What rules should I follow?” but rather “What kind of person should I be?” Certainly, demand-side approaches to natural law exist, but I would argue that they are not as philosophically defensible. For the distinction between supply-side and demand-side ethics, I am indebted to David Kelley and Roderick T. Long; see Long, “Slavery Contracts and Inalienable Rights: A Formulation,” *Formulations* 2, No. 2 (Winter 1994-95), www.libertariannation.org/a/f2211.html. For the roots of liberal natural law and natural rights theory in Aristotle, see Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995); and for a necessary amendment to it, see Long, “Aristotle's Conception of Freedom,” *The Review of Metaphysics* 49 (June 1996): 775-802. Finally, it is not the place of this essay to argue the ultimate source of natural law, whether it be God or the logical structure of reality. Suffice to say that there is some dispute among natural law theorists on this subject while they agree on the existence of natural law and its accessibility to reason.

¹⁰ Man is defined as a rational being. Libertarians recognize certain conditions such as childhood, mental retardation, and insanity in which an individual's faculty of reason is considered to be in an impaired, disabled, or not fully developed state. There is little, if any, debate among libertarians, or among sensible people for that matter, that it is a reasonable assumption that an adult is capable of making his or her own decisions (even if he or she actually makes foolish ones). There is considerable debate among libertarians, however, as to exactly when children develop an adult capacity for reason and cease being children. This issue is complicated by the fact that children don't all mature at the same rate. The level of a child's development is a matter of degree, leading to a diminished gap between the child's expressed and true preferences as he/she matures. The issue is not central to my purpose, but I think Roderick Long's suggested solution is the fairest one: “pick a single universal age of majority [say, 18], but allow exceptions through litigation; the age of majority simply determines the point at which the presumption of incapacity yields to a presumption of capacity, rather than serving as a rigid inescapable iron barrier. Once this flexibility is introduced, the precise age that is picked as the cut-off for majority becomes less important” (“Imagineering Freedom: A Constitution of Liberty, Part IV,” *Formulations* 2, No. 4 (Summer 1995), www.libertariannation.org/a/f2412.html). Until a child reaches the age of majority, it is the duty of the parent(s) or guardian(s) to protect the child's rights and supervise his/her choices. Such paternalism is not justified for adults, however.

good and of virtuous action in the State, with individuals strictly subordinated to State action[.]”

the Levellers and particularly John Locke in seventeenth-century England...transformed classical natural law into a theory grounded on methodological and hence political individualism. From the Lockean emphasis on the individual as the unit of action, as the entity who thinks, feels, chooses, and acts, stemmed his conception of natural law in politics as establishing the natural rights of each individual. It was the Lockean individualist tradition that profoundly influenced the later American revolutionaries and the dominant tradition of libertarian political thought in the revolutionary new nation.¹¹

Consider the following passage from Locke’s “Second Treatise on Government”:

[E]very man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something of his own, and thereby makes it his property. It being by him removed from the common state nature has placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to...

He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask when did they begin to be his?...And ‘tis plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common. That added something to them more than nature, the common mother of all, had done: and so they become his private right. And will any one say he had no right to those acorns or apples he thus appropriated, because he had not the consent of all mankind to make them his?...If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that ‘tis the taking part of what is common, and removing it out of the state Nature leaves it in, which beings the property; without which the common is of no use.¹²

¹¹ Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 2002 [1982]), p. 21.

¹² John Locke, “The Second Treatise of Government” in *The Political Writings of John Locke*, David Wootton, ed. (New York: Penguin Books, Ltd., 1993), V.27-28, pp. 274-275. The process, herein described, of original appropriation of property out of the state of nature is called the homesteading principle.

In *The Ethics of Liberty*, Murray Rothbard makes a similar point:

The individual man, in introspecting the fact of his own consciousness, ... discovers the primordial natural fact of his freedom: his freedom to choose, his freedom to use or not use his reason about any given subject. In short, the natural fact of his “free will.” He also discovers the natural fact of his mind’s command over his body and its actions: that is, of his natural *ownership* over his self.¹³

This right to his person and property derives from Man’s reasoning mind. For individuals to live a life proper to Man (i.e., a virtuous life), central place must be given to the distinctively human faculty of reason. In dealing with others, one properly expresses this faculty through reason and persuasion, rather than through the initiation of force (including fraud, theft, and the threat of force).¹⁴ The virtue that defines the appropriately human attitude towards the initiation of force is justice. A just person will refrain from initiating coercion against others. From this obligation to behave justly (i.e., virtuously), we derive the concept of natural rights.

A right is a moral concept; it is a principle of interpersonal ethics that acts as a bridge between the ethical and the political. Rights, then, are a subset of moral principles that govern the legitimate use of force in interpersonal relations. A right always pertains only to action (or more precisely, to freedom of action). To a moral agent, a right is a positive sanction for him to act on his own judgment; it is also a negative obligation on him to use reason in his dealings with others, that is, to refrain from violating their rights by initiating force. In other words, our obligation to live a maximally human life, which is a life of reason, translates into a right, on the part of others, not to be aggressed

¹³ Rothbard, *The Ethics of Liberty*, p. 31.

¹⁴ Initiation of force here is used in contradistinction to retaliatory force, which itself is justified only against those who have initiated force in the first place.

against.¹⁵ In this sense, the right to liberty, properly understood, is the right not to be subject to the initiation of force. It is also important to point out that liberty, properly understood, is complete and total liberty.¹⁶ If liberty consists in freedom from the initiation of force; if it is unjust and therefore a violation of your liberty for me to initiate force against you, and vice versa; then it is nonsensical to speak of the protection of our rights as requiring the limitation of our rights, for by natural law none of us have the right to aggress against each other. In other words, the rights of individuals do not overlap or in any other way conflict with those of others; by definition, they cannot.

Just as we have a responsibility to conduct our affairs with others through reason and persuasion, so too do we have a responsibility to resist the initiation of force against us, for acquiescing to it prevents us from freely exercising our faculty of reason.

Defensive force is morally permissible as a proper means of restoring justice, but it is hard to see how it can be mandated to the *exclusion* of nonviolent means of resistance. Indeed, nonviolent resistance would seem to be more appealing to a life pursuant with a dedication to reason. Aristotle argues, in his *Politics*, that man is a political animal; a man who is by nature without a polis must be either a beast or a god, either subhuman or superhuman, but being a god is impossible for man; either extreme is a vice. Similarly, in

¹⁵ As a point of clarification, this obligation is one that we owe ourselves as moral agents (and, for Christians, to God as well and above all; similarly for other religions). In an Aristotelian virtue-ethics, virtue is not merely instrumental to our happiness but constitutive of it.

¹⁶ This is analogous to Herbert Spencer's Law of Equal Freedom: "Every man has freedom to do all he wills, provided he infringes not the equal freedom of any other man" (Spencer, *Social Statics*, New York: D. Appleton and Company, 1897, p. 121). Murray Rothbard is correct, however, in pointing out that Spencer's Law is redundant; the first proviso implies the second. "For if *every* man has freedom to do all that he wills, it follows from this very premise that *no man's* freedom has been infringed or invaded. [...] The concept "equality" has no rightful place in the "Law of Equal Freedom," being replaceable by the logical qualifier "every." The "Law of Equal Freedom" could well be renamed "The Law of Total Freedom." (Rothbard, *Man, Economy, and State with Power and Market*, Scholar's Edition. Auburn: Mises Institute, 2004 [1962, 1970], p. 1312).

his *Nicomachean Ethics*, he holds that a virtue is a mean between two vices.¹⁷ If Aristotle is correct, and I think that he is, then neither an inhuman (or superhuman) passivism nor an animalistic (subhuman) propensity to violence is appropriate to man. In short, there is a point at which nonviolent resistance may no longer be moral and violent resistance becomes obligatory, and vice versa. Exactly what that point is will have to be judged contextually by the particular individual(s).

“The right of property implies the right to make contracts about that property: to give it away or to exchange titles of ownership for the property of another person.”¹⁸ The right of contract is not absolute, however, as it is derived from the right of property.

[The] only *enforceable* contracts (i.e., those backed by the sanction of legal coercion) should be those where the failure of one party to abide by the contract implies the *theft* of property from the other party. In short, a contract should only be enforceable when the failure to fulfill it is an implicit theft of property. But this can only be true if we hold that validly enforceable contracts only exist where title to property has already been *transferred*, and therefore where the failure to abide by the contract means that the other party’s property is retained by the delinquent party, without the consent of the former (implicit theft).¹⁹

This is the “title-transfer” theory of contracts. A contract is not made valid and therefore legally enforceable because of promises made or expectations created but because title to property has been transferred under certain agreed upon conditions. This is not to say that breaking promises or not living up to expectations we foster in others is moral, quite the contrary, but we are here concerned with justice and law.

¹⁷ Aristotle, *Politics*, 1253a1-5, 27-33; idem. *Nicomachean Ethics*; cf. Roderick T. Long, “The Irrelevance of Responsibility,” *Social Philosophy and Policy* 16, no. 2 (Summer 1999): 118-145. “The Aristotelian virtues, too, can be seen as a mean between the subhuman vice of overvaluing, and the superhuman vice of undervaluing, our vulnerable embodiedness. To err on the side of the beasts is to be excessively concerned with our animal nature, our physical desires and physical security[.] . . . To err on the side of the gods, by contrast, is to treat human beings as disembodied intellects for whom the animal nature is irrelevant[.]” (Long, p. 122.)

¹⁸ Rothbard, *The Ethics of Liberty*, p. 133.

¹⁹ Ibid. Emphasis in original.

Not all titles of ownership in property are transferable. Certainly the physical property we own can be given away or sold by us as we please. Such property is *alienable*. Man's right to his own person and will, however, is *inalienable*; that is, he cannot give or sell control of his person and will to another. Even if he did, in practice, voluntarily subordinate his will and person to another, it is still he who decides to follow every order given by that person. Moreover, no such voluntary slave contract can be legally enforceable. There is no transfer of title in the agreement. If, at any time, the individual changes his mind and refuses any longer to be a "slave," he is legally entitled to do so.

It follows from the foregoing that the only just government is one that protects and respects the rights of its citizens. Some of the implications of this it would do to spell out, because such a government as would be just according to a consistent adherence to natural law and natural rights would hardly be recognizable as a *government* to most people. It has been said that one of the requirements of a just government is the consent of the governed. But what does this mean? Is it consent of the majority? Or of the strongest party? Can one man or group of men declare consent for another?

Legal theorist and abolitionist Lysander Spooner, writing just after the Civil War, answers these questions definitively in "No Treason No. 1 (1867)." Anyone who claim's that "his consent is necessary to the establishment or maintenance of government" thereby admits that "every other man's are equally necessary," for one man's rights are just as good as everyone else's. The opposite is also true: anyone who claims that someone else's consent is not necessary thereby admits that his own is not necessary either. There is "no alternative but to say, either that the separate, individual consent of

every man, *who is required to aid, in any way, in supporting the government*, is necessary, or that the consent of no one is necessary.”²⁰ Since we possess the right to life, liberty, and property, it follows that the latter alternative must be rejected and that the individual consent of everyone is necessary

Thus, applied to the United States Constitution, the phrase “We, the people” in the preamble must be taken to mean simply: “We, the people of the United States, *acting freely and voluntarily as individuals, consent and agree* that we will cooperate with each other in sustaining such a government as is provided for in this Constitution.”²¹ The whole authority of the Constitution rests upon the necessity for consent of “the people” and if they do not consent it is of no validity, and insofar as it has any validity it is only between those who actually consent to it.²² “No one’s consent could be presumed against him, without his actual consent being given, any more than in the case of any other contract to pay money, or render service. And to make it binding upon any one, his signature, or other positive evidence of consent, was as necessary as in the case of any other contract.”²³ At most, the Constitution can be inferred only as *offering* membership. Spooner notes that even those few who actually voted to adopt the Constitution

did not pledge their faith *for any specific time*, since no specific time was named, in the Constitution, during which the association should continue. It was, therefore, merely an association during pleasure; even as between the original parties to it. Still less, if possible, has it been any thing more than a voluntary association, during pleasure, between the succeeding generations, who have never gone through, as their fathers did, with so much even as any outward formality of adopting it, or of pledging their faith to support it. [...] The consent, therefore, that has been given,

²⁰ George H. Smith, ed., *The Lysander Spooner Reader* (San Francisco: Fox & Wilkes, 1992), p. 60 (emphasis in original).

²¹ *Ibid.*, “No Treason No. 2 (1867),” p. 65 (emphasis in original).

²² *Ibid.*

²³ *Ibid.*

whether by individuals, or by the States, has been, at most, only a consent for the time being; not an engagement for the future.²⁴

Thus, Spooner states in “No Treason No. VI” that the “Constitution [and any constitution, for that matter] has no inherent authority or obligation. It has no authority or obligation at all unless as a contract between man and man.”²⁵

One also cannot infer from the Constitution that it is “an agreement between any body but ‘the people’ *then* existing; nor does it, either expressly or impliedly, assert any right, power, or disposition, on their part, to bind any body but themselves.”²⁶ Indeed, no constitution that purported to do so could be considered valid. In the preamble, it merely expresses the hope that it will be useful to the original people’s posterity. Subsequent generations would have to individually and voluntarily consent to the Constitution to be bound by it.

It is thought by some that individuals express their consent by voting and paying taxes, but even these actions cannot be taken to demonstrate consent. Certainly, even if the act of voting were a legitimate demonstration of consent, it “could bind nobody but the actual voters.”²⁷ Furthermore, the act of voting cannot be said to be a demonstration of a person’s support for the Constitution unless the act of voting were a perfectly voluntary one. Yet the act of voting cannot properly be called a perfectly voluntary one for many people (or even for most, or all, today). Many vote out of necessity, seeing it as the only means they have of preventing the theft of their property or abuse of their rights

²⁴ Ibid., pp. 66-67 (emphasis in original).

²⁵ Ibid., p. 77. The intervening numbers, III-V, were never written.

²⁶ Ibid. Emphasis in original.

²⁷ Ibid., p. 79.

by other voters. This is so, in part, because taxation is, at least in practice, compulsory.²⁸

And as “we can have no legal knowledge as to who votes from choice, and who from the necessity thus forced upon him, we can have no legal knowledge, *as to any particular individual*, that he voted from choice; or consequently, that by voting, he consented, or pledged himself, to support the government.”²⁹ This is so because all voting is done secretly. “No man can reasonably or legally be said to do such a thing as to assent to, or support, the Constitution, *unless he does it openly, and in a way to make himself personally responsible for the acts of his agents, so long as they act within the limits of the power he delegates to them.*”³⁰

Spooner trenchantly concludes:

The ostensible supporters of the Constitution, like the ostensible supporters of most other governments, are made up of three classes, viz.: 1. Knaves, a numerous and active class, who see in the government an instrument which they can use for their own aggrandizement or wealth. 2. Dupes – a large class, no doubt – each of whom, because he is allowed one voice out of millions in deciding what he may do with his own person and his own property, and because he is permitted to have the same voice in robbing, enslaving, and murdering others, that others have in robbing, enslaving, and murdering himself, is stupid enough to imagine that he is a “free man,” a “sovereign”; that this is “a free government”; “a government of equal rights,” “the best government on earth,” and such like absurdities. 3. A class who have some appreciation of the evils of government, but either do not see how to get rid of them, or do not choose to so far sacrifice their private interests as to give themselves seriously and earnestly to the work of making a change.³¹

²⁸ The economist Joseph Schumpeter was correct when he wrote that “the theory which construes taxes on the analogy of club dues or of the purchase of services of, say, a doctor only proves how far removed this part of the social sciences is from scientific habits of mind” (*Capitalism, Socialism, and Democracy* (New York: Harper and Brothers, 1942), p. 198.). Anyone who doubts this is welcome to experiment with not paying his taxes and see what happens to him.

²⁹ *Ibid.*, p. 81 (emphasis in original).

³⁰ *Ibid.*, p. 83.

³¹ *Ibid.*, p. 84. In a footnote, Spooner adds: “Suppose it to be the ‘best government on earth’, does that prove its own goodness, or only the badness of all other governments?” (p. 122)

Spencer goes on to argue that the “*Constitution not only binds nobody now, but it never did bind anybody.*”³² This is so because it is a general principle of law and reason that “all men’s *important* contracts”³³ be *written, signed, and delivered*. And by delivered is meant that it must be “delivered to the party (or to some one for him), in whose favor it is made, before it can be binding on the party making it.”³⁴ Just as he is free to refuse to sign it, he is free to refuse to deliver it even after he has signed it. Once delivered, however, he would be bound by the contract he has signed and delivered, so long as it is a contract he had a natural right to consent to.

As the Constitution has no authority, Spencer asks, “on what authority does the government practically rest?”³⁵ Those who profess to administer it cannot name who their principals are. They cannot specify who they are acting as agents for. They have no “*written* authority... accrediting [them] as such.”³⁶ “A secret ballot makes a secret government; and a secret government is a secret band of robbers and murderers. [...] Men honestly engaged in attempting to establish justice in the world, have no occasion thus to act in secret; or to appoint agents to do acts for which they (the principals) are not willing to be responsible.”³⁷ Thus the pretended agents of the people are really agents of nobody and the government’s sole source of authority rests upon the use of force.

Spencer ends “No Treason No. VI” thus:

Inasmuch as the Constitution was never signed, nor agreed to, by anybody, as a contract, and therefore never bound anybody, and is now binding upon nobody; and is moreover such an one as no people can ever hereafter be expected to consent to, except as they may be forced to do so at the

³² Ibid., p. 88 (emphasis in original).

³³ Ibid., p. 90 (emphasis in original).

³⁴ Ibid.

³⁵ Ibid., p. 95.

³⁶ Ibid., p. 96 (emphasis in original).

³⁷ Ibid., p. 97 (emphasis in original).

point of the bayonet, it is perhaps of no importance what its true legal meaning, as a contract, is. Nevertheless, the writer thinks it proper to say that, in his opinion, the Constitution is no such instrument as it has generally been assumed to be; but that by false interpretations, and naked usurpations, the government has been made in practice a very widely, and almost wholly, different thing from what the Constitution itself purports to authorize. He has heretofore written much, and could write much more, to prove that such is the truth. But whether the Constitution really be one thing, or another, this much is certain – that it has either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist.³⁸

Thus has Spooner exploded (or refined) the very notion of the social contract theory of government. Either government contractually rests upon voluntarily and explicitly granted consent by each and every individual it purports to have authority over; or else it is government by force and fraud, and we should dispense with talk of justice and government by consent.

The consent of every individual is not the only requirement a government must meet in order to be just. It must uphold its side of the bargain by protecting its citizens' rights and it must not itself violate their rights. It follows then that a government cannot justly violate an individual's rights even if a majority of the voters support such an action. Moreover, it is not the business of government to be legislating morality (apart from protecting individual rights), because it cannot do so without violating an individual's rights. In "Vices Are Not Crimes: A Vindication of Moral Liberty (1875)," Spooner makes a comprehensive argument that vices and crimes are two distinctly different things. "*Crimes* are those acts by which one man harms the person or property of another. *Vices* are simply the errors which a man makes in his search after his own happiness."³⁹ Vices, in and of themselves, involve neither criminal intent nor interference with the

³⁸ Ibid., pp. 121-122.

³⁹ Ibid., p. 25 (emphasis in original).

persons or property of others. As only interference with the persons or property of others without their consent can violate their rights, “unless this clear distinction between vices and crimes be made and recognized by the laws [i.e., unless vices are not treated as crimes], there can be on earth no such thing as individual right, liberty, or property; no such things as the right of one man to the control of his own person and property, and the corresponding and coequal rights of another man to the control of his own person and property.”⁴⁰ History has shown that laws criminalizing vices, at best, do little or nothing to suppress the vice and, at worst, encourage real crime to spring up around the vice as it is forced underground (witness the fiasco that was the Prohibition, which aided the rise of the big crime families). Certainly it cannot be said of laws that they make men more virtuous (or just), for one must voluntarily *choose* to be moral; one who is *forced* to perform or refrain from some act is not thereby made virtuous (or just) by it, though the act may have been virtuous (or just) if performed (or not) voluntarily. A vice is still a vice, however, and the foregoing does not in any way mean that members of society are not free to impose *nonviolent* sanctions upon individuals they deem to be immoral (such as boycotting, blacklisting, etc.).

It follows, also, that taxation (or any other means of expropriation or redistribution of property and wealth), insofar as it is accomplished by force or the threat thereof, is unjust. No one has put the matter more unequivocally than Lysander Spooner:

It is true that the *theory* of our Constitution is, that all taxes are paid voluntarily; that our government is a mutual insurance company, voluntarily entered into by the people with each other; that each man makes a free and purely voluntary contract with all others who are parties to the Constitution, to pay so much money for so much protection, the same as he does with any other insurance company; and that he is just as

⁴⁰ Ibid.

free not to be protected, and not to pay any tax, as he is to pay a tax, and be protected.

But this theory of our government is wholly different from the practical fact. The fact is that the government, like a highwayman, says to a man: *Your money, or your life*. And many, if not most, taxes are paid under compulsion of that threat.

The government does not, indeed, waylay a man in a lonely place, spring upon him from the roadside, and, holding a pistol to his head, proceed to rifle his pockets. But the robbery is none the less a robbery on that account; and it is far more dastardly and shameful.

The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a “protector,” and that he takes men’s money against their will, merely to enable him to “protect” those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. He is too sensible a man to make such professions as these. Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful “sovereign,” on account of the “protection” he affords you. He does not keep “protecting” you, by commanding you to bow down and serve him; by requiring you to do this, and forbidding you to do that; by robbing you of more money as often as he finds it for his interest or pleasure to do so; and by branding you as a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villainies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave.⁴¹

It must also be pointed out, in light of the mention of protection services, that an individual has the right to purchase protection or legal services from entities other than the government or to go into business providing such services himself, even in competition with the government, or to rely solely upon himself if he so chooses. For a government to attempt to monopolize such services would be for it to commit an

⁴¹ Ibid., pp. 84-85 (emphasis in original).

injustice, for such an attempt by it would necessarily entail the initiation of force and therefore the violation of people's right to their person and property.

One of Spooner's arguments within the context of what the Constitution does authorize is pertinent to the issues raised in the previous paragraph as well as subsequent ones. In "No Treason No. 2 (1867)," he addresses the treason clause in the Constitution. He argues that like all other laws, criminal laws included, it must be interpreted "in the sense most favorable to liberty and justice."⁴² "The true and legitimate meaning of the word *treason*, then, necessarily implies treachery, deceit, breach of faith. Without these, there can be no treason. A traitor is a betrayer – one who practices injury, *while professing friendship*. [...] An open enemy, however criminal in other respects, is no traitor."⁴³

As just governments are formed voluntarily by the people in order to protect their rights, and as individuals have a right to resist violations of their rights, it follows that individual citizens have a right to resist unjust governments. That is, individuals have the right to resist a government that they have not consented to and/or that violates their rights. Among the means of resisting an unjust government, it would seem the most obvious in light of the foregoing is secession. Drawing on Austrian economist Jorg Guido Hulsmann, I define secession as "the one-sided disruption of a hegemonic bond" by the subject, but unlike Hulsmann I use it here only in the revolutionary, "all-or-nothing," sense of severing all hegemonic bonds with the tyrant.⁴⁴ The act of secession, whether by

⁴² Ibid., p. 68.

⁴³ Ibid., p. 69.

⁴⁴ Jorg Guido Hulsmann, "Secession and the Production of Defense," in *The Myth of National Defense: Essays on the Theory and History of Security Production*, Hans-Hermann Hoppe, ed., (Auburn: The Ludwig von Mises Institute, 2003), p. 374 and pp. 375-378.

an individual or a state, or resistance to rights violations, it should be obvious, are not acts of treason.

Certainly, secession is not the only means of resisting a tyrant. Others exist, such as tyrannicide, the slaying of the offending tyrant. Like secession, tyrannicide can be committed by a lone individual, a small group acting in isolation, or even at the active behest of a majority of the people. As Oscar Jászi and John D. Lewis point out, in *Against the Tyrant: The Tradition and Theory of Tyrannicide*, that tyrannicide is a controversial doctrine. Some political thinkers have regarded it as a dangerous and/or immoral one; others have defended the right of the individual to kill the tyrant, qualifying this, of course, with the assumption that the individual would be acting on behalf of the people to restore justice. It is not the purpose of this essay to deal with the morality (or immorality) of tyrannicide, however; it is mentioned only in order to show that it is in fact an aspect of other methods of resisting tyranny (see below).

The right to secede derives from the right of individuals to freely form their own government and to resist rights violations. Certainly a lone individual could attempt to secede, though as a lone individual his options would be limited: fleeing for the hills or to another country, ignoring the state, tyrannicide, or some other form of resistance. Flight has a chance of success, as does tyrannicide. Against the organized violence of the state, however, he will not last long in attempting to ignore it or violently oppose it. With tyrannicide, though a lone individual could succeed in slaying a tyrant, he might still have to worry about the tyrant's successor(s). Tyrants do not oppress only lone individuals, however. Indeed, the victims usually make up a sizable plurality or majority of the population.

One can speak of an oppressed people, as a group of individuals, having the right to revolution. “[I]t is the Right of the People to alter or to abolish [an unjust government], and to institute a new Government”^{45, 46} in its place. A political revolution – as opposed to political reformation, which involves change *within* a system rather than change *of* a system – can be defined as a fundamental change in political organization, especially the overthrow or renunciation of one government or ruler and the substitution of another by the governed.⁴⁷ One can think of at least two different types of political revolution: internal regime change⁴⁸ and secession.⁴⁹ With internal regime change, the goal of the revolutionary (-ies) is the replacement of the existing regime. The goal of secession is generally a separation of territory from the existing government, usually with the goal of forming a new government in the seceding territory. Political revolutions are often characterized by violence, but this need not always be so. Accordingly, the concept of political revolution can, I think, be subdivided into a four-fold typology consisting of: 1)

⁴⁵ *The Declaration of Independence*.

⁴⁶ In today’s day and age, in which it is fashionable to fabricate various and sundry group (or collectivized) “rights” such as economic rights, etc., it is necessary to point out that the term individual rights is redundant. All rights are individual rights and are possessed equally by all. A group (be it ethnic, economic, religious, political, whatever) is merely a collection of individuals and can have no rights above and beyond the rights of the individuals of which it is comprised.

⁴⁷ For an excellent and broad historical survey of political revolutions, see Martin Van Creveld, *The Encyclopedia of Revolution and Revolutionaries: From Anarchism to Zhou Enlai* (New York: Facts on File, 1996).

⁴⁸ Regime is here taken loosely to mean either or both the form of government and the particular government (or ruler) in power. I also depart from what seems to be the most commonly used meaning of “regime change,” having no other word to employ in the context of revolution, by using it to mean internal regime change rather than externally imposed regime change.

⁴⁹ For a historical survey of different moral justifications for secession, see Allen E. Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder: Westview Press, 1991); cf. a review of it by John Tomasi, “Secession, Group Rights and the Grounds of Political Obligation,” *Humane Studies Review* 8, No. 1 (Fall 1992), www.theihs.org/libertyguide/hsr/index.php?menuid=3. Buchanan identifies no less than twelve different justifications for secession, such as the “Pure Self-Determination” or “Nationalist” argument, rectification of past injustices, cultural preservation, liberty, consent, escape from discriminatory redistribution, among others. As Tomasi points out, however, Buchanan regards secession as a group right rather than grounding it in the rights of individuals. As has already been established, rights are properly grounded in the individual moral agent. To speak of group rights apart from rights held by the individuals that make up the group is to reify the concept ‘group’ and treat it as a concrete entity rather than an abstraction.

violent regime change, 2) violent secession, 3) peaceful regime change, and 4) peaceful secession.

There are historical examples for each of these types. Political revolutions are often characterized by violence, and indeed types 1 and 2 have historically been the most common forms of revolution. The French Revolution and the Russian Revolution are two examples of violent regime change (type 1). The American Revolution and the misnamed American Civil War are examples of violent secession (type 2). The adoption of the US Constitution in place of the Articles of Confederation is an example of peaceful regime change (type 3). And India's successful independence from the British Empire is the prime example of peaceful secession (type 4). Obviously, both types 1 and 2 can (but need not) involve tyrannicide, while 3 and 4 cannot. Note, also, that 3 and 4 are compatible with La Boétie's solution to tyranny: mass nonviolent withdrawal of consent (to be discussed later).

Which of these types of revolution is preferable? Secession should be the most attractive to modern liberals (i.e., libertarians) for a number of reasons. It tends toward the creation of smaller states with more limited governments. Moreover, secession generally occurs over a contiguous territory within a larger state; it thus presents less of a collective action problem as local communities will tend to be more homogeneous: those who live near each other will tend to have closer ties and will have an easier time communicating, coordinating activities, and lending support and aid. Other things being equal, it will be more difficult to get a consensus for a regime change than it would for secession due to the greater number of people and increasing diversity of interests and beliefs.

Though violent revolution has traditionally been the favored method of liberal theorists, it is problematic. The state, especially the modern nation-state, typically possesses the preponderance of military power. How are the people to match it? Moreover, violent revolution, particularly violent regime change, often results merely in the creation of a new set of elites in control of the political means. The people end up exchanging one tyrant (or set of tyrants) for another. The new tyrant(s) might even be worse! Intuitively, it may be difficult to see the advantage of nonviolent revolution. However, it is more attractive in light of the neo-Aristotelian natural law theory sketched above and in the eyes of the more pacific aspects of major world religions such as Christianity and Judaism, Hinduism and Buddhism, Confucianism and Taoism, as well as other less common religions. It also has the advantage of creating a revolutionary soil that is not as conducive to the growth of new tyranny. But is it an effective strategy? It is not the purpose of this essay to make a decisive case for the effectiveness of nonviolent revolution, but the theory and history of nonviolent resistance is promising.⁵⁰

Libertarians, particularly of the Austrian school, have in recent years begun extensive explorations into the theory and history of national defense. They question the ability of the state to provide it, and explore private market-based production of security, including applications to strategies of secession.⁵¹ Among these are private insurance-protection firms and such strategies as guerrilla warfare and privateering. In the context

⁵⁰ See Bryan Caplan, "The Literature of Nonviolent Resistance and Civilian-Based Defense," *Humane Studies Review* 9, No. 1 (Summer 1994), www.theihs.org/libertyguide/hsr/index.php?menuid=3; see further: Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent Publisher, 1968 [1973]), in particular, and other works on nonviolent action by Sharp.

⁵¹ See Hans-Hermann Hoppe, ed., *The Myth of National Defense: Essays on the Theory and History of Security Production* (Auburn: The Ludwig von Mises Institute, 2003); for the seminal defense of security production under free market anarchism, see Gustave de Molinari, *The Production of Security*, trans. J. Huston McCulloch, Occasional Papers Series #2 (Richard M. Ebeling, Editor), (New York: The Center for Libertarian Studies, May 1977 [1849]), www.praxeology.net/GM-PS.htm.

of revolution and secession, nonviolent strategies, so successfully used by Gandhi in India, have with few exceptions been neglected by libertarians, however.⁵²

⁵² See Caplan in note 23; see also Hans-Hermann Hoppe, *Democracy: The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (New Brunswick: Transaction Publishers, 2002); and Robert Mihaly, “Nonviolent Civilian Defense” and Roderick T. Long, “Defending a Free Nation” in *Formulations*, Issue #30 (Summer 2002) and *Formulations* 2, No. 2 (Winter 1994-95), respectively: www.libertariannation.org/a/index.html.

III. Étienne de la Boétie on Tyranny, Voluntary Servitude, and Civil Disobedience

Resolve to serve no more, and you are at once freed. I do not ask that you place hands upon the tyrant to topple him over, but simply that you support him no longer; then you will behold him, like a great Colossus whose pedestal has been pulled away, fall of his own weight and break into pieces.

– Étienne de la Boétie, *The Discourse of Voluntary Servitude*⁵³

Étienne de la Boétie is an unfamiliar figure from Sixteenth Century France, a century that saw the rise of the nation-state and absolute monarchy as well as religious and civil wars sparked by the Reformation. His life was short, though in that time he was a close friend of Montaigne and had a successful career as a royal magistrate. His *Discourse of Voluntary Servitude*, which he wrote as a young man in college, appears to be a masterful analysis of the nature of tyranny. In the paragraphs that follow, I first briefly discuss his life and the events surrounding the writing of the *Discourse*. I then explicate his definition of tyranny and explore his examination of the psychology of obedience. Following this, I delve into his discussion on the structure and specific mechanisms of tyrannical (or more generally, state) authority, the motives of those who obey and those who command, and the phenomenon of obedience in the absence of force. In the process, I attempt to make the case for the role of ‘those few who keep liberty alive’ in helping the people achieve their liberty.

Étienne de la Boétie “was born in Sarlat, in the Périgord region of southwest France, in 1530, to an aristocratic family.”⁵⁴ He was orphaned at an early age, raised by his uncle, and received his law degree from the University of Orléans in 1553. The

⁵³ La Boétie, pp. 52-53.

⁵⁴ Murray Rothbard, “The Political Thought of Étienne de La Boétie” in *The Politics of Obedience: The Discourse of Voluntary Servitude*, p. 9.

following year, he was given a royal appointment to the Bordeaux Parlement despite being too young for the position.

There he pursued a distinguished career as judge and diplomatic negotiator until his untimely death in 1563, at the age of thirty-two. La Boétie was also a distinguished poet and humanist, translating Xenophon and Plutarch, and being closely connected with the leading young Pléiade group of poets, including Pierre Ronsard, Jean Dorat, and Jean-Antoine de Baif.⁵⁵

He wrote the *Discourse* while a law student at the University. During this time France was experiencing “a period of questing and religious ferment,” and the University was “a noted center of free and untrammled discussion.”⁵⁶ His mentor was the notable Huguenot martyr, Anne du Bourg, and his best friend there was Du Bourg’s favorite student, Lambert Daneau. La Boétie himself was never connected with the Huguenot cause, however. The University later became a center for Calvinism and some of his fellow students became Huguenot leaders.

There is some dispute as to exactly when the *Discourse* was written. It was not published by La Boétie and was only circulated in manuscript form. Nannerl Keohane speculates that it was written

under the immediate stimulus of the harsh repression of the *revolte des gabelles* in Bordeaux, which led to the execution of a number of city fathers who had failed to act with sufficient firmness against the rebels, as well as to the suppression of the parlement of Bordeaux and the humiliation of the city.⁵⁷

It is certainly likely that such an event would have a significant impression on the young La Boétie. Paul Bonnefon adds further elucidation on the subject:

⁵⁵ Ibid., p. 10.

⁵⁶ Ibid.

⁵⁷ Nannerl O. Keohane, *Philosophy and the State in France: The Renaissance to the Enlightenment* (Princeton: Princeton University Press, 1980), p 92.

The teaching of the law [during the sixteenth century] was a preaching rather than an institution, a sort of search for truth, carried on by teacher and student in common, and which they feverishly undertook together, opening up an endless field for philosophic speculation.⁵⁸

The radical views expressed in the *Discourse* may have been an important reason for its being withheld from publication. It did achieve considerable fame in local intellectual circles, however, as evidenced by the fact that Montaigne had read it long before he and La Boétie met in 1559 as fellow members of the Bordeaux Parlement. They became extremely close friends. It was Montaigne who claimed first that La Boétie had written the essay at the youthful age of eighteen and then later at the even younger age of sixteen. Harry Kurz accepted the former and the date of 1548 as the date the essay was likely written.⁵⁹ Keohane (in 1980), however, dates the writing of the essay to 1550, when La Boétie was around nineteen or twenty years old. The reason for this dating is not clear, however.⁶⁰ Rothbard, citing (in 1975) recent scholarship that Keohane seems to have overlooked, argues that the claims of Montaigne are incorrect. Montaigne was probably trying

to guard his dead friend's reputation by dissociating him from the revolutionary Huguenots who were claiming La Boétie's pamphlet for their own. Extreme youth tended to cast the *Discourse* in the light of a work so youthful that the radical content was hardly to be taken seriously as the views of the author.⁶¹

Both internal evidence and the erudition evinced in the essay indicate that it was likely written in 1552 or 1553 when La Boétie was twenty-two.

⁵⁸ Quoted in Rothbard's intro to La Boétie's *Discourse*, p. 10; cf. Paul Bonnefon, *Oeuvres Complètes d'Étienne de La Boétie* (Bordeaux: C. Gounouilhou, and Paris: J. Rouam et Cie., 1892), p. xlvi.

⁵⁹ Harry Kurz, ed., *Anti-Dictator: The Discours sur la servitude volontaire of Étienne de La Boétie*, rendered into English by Harry Kurz (New York: Columbia University Press, 1942), p. x.

⁶⁰ Keohane, p. 92.

⁶¹ Rothbard, "The Political Thought of Étienne de La Boétie," pp. 37-38, n. 4.

What is it that makes the *Discourse* so radical? Its abstract and timeless nature is one aspect of the answer to this question. As Rothbard points out in his introduction, the essay is structured around a single axiom: that all governments rest upon the consent of the governed. On the basis of this insight, La Boétie elucidates the nature of tyranny, transcending the two-fold classical conception of tyranny as either usurpation of power or government against the laws by exploring the nature of power itself. Contrary to earlier theorists, tyranny does not depend on the means of acquiring power.

There are three kinds of tyrants; some receive their proud position through elections by the people, others by force of arms, others by inheritance. Those who have acquired power by means of war act in such wise that it is evident they rule over a conquered country. Those who are born to kingship are scarcely any better, because they are nourished on the breast of tyranny, suck in with their milk the instincts of the tyrant, and consider the people under them as their inherited serfs; and according to their individual disposition, miserly or prodigal, they treat their kingdom as their property. He who has received the state from the people, however, ought to be, it seems to me, more bearable and would be so, I think, were it not for the fact that as soon as he sees himself higher than the others, flattered by that quality which we call grandeur, he plans never to relinquish his position. Such a man usually determines to pass on to his children the authority that the people have conferred upon him; and once his heirs have taken this attitude, strange it is how far they surpass other tyrants in all sorts of vices, and especially in cruelty, because they find no other means to impose this new tyranny than by tightening control and removing their subjects so far from any notion of liberty that even if the memory of it is fresh it will soon be eradicated. Yet, to speak accurately, I do perceive that there is some difference among these three types of tyranny, but as for stating a preference, I cannot grant there is any. For although the means of coming into power differ, still the method of ruling is practically the same; those who are elected act as if they were breaking in bullocks; those who are conquerors make the people their prey; those who are heirs plan to treat them as if they were their natural slaves.⁶²

From this passage alone one might interpret the *Discourse* as an indictment of all personal power, that is, all forms of monarchy. Indeed, Keohane and other La Boétie scholars do so. This conclusion is incorrect, however. If La Boétie meant his analysis to

⁶² La Boétie, pp. 58-59.

apply only to monarchy, surely he would not have remarked thus in the opening paragraph of his essay: “Yet in the light of reason, it is a great misfortune to be at the beck and call of one master, for it is impossible to be sure that he is going to be kind, since it is always in his power to be cruel whenever he pleases. As for having several masters, according to the number one has, it amounts to being that many times unfortunate.” Tyranny, then, is the exercise of power over others, whether by one tyrant or many.

La Boétie was not an anarchist as some earlier scholars have supposed.⁶³ He remarks that he does “not wish at this time to discuss this much debated question, namely whether other types of government are preferable to monarchy[.]”⁶⁴ The *Discourse* does not present an *explicit* indictment of republican government or of government in general, and indeed, La Boétie evinced a clear conservative bent during his career as a government official. As Rothbard points out, it is certainly not unusual for a radical young student to “settle into a comfortable and respectable conservatism once well entrenched in a career bound to the emoluments of the *status quo*.”⁶⁵ Rothbard may well also be right in his suggestion that the very abstractness and universality of the *Discourse* allowed La Boétie to divorce theory from practice, permitting him “to be sincerely radical in the abstract while continuing to be conservative in the concrete.”⁶⁶ It would seem this argument is strengthened by Montaigne’s contention (if it can be entirely trusted) that the *Discourse* was treated by La Boétie “only by way of an exercise, as a common theme hashed over in a thousand places in books” though Montaigne has “no doubt that [La

⁶³ See Rothbard, “The Political Thought of Étienne de La Boétie.”

⁶⁴ La Boétie, p. 46.

⁶⁵ Rothbard, “The Political Thought of Étienne de La Boétie,” p. 28-29.

⁶⁶ *Ibid.*, p. 29.

Boétie] believed what he wrote, for he was so conscientious as not to lie even in jest.”⁶⁷ I think that Rothbard is also correct, however, that La Boétie’s analysis is sufficiently vague to allow one to easily extend it to anarchist conclusions (though this would no doubt have caused La Boétie no little distress). Keohane seems to obliquely address this issue when she remarks: “If all authority is tyrannical, it matters little whether one is ruled by an Egyptian pharaoh, a senate, or a Valois king.”⁶⁸ Her contention that the only liberty possible to human beings is mental or spiritual liberty is overly pessimistic, however.

La Boétie’s motivation for writing the *Discourse* is lucidly evident:

I should like merely to understand how it happens that so many men, so many villages, so many cities, so many nations, sometimes suffer under a single tyrant who has no other power than the power they give him; who is able to harm them only to the extent to which they have the willingness to bear with him; who could do them absolutely no injury unless they preferred to put up with him rather than contradict him. Surely a striking situation! Yet it is so common that one must grieve the more and wonder the less at the spectacle of a million men serving in wretchedness, their necks under the yoke, not constrained by a greater multitude than they...⁶⁹

He is not merely puzzled and curious but appalled.

Shall we call subjection to such a leader cowardice? Shall we say that those who serve him are cowardly and faint-hearted? If two, if three, if four, do not defend themselves from the one, we might call that circumstance surprising but nevertheless conceivable. In such a case one might be justified in suspecting a lack of courage. But if a hundred, if a thousand endure the caprice of a single man, should we not rather say that they lack not the courage but the desire to rise against him, and that such an attitude indicates indifference rather than cowardice? When not a hundred, not a thousand men, but a hundred provinces, a thousand cities, a million men, refuse to assail a single man from whom the kindest treatment is the infliction of serfdom and slavery, what shall we call that? Is it cowardice? Of course there is in every vice inevitably some limit beyond which one cannot go. Two, possibly ten, may fear one; but when a

⁶⁷ Quoted in Keohane, p. 93.

⁶⁸ Keohane, p. 97.

⁶⁹ La Boétie, p. 46.

thousand, a million men, a thousand cities, fail to protect themselves against the domination of one man, this cannot be called cowardly, for cowardice does not sink to such a depth... What monstrous vice, then, is this which does not even deserve to be called cowardice, a vice for which no term can be found vile enough, which nature herself disavows and our tongues refuse to name?⁷⁰

The subject is all the more disturbing once we realize that violence is not required to overthrow this single tyrant, “for he is automatically defeated if the country refuses to consent to its own enslavement: it is not necessary to deprive him of anything, but simply to give him nothing; there is no need that the country make an effort to do anything for itself provided it does nothing against itself.”⁷¹

In light of the above, La Boétie concludes that it is the people themselves who bring about their own subjection. They enslave themselves by choosing to be vassals instead of free men. If they but “cease to submit they would put an end to their servitude.”⁷² In keeping with this conclusion, La Boétie does not urge tyrannicide or violence of any kind, though he does not explicitly disapprove of such action. Rather, he argues as if to encourage people to resist tyranny by showing them that it does not require great boldness or entail heavy cost.

If in order to have liberty nothing more is needed than to long for it, if only a simple act of the will is necessary, is there any nation in the world that considers a single wish too high a price to pay in order to recover rights which it ought to be ready to redeem at the cost of its blood, rights such that their loss must bring all men of honor to the point of feeling life to be unendurable and death itself a deliverance?

Just as a fire requires fuel to burn or a tree nourishment to grow, so too does a tyrant. If he is simply not obeyed, he will become “naked and undone and as

⁷⁰ Ibid., p. 48.

⁷¹ Ibid., p. 50.

⁷² Ibid.

nothing,⁷³ but the more he is yielded to the stronger and more insatiable he becomes.

For this reason, La Boétie exhibits a degree of contempt for the stupid and cowardly who long for liberty but make no effort to claim it. He laments that if they but did so, they would be happy and contented, but wonders that it seems liberty is the only joy men do not insist upon.

Poor, wretched, and stupid peoples, nations determined on your own misfortune and blind to your own good! You let yourselves be deprived before your own eyes of the best part of your revenues; your fields are plundered, your homes robbed, your family heirlooms taken away. You live in such a way that you cannot claim a single thing as your own; and it would seem that you consider yourselves lucky to be loaned your property, your families, and even your lives. All this havoc, this misfortune, this ruin, descends upon you not from alien foes, but from the one enemy whom you yourselves render as powerful as he is, for whom you go bravely to war, for whose greatness you do not refuse to offer your own bodies unto death. He who thus domineers over you has only two eyes, only two hands, only one body, no more than is possessed by the least man among the infinite numbers dwelling in your cities; he has indeed nothing more than the power you confer upon him to destroy you. Where has he acquired enough eyes to spy on you, if you do not provide them yourselves? How can he have so many arms to beat you with, if he does not borrow them from you? The feet that trample down your cities, where does he get them if they are not your own? How does he have any power over you except through you? How would he dare assail you if he had no cooperation from you? What could he do to you if you yourselves did not connive with the thief who plunders you, if you were not accomplices of the murderer who kills you, if you were not traitors to yourselves? You sow your crops in order that he may ravage them, you install and furnish your homes to give him goods to pillage; you rear your daughters that he may gratify his lust; you bring up your children in order that he may confer upon them the greatest privilege he knows – to be led into his battles, to be delivered to butchery, to be made the servants of his greed and the instruments of his vengeance; you yield your bodies unto hard labor in order that he may indulge in his delights and wallow in his filthy pleasures; you weaken yourselves in order to make him the stronger and the mightier to hold you in check. From all these indignities, such as the very beasts of the field would not endure, you can deliver yourselves if you try, not by taking action, but merely by willing to be free. Resolve to

⁷³ Ibid., p. 51.

serve no more, and you are at once freed. I do not ask that you place hands upon the tyrant to topple him over, but simply that you support him no longer; then you will behold him, like a great Colossus whose pedestal has been pulled away, fall of his own weight and break into pieces.⁷⁴

The rhetoric of this passage implies that people are not free when their will is not their own, that is, when someone else controls how they make use of their person and property. A people are collectively complicit in their subjection to a tyrant, however. La Boétie sharply criticizes fighting someone else's war and working for someone else's interest to the exclusion of your own. What he advocates as a solution is clearly secession, the one-sided severance of a hegemonic bond. Highly hierarchical and militarized organization, and organized mass violence, are not necessary; the people, or some critical mass of them, need only withdraw consent. Without a significant portion of the people's help, the tyrant's power to dominate dissipates. As we will see in part five, the French Revolution greatly violated the spirit of this passage; in overthrowing a tyrannical monarch the people became cogs in a new tyrannical machine, victims and/or petty tyrants in a popular despotism.

The complicity of the people in their own subjection begs two questions: why do people give up their natural liberty and is it really in man's nature to be free?

La Boétie answers the second question first with a definite affirmative. He argues "that nature, the handmaiden of God, governess of men, has cast us all in the same mold in order that we may behold in one another companions, or rather brothers."⁷⁵ It is true, he admits, that men are not born with equal abilities, but he maintains that our own natures and that of the world are such that we need not live life as if in a battlefield but rather we are eminently suited to cooperation. "One should...conclude that in distributing

⁷⁴ Ibid., p. 52-53.

⁷⁵ Ibid., p. 56.

larger shares to some and smaller to others, nature has intended to give occasion for brotherly love to become manifest, some of us having the strength to help others who are in need of it.”⁷⁶ We all have the gift of speech and, as the faculty of reason is our main advantage over other animals, for we do not possess the advantageous physical traits of other species, it is in our mutual best interest to pursue cooperation rather than conflict. The advantage of cooperation is such that La Boétie argues “there can be no further doubt that we are all naturally free, inasmuch as we are all comrades. Accordingly it should not enter the mind of anyone that nature has placed some of us in slavery, since she has actually created us all in one likeness.”⁷⁷ Liberty, then, is natural: one cannot be held as a slave without being wronged. This is reminiscent of Aristotle’s arguments that, since man is a political animal, a life pursuant with his nature is one of reason and discourse not force.⁷⁸ Finally, as freedom is our natural state, we have a natural urge to defend it. Indeed, La Boétie holds that this fact is so self-evident that even the lower animals are seen to possess this urge, and that only the severely corrupted could fail to recognize it.

Man’s natural liberty, and his seeming readiness to give it up and forget about it, leads La Boétie to wonder how such a tragedy could come about. What could so denature man “that he, the only creature really born to be free, lacks the memory of his original condition and the desire to return to it?”⁷⁹ He can see only two ways that a free man could allow himself to become enslaved: he must either be driven into it by force or else led into it by deception. A people can be conquered or duped. Moreover, he finds that when a people loses “their liberty through deceit they are not so often betrayed by others as

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ See Aristotle’s *Politics* and *Nicomachean Ethics*; cf. Long, “Aristotle’s Conception of Freedom,” pp. 781-784; idem. “The Irrelevance of Responsibility,” p. 123.

⁷⁹ La Boétie, p. 58.

misled by themselves.”⁸⁰ This often happens during crisis, for example, when a people, thrust into war, entrust a general with a large army and emergency powers. Upon his victorious return he is greeted as a hero, transforms himself into a king and then into a tyrant.

La Boétie finds it to be amazing how quickly and easily a people fall “into such complete forgetfulness of their freedom” once they become subject; they can scarcely “be roused to the point of regaining it,” so easily and readily do they obey.⁸¹ In the beginning, force and constraint are generally necessary to compel submission. Successive generations, however,

obey without regret and perform willingly what their predecessors had done because they had to. This is why men born under the yoke and then nourished and reared in slavery are content, without further effort, to live in their native circumstance, unaware of any other state or right, and considering as quite natural the condition into which they were born.⁸²

The first explanation, then, for man’s readiness to give up his natural liberty and submit to slavery is custom, “namely, habituation to subjection.”⁸³ Just as a man can build up an immunity to poison by slowly imbibing greater amounts of it, so too does man “learn to swallow, and not to find bitter, the venom of servitude.”⁸⁴ La Boétie foreshadows the modern ‘nature vs. nurture’ debate, ascribing a far greater role in man’s mental formation to custom rather than to biology. Like a seed our faculty of reason and love of liberty must be nurtured if it is to bear good fruit; if it is planted in poor soil and abused, it will grow stunted at best, be entirely perverted or destroyed at worst.

⁸⁰ Ibid., p. 59.

⁸¹ Ibid., p. 60.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

Custom, then, “becomes the first reason for voluntary servitude.”⁸⁵ “[A]ll those things to which [man] is trained and accustomed seem natural to [him]” whereas that which is truly native to him is that “which he receives with his primitive, untrained individuality.”⁸⁶

Men will grow accustomed to the idea that they have always been in subjection, that their fathers lived in the same way; they will think they are obliged to suffer this evil, and will persuade themselves by example and imitation of others, finally investing those who order them around with proprietary rights, based on the idea that it has always been this way.⁸⁷

Not all men, however.

There are always a few, better endowed than others, who feel the weight of the yoke and cannot restrain themselves from attempting to shake it off: these are the men who never become tamed under subjection... who... cannot prevent themselves from peering about for their natural privileges and from remembering their ancestors and their former ways. These are in fact the men who, possessed of clear minds and far-sighted spirit, are not satisfied, like the brutish mass, to see only what is at their feet, but rather look about them, behind and before, and even recall the things of the past in order to judge those of the future, and compare both with their present condition. These are the ones who, having good minds of their own, have further trained them by study and learning. Even if liberty had entirely perished from the earth, such men would invent it. For them slavery has no satisfactions, no matter how well disguised.⁸⁸

But these men face an obstacle. Tyrants are well aware that education undermines their authority and so seek to suppress learning or, more so in modern times, to pervert it into supporting the status quo. These few may have difficulty finding one another, particularly if they have lost freedom of action and speech; however, though this might lead lovers of liberty to despair, La Boétie reminds us of history’s many examples of heroes who have not “failed to deliver their country from evil hands when they set about their task with a

⁸⁵ Ibid., p. 65.

⁸⁶ Ibid., p. 64.

⁸⁷ Ibid., p. 65.

⁸⁸ Ibid.

firm, whole-hearted, and sincere intention. Liberty, as if to reveal her nature, seems to have given them new strength.”⁸⁹

Keohane has a different interpretation of the *Discourse*, however. She initially focuses on La Boétie’s condemnation of tyranny and analysis of the psychology of subjection and explains away his call for nonviolent withdrawal of consent as mere rhetoric to facilitate the former. She argues that unlike his friend, he had nothing but contempt for the popular will and evinced “none of the ability to identify with ordinary people that Montaigne developed with the years.”⁹⁰ As we have seen, the *Discourse* is indeed an elitist essay. But is it, as Keohane suggests, an attempt to rationalize a narrowly delimited sphere of joy out of an essentially bleak worldview? She argues that La Boétie “holds out a vision of a community of brothers, a fraternity of educated men throughout the ages that binds together the natural free spirits.”⁹¹ In support of this thesis, she points out an obscure and isolated reference to the “liberty of the Republic of Plato.”⁹² Further evidence is that the radicalism of the *Discourse* is never expressed in his public life. His later friendship with Montaigne is yet further evidence. Certainly, Keohane’s thesis is compatible and even complementary to Rothbard’s explanation for La Boétie’s conservatism.

I am not convinced that La Boétie’s “beautiful vision of a transtemporal fraternity” is the whole story, however. It may very well have been the underlying theme of his essay, and it does indeed provide solace to lovers of liberty who find their bodies but not their minds subjected to slavery. Yet, in light of his celebration of liberty and of

⁸⁹ Ibid., p. 66.

⁹⁰ Ibid.

⁹¹ Keohane, p. 97.

⁹² La Boétie, p. 70.

heroes who help free their country, and given his superlative analysis of the nature of tyranny, how it comes about, and how people can be rid of it, it seems to me that we would be remiss in not also interpreting the *Discourse* as a call, to those who will hear it, to throw off our shackles and embrace liberty in mind *and* body. Surely, in the spirit of the brotherhood of mankind that La Boétie expresses so well in his explanation of natural liberty, it is the great task of those who keep freedom alive to educate their brothers and help them be free, both in mind and body, when and however possible. Even if escaping the cave is only possible for a select few – those with a philosophic temperament – one need not necessarily infer that the philosophers have no obligation to help (when and however possible) the great mass of the people achieve what liberty they can, that is, political liberty.

To return to our analysis of tyranny and subjection: “the essential reason why men take orders willingly is that they are born serfs and are reared as such. From this cause there follows another result, namely that people easily become cowardly and submissive under tyrants.” Valor is lost with liberty. Many Americans have had the immediate experience in the twentieth century of seeing firsthand the superiority of a voluntary army over a conscripted one. This is because, as La Boétie rightly observes,

Among free men there is competition as to who will do most, each for the common good, each by himself, all expecting to share in the misfortunes of defeat, or in the benefits of victory; but an enslaved people loses in addition to this warlike courage all signs of enthusiasm, for their hearts are degraded, submissive, and incapable of any great deed. Tyrants are well aware of this, and, in order to degrade their subjects further, encourage them to assume this attitude and make it instinctive.⁹³

⁹³ Ibid., p. 68.

Due to his precarious position, the tyrant must always fear his subjects. For this reason, he cannot “consider his power firmly established until he has reached the point where there is no man under him who is of any worth.”⁹⁴

Tyrants throughout history have used countless ingenious methods of deceiving and stultifying their subjects. Among the more blatant examples cited by La Boétie is that of Cyrus. In order to quell a rebellion in the recently conquered capital city of the Lydians, rather than squashing the city by force of arms or establishing a garrison to police it, Cyrus “established in it brothels, taverns, and public games, and issued a proclamation that the inhabitants were to enjoy them.”⁹⁵ La Boétie marvels at how suspicious city dwellers are of those who have their welfare at heart and yet are so gullible toward those who would fool them. So easily are they duped by such things as “[p]lays, farces, spectacles, gladiators, strange beasts, medals, pictures, and other such opiates”; such things “were for ancient peoples the bait toward slavery, the price of their liberty, the instruments of tyranny.”⁹⁶

By these practices and enticements the ancient dictators so successfully lulled their subjects under the yoke, that the stupefied peoples, fascinated by the pastimes and vain pleasures flashed before their eyes, learned subservience as naively, but not so creditably, as little children learn to read by looking at bright picture books. Roman tyrants invented a further refinement. They often provided the city wards with feasts to cajole the rabble, always more readily tempted by the pleasure of eating than anything else. The most intelligent and understanding amongst them would not have quit his soup bowl to recover the liberty of the Republic of Plato. Tyrants would distribute largess, a bushel of wheat, a gallon of wine, and a sesterce: and then everybody would shamelessly cry, “Long live the King!” The fools did not realize that they were merely recovering a portion of their own property, and that their ruler could not have given them what they were receiving without having first taken it from them. A man might one day be presented with a sesterce and gorge himself on a

⁹⁴ Ibid.

⁹⁵ Ibid., p. 69.

⁹⁶ Ibid., pp. 69-70.

public feast, lauding Tiberius and Nero for handsome liberality, who on the morrow, would be forced to abandon his property to their avarice, his children to their lust, his very blood to the cruelty of these magnificent emperors, without offering any more resistance than a stone or a tree stump.⁹⁷

The mob has always behaved this way, and so have tyrants. Indeed, one has merely to look around to see the above mentioned practices being performed, merely modern variations on the same theme.

Another favorite tactic of the Roman emperors was to claim to be a man of the people. The emperors generally assumed the title of Tribune of the People, traditionally an office of sacred trust, dedicated to the defense and protection of the people. Indeed, the rulers of Rome and La Boétie's France are little different: "they never undertake an unjust policy, even of some importance, without prefacing it with some pretty speech concerning public welfare and common good."⁹⁸ The people themselves will even create their own myths to glorify the nation to which they belong.

La Boétie also remarks on the frequent use by tyrants of religion to support their rule. Tyrants often wrap themselves in divinity. The kings of the Assyrians and the Medes would show themselves as little as possible in public so as to encourage the imaginations of their people into making them out to be more than men. La Boétie does not spare even his own kingdom. Even the leaders of France have "employed... certain similar devices, such as toads, fleur-de-lys, sacred vessels, and standards with flames of gold."⁹⁹

⁹⁷ Ibid., p. 70.

⁹⁸ Ibid., p. 71; A great many people today would doubtless agree with the application of this passage to modern politicians.

⁹⁹ Ibid., p. 74.

The absence of criticism of the Catholic Church in the foregoing is a curious one. To be sure, La Boétie sharply criticizes attempts by tyrants to wrap themselves in divinity and cloak themselves behind religion. This would seem to extend logically to the ‘divine right of kings’ doctrine embraced by medieval European monarchs. La Boétie’s further (apparently sarcastic) remarks about the French kings may shed some light on the subject:

I do not wish, for my part, to be incredulous, since neither we nor our ancestors have had any occasion up to now for skepticism. Our kings have always been so generous in times of peace and so valiant in time of war, that from birth they seem not to have been created by nature like many others, but even before birth to have been designated by Almighty God for the government and preservation of this kingdom. Even if this were not so, yet should I not enter the tilting ground to call in question the truth of our traditions, or to examine them so strictly as to take away their fine conceits. Here is such a field for our French poetry... These poets are defending our language so well that I dare believe that very soon neither the Greeks nor the Latins will in this respect have any advantage over us except possibly that of seniority. And I should assuredly do wrong to our poesy... I should do the Muse great injury if I deprived her now of those fine tales about King Clovis... Certainly I should be presumptuous if I tried to cast slurs on our records and thus invade the realm of our poets.¹⁰⁰

King Clovis was the first Christian (Catholic, to be precise) king of France. The Frankish king, one of the first of the line known as Merovingians, was baptized in 496. Three thousand of his warriors soon followed him in baptism, thus beginning the conversion of Gaul (France) to Catholicism.¹⁰¹

Kurz, Rothbard, and Keohane all indicate that La Boétie was Catholic himself, however. Indeed, Rothbard and Keohane refer to only one other political writing attributed to him and written shortly before he died, *Memoir Concerning the Edict of January, 1562*, in which he wrote approvingly of the “king’s Catholic cause against the

¹⁰⁰ Ibid.

¹⁰¹ See the *Internet Medieval Sourcebook* at Fordham University Center for Medieval Studies: www.fordham.edu/halsall/sbook.html.

[Protestant] Huguenots”¹⁰² and advised the government to “punish Protestant leaders as rebels, [and] to enforce Catholicism upon France[.]”¹⁰³ Yet Kurz, writing about four decades earlier, refers to the same work as approving of the Chancellor of France’s edict “conferring greater freedom of worship upon the Huguenots.”¹⁰⁴ These two accounts appear to be in direct conflict. Rothbard and Keohane make no mention of this apparent discrepancy whatsoever, making it a fruitful area for future research. The Edict itself was an attempt to avoid civil war by declaring over two thousand French Protestant churches to be legal and repealing many restrictive laws.

Rothbard indicates that in the *Memoir* La Boétie also calls for “reform [of] the abuses of the Church moderately and respectably by the agency of the king and his Parlements.”¹⁰⁵ And Kurz mentions that during the last three years of his life, La Boétie

was extremely active at Agen, a hotbed of angry dispute where churches were violently entered and images destroyed. [...] His sense of fairness generally led him to assign to the disputants different churches, and, in towns with only one place of worship, different hours for religious services.¹⁰⁶

Without an English translation of the *Memoir* available, it is pure speculation on my part, but it appears these differing accounts might be at least partially reconcilable through the *Discourse*. La Boétie is critical of tyrants and their use of religion to bolster their power. Yet in the absence of any call on the people to commit tyrannicide or violence of any kind; with an apparent call instead to withdraw their consent; coupled with his remarks praising liberty, reason, and the brotherhood of mankind, it might be that La Boétie detested abuse of authority and violence by French officials, Catholics, and Protestants

¹⁰² Keohane, p. 98.

¹⁰³ Rothbard, “The Political Thought of Étienne de La Boétie,” p. 28.

¹⁰⁴ Kurz, p. xi.

¹⁰⁵ Rothbard, “The Political Thought of Étienne de La Boétie,” p. 28.

¹⁰⁶ Kurz, p. xi.

alike. Weight is lent to this conjecture by the conservatism he evinced in life and Montaigne's claim regarding his devotion "to the tranquillity of his country" and his hostility "to the commotions and innovations of his time."¹⁰⁷

To return from this digression to the text of the *Discourse*: Tyrants have used the above-mentioned tricks and more "to train their people not only in servility and obedience toward themselves, but also in adoration,"¹⁰⁸ yet identification of these varied instruments of tyranny does not get us to the heart of the matter. La Boétie observes that the guards and armies employed by tyrants are rather more for ceremony and show of force than for any practical effect of security they can provide; they offer little protection from stealthy assassins, for example. He also notes the frequency with which tyrants are slain by their own followers.

Ultimately, La Boétie finds a hierarchical pyramid of privilege to be "the mainspring and the secret of domination, the support and foundation of tyranny."¹⁰⁹

[T]here are only four or five who maintain the dictator, four or five who keep the country in bondage to him. Five or six have always had access to his ear, and have either gone to him of their own accord, or else have been summoned by him, to be accomplices in his cruelties, companions in his pleasures, panders to his lusts, and sharers in his plunders. These six manage their chief so successfully that he comes to be held accountable not only for his own misdeeds but even for theirs. The six have six hundred who profit under them, and with the six hundred they do what they have accomplished with their tyrant. The six hundred maintain under them six thousand, whom they promote in rank, upon whom they confer the government of provinces or the direction of finances, in order that they may serve as instruments of avarice and cruelty, executing orders at the proper time and working such havoc all around that they could not last except under the shadow of the six hundred, nor be exempt from law and punishments except through their influence.¹¹⁰

¹⁰⁷ Quoted in Keohane, p. 93.

¹⁰⁸ *Ibid.*, p. 75.

¹⁰⁹ *Ibid.*, p. 77.

¹¹⁰ *Ibid.*, pp. 77-78.

In this way, the tyrant's regime permeates through society until "not the six thousand but a hundred thousand, and even millions, cling to the tyrant by this cord to which they are tied."¹¹¹ By handing out favors and profits, large and small, "all the wicked dregs of the nation...all those who are corrupted by burning ambition or extraordinary avarice, these gather around him and support him in order to have a share in the booty and to constitute themselves petty chiefs under the big tyrant."¹¹² The structural incentives of the tyrannical regime bind men into a web of interest and ambition.

Thus the tyrant divides his people against one another. He uses some of his subjects to subdue the others and "thus is protected by those from whom, if they were decent men, he would have to guard himself[.]"¹¹³ Consequently, while toppling the tyrant appears at first glance to be a simple matter of withdrawing consent, in light of this insight the matter turns out to be far more complicated. It is evident that the subjects face a collective action problem. Would-be resisters face many obstacles, from having to operate underground to possessing inferior firepower and training to organizing and motivating resistance in the face of danger to life and limb. The revolutionaries have to deal with the problem of free riders, for there is ample temptation to avoid the risk of losing one's life and property by letting others do all the work. But they also have to contend with the temptation for illicit gain through selling out to the tyrant.

Defenders of liberty possess a powerful ally in the unnatural lives of the tyrant and his followers, however. Such is the nature of a tyrant that even his followers suffer at his hands. Such men will "endure evil if permitted to commit it, not against him who

¹¹¹ Ibid., p. 78.

¹¹² Ibid.

¹¹³ Ibid., p. 79.

exploits them, but against those who like themselves, submit, but are helpless.”¹¹⁴ Yet ultimately to live in such a way is folly. Such men are still slaves, albeit privileged ones. Indeed, La Boétie argues that while their lives may be materially better than those whom they exploit, the helpless people they exploit are actually freer and better off. The downtrodden are merely forced to do what they are told when they are told to do it. By contrast, the tyrant’s followers are constantly in competition amongst themselves to woo him and gain his favor. They must not only anticipate his every desire but do so before their competitors, necessarily to the neglect of their own preferences. Not a moment of their lives is really their own. A moment’s failure can spell the end. “What condition is more wretched than to live thus, with nothing to call one’s own, receiving from someone else one’s sustenance, one’s power to act, one’s body, one’s very life?”¹¹⁵ And this is often the reason why so many tyrants have died at the hands of their followers, even “their closest favorites who, observing the nature of tyranny, could not be so confident of the whim of the tyrant as they were distrustful of his power.”¹¹⁶ To ally with men such as this in order to be free of a tyrant is to risk exchanging an old tyrant for a new and possibly worse tyrant, however.

La Boétie’s solution to tyranny – mass nonviolent withdrawal of consent – is not the only possible solution. As I have noted, traditional political thought and history have favored violent resistance to tyranny. La Boétie’s theory, despite its originality, had little if any influence on subsequent theorists until the nineteenth century, over two hundred years after the *Discourse* was written. It is almost certain that Henry David Thoreau was

¹¹⁴ Ibid.

¹¹⁵ Ibid., p. 80.

¹¹⁶ Ibid., p. 83.

at least indirectly influenced by La Boétie; his close friend Ralph Waldo Emerson was familiar with the *Discourse*¹¹⁷ and Thoreau's *Civil Disobedience* bears a striking kinship to it as we shall see. Leo Tolstoy's nonviolent anarchism was directly influenced by La Boétie; he quotes a passage from the *Discourse* in his *The Law of Love and the Law of Violence*. Such important twentieth century figures as Mohandas Gandhi and Martin Luther King, Jr., were indirectly influenced by La Boétie as well. Though Gandhi had already begun to develop his own doctrine of nonviolent resistance independently, Tolstoy's *Letter to a Hindu* had a deep influence on him.¹¹⁸ Gandhi also read and was influenced by Thoreau's *Civil Disobedience*.¹¹⁹ And King was certainly influenced by Gandhi and Thoreau.¹²⁰

Until Thoreau and Tolstoy, resistance to tyranny continued to be equated with violence. This was the case even for such eminent resistance theorists of seventeenth-century England as Milton, Sidney, and Locke. These thinkers had a profound influence on the colonization of North America, as the colonists fled the religious oppression of England; on the subsequent struggle of the colonists from English tyranny; and on the formation of the United States of America.

There are many lessons would-be revolutionaries can learn from La Boétie's *Discourse* aside from how to identify the means by which a tyrant acquires and maintains his power. Consider the discussion of the tyrant's followers in the previous paragraph. Not all men who serve a tyrant are necessarily evil, without a decent bone in their bodies.

¹¹⁷ See Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent Publisher, 1973), pp. 59-60 n. 158; idem. *Gandhi as a Political Strategist* (Boston: Porter Sargent Publisher, 1979);

¹¹⁸ See Rashmi-Sudha Puri, *Gandhi on War and Peace*. (New York: Praeger Publishers, 1987), pp. 10-11.

¹¹⁹ Ibid., p. 11.

¹²⁰ For his famous argument in favor of nonviolent action, see Martin Luther King, Jr., "Letter from Birmingham Jail," *Why We Can't Wait* (New York: Harper & Row, 1963).

Moreover, a friendless life of sycophancy is far from a happy one. Also, observing and carrying out atrocities may weigh on one's conscience. This is particularly true of the followers of the lowest rank, the soldiers and police who see and carry out the oppression firsthand, who often have chosen their jobs, if they have chosen them at all, merely to make a living and/or purchase some measure of security. While defending oneself, even against these, is certainly justified, fighting tends to polarize the two sides and makes conversion more difficult. Mohandas Gandhi and Martin Luther King, Jr. developed civil disobedience tactics that have proven in theory and practice to be effective at changing the hearts and minds of others. The genius of nonviolent resistance is that it creates a tension in the minds of the doers of injustice. It forces one to confront the cognitive dissonance that must exist between one's actions and what one knows to be right; it forces the recognition of the fundamental humanity of those who are oppressed.¹²¹

Consider also La Boétie's claim that it is difficult for 'those few who keep freedom alive' to find one another. Advanced communication technology such as the internet can make it far easier for interested people to find one another, promote their ideas, and coordinate their activities. Talk of strategy and tactics is moot, however, if the people lack the motivation and organization to resist their oppressors. The people need to be made aware of their rights and of their power to resist. Advanced means of communication can also be a medium for revealing that, indeed, the emperor has no clothes. Yet economists have a difficult time explaining how the collective action problem, which becomes all the more complicated in a democracy due to the obscured

¹²¹ See Martin Luther King, Jr., "Letter from Birmingham Jail," *Why We Can't Wait* (New York: Harper & Row, 1963); cf. Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent Publisher, 1973); idem. *Gandhi as a Political Strategist* (Boston: Porter Sargent Publisher, 1979); and Rashmi-Sudha Puri, *Gandhi on War and Peace*. (New York: Praeger Publishers, 1987).

line between ruler and ruled, can be surmounted. The explanation, at least with regard to our subject, is ideology. Despite the seemingly insurmountable obstacles in the way of freedom, there are countless examples of peoples rising up to overthrow their oppressors. Invariably, such freedom movements were motivated by religious and political ideologies of varying degrees of sophistication. I will now turn to an illustration of the role of religious and political ideology in revolutions, and of the conflict between liberty and power.

IV. The Role of Religious and Political Ideology in the American Revolution and Founding

WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute a new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

– Thomas Jefferson, *Declaration of Independence*, 1776

Some scholars have correctly pointed out that natural law is inherently radical and revolutionary. Lord Acton wrote, “Liberalism wishes for what ought to be, irrespective of what is.”¹²² This means that the individual, “armed with natural law moral principles, is then in a firm position from which to criticize existing regimes and institutions, to hold them up to the strong and harsh light of reason.”¹²³ The very fact that “natural-law theorists derive from the very nature of man a fixed structure of law independent of time and place, or of habit or authority or group norms, makes that law a mighty force for radical change.”¹²⁴ I am indebted to Rothbard for bringing to my attention the following pertinent observation by conservative political scientist Samuel Huntington:

No ideational theory can be used to defend existing institutions satisfactorily, even when those institutions in general reflect the values of that ideology. The perfect nature of the ideology’s ideal and the imperfect nature and inevitable mutation of the institutions create a gap between the two. The ideal becomes a standard by which to criticize the institutions, much to the embarrassment of those who believe in the ideal and yet still wish to defend the institutions.

¹²² Gertrude Himmelfarb, *Lord Acton: A Study in Conscience and Politics* (Chicago: University of Chicago Press, 1962), p. 135.

¹²³ Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 2002 [1982]), p. 19.

¹²⁴ *Ibid.*, p. 21.

He then adds in a footnote: “Hence any theory of natural law as a set of transcendent and universal moral principles is inherently non-conservative...Opposition to natural law [is]...a distinguishing characteristic of conservatism.”¹²⁵

In what follows I attempt to illustrate the conflict between liberty and power by sketching the role of religious and political ideology in the American Revolution and in the later Founding of the United States through the ratification of the Constitution. I begin by tracing the roots of these ideas through the Protestant Reformation and revolutionary Seventeenth Century England, then their role in motivating the colonists to secede from England are discussed, though space limitations obviously prevent this from being even close to an exhaustive treatment. Following this is a discussion on whether the Revolution was radical or conservative, or, not necessarily the same thing, (classical) liberal or conservative. Finally, I pose the question of whether the Constitutional Convention represented a liberal innovation or a conservative counter-revolution (or, alternatively, as Albert Jay Nock put it, an industrial *coup d’Etat*). These issues bear on the overall focus of this entire essay, which is not merely voluntary subjection to tyranny and what motivates people to withdraw their consent but also what constitutes tyranny. Different peoples at various times in history have had different definitions of what constitutes tyranny. However, if there is such a thing as natural law, and I believe there is, then by improving our understanding of it we can arrive at an increasingly refined conception of what constitutes tyranny. The seed of this understanding was already

¹²⁵ Samuel P. Huntington, “Conservatism as an Ideology,” *American Political Science Review* (June 1957): 458-59.

present in early liberalism. It had only to be brought to its logical conclusion by subsequent liberals (i.e., libertarians).¹²⁶

IV.1 The Role of Religious and Political Ideology in the American Revolution

In America today, we take for granted the separation of church and state. Indeed, at least in part due to the complications arising from an extensive public education system, the separation of church and state that we have today appears more like a jagged wound when compared to the separation of church and state as it was conceived in Jefferson's day. The phrase "separation of church and state" does not actually appear in the Constitution. The 1st Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The phrase "separation of church and state" originated from Jefferson as his interpretation of the 1st Amendment in his January 1, 1802 letter to the Committee of the Danbury Baptist Association; therein, he called it a "wall of separation between church and State." In comparison to the American experience leading up to the framing of the Constitution, the Constitution itself is a secular document influenced by classical republicanism, English constitutionalism, and Lockean (classical) liberalism. The 1st Amendment was not meant to completely expunge religion from government as is commonly supposed these days by modern Leftist liberals, judges, and atheists, however. It was merely meant to protect freedom of religion by prohibiting the establishment of a federal religion as well as the enforcement or prohibition of specific religious practices by the state. The early Americans were, with

¹²⁶ As noted previously, even among libertarians this issue is not entirely settled.

few exceptions, a profoundly religious people. Religion played a powerful role in the colonization of America, the subsequent development of the colonies, and the American Revolution. Contrary to prevailing opinion, the early United States of America was shaped not only by classical republicanism, English constitutionalism, and (classical) liberalism but by the Christian religion also.¹²⁷ As we shall see, for the early Americans, religious and political ideology were intimately intertwined.

IV.1.1 The English Roots of American Religious and Political Ideology¹²⁸

Before delving into the role of religious and political ideology in the American Revolution, it is important to trace the roots of these beliefs back to the Protestant Reformation, English constitutionalism, and the upheaval that was the Seventeenth-Century Revolution in England. Of particular interest to us is the political thought of John Milton, Algernon Sidney, and John Locke, for their influence on the Founders was profound. Let us begin, then, by setting the stage for the Protestant Reformation; if it was not for this monumental event in history the United States of America might never have been founded.

Prior to the Reformation, Medieval Europe was subject to canon and feudal law. In his essay “A Dissertation on the Canon and Feudal Law,” John Adams called these institutions the “two greatest systems of tyranny.”¹²⁹ Both systems are derived and

¹²⁷ This is not to say that the United States is a Christian nation (-state). To say that a nation is Christian or founded upon Christianity is altogether different from saying that it was strongly shaped by the Christian religion. The former implies a universal *telos* for the nation as a whole, a doctrine that is fundamentally antithetical to the principles of the Revolution expressed in the Declaration of Independence. Which Christianity? What about the non-Christian citizens of the US? This, I think, is what is meant by Jefferson’s statement in the Treaty of Tripoli: “the Government of the United States of America is not, in any sense, founded on the Christian religion” (Art. 11, c1797).

¹²⁸ In this section and with the political sermons in the following section, I maintain the spelling, punctuation, and grammar of the original documents unless otherwise noted.

perverted from Christianity in order to gratify the passions of the “great.” According to Adams and other Protestants, they are lies promulgated by the great to keep the poor willingly in subjection. The canon law was the province of the Catholic Church. Its clergy

persuaded mankind to believe, faithfully and undoubtingly, that God Almighty had entrusted them [the clergy] with the keys of heaven, whose gates they might open and close at pleasure; with a power of dispensation over all the rules and obligations of morality; with authority to license all sorts of sins and crimes; with a power of deposing princes and absolving subjects from allegiance; with a power of procuring or withholding the rain of heaven and the beams of the sun; with the management of earthquakes, pestilence, and famine; nay, with the mysterious, awful, incomprehensible power of creating out of bread and wine the flesh and blood of God himself.¹³⁰

Such beliefs were instilled and maintained in the people by keeping them ignorant and by instilling in them a religious aversion to letters and knowledge, and thereby keeping them in awe of the clergy.

The feudal law is similar to canon law, albeit not as subtle and refined. It too serves to keep the people in ignorance and poverty, relegated to the bottom of a rigid social hierarchy. The general or chief or king claimed all the land of a given territory as his property. All of the lesser lords and officers down to the common people themselves held their lands

by a variety of duties and services, all tending to bind the chains the faster on every order of mankind. In this manner the common people were held together in herds and clans in a state of servile dependence on their lords, bound, even by the tenure of their lands, to follow them, whenever they commanded, to their wars, and in a state of total ignorance of every thing divine and human, excepting the use of arms and the culture of their lands.¹³¹

¹²⁹ John Adams, *The Revolutionary Writings of John Adams*, edited by C. Bradley Thompson (Indianapolis: Liberty Fund 2000, p. 21.

¹³⁰ *Ibid.*, p. 22.

¹³¹ *Ibid.*, p. 23.

While the use and threat of force by the elites was no doubt more prevalent in the enforcement of feudal law than in canon law, La Boétie and Hume have shown us that all governmental institutions ultimately depend for their continuation upon general popular acceptance, even the worst tyrannies, and even such institutions as the Catholic Church.

The unholy alliance of canon and feudal law, of Pope and monarch, with each giving legitimacy to and reinforcing the other, held the people “in ignorance, [without] liberty, and with her, knowledge and virtue too.”¹³² Thanks in no small part to the invention of the printing press, which made available cheap mass produced copies of the Bible in the vernacular, the Protestant Reformation broke the monopoly of the Catholic Church on Christ’s teachings and, in so doing, disrupted the ties between King and Church. The door was opened to individual interpretation of the Bible and, consequently, there was an increased incentive among the general population to become literate and, in general, educated. This in turn increased demand for books and the further development of printing.¹³³ With the diffusion of Biblical knowledge came a desire for religious liberty. The decentralization of the Christian religion was soon followed by a desire for political liberty and political decentralization. If we are all equal in the eyes of God, why not in our political relations as well?¹³⁴ Along with the diffusion of religious knowledge came a religion-inspired desire among the people for the realization of their political rights; it brought them the realization that they were the rightful and actual source of political power, not their rulers. A rigid and hierarchical society of status was disrupted and gradually dismantled, to be replaced by a dynamic and voluntary society of contract.

¹³² Ibid., p. 23.

¹³³ See Christopher Hill, *The English Bible and the Seventeenth-Century Revolution* (New York: Penguin Books, 1993), especially the introduction, “A Biblical Culture.”

¹³⁴ To a point, of course. Universal suffrage was unheard of.

The Bible became a living document in England and in continental Europe. The English had already extracted some measure of protection for their rights by limiting the power of the king with the Magna Carta in 1215. England in the seventeenth-century was experiencing two countervailing forces, however. On the one hand, the people were finding compelling support and motivation in the Bible for greater political liberty. On the other hand, the kings, particularly Charles I, saw this trend as a threat to their power and sought to consolidate power in their hands to suppress it. As Hill notes, “Direct access to the sacred text gave a sense of assurance to laymen which they had previously lacked, and so fortified long-standing criticisms of the church and its clergy.”¹³⁵ Quarrels broke out between Protestants and Catholics, and between divergent groups of Protestants, as to the meaning of Scripture. Each side was able to find support in the Bible for its position. Biblical scholarship exploded as positions were laid out and defended, and the accuracy of the text itself was questioned. What “had been muttered in ale-houses could now be read by anybody.”¹³⁶ And debate was not limited to merely theological matters; the Bible was used to support various and conflicting political beliefs as well.

England in the seventeenth-century did indeed experience a cultural revolution. The Bible became an integral part of every aspect of life. Hill cites the Puritan oracle, William Perkins, who “declared that Scripture ‘comprehendeth many holy sciences’, including ethics, economics, politics, academy (‘the doctrine of governing schools well’).”¹³⁷ In 1642, Milton “spoke of the Bible as ‘that book within whose sacred context

¹³⁵ Hill, p. 11.

¹³⁶ Ibid., p. 12.

¹³⁷ Quoted in Hill, p. 20.

all wisdom is enfolded’.”¹³⁸ In response to Sir Robert Filmer’s defense of absolute monarchy, *Patriarcha*, both Sidney and Locke employed the authority of the Bible. All sides were agreed, however, in the wake of the Reformation, that “[c]hurch and state in Tudor England were one.”¹³⁹

As early as the first half of the sixteenth-century, censorship was attempted. King Henry VIII tried to “abolish ‘diversity of opinions’ by Act of Parliament,” though he was not very successful, and neither were his successors.¹⁴⁰ Matters came to a head during the reign of Charles I. “In 1628 Charles I was outraged when the Commons called for the Petition of Right – the first significant modification of the royal prerogative – to be printed, because he did not want ordinary people to read or discuss it.”¹⁴¹ He dissolved Parliament in 1629 and ruled personally for eleven years. Desperately needing money to subdue the Scots, he recalled Parliament in 1640; it became known as the Short Parliament because within three months he dissolved it again when they proved unamenable to his wishes. After another military defeat he was once again persuaded to recall Parliament, now known as the Long Parliament. “In 1641 a proposal to print the Grand Remonstrance, a list of the Commons’ grievances against Charles I’s government, led to uproar in the House, in which swords were drawn for the only recorded time in history. It presaged civil war, in which Parliament *had* to appeal to the common people if Charles was to be defeated.”¹⁴²

Into this period strides John Milton with *Areopagitica*, a compelling though ultimately (concerning its practical purpose) ineffective call for a free press. Milton had

¹³⁸ Quoted in Hill, p. 21.

¹³⁹ Ibid., p. 7.

¹⁴⁰ Ibid., p. 11.

¹⁴¹ Ibid., p. 18.

¹⁴² Ibid., pp. 18-19.

expected prior censorship to be relaxed under the new revolutionary regime. His hopes and the cause of liberty were delivered a setback when the new Parliament passed a bill that provided for the licensing of the press. In *Areopagitica*, Milton appealed to the new regime to reconsider its decision and free England's press from its restraints.

To Milton, a free and unlicensed press was of paramount importance: "Give me liberty to know, to utter, and to argue freely according to conscience, above all liberties."¹⁴³ His central argument for freedom of conscience is that mature adults must learn the great virtue of temperance, but they can only do so by the light of their own reason and through hard-earned experience. This task God has given to every man, by giving each free will; each must be free to choose, to make mistakes and to learn from them.¹⁴⁴ Without the possibility of vice there can be no virtue, or at least virtue would be a pale and pathetic thing: impure. We are purified by trial, i.e., confronting that which is contrary to the good and/or to what we know (or think we know).¹⁴⁵ It is for this reason that we must be free to exercise our own conscience. And it is the need for freedom of conscience, founded in human nature, that is at the root of Milton's other arguments. He further argues that the knowledge contained in a corrupt book will not defile the conscience of the pure, for "To the pure all things are pure."¹⁴⁶ Whereas even the best books are to a "naughty mind...not unapplicable to occasions of evil."¹⁴⁷ Bad books, on the other hand serve a "discreet and judicious Reader...in many respects to discover, to confute, to forewarn, and to illustrate."¹⁴⁸ Truth will emerge from the healthy discourse of

¹⁴³ John Milton, *Areopagitica and Other Political Writings of John Milton* (Indianapolis: Liberty Fund, Inc., 1999), p. 44.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, pp. 17-18.

¹⁴⁶ *Ibid.*, p. 15.

¹⁴⁷ *Ibid.*, p. 16.

¹⁴⁸ *Ibid.*

free and open debate that an unlicensed press allows. In contrast, censorship will help to prolong error and falsehood. Among others, he also makes a consistency argument: “If we think to regulat Printing, thereby to rectifie manners, we must regulat all recreations and pastimes, all that is delightful to man.”¹⁴⁹

In his other works, Milton defended the revolution and the practice of regicide. Milton argues that all men were born naturally free¹⁵⁰ and that while “the Magistrate was set above the people, so the Law was set above the Magistrate.”¹⁵¹ Moreover, “if the King or Magistrate prov’d unfaithful to his trust, the people would be disingag’d,” meaning that they would have no obligation towards him.¹⁵² Milton agreed with the lawyer and churchman, Lord Henry de Bracton, that “kings ought to use the power of law and right as God’s servant and viceregent; the power to do wrong is the Devil’s, and not God’s; when the king turns aside to do wrong, he is the servant of the Devil.”¹⁵³ Milton favorably quotes a passage from Seneca: “There can be slaine/No sacrifice to God more acceptable/Then an unjust and wicked King.”¹⁵⁴ The revolution, conducted “under the inspection of God first implored, and under his manifest guidance, setting examples and performing deeds of valor, the greatest since the foundation of the world – delivered the Commonwealth from a grievous domination, and religion from a most debasing thralldom.”¹⁵⁵ In “The Readie and Easie Way to Establish a Commonwealth,” Milton criticizes centralized government and lays out his vision of an essentially republican government that included an aristocratic and a popular assembly.

¹⁴⁹ Ibid., p. 22.

¹⁵⁰ Ibid., “The Tenure of Kings and Magistrates,” p. 58.

¹⁵¹ Ibid., p. 59

¹⁵² Ibid., pp. 59-60.

¹⁵³ Ibid., “Defense of the People of England,” p. 269

¹⁵⁴ Ibid. p. 67.

¹⁵⁵ Ibid., “Second Defense of the People of England,” p. 315.

Like his contemporary, John Locke, and his predecessor, John Milton, Algernon Sidney argues in *Discourses Concerning Government* that good government must be founded upon the consent of the governed. Like Locke, Sidney strongly stresses the individual's right to liberty. For Sidney and Locke, liberty means a natural equality of authority, of an "independency upon the will of another,"¹⁵⁶ for "God is our lord by right of creation, and our only lord, because he only hath created us."¹⁵⁷ Unlike Locke, however, who is far more a modernist, Sidney's thought harkens back to the classical philosophers in that he criticizes "liberty without restraint" (licentiousness¹⁵⁸) as being "inconsistent with any government, and the good which man naturally desires for himself, children, and friends."¹⁵⁹ Rational liberty is supported by virtue, and consequently, good government, contra Locke, does not merely protect liberty but rewards virtue and punishes vice.¹⁶⁰ The form of government that best performs these functions, Sidney argues, is a mixed-constitution republic, consisting not only of monarchic elements but also of aristocratic and democratic. Further, government must be restrained to operate only within the general principles of law or else the people will be ruled by the arbitrary whims of men. In arriving at this conclusion and his refutation of absolute monarchy, he criticizes blind faith, arguing instead for the importance of reasoning from first principles,¹⁶¹ though his arguments make liberal use of Scripture as well as reason and historical experience.

¹⁵⁶ Algernon Sidney, *Discourses Concerning Government*, (Indianapolis: Liberty Fund, 1996), I.5, p. 17.

¹⁵⁷ *Ibid.*, II.9, p. 131.

¹⁵⁸ *Ibid.*, I.2, p. 9

¹⁵⁹ *Ibid.*, II.20, p. 191-2.

¹⁶⁰ *Ibid.*, I.20. By virtue, he means Christian virtue, of course.

¹⁶¹ *Ibid.*, I.3.

It is with Locke that we find what has become the best known, perhaps the standard, liberal doctrine for the proper purpose of government. As the meat of his political philosophy has already been dealt with in part two and will be again in part six, discussion of his importance to the American Revolution is dealt with in the next section.

IV.1.2 Religious and Political Ideology in the American Revolution

It is as an outgrowth of the religious ferment in revolutionary Seventeenth Century England that the settlement of America by English Protestants fleeing persecution, and the later Revolution and Founding, are to be understood. Milton, Sidney, Locke, and others had argued that God had bestowed upon mankind the tools that made him fit to judge what is best in matters religious and civil. The settlers fled to America in search of the liberty to do just that.

America was viewed as a promised land. Under the reign of Charles I, John Winthrop, the first governor of the Massachusetts Bay Colony, preached his famous “City on a Hill” sermon, which was based on Matthew 5:14 (“You are the light of the world. A city set on a hill cannot be hid.”). In this sermon, he urged the soon-to-be Puritan colonists of New England to make their new community a “city on a hill,” an example to the Christian world. Puritans believed that the Anglican Church had fallen from grace by accepting Catholic rituals. Moreover, Winthrop and other Puritans believed that all nations have a covenant with God, and since England had violated this covenant, the Puritans had to leave the country. It was his hope and theirs that Christianity would be purified in the New World and serve as an example of a proper Protestant community to the Old World. He warned his fellow colonists, “if we shall

deale falsely with our god in this worke wee have undertaken and soe cause him to withdrawe his present help from us, wee shall be made a story and a byword through the world, wee shall open the mouthes of enemies to speake evill of the wayes of god and all professours for Gods sake."¹⁶² Massachusetts maintained exceedingly strict regulations on religious and moral conduct early on, particularly in contrast to the loosely-bound societies of the Chesapeake Bay and Jamestown colonies. In general, however, religious ‘liberty’ in early colonial America meant only freedom from Canterbury and Rome; that is, from the Anglican and Catholic Churches. Even after the Constitution was ratified some states still had established religions – only the national government was prohibited from establishing religion.

In the 1730s and 1740s, America experienced a spiritual revolution called the Great Awakening. “Narrowly construed as occurring in the years 1739 to 1742,”¹⁶³ the Great Awakening was a religious revival movement that sought a return to the Pilgrim’s strict Calvinist roots and to reawaken the fear of God. It was brought on in response to a decline in religiosity that had been occurring for decades, perhaps due in part as a reaction to the Salem witch trials. Alan Heimert and Perry Miller write that the Great Awakening “clearly began a new era, not merely of American Protestantism, but in the evolution of the American mind.”¹⁶⁴ Indeed, it was perhaps the first truly “American” event and, as such, it represented a step towards a common identity in the hearts and minds of the colonists. Throughout the period and later as well, itinerant preachers sprang up across the colonies calling themselves the “New Lights.” In contrast to the “Old

¹⁶² John Winthrop, “A Modell of Christian Charity (1630),” in *Political Thought in America: An Anthology*, 2nd Edition, Michael B. Levy, ed. (Prospect Heights, IL: Waveland Press, Inc., 1992), p. 12.

¹⁶³ Elis Sandoz, ed., *Political Sermons of the American Founding Era, 1730-1805*, Vol. 1, 2nd Edition (Indianapolis: Liberty Fund, 1998), p. xv.

¹⁶⁴ Quoted in Sandoz, p. xv.

Lights,” as the new brand of preachers called them, “who eschewed emotion and experimental religion,”¹⁶⁵ the New Lights sought to revive religious feeling in the colonists. The intent was for each person to experience a

vivid communion with God... , with the consequence that this concourse becomes the transformative core for that person, who therewith sees himself as a “new man”: initially in the *conversion* experience (represented as a spiritual rebirth) and subsequently in the continuing meditative nurture of the soul, pursued by every means but chiefly, in American Protestantism, through prayer, sermons, and scriptural meditation.¹⁶⁶

“The great cry of the awakeners was for a converted ministry, one able to revive religious communities lacking vitality and zeal, so as to make the presence of God with his people a palpable reality.”¹⁶⁷

The New Lights did not confine themselves to theological issues solely. American preachers had several means available for expounding Protestant political theology.¹⁶⁸ Among these were election sermons “preached annually to the governor and legislature after the election of officers.”¹⁶⁹ Other vehicles were artillery sermons, convention sermons, sermons given on holidays such as the day Charles I was executed, sermons on holy days, and century sermons such as the Glorious Revolution’s centenary in 1788, and more. Thousands of sermons were examined for inclusion into Dr. Sandoz’s anthology; of these, fifty-five were selected. As a measure not merely of the quality of published political sermons but also of the quantity preached in colonial America, “very few of the sermons preached ever were published; thus, Samuel Dunbar, an Old Light minister of Stoughton, Massachusetts, wrote out some eight thousand sermons during his long career

¹⁶⁵ Ibid., p. xvii.

¹⁶⁶ Ibid. Emphasis in original.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid., p. xx.

¹⁶⁹ Ibid.

but published only nine of them.”¹⁷⁰ Due to space constraints I will limit myself to citing just a few of the political sermons from Sandoz’s anthology.

Though not the only one to do so, Elisha Williams is notable for his seamless melding of a Lockean framework and Scriptural foundation for natural rights. Though his sermon does not primarily deal with the general purview of civil government but rather with the right to liberty of conscience, he nevertheless provides an excellent treatment of the origin and end of government, and his argument is easily generalizable beyond religious liberty. He notes that “the sacred scriptures are the alone rule of faith and practice to a Christian...that every Christian has *a right of judging for himself* what he is to believe and practice in religion according to that rule,” which he finds “perfectly inconsistent with any power in the civil magistrate to make any penal laws in matters of religion.”¹⁷¹

Christ alone is our master in matters of religion, and matters of religion for a Christian covers quite a lot of ground. The Scriptures are Christ’s Word and our means of knowing his Will, therefore as God has created us with free will and the faculty of reason, we alone bear the responsibility of interpreting it.

[F]or any to assume the power of directing the consciences of men, not leaving them to the scriptures alone, is evidently a declaring them to be defective and insufficient to that purpose; and therefore that our Lord who has left us the scriptures for that purpose, did not know what was necessary and sufficient for us, and has given us a law, the defects of which were to be supplied by the wisdom of some of his own wiser disciples. How high an impeachment this is of his infinite wisdom, such would do well to consider, who impose their own doctrines, interpretations or decisions upon any men by punishments, legal incapacities, or any other methods besides those used and directed to in the sacred scriptures.

¹⁷⁰ Ibid, pp. xx-xxi.

¹⁷¹ Elisha Williams, “The Essential Rights and Liberties of Protestants (1744),” in *Political Sermons*, p. 55 (emphasis in original).

And as all imposers on men's consciences are guilty of rebellion against GOD and CHRIST, of manifest disobedience to and contempt of their authority and commands; so all they who submit their consciences to any such unjust usurp'd authority[.]¹⁷²

This is not merely an indictment of the interference of civil government in religious matters but of private interference as well. Everyone must be free to join, leave, or form any worshipping assembly that their judgment sees fit to join, leave, or form, or to worship singly, so long as they do so peaceably.

Williams's line of reasoning in matters of religious liberty is fascinatingly paralleled by Christian-Lockean arguments on the origin and end of government, and for resisting tyranny. Consider Williams's own. "For the freedom of man and liberty of acting according to his own will (without being subject to the will of another) is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will."¹⁷³ All men are naturally equal in authority. Our natural liberty consists not in being free to do absolutely anything we please, that is, to satisfy our whims of the moment. Rather, "it consists in a freedom from any *superior power on earth*, and not being under the will or legislative authority of man, and having only the law of nature (or in other words, of its Maker) for his rule."¹⁷⁴ Consequently, every man has an equal right to his person, and to performing the legitimate actions necessary for his preservation, which means that he has a right to his property as well and the right to defend his person and property from those who would take it against his will. In typical Lockean fashion, Williams argues that men come together to form civil governments in order to provide a measure of security unavailable

¹⁷² Ibid., p. 66.

¹⁷³ Ibid., p. 56.

¹⁷⁴ Ibid. Emphasis in original.

in a state of nature. This then is the just, if rarely the historical, origin of government. The only just end of government is thus the protection of person and property from the initiation of force. Christians not only have a right but a duty to resist an unjust government.

Jonathan Mayhew, writing in the wake of the repeal of the Stamp Act, affirmed that Americans “were free-born...so we have a natural right to our own, till we have freely consented to part with it, either in person, or by those whom *we* have appointed to represent, and to act for us.”¹⁷⁵ This natural right is “affirmed and secured to us, as we are British subjects, by Magna Charta; all acts contrary to which, are said to be *ipso facto* null and void[.]”¹⁷⁶ At issue were an American aversion to being taxed without representation and fears of the money being used to support an oppressive standing army and state religion. He nevertheless urged the Christian “duty of cultivating a close harmony with the mother-country, and a dutiful submission to king and Parliament, our chief grievances being redressed;” however, he means not to “disswade people from having a just concern for their own rights, or legal, constitutional privileges.”¹⁷⁷ Americans must be ever on their guard, for Christ is the only King “that, in a religious or moral sense, ‘can do no wrong’.”¹⁷⁸ While “men *sleep, then the enemy cometh and soweth tares*, which cannot be rooted out again till the *end of the world*, without rooting out the wheat with them.”¹⁷⁹ He reminds his listeners that “God gave the Israelites a king [or absolute monarch] in his anger, because they had not sense and virtue enough to like a free commonwealth, and to have himself for their king; that the Son of God came down

¹⁷⁵ Jonathan Mayhew, “The Snare Broken (1766),” p. 240.

¹⁷⁶ Ibid. Emphasis in original.

¹⁷⁷ Ibid., p. 258.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid. Emphasis in original.

from heaven to make us ‘free indeed’; and that ‘where the Spirit of the Lord is, there is liberty’; this made me conclude, that freedom was a great blessing.”¹⁸⁰

In a more radically patriotic and revolutionary sermon, regarding the *Gaspee* affair, John Allen appeals to the Earl of Dartmouth’s Christianity: “The law of GOD directs us to do unto others, as we would they should do unto us.”¹⁸¹ What true Christian, he asks, then, “will oppress his fellow-creatures?”¹⁸² He remarks threateningly that “such men, who will take away the rights of any people, are neither fit for heaven; nor earth, neither fit for the land or the dunghill.”¹⁸³ Again, the issue was taxation without representation. The *Gaspee* had been burned in response to the oppressive mission of its crew to expropriate the peoples’ property against their will. The grievance was compounded with England’s intent to try the perpetrators not in an American court under American law, but in a special Admiralty court three thousand miles from their homes under English law, for treason. Quoting Scripture, Allen contends that “*where there is no Law, there is no transgression.*”¹⁸⁴ America is the native right of Americans. The King “can have no more right to America, than what the people have, by compact, invested him with, which is only a power to protect them, and defend their rights civil and religious; and to sign, seal, and confirm, as their steward, such laws as the people of America shall consent to.”¹⁸⁵ The Americans, therefore, were in the right to defend their property. He echoes Mayhew in professing that Americans have a Christian love and duty

¹⁸⁰ Ibid. Brackets included by the editor of *Political Sermons*.

¹⁸¹ John Allen, “An Oration Upon the Beauties of Liberty (1773),” p. 305.

¹⁸² Ibid.

¹⁸³ Ibid., p. 306.

¹⁸⁴ Ibid., p. 309 (emphasis in original).

¹⁸⁵ Ibid., p. 311.

to their King and mother-country, but warns against provoking a revolution that could destroy both England and America.

Two passages of Christ's teachings, quoted in Elisha Williams's sermon convey the general theme of the political sermons. The first is "no Man can serve two Masters, but he must unavoidably prefer the one and neglect the other."¹⁸⁶ The second is "For one is your Master even Christ, and all ye are Brethren: And call no Man your Father upon Earth; for one is your Father which is in Heaven: Neither be ye called Masters; for one is your Master even Christ."¹⁸⁷ Taken together, these two passages indict all earthly authority, aside from, as we have seen, each individual's conscience in interpreting Scripture, though a man can choose to delegate his authority voluntarily to a representative in civil government who is tasked with looking after his interests.

The political sermons were not the only medium through which politics and religion met in colonial America. Religion played a direct role in the conduct, debate, and policies of government officials from the lowliest town selectman to the colonial legislatures and governors. Politics and religion also met in print via newspapers in the form of open letters to the people as well as in the activity known as pamphleteering. Among those who took active part in both of these mediums was John Adams, one of the Founding Fathers, a man whom Benjamin Rush called "the Atlas of American Independence."¹⁸⁸ Rush "thought there was a consensus among the generation of 1776 that Adams possessed 'more learning probably, both ancient and modern, than any man who subscribed the Declaration of Independence.'"¹⁸⁹ He "wrote some of the most

¹⁸⁶ Williams, p. 67. Italicized in the original to indicate a quotation.

¹⁸⁷ Ibid., p. 81. Italicized in the original to indicate a quotation.

¹⁸⁸ Quoted in *The Revolutionary Writings of John Adams*, p. ix.

¹⁸⁹ Ibid.

important and influential essays, constitutions [most notably that of Massachusetts in 1780], and treatises of the Revolutionary period.”¹⁹⁰

Like his contemporaries, John Adams defends the preexisting liberties of the American people from English oppression. Though he recognized the policies of England as growing increasingly tyrannical towards the colonies, he did not mean to suggest overturning the English form of government. David McCullough argues that Adams viewed English constitutionalism in an extremely positive light.

The English constitution, Adams declared – and knowing he would be taken to task for it – was the ideal...it was “the most stupendous fabric of human invention” in all history. Americans should be applauded for imitating it as far as has been done, but also, he stressed, for making certain improvements in the original[.]¹⁹¹

To Adams, the English system of government was not the problem but rather the current government was.

To be more precise, the current policies towards the colonies, because they were crafted without the consent of the colonists since the colonies were not represented in Parliament, were tyrannical. In 1765, Adams “called for a town meeting in order to instruct its representative to the General Court on how the colony should respond to Parliament and the Stamp Act.”¹⁹² In “Instructions of the Town of Braintree to Their Representative,” Adams argues that the “Stamp Act is unconstitutional and therefore void because it deprives Americans of their traditional English rights to taxation by consent and trial by jury.”¹⁹³ He laments the current situation:

Such is our loyalty to the King, our veneration for both houses of Parliament, and our affection for all our fellow-subjects in Britain, that

¹⁹⁰ Ibid.

¹⁹¹ David McCullough, *John Adams* (New York: Simon & Schuster, 2002), p. 375.

¹⁹² Thompson, p. 38.

¹⁹³ Ibid.

measures which discover any unkindness in that country towards us are the more sensibly and intimately felt. And we can no longer forbear complaining, that many of the measures of the late ministry, and some of the late acts of Parliament, have a tendency, in our apprehension, to divest us of our most essential rights and liberties.¹⁹⁴

The forcing of laws upon the colonists without their consent could only lead to slavery. In “Novanglus,” he argues against an apologist for England that the potential revolutionaries in the colonies

can hardly be losers if unsuccessful; because, if they live, they can be but slaves, after an unfortunate effort, and slaves they would have been if they had not resisted. So that nothing is lost. If they die, they cannot be said to lose, for death is better than slavery. If they succeed, their gains are immense. They preserve their liberties.¹⁹⁵

Revolution, then, was the only reasonable choice for the colonists, if England could not be persuaded to restore justice.

“In late 1775, Adams assumed a leading role in the Continental Congress to encourage the thirteen colonies to begin designing and constructing new governments.”¹⁹⁶ In his “Thoughts on Government: Applicable to the Present State of the American Colonies,” he lays out, by popular request, the general principles that he thought most essential to framing a just and proper government. Building on English constitutionalism and classical republicanism, Adams was strongly in favor of a separation of powers between the legislative, judicial, and executive branches of government. The legislature should be divided into two houses. This separation of powers, he thought, would better ensure the effective functioning of government as well as restrain potential abuses of power by posing each branch (and house, in the legislature) as a check on the other.

¹⁹⁴ Adams in *Revolutionary Writings*, p. 39.

¹⁹⁵ *Ibid.*, p. 154.

¹⁹⁶ Thompson, p. 286.

Adams echoes Sidney when he declares that “the happiness of man, as well as his dignity, consists in virtue. [...] The noblest principles and most generous affections in our nature, then, have the fairest chance to support the noblest and most generous models of government;”¹⁹⁷ namely, a republican one. Moreover, the preservation of liberty and just government rests upon the virtue of the citizens, which in turn is supported by proper education. Small wonder, then, that in “A Dissertation on the Canon and Feudal Law,” he praises the Puritans whose “civil and religious principles, therefore, conspired to prompt them to use every measure and take every precaution in their power to propagate and perpetuate knowledge. For this purpose they laid very early the foundations of colleges, and invested them with ample privileges and emoluments.”¹⁹⁸ And in “Thoughts on Government,” he argues that “[l]aws for the liberal education of youth, especially of the lower class of people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant.”¹⁹⁹ In the 1780 Massachusetts Constitution, he went further by including provisions that made it a requirement to be Christian in order to be elected to public office. Also constitutionalized was recognition of and support for the university of Massachusetts, Harvard College, which was a seminary at the time. Too, support was stipulated in the Massachusetts Constitution for

the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their

¹⁹⁷ Adams in *Revolutionary Writings*, pp. 287-288.

¹⁹⁸ *Ibid.*, p. 27.

¹⁹⁹ *Ibid.*, p. 292.

dealings, sincerity, good humor, and all social affections and generous sentiments of the people.²⁰⁰

Like Sidney, Adams recognizes that the longevity of a just government depends fundamentally upon the continued virtue of its citizens. What both failed to understand is that government is the last institution one should want attempting to inculcate virtue.

While the New Light preachers and figures such as John Adams and the other Founders played important roles in arousing the colonists' passion for liberty, two of the most important figures in this regard were Locke himself, by proxy, and Thomas Paine. Not long after the battles of Lexington and Concord, Paine issued a fiery pamphlet entitled *Common Sense*. In it he openly called for American independence, as the only alternative to slavery to Britain. He attacked the very principle of monarchy and was perhaps the first to openly denounce King George as the villain. And he criticized so-called republican government in England, with its mixed constitution and checks and balances such that each branch was supposed to act as a check on the other. This complicated system of government made it difficult for the people to determine where responsibility lay when they had grievances. Moreover, the monarchic and aristocratic elements were independent of the people. In reality, the complexity of the system masked the repression of the democratic element. And, in any event, for the government to act, one branch had to be at least temporarily dominant; the checks of the other branches at best served to gum up the works, so to speak, and slow the progress of the dominant branch. He favored instead, simple republican governments with single-chamber legislatures, and spoke of ordinary farmers and artisans as making "the best

²⁰⁰ Ibid., p. 321.

governors.”²⁰¹ He also favored free trade with the world rather than the mercantilist policies of Britain. He makes a libertarian distinction between society and government: “Society is produced by our wants and government by our wickedness; the former promotes our happiness *positively* by uniting our affections, the latter *negatively* by restraining our vices.”²⁰² He also, while taking a Lockean stance on the nature and purpose of government, correctly recognizes that the *origin* of government has almost invariably been through conquest not voluntary social contract. *Common Sense* spread like wildfire and inspired many others to similar exertions.

We have already seen how at least one preacher incorporated Lockean natural rights arguments into popularized Christian political theology. Among other more notable writers were John Trenchard and Thomas Gordon of *Cato’s Letters*, which were published from 1720 to 1723. Indeed, in his book *Seedtime of the Republic*, historian Clinton Rossiter once remarked that “no one can spend any time in the newspapers, library inventories, and pamphlets of colonial America without realising that *Cato’s Letters* rather than Locke’s *Civil Government* was the most popular, quotable, esteemed source of political ideas in the colonial period.”²⁰³ Trenchard and Gordon, many preachers, and others, popularized dry and theoretical arguments and were extremely influential in America. Consider Gordon’s thoughts on what is liberty:

By Liberty I understand the Power which every Man has over his own Actions, and his Right to enjoy the Fruits of his Labour, Art, and Industry, as far as by it he hurts not the Society, or any Members of it, by taking from any Member, or by hindering him from enjoying what he himself

²⁰¹ Leonard L. Richards, *Shays’s Rebellion: The American Revolution’s Final Battle* (Philadelphia: University of Pennsylvania Press, 2002), p. 69.

²⁰² Quoted from “Common Sense” in *Political Thought in America: An Anthology*, 2nd Edition, Michael B. Levy, ed., (Prospect Heights, IL: Waveland Press, Inc., 1992), p. 73. Source: William M. Vander Weyde, ed., *The Life and Works of Thomas Paine*, vol 2 (New Rochelle, N.Y.: Thomas Paine National Historical Association, 1925).

²⁰³ Clinton Rossiter, *Seedtime of the Republic* (New York: Harcourt, Brace & World, 1953), p. 141.

enjoys. The Fruits of a Man's honest Industry are the just Rewards of it, ascertained to him by natural and eternal Equity, as is his Title to use them in the Manner which he thinks fit: And thus, with the above Limitations, every Man is sole Lord and Arbiter of his own private Actions and Property.²⁰⁴

From such a foundation, Trenchard and Gordon made passionate arguments in defense of freedom of speech and conscience. The colonists eagerly imbibed their rhetoric that “government in general, and the British government specifically, was the great violator of such rights, and warned also that power – government – stood ever ready to conspire to violate the liberties of the individual. To stop this crippling and destructive invasion of liberty by power, the people must be ever wary, ever vigilant, ever alert to conspiracies of the rulers to expand their power and aggress against their subjects.”²⁰⁵ And the colonists’ conspiracy view of the British government turned out to be justified.

IV.2 The American Revolution: Radical or Conservative?

At this point it would be fruitful to compare the American Revolution with one that it helped to inspire, the French Revolution. Many Americans were at first elated by this event and initially gave it high praise. Elation soon turned to horror, however, as the French Revolution transformed into the worst tableau of tyranny: popular despotism. What was the difference? What had gone wrong? Many conservative scholars, particularly neoconservatives, hold that the difference lies in the fact that the American Revolution was essentially a conservative revolution. The Americans sought only to

²⁰⁴ Thomas Gordon, Letter 62 (1722) of *Cato's Letters* (1720-1723), quoted by Ronald Hamowy, "Cato's Letters, John Locke, and the Republican Paradigm", in Edward J. Harpham (Ed.), *John Locke's Two Treatises of Government: New Interpretations* (Lawrence: University Press of Kansas, 1992), p. 157.

²⁰⁵ Rothbard, *Conceived in Liberty Vol. III: Advance to Revolution, 1760-1775* (New Rochelle, NY: Arlington House Publishers, 1976), p. 356.

restore justice by overthrowing tyranny, to defend preexisting rights and traditions that England was violating. It was also a holy revolution in the Christian sense of the word.

In so far as the French Revolution sought liberty, says Noah Webster, its cause was “the noblest ever undertaken by men. It was necessary; it was just.”²⁰⁶

The feudal and papal systems were tyrannical in the extreme; they fettered and debased the mind; they enslaved a great portion of Europe. While legislators of France confined themselves to a correction of real evils, they were the most respectable reformers: they commanded the attention, the applause and the admiration of surrounding nations. But when they descended to legislate upon names, opinions and customs, that could have no influence upon liberty or social rights, they became contemptible; and when faction took the lead, when a difference of opinion on the form of government proper for France, or a mere adherence to a solemn oath, became high treason punishable with death, the triumphant faction [the Jacobins] inspired even friends of the revolution, with disgust and horror. Liberty is the cry of these men, while with the grimace of a Cromwell, they deprive every man who will not go all the lengths of their rash measures, of both liberty and life [and property]. A free republic, is their perpetual cant; yet to establish their own ideas of this free government, they have formed and now exercise throughout France a military aristocracy, the most bloody and despotic recorded in history.²⁰⁷

While in its initial fazes the French Revolution sought to secure liberty, its ultimate mission became a complete and total overturning of the old order. The hubris of the utopian visionaries of the French Revolution led them to believe they could remake the entire social order in all its infinite complexity and do so through central planning. They forgot that human reason has its limitations; and one of the traditions they threw off was the Christian doctrine of original sin, which served the function of reminding man that he is not infallible or omniscient. “In seeking liberty, France [had] gone beyond her.”²⁰⁸

²⁰⁶ Noah Webster, “The Revolution of France: Considered in Respect to its Progress and Effects,” in *Political Sermons*, Vol. 2, p. 1268.

²⁰⁷ *Ibid.*, pp. 1268-69.

²⁰⁸ *Ibid.*, p. 1299.

But if the French Revolution was radical, does that necessarily make the American Revolution conservative, even if only by comparison? To the American colonists, the fight for independence was intimately a matter of both reason and faith, mind and heart, civil and religious tradition. These intertwined elements were the motivation and *raison d'être* of the American Revolution. This is no better expressed than in the Declaration of Independence.

Are not all revolutions inherently radical, however? A political revolution is a fundamental change in political organization. Such an event can hardly be termed conservative. But as revolutions go – that is, relatively speaking – was it a conservative revolution? In a certain sense, it is possible to speak of *all* revolutions as “conservative” in that all are *reactions* against increasing oppression; they are generally attempts to restore some previous better condition. But to use the word “conservative” in this way is to make it meaningless. The Declaration of Independence makes clear “that mankind is more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.” To overthrow such habits, even in the face of a long train of abuses leading them into slavery, is a fundamentally radical act.²⁰⁹

The ideology of natural rights, individual liberty, and popular sovereignty is an inherently revolutionary one, overthrowing the old orders of feudal and canon law as well as their more modern descendants and all forms of oppression. We have seen how it began in Seventeenth Century England and became more radical in America, culminating in the Revolution, the liberating spirit of which motivated the colonists to resist not only

²⁰⁹ Murray N. Rothbard, *Conceived in Liberty Vol. IV: The Revolutionary War, 1775-1784* (New Rochelle, NY: Arlington House Publishers, 1979), pp. 441-446.

English tyranny but tyranny at home as well. The liberating spirit of Revolution also induced many colonists, mostly in the North, to challenge slavery.²¹⁰

As Murray Rothbard argues in his four-volume work, *Conceived in Liberty*, there were other ways in which the American Revolution was radical. “It was the first successful war of national liberation against western imperialism.”²¹¹ It was also a people’s war and, insofar as it was successful, it was won with guerrilla strategy and tactics against an otherwise superior army.²¹² Moreover, the Revolution resulted

in permanent expulsion of 100,000 Tories from the United States. Tories were hunted, persecuted, their property confiscated, and themselves sometimes killed... Thus, the French Revolution was, as in so many other things, foreshadowed by the American. The inner contradiction of the goal of liberty and the struggle against the Tories during the Revolution showed that revolutions will be tempted to betray their own principles in the heat of battle. The American Revolution also prefigured the misguided use of paper money inflation, and of severe price and wage controls which proved equally unworkable in America and in France.

The Americans had a long tradition of spontaneous local government that started at the town level. Their tendency to form spontaneous local and county committees, quasi-anarchistic institutions that paralleled or replaced old and established governmental ones, only increased with the Revolution.²¹³ Herein lies the primary difference between the American and French Revolutions. The American Revolution was largely a grass-roots, decentralized revolution and the ideology of natural rights, individual liberty, and popular sovereignty was deeply ingrained in the hearts and minds of the people. By contrast, the French Revolution was far more collectivist, organized rigidly and planned from the top

²¹⁰ See Jeffrey Rogers Hummel’s masterful treatment of the Civil War, *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* (Chicago: Open Court Publishing Company, 1997), especially Ch. 1. The issue of slavery will be dealt with in more detail in part five of this essay.

²¹¹ Rothbard, *Conceived in Liberty Vol. IV: The Revolutionary War*, p. 443.

²¹² Ibid.

²¹³ Ibid., pp. 443-444.

down, though there were elements of this in the American Revolution as well.²¹⁴ And the French people were experientially lacking in the tradition of liberty the Americans had come to take for granted. The French did not truly understand liberty, small wonder that they went so far beyond her.

We can identify two major sides within the American Revolution, the liberals and the conservatives, though this is not to say that the conservatives did not hold classical liberal ideas.²¹⁵ The former were more local in their interests, democratic, radical, and more consistent proponents of the ideology of natural rights and individual liberty and of popular sovereignty. The conservative movement emerged as a reaction to the liberals. After the Revolution got underway and the British-supported governments and favorites were overthrown, the problem of who would rule at home arose. The conservatives were made up of those who were radical in their desire for independence from Britain but highly conservative on domestic affairs as well as quasi-Tories who opposed independence until the last minute. The conservatives tended to be strongly aristocratic and nationalist, and distrusted the will of the people. Rothbard summarizes the tension between the liberals and conservatives nicely:

The basic issue in internal affairs was simply: Would the American governments remain as they had emerged at the outset of the Revolution: spontaneous, libertarian, democratic, and responsive to the checks of the people? Or would they revert to something very like oligarchic British rule: strong government, with an executive and upper legislative house far removed from the people and only partially checked by them? Would

²¹⁴ This can be seen in Washington's remaking of the Continental Army on the European model as well as in the creation of quasi-independent executive departments each headed by a nonelected bureaucrat. Robert Morris consolidated immense power under his control as Secretary of Finance between 1780-83, virtually every function of government, including the creation of America's first central bank.

²¹⁵ Conservative here does not necessarily have anything to do with modern conservatives. Rather, it is meant to identify those who still favored a stronger central government as well as mercantilist and nationalist policies reminiscent of the British merchant-State.

oligarchic power be resumed by a new set of Tory lords in another guise?²¹⁶

Men like Thomas Paine and Thomas Jefferson generally fell into the liberal camp, while men like John Adams, George Washington, and Alexander Hamilton generally fell into the conservative camp. We have already glimpsed the work of John Adams and, indeed, his “Thoughts on Government” was written in reaction to Thomas Paine’s *Common Sense*.²¹⁷ In contrast to Paine, Adams strongly favored a mixed constitution with three branches and checks and balances. He favored aristocracy, though not hereditary aristocracy; few people in America favored hereditary aristocracy. He distinguished between ‘artificial aristocracy’, “those inequalities of weight and superiorities of influence which are created and established by civil laws,” favoring instead what he called ‘natural aristocracy’, which he defined as “those superiorities of influence in society which grow out of the constitution of human nature.”²¹⁸ His definition of aristocracy, however, was decidedly republican: “By aristocracy, I understand all those men who can command, influence, or procure more than an average number of votes; by an aristocrat, every man who can and will influence one man to vote besides himself.” Even the most ‘democratic’ of the Founders, Thomas Jefferson, held this position:

There is a natural aristocracy among men. The grounds of this are virtue and talents... There is also an artificial aristocracy founded on wealth and birth, without either virtue or talents; for with these it would belong to the first class. The natural aristocracy I consider as the most precious gift of nature for the instruction, the trusts, and government of society. And, indeed, it would have been inconsistent in creation to have formed man for the social state and not to have provided virtue and wisdom enough to manage the concerns of the society. May we not even say that that form of government is the best which provides the most effectually for a pure

²¹⁶ Rothbard, *Conceived in Liberty Vol. IV: The Revolutionary War*, p. 143.

²¹⁷ Ibid.

²¹⁸ Quoted from “Letter to John Taylor (1814)” in *Political Thought in America: An Anthology*, p. 171. Source: Charles Francis Adams, ed., *The Life and Works of John Adams* (Boston: Little, Brown, 1851).

selection of these natural *aristoi* into the offices of government? The artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent its ascendancy.²¹⁹

However, it was not on the existence of a natural aristocracy that the liberals and conservatives disagreed, but rather they disagreed on how it would be expressed in the form and function of government. Men like Adams saw the natural aristocracy primarily in terms of the wealthy and well-born, and the politico-economic policies of the conservatives tended to create an artificial aristocracy whether or not they intended them to.

Not only was “Thoughts on Government” a reactionary document, but so too was Adams’s 1780 Massachusetts Constitution. By the time it was written, most of the other states had already written new constitutions.

The worst example in the eyes of the gentry was that of Pennsylvania, where in the summer of 1776 “radical” forces [influenced by Paine] had gained control and fashioned a document without any system of “checks and balances.” Written by Revolutionaries, it discriminated against all those who opposed taking up arms against the king, Quaker pacifists as well as Tories. Yet, in its treatment of those who supported the war effort, it was remarkably “democratic,” empowering poor men as well as rich men, privates as well as generals.

[...]

[T]he new Pennsylvania constitution established a single, all-powerful legislature, elected annually by taxpaying males over the age of twenty-one. There were no property qualifications for holding office. And instead of a powerful governor with a veto, there was a plural executive consisting of a president and a council, whose job was to simply carry out the will of the legislature.

[...]

A year later Vermont took the Pennsylvania model a step further. In just six days [Ethan Allen’s] Green Mountain Boys drafted a constitution that

²¹⁹ “Thomas Jefferson to John Adams, 1813,” in *The Writings of Thomas Jefferson*, Memorial Edition, Lipscomb and Berg, eds., 20 Vols., (Washington, D.C.: 1903-1904), 13:396.

largely copied the Pennsylvania document, except that it also banned slavery and enhanced the power of local governments, even allowing towns to decide such matters as legal fees. In the eyes of many in western Massachusetts, Vermont was an example to be followed. Strengthening town government, enhancing the power of town meetings, was clearly the direction in which to move. In the eyes of the Massachusetts gentry, however, Vermont was an outlaw state and its constitution was an abomination.

Rhode Island, which did not even bother to write a new constitution but rather “simply deleted all references to the British crown from its old colonial charter,” had a similar form of government and was viewed in much the same light as Vermont by the Massachusetts gentry.²²⁰

The new Massachusetts constitution was highly conservative and had much in common with Maryland’s. In it Adams advocated a high property-value qualification for suffrage. Real estate was made the sole qualification for eligibility to public office; money and other personal property would not count. Intervals between elections longer than those of Pennsylvania were established. The 1780 Massachusetts Constitution was, in many ways, a prototype of the US Constitution. The executive and upper house of the legislature were strong and independent; both were highly aristocratic. The upper house was designed to represent the interests of the wealthy. And the judiciary was independent of the control of ordinary people. The governor had veto power and complete control over the military. He could appoint all judges, whose tenure rested on good behavior unless removed by him and his council.

This constitution, which followed on the heels of the rejected conservative Constitution of 1778, was bitterly contested.

The heaviest opposition to the constitution came over the declaration of rights and its weakness in insuring freedom of speech or habeas corpus.

²²⁰ Richards, p. 68.

Many towns opposed the property qualifications, as well as the appointive power of the executive and the oligarchy of independent judges. Also bitterly fought in the press and in the towns was the clause on establishment of religion.²²¹

The greatest opposition to the property qualifications came from the western towns, the backcountry of Massachusetts, which were made up mostly of yeoman farmers. They pointed out the inconsistency of property qualifications with the revolutionary principle of no taxation without representation. “Other demands by opposition towns were for election of local officials, a tight rein on the governor, a unicameral legislature [like that of Vermont and Rhode Island], and a loosening of the highly restrictive provisions for amendment of the constitution.”²²²

No small amount of chicanery was involved in getting this constitution ratified. The 1778 constitution had required unqualified support of a two-thirds majority, the entire document would be rejected if any detail was objected to, and so it was rejected. Having learned from this, the proponents of the new constitution contrived

a ratification process that virtually guaranteed approval of their handiwork. Instead of requiring unqualified support, this time a town might suggest scores of amendments and still be counted as a ‘yes’ vote. Every town was to vote on the constitution, clause by clause, and state objections to any clause that did not obtain a majority. Then the adjourned constitutional convention was to look at the results, and if there appeared to be a two-thirds majority for each clause to declare the constitution ratified, and if there did not appear to be a two-thirds majority to make alterations ‘in accord with the popular will’.

What if there was no popular will? What if sixty towns objected to a provision for one reason, and another sixty for the opposite reason? Such was the case when it came to the relationship of church to state. And what if a town never took a vote on an article it objected to? If it had just suggested an amendment and voted on the amendment? Should the votes for the amendment be counted as votes against the original article? That might seem logical, but that is not what happened. In fact, most towns

²²¹ Ibid., p. 69.

²²² Rothbard, *Conceived in Liberty Vol. IV: The Revolutionary War*, pp. 385-386.

never took a vote on an article that the majority clearly opposed, just on the substituted amendment, and these votes were not counted against the original article. Similarly, the vote counters decided other ticklish issues in behalf of their creation. Every article thus passed by a landslide.²²³

It did not sit well with the people of the backcountry that the new constitution took power out of their hands and gave it to the Boston gentry. In addition to the objections already mentioned, many of the western towns preferred “superior court judges to be either elected or appointed annually, . . . justices of the peace to be elected,” and “censured the new constitution for allowing the house to do business when only sixty members were present. This, they argued, was especially biased in favor of the mercantile elite and the eastern part of the state.”²²⁴

The conflict between liberals and conservatives also manifested in the Continental Army under George Washington. The citizen militias of the colonists were individualistic and democratic in spirit. “[T]he officers of the militia were elected by their own men, and the discipline of repeated elections kept the officers from forming an aristocratic ruling caste typical of European armies of the period. The officers often drew little more pay than their men and there were no hierarchical distinctions of rank imposed between officers and men. As a consequence, officers could not enforce their wills coercively on the soldiery.”²²⁵ These militias were eminently well-suited to guerrilla warfare and a libertarian-style revolution. Washington, however, proceeded to mold the new Continental Army on the European model. He “insisted on distinctive decorations of dress in accordance with minute gradations of rank” and, despite the unfeasible expense involved, “tried to stamp out individuality in the army by forcing uniforms upon

²²³ Richards, pp. 72-73.

²²⁴ Ibid., pp. 73-74.

²²⁵ Rothbard, p. 43

them[.]”²²⁶ He also introduced extensive inequality in pay between the officers and common soldiers. Strict and harsh discipline was enforced.

The Continental Army proved expensive, not only for the Continental Congress which went heavily into debt financing the war, but also for the soldiers who, when they *were* paid, were paid in depreciating paper notes. Being away from their farms for extended periods of time, they too went into debt. Many of the officers, particularly those not independently wealthy, were no better off, despite their higher pay; “Washington wanted his officers to be more like European officers, to dress elegantly, to have an enlisted man as a body servant, to haul around lots of personal baggage, to ride a horse rather than march, to dine in taverns rather than in field messes.”²²⁷

It has already been noted that the Revolutionary War was a people’s war. The war had the support of a majority of the people and could not have been won without it. The British military possessed superior firepower and fought with conventional military strategy and tactics. In recent decades scholars have become increasingly aware of the effectiveness of guerrilla warfare in wars of liberation, both in terms of strategy and tactics as well as morale and monetary cost. The Revolutionary War, insofar as it was successful, was largely won due to the fact that it was a people’s war fought with guerrilla-style strategy and tactics (including privateering). Attempts to fight a conventional war resulted in many of the Americans’ worst defeats, required an increasing consolidation of power in the Congress, and enriched well-connected individuals while saddling the people with debt.²²⁸

²²⁶ Ibid., p. 44.

²²⁷ Richards, p. 48.

²²⁸ Rothbard, in *Conceived in Liberty*, provides a good overview of these subjects. See also: Hoppe, *The Myth of National Defense*; Don Higginbotham, *The War of American Independence: Military Attitudes*,

By 1780, with the victories in Massachusetts and Pennsylvania, the war was already winding down. Congress and the several states had put severe strain on the economy with rampant inflation and price controls begun early in the war. As Secretary of Finance between 1780-83, Robert Morris consolidated immense power under his control, virtually every function of government, including America's first central bank. Congress created quasi-independent executive departments each headed by a nonelected bureaucrat. Morris demanded and received from Congress the power to hire anyone for his own department and fire anyone in any other department. The naval and admiralty boards were consolidated under his department. In other departments, he helped friends and associates into positions of power. "[E]very Monday night Morris called together the major executive officers of government...in an informal but effective cabinet meeting."²²⁹ He also demanded and received advance sanction for any private business dealings he might have while in office. With the Bank of North America, Morris issued his own notes called "Morris notes" and "Morris warrants" which depreciated rapidly, and he amassed a considerable public debt on behalf of Congress. Morris, it seems, "wanted to bind the national government to powerful 'private interest,' to the 'interests of monied men.'" Alexander Hamilton, too, it is well known, favored mercantilist policies; he wrote that

there are some who maintain that trade will regulate itself, and is not to be benefited by the encouragements, or restraints, of government. Such persons will imagine, that there is no need of a common directing power.

Policies, and Practice, 1763-1789 (1971); John Shy, *A People Numerous and Armed: Reflections on the Military Struggle for American Independence* (1976); idem. "The American Revolution: The Military Conflict Considered as a Revolutionary War," in S. Kurtz and J. Hutson, eds., *Essays on the American Revolution* (1973); R. Arthur Bowler, *Logistics and the Failure of the British Army in America, 1775-1783* (1975); John R. Alden, *Charles Lee: Traitor or Patriot?* (1951); Russell F. Weigley, *The Partisan War: The South Carolina Campaign of 1780-1782* (1970); George Allan Billias, ed., *George Washington's Generals* (1964); Bernhard Knollenberg, *Washington and the Revolution: A Reappraisal* (1940).

²²⁹ Rothbard, *Conceived in Liberty Vol. IV: The Revolutionary War*, p. 390.

This is one of those wild speculative paradoxes which have grown into credit among us, contrary to the uniform practice and sense of the most enlightened nations.²³⁰

Rather than apportioning the Congressional debt among the states as befit the idea behind the Articles of Confederation, the conservatives pushed for Congress to assume all of the public debt, even that held by the several states, which would help tie the interests of the nation to a central government and bureaucracy. In other words, as the passage by Hamilton indicates, the idea was to recreate a version of the mercantilist States of Europe in America.²³¹

In the foregoing I have attempted to illustrate the conflict between the liberals and the conservatives. I have not attempted to tell the whole story here, for such would be impossible. The American Revolution, insofar as it was a revolution against England, was fundamentally a radical event. The conflict between the liberals and conservatives was over the question of the extent to which the principles of the Revolution were to apply at home with the end of British rule. By the early 1780s, conservatives had swept into power in most states. In 1781, conservatives pushed for a federal tariff that was narrowly defeated by Rhode Island's failure to ratify the necessary amendment to the Articles of Confederation and Virginia's last minute repeal of its ratification. Insofar as there was a revolution at home, the conflict between the liberals and the conservatives was not decided until 1787. It is in this light that the Constitutional Convention and ratification of the Constitution can be evaluated. Do these events represent a liberal innovation in government? Or a conservative counter-revolution?

²³⁰ Quoted in *ibid.*, p. 398.

²³¹ See Rothbard, *Conceived in Liberty Vol. IV: The Revolutionary War*, especially pp. 373-412.

IV.3 The American Constitution: Liberal Innovation or Conservative Counter-Revolution?

The Federalist Papers, letters written by Alexander Hamilton, James Madison, and John Jay in support of the newly proposed Constitution, are well known and well read even over two hundred years after they were written.²³² Collectively, these letters are considered a milestone in American political science. While they present a systematic defense of the Constitution, this fundamental document did not yet include the Bill of Rights we are so familiar with today. It is the less well-known and less well-studied writings of the opponents of the Constitution, the so-called Anti-Federalists, that we have to thank for this much needed addition. The opponents of the Constitution were as diverse in their reasons for opposing it as were the supporters of the proposed new system. However, one can find common themes that run through many of the Anti-Federalists' writings. Among these is a distrust of the elites, the aristocratic class, who were promoting the new system of government and no doubt would assume a prominent role within it. The Anti-Federalists also feared, and rightly so, what they perceived as features of the new Constitution that would inevitably lead to a consolidation of power in the national government. The state governments would be abolished, or at the very least be so subordinated to the national government as to have been stripped of sovereignty. Such a government would be tyrannical. As it turns out, history has proven the Anti-Federalists' right in many respects and wrong in others. Ultimately, they failed in preventing the ratification of the Constitution, though they were instrumental in forcing the Federalists to add the Bill of Rights. Why did they oppose the Constitution? And what did they find so objectionable about it?

²³² *The Federalist Papers*, Clinton Rossiter, ed., with an introduction and notes by Charles R Kesler, (Penguin Putnam Inc., 1999).

First, in order to gain perspective on the arguments of the Anti-Federalists and the Federalists, it would be fruitful to delve briefly into the background history that led to the framing of the Constitution in the first place. The United States were at the time a federal republic.²³³ The word federal was used differently at the time, our current form of government not having been invented yet. A federal form of government, or confederation, consists of a council (which the later Federalists would define as a weak central government) that serves certain delegated functions for, and whose powers are delegated by, a number of sovereign states. In this sense, The Impartial Examiner was correct when he argued that the Anti-Federalists were the true Federalists.²³⁴ The term confederation is now used solely to identify this form of government, while federation or federalism has shifted in meaning to identify a form of government that is structurally similar to that of a confederation but with a significantly stronger central government that shares sovereignty with its component regions.

The United States were governed by the Articles of Confederation. The men who would become known as Federalists saw three principal deficiencies in the current form of government. It became apparent, in the wake of the Revolution, that Congress was unable to pay off the national debt that had been taken on in order to fight the war for independence; Congress was unable to raise revenue by taxation or force the states to pay up. It also did not have sufficient power to regulate relations between the states and foreign nations. Congress could not force the states to abide by treaties or prevent them from signing their own at cross-purposes with each other. Thus it was recognized by

²³³ See the “Letters of Agrippa,” particularly VIII (December 25, 1787), in *The Anti-Federalist: Writings by the Opponents of the Constitution*, Herbert J. Storing, ed., selected from *The Complete Anti-Federalist* by Murray Dry (Chicago: University of Chicago Press, 1985).

²³⁴ *The Anti-Federalist*, p. 276; cf. *The Complete Anti-Federalist*, 5.14.25-26.

many that the Articles of Confederation had to be strengthened. But these were not sufficient reasons to jettison the old system of government entirely, so the Anti-Federalists thought.

The third principal deficiency of the Articles of Confederation was the perceived weakness of the national and state governments in the face of civil unrest and insurgencies. The immediate catalyst of the Constitutional Convention of 1787 was an event in Massachusetts called Shays's Rebellion. This event was used by the ruling elites as an impetus for improving the system of government and, later, as a justification for the dire need of ratifying the new Constitution. Most importantly, it was this event, as it was reported to him by his friends, that stirred George Washington out of his retirement and convinced him to preside over the Constitutional Convention. His presence was pivotal, as it gave the convention and the controversial Constitution a special air of legitimacy, for though the "other delegates...were men of great prestige,...none as yet had been deemed demigods. Washington, in contrast, was already a towering figure, larger than life, the nation's most influential citizen. With Washington as presiding officer, everyone in the country had to take notice."²³⁵

Of the rebellion that occurred in Massachusetts in 1786-87, Washington was informed by his former aide, Daniel Humphreys, that the uprising was due to the "licentious spirit prevailing among the people"; that the malcontents were "levellers" determined to "annihilate all debts public & private."²³⁶ The rebels had shut down courts, allegedly to suspend debt suits, and had attempted to seize the national arsenal at Springfield to do...what? The arsenal would have made the rebels better armed than the

²³⁵ Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle*, p. 133. The following discussion on Shays's Rebellion is drawn from this work.

²³⁶ Quoted in Richards, p. 2.

state of Massachusetts had they been successful.²³⁷ Reports from Humphreys, Henry Knox, and others instilled in Washington a fear that the political fabric of the nation was unraveling and that something drastic had to be done to save it.

This popular account of Shays's Rebellion is a highly distorted one, however. Far from being a mob of destitute farmers, Shays and his approximately 4,000 fellow rebels ranged from the heavily indebted and poor to the wealthy and well-to-do. Moreover, there is absolutely no correlation between debt and the backcountry towns of Massachusetts that rebelled. A large number of the rebels were veterans of the Revolutionary War, including Daniel Shays. The rebellion had popular support in western Massachusetts. Even those who did not actively take up arms were sympathetic to the rebel cause. Indeed, nearly all of the citizen militia of Massachusetts either refused to suppress the rebellion or joined forces with the rebels. And the authorities in Boston were well aware of this.

If it was not to suspend debt suits and eradicate 'all debt, public and private', why did the farmers of the Massachusetts backcountry rebel? In their eyes, they were fighting an unjust government. They were the victims of a regressive tax system, an overly expensive and complicated judicial system, and were not adequately represented in the Massachusetts government, which was dominated by the Boston gentry and unresponsive to their needs. In short, their rebellion was in the spirit of the Revolution; they saw themselves as "Regulators...for the Suppressing of tyrannical government in the Massachusetts State,"²³⁸ a state that was no better than the British colonial rule they had

²³⁷ Ibid.

²³⁸ Ibid., p. 63.

so recently fought to throw off. It is a not unimportant fact that the government Shays and his fellows were rebelling against was established by John Adams's 1780 constitution.

Shays's Rebellion was sparked by a sharp rise in regressive taxes. The taxes themselves were increased as part of the plan to pay off the state debt in less than ten years, and enrich the few at the expense of the many in the process. During and after the Revolutionary War, the states had issued notes to the soldiers as payment for their services. Few of these soldiers could afford to wait until their state was able to pay off its debts, particularly in the face of depreciating paper money, so they often sold them at a fraction of their value to speculators in order to receive payment that was more immediately useful for paying expenses. Large portions of these notes ended up in the hands of a relative few, note speculators, many of whom had political connections. The mercantile-dominated legislature managed to get the state debt consolidated at face value, twice the value necessary to make the state creditworthy, and intended to have it paid off quickly. Thus, taxes were raised to an oppressive level. Especially hard hit were the backcountry farmers, particularly those with grown sons. To make matters worse, payment had to be made in hard money (that is, in gold).

The Massachusetts elite was able to put a negative spin on Shays's Rebellion. Their version of the event not only served as the catalyst for the Constitutional Convention and got Washington out of retirement, but intensified the distrust felt among the elite about the ability of the common people to govern themselves. "The general conviction was that ordinary people, especially in Rhode Island and Massachusetts, were out of control and that there were "combustibles," as Washington termed them, in every

state.”²³⁹ Madison proclaimed, “The insurrections in Massachusetts admonished all the States of the danger to which they were exposed.”²⁴⁰ Even Elbridge Gerry, who would later oppose the Constitution, declared, “The evils we experience flow from the excess of democracy.”²⁴¹ Indeed, the new Constitution was decidedly aristocratic, especially the Senate – elected indirectly by the people through their state legislatures and designed with strong powers to counter the more popularly elected House of Representatives – and the President, who would be elected indirectly by the people through the Electoral College. The Supreme Court Justices are not elected at all, but even further removed from the people in that they are nominated by the President and approved by the Senate. Suffrage requirements were left up to the several states and, though property qualifications were not included for federal officials, the very nature of the offices would virtually ensure that the wealthy and well-born would tend to dominate them.

The Massachusetts towns that produced Shays’s Rebellion had much in common with the Anti-Federalists. Most of the former voted against the new Constitution. Like many of the Anti-Federalists, they distrusted a powerful, unrepresentative government in the hands of a wealthy and aristocratic elite. Richards points out that in Massachusetts chicanery was involved in the ratification process of the national Constitution as well. The document “began with ‘We the People’, but it was not the ‘people’ who had demanded a new national government. Instead, the Constitution was the handiwork of a small segment of governing elite, and everyone knew it.” Some of the people’s main criticisms were the direct tax clause, the three-fifths clause, and the lack of a bill of rights. “To prevail, noted George Richards Minot, the clerk of the state legislature, King

²³⁹ Ibid., p. 134.

²⁴⁰ Ibid.

²⁴¹ Ibid.

and his allies had ‘to *pack* a Convention whose sense would be different from that of the people.’ Even Minot, “an ardent Federalist [himself] and a seasoned observer of deal-making, was appalled. ‘Never was there a political system introduced by less worthy means,’ wrote Minot.”²⁴²

As Richards also shows, Shays’s Rebellion was not unique; the Regulator movement was not confined to Massachusetts. These most prominent examples received nationwide attention: Backcountry yeoman farmers attempted to rebel against tyrannical state government in North Carolina in 1768 and in South Carolina later in the year; the former were crushed, while the latter were generally successful in their more limited aims. A failed insurgency had occurred in New York two years earlier in 1766. And in the 1770’s Ethan Allen and the Green Mountain Boys succeeded in carving the independent republic of Vermont out of New York and New Hampshire.²⁴³ The new Constitution would enable the national government to put an end to such rebellions, however. One might say, with Richards, that Shays’s Rebellion was the final battle of the Revolution.

Though not recognizing the justness of Shays’s Rebellion, The Federal Farmer nevertheless perceptively identifies the aristocratic elite pushing for the adoption of the Constitution.

Though I have long apprehended that fraudulent debtors, and embarrassed men, on the one hand, and men, on the other, unfriendly to republican equality, would produce an uneasiness among the people, and prepare the way, not for cool and deliberate reforms in the governments, but for changes calculated to promote the interests of particular orders of men.²⁴⁴

²⁴² Ibid., pp. 147-148 (emphasis in original).

²⁴³ Ibid., pp. 63-67.

²⁴⁴ *The Anti-Federalist*, p. 33.

The latter party, in reaction to the former (Shays & Co.), “in 1787, has taken the political field, and with its fashionable dependents, and the tongue and the pen, is endeavoring to establish in great haste, a politer kind of government.”²⁴⁵ Though he does not necessarily identify the Convention delegates as all being part of this group, he nevertheless holds that this group of “aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object.”²⁴⁶

Though the tactics used in other states were not as underhanded as in Pennsylvania, it will be instructive to have a look at the ratification process in the first state to call a convention on the Constitution. Samuel Bannister Harding informs us:

In the State were two parties, embittered by a dozen years of violent struggle. On the one side, and for the moment in power, stood the greater proportion of the men of property, of education, of large ideas, and federal views; six of the eight delegates sent by the State to the Federal convention had come from their number, and the other two – Franklin and Ingersoll – if not neutral, were at most but moderate Constitutionalists. On the other side [the Constitutionalists] the leadership had been assumed by men of obscure birth, of little education or property, and of the narrowest views. Small wonder, then, that the cause espoused by the first met with the violent condemnation of the second, and that the contest which ensued was unprecedented in virulence and animosity.²⁴⁷

The Republican-controlled legislature moved quickly to call a ratifying convention before the opposition could get organized or obtain thorough information. Sixteen of the Anti-Federalist legislators attempted to prevent a quorum by fleeing the assembly. Two were rounded up and forcibly detained, so that a quorum was established; a vote was eventually taken and the Constitution was ratified. Though each article was debated, the dissenting opinion of the minority was kept out of the official record and no amendments were allowed to be proposed. Moreover, the sixty-nine delegates that made up the

²⁴⁵ Ibid., p. 62.

²⁴⁶ Ibid.

²⁴⁷ Ibid., p. 199.

quorum represented a mere ten percent of eligible voters. Less than a week later, an open letter was published by a person or group claiming to be the Pennsylvania Minority.²⁴⁸

After criticizing the lack of a Bill of Rights in the Constitution, a sticking point for the Anti-Federalists, and recommending fourteen, the Pennsylvania Minority goes on to raise three general objections. The first raises the point that, “the most celebrated writers on government, and...uniform experience, [tell us] that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns.”²⁴⁹ The only other way to govern such a vast territory is through despotism. This position echoes that of the Federal Farmer, who elaborated further “that one government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded.”²⁵⁰ Well aware of how large a territory the United States were and how fast they were expanding, he notes:

the laws of a free government rest on the confidence of the people, and operate gently – and never can extend their influence very far – if they are executed on free principles, about the centre, where the benefits of the government induce people to support it voluntarily; yet they must be executed on the principles of fear and force in the extremes – This has been the case of every extensive republic of which we have any accurate account.²⁵¹

Agrippa, too, argues that no extensive empire can or has been “governed upon republican principles, and that such a government will degenerate into a despotism, unless it be

²⁴⁸ Ibid., p. 204-206; cf. Richards, p. 141.

²⁴⁹ Ibid., p. 209.

²⁵⁰ Ibid., p. 39.

²⁵¹ Ibid., p. 40.

made up of a confederacy of smaller states, each having the full powers of internal regulation.”²⁵²

The Anti-Federalists feared that the Constitution, at least partly due to the large territory of the United States but also on its own merits (or demerits), would lead to a consolidated government and the abolition of the states, in fact if not in name. Brutus acknowledges that “although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.”²⁵³ The Federal Farmer,²⁵⁴ Pennsylvania Minority, and Agrippa agree. Brutus goes further, arguing that such is the very object of the Constitution itself. The preamble of the Constitution established the United States as “a union of the people...considered as one body” and does not secure the existence of the state governments.²⁵⁵ Its stated purpose is “To form a more perfect union” but a more perfect union of this kind would necessitate the abolition of “all inferior governments, and to give the general one compleat legislative, executive and judicial powers to every purpose.”²⁵⁶ So too with its professed purposes of establishing justice and ensuring domestic tranquillity. The Pennsylvania Minority echo this argument, pointing out that “We the people of the United States” is “the style of a compact between individuals entering into a state of society, and not that of a confederation of states.”²⁵⁷

The Pennsylvania Minority conclude that “consolidation pervades the whole constitution”²⁵⁸ and Brutus agrees that the declared intention of the preamble “proceeds

²⁵² Ibid., p. 235; cf. Pennsylvania Minority, p. 213.

²⁵³ Ibid., p. 110.

²⁵⁴ Ibid., p. 37.

²⁵⁵ Ibid., p. 170.

²⁵⁶ Ibid.

²⁵⁷ Ibid., p. 213.

²⁵⁸ Ibid.

in the different parts”²⁵⁹ of the Constitution. Two very important issues to the Anti-Federalists, relating to the size and diversity of the United States, were “full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice.”²⁶⁰ The Federal Farmer defines full and equal representation as

that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled – a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it – in order to allow professional men, merchants, traders, farmers, mechanics, etc. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous.²⁶¹

The number of legislators allotted to the House of Representatives and the Senate was far too few to effect full and equal representation. In an era without the automobile or the train, this deficiency was aggravated by the extensive territory of the United States; “it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government”²⁶²; only the wealthy would be able to afford being elected. But, as I have previously noted, full and equal representation is precisely what the framers of the Constitution did *not* want. A jury trial of the vicinage, or vicinity, meant a jury trial of your peers from the nearby area in which you lived. The Anti-Federalists were afraid that this vital tradition would be obviated by the single supreme judiciary under the new Constitution, even with its inferior courts.²⁶³

Brutus argues that the general welfare clause in Section 8 of Article 1 grants Congress the authority to do anything “which in their judgment will tend to provide for

²⁵⁹ Ibid., p. 170.

²⁶⁰ Ibid., p. 39.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ See “Letter of The Federal Farmer,” p 40.

the general welfare, and this amounts to the same thing as general and unlimited powers of legislation in all cases.”²⁶⁴ The Federal Farmer agrees that the powers lodged in the general government under the new Constitution are “very extensive powers – *powers* nearly, if not altogether, complete and unlimited, over the purse and the sword.”²⁶⁵ Brutus fears, however, that:

In a republic of such vast extent as the United States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.²⁶⁶

Something like this has indeed come to pass in the United States. The problems foreseen by Brutus in the first long passage have plagued every centralized state lawmaking body and bureaucracy throughout history, such is inherent in their nature. As for the pronouncements of the second long passage, one has only to look at the vast proliferation

²⁶⁴ Ibid., p. 170.

²⁶⁵ Ibid., p. 41.

²⁶⁶ Ibid., p. 116.

and intrusive growth of federal bureaucracies in nearly every aspect of life that we have seen in the last century. To name just a few examples: the EPA, IRS, OSHA, DEA, ATF, FCC, FTC, NTSB, etc.²⁶⁷ Although the potential power of the executive branch was one to be feared, the Anti-Federalists were far more concerned at the moment with the consolidating powers of the legislative and judicial branches.

Among the powers of Congress that most disturbed the Anti-Federalists were its powers of internal taxation, its expansive power to maintain a standing army and regulate militias, its powers to regulate commerce and trade, and its treaty-making power. All of these would tend toward a consolidation of power in the national government. Internal taxation was disliked by the American people in general and the first two together, internal taxation and the power over the military, left room for an alarming degree of discretionary power. The two year limit on appropriations would hardly prevent Congress from simply renewing them every two years. In light of the discussion on Shays's Rebellion, it is interesting to point out that the Constitution gave the national government the power not merely to repel invasions but also to suppress insurrections. Such a provision could be used to prevent secession or rebellion, by states or within states, be it just or unjust. Standing armies were widely recognized by Federalists and Anti-Federalists alike as a bane to free republics; they are a tool of repression and a vehicle for conformity and uniformity, of social engineering. Anti-federalists were also afraid that the concurrent powers of taxation, held by both the national and state governments, would eventually lead to the national government crowding the state governments out and depriving them of revenue. With power over commerce and trade and over the

²⁶⁷ For details, see Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987).

making of treaties, and with the laws and treaties passed and ratified by Congress as the supreme law of the land, there was also the danger that the national government could by way of these whittle away at the sovereignty of the several states. Most of these fears have to a great extent been realized, albeit largely a century or more after the Constitution was ratified.

The judiciary was also seen as a major feature of the Constitution that would tend to abolish the state governments or at least greatly emasculate them. Brutus complains that the power of judging the constitutionality of the laws is best left up to the people, who can decide to whether or not to re-elect legislators. Instead, in the Constitution, the unelected Supreme Court is given the sole authority of judging the constitutionality of the laws, and neither the “people, nor state legislatures, nor the general legislature can remove [the Supreme Court Justices] or reverse their decrees.”²⁶⁸ He also was concerned that the national judiciary would contribute to the “entire subversion of the legislative, executive and judicial powers of the individual states.”²⁶⁹ This would be accomplished through its original jurisdiction in cases between states and between states and citizens of other states, and through its appellate jurisdiction and its power to judge the constitutionality of state laws. Just thirty years later, Thomas Jefferson had similar fears of the judiciary: “Our government is now taking so steady a course as to show by what road it will pass to destruction; to wit: by consolidation first and then corruption, its necessary consequence. The engine of consolidation will be the Federal judiciary; the two other branches the corrupting and corrupted instruments.”²⁷⁰

²⁶⁸ *The Anti-Federalist*, pp. 186-187.

²⁶⁹ *Ibid.*, p. 165.

²⁷⁰ “Thomas Jefferson to Nathaniel Macon, 1821,” in *The Writings of Thomas Jefferson*, Memorial Edition, Lipscomb and Berg, eds., 20 Vols., (Washington, D.C.: 1903-1904), 15:341.

As a final indignity in the eyes of the Anti-Federalists, the nail in the coffin so to speak, Article Six of the Constitution stipulates that it and all the laws and treaties made in pursuance thereof would be the supreme law of the land. Moreover: “The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound, by oath or affirmation, to support this constitution.” Brutus exclaims: “It is therefore not only necessarily implied thereby, but positively expressed, that the different state constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States[.]”²⁷¹

The Federalist Papers were written both to promote the new Constitution and to rebut the objections of the Anti-Federalists. While many of the Anti-Federalists were concerned with the possibility of consolidation through it, the Federalists feared the opposite; they feared that if the Constitution were not adopted, the Union would not last. Hamilton, as Publius, argues in Federalist #1 that the Articles of Confederation were insufficient to the task. A more ‘energetic’ government was needed. He presents the issue in stark either-or terms: either adopt the new Constitution or face a dismemberment of the Union, a false alternative to be sure. The situation was not as urgent and dire as the Federalists made it out to be, and at least one alternative was available, amending the Articles of Confederation so as to rid it of its deficiencies, which is what the Constitutional Convention had been tasked to do.

In perhaps the most famous of the Federalist Papers, #10, Madison addresses the issue of faction in connection with representation and an extensive republic. The most

²⁷¹ *The Anti-Federalist*, p. 121.

important issue in a popular government is to control the violence of faction. Madison argues that direct democracies are so tumultuous because it is easy for a majority faction to gain control of the government and do away with the minority faction's rights. A republic or representative democracy, on the other hand, can serve to control majority faction by filtering the passions of the people through their representatives. However, in a republic it is possible that men "of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people."²⁷² Madison argues that a large republic would be better able to prevent this than a small one:

In the first place it is to be remarked that however small the republic may be the representatives must be raised to a certain number in order to guard against the cabals of a few; and that however large it may be they must be limited to a certain number in order to guard against the confusion of the multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in a small republic, it follows that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffuse and established characters.²⁷³

Yet if the number of fit characters in a large republic is likely to be greater than in a small one, does it not seem just as likely that the number of unfit characters will be greater as well? Furthermore, it seems counterintuitive that the people will be able to better judge the fitness of character in a candidate whom they know less well due to a more extensive territory and a smaller proportion of representatives.

²⁷² *The Federalist Papers*, p. 77.

²⁷³ *Ibid.*

Madison also argues that a larger republic will make majority faction control of the government less likely due to a greater diversity of interests. This may be true to some degree. A two party system developed early on, however, and though the national parties had to build platforms on broad issues, once in office politicians could pursue whatever specific policies interested them or their friends. Moreover, by the very nature of things one of these two parties had to be dominant at any given time. And while the tyranny of the majority may have been avoided or dampened, except in times of severe crisis, a multiplicity of special interest groups have not faced the collective action problem of the majority. Politicians, especially in the twentieth century, have not failed to make compromise deals with each other to support these interests.

With regards to the nature of representation itself, in Federalist #56 Madison attempts to answer contention of the Federal Farmer and other Anti-Federalists that the federal government should have a full and equal representation that possesses the same varied interests as the people themselves would have if they all assembled. He agrees that indeed representatives “ought to be acquainted with the interests and circumstances of his constituents. But this principle can extend no further than to those circumstances and interests to which the authority and care of the representative relate.”²⁷⁴ For the federal legislature, the three most important objects are the regulation of commerce, taxation – largely through tariff duties, and the militia. Therefore, the representatives did not need knowledge of “a variety of minute and particular objects” for this.²⁷⁵ In America today, however, the objects of the federal legislature extend into a wide array of subjects.

²⁷⁴ Ibid., p. 344.

²⁷⁵ Ibid.

Among the chief differences between the Articles of Confederation and the Constitution were the latter's expansive powers over commerce, taxation, and the military. The Constitution did achieve the object of the Federalists, which was to create a more energetic and efficient central government. For example, Hamilton was afraid that, far from the states wreaking havoc with each other's commerce, tariffs would be *too low* without the Constitution:

In America it is evident that we must a long time depend for the means of revenue chiefly on such duties. In most parts of it excises must be confined within a narrow compass. The genius of the people will ill brook the inquisitive and peremptory spirit of excise laws. The pockets of the farmers, on the other hand, will reluctantly yield but scanty supplies in the unwelcome shape of impositions on their houses and lands; and personal property is too precarious and invisible a fund to be laid hold of in any other way than by the imperceptible agency of taxes on consumption.

[...]

The relative situation of these States; the number of rivers with which they are intersected and of bays that wash their shores; the facility of communication in every direction; the affinity of language and manners; the familiar habits of intercourse – all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty and would insure frequent evasions of the commercial regulations of each other. The separate States, or confederacies, would be necessitated by mutual jealousy to avoid the temptations to that kind of trade by the lowness of their duties.²⁷⁶

It is therefore evident that one national government would be able at much less expense to extend the duties on imports beyond comparison, further than would be practicable to the States separately, or to any partial confederacies. Hitherto, I believe, it may safely be asserted that these duties have not upon an average exceeded in any State three percent. In France they are estimated at about fifteen percent, and in Britain the proportion is still greater. There seems to be nothing to hinder their being increased in this country to at least treble their present amount.²⁷⁷

²⁷⁶ Ibid., pp. 88-89.

²⁷⁷ Ibid., p. 90.

But to what end? Tariffs higher than a few percent would begin to constitute protective tariffs. As he indicates in *Report on Manufactures* (1791) that is precisely what he wants in order to encourage the growth of certain industries. Hamilton was also in favor of internal improvements as well as a national bank. Not all of the Federalists agreed with Hamilton on these issues, but a sizable number of them did. It is also interesting to note that the first quoted passage seems to indicate that Hamilton looked forward to a time when the people would not be so adverse to direct taxes.

Regarding the Anti-Federalists', and Jefferson's, fears of the judiciary, Hamilton, who wrote all of the Federalist Papers on the subject, thought it to be the weakest of the three branches of government.²⁷⁸ The judiciary has no control over the purse or the sword. It may be a minor quibble, but how are the three branches supposed to balance and check each other if they are not roughly equal in strength? The greatest fear of the Anti-Federalists and Jefferson was that the judiciary would, either out of weakness or complicity, allow the gradual increase and consolidation of power in the federal government not necessarily through action solely but also through *inaction*. With the federal judiciary, and the Supreme Court in particular, set up as the ultimate arbiter of what is constitutional, this was a very real danger.

Over two centuries after the ratification of the Constitution, many of the fears of the Anti-Federalists have been realized, though not necessarily in the way that they or even the Federalists would have expected. It is also true that most of these transformations took a century or more after they wrote to begin in earnest. It is my opinion that the Bill of Rights and the tradition of republicanism and liberty prevailing

²⁷⁸ Ibid., p. 464.

among the people helped to slow this process down. Ultimately, the greatest degree of consolidation into the hands of the national government (and the executive in particular) has occurred during times of crisis, such as the Civil War, the Great Depression, and World Wars I & II.²⁷⁹ The seeds were sown in the Constitution, however. And the road was embarked upon right in the beginning.

Alexander Hamilton sought, as the first Secretary of the Treasury, and succeeded in, tying the interests of the wealthy and well-born to the national government by consolidating the debts of all the states into the hands of the national government and paying off the notes at face value, thus enriching the wealthy speculators such as those in Massachusetts. He rightly recognized that the wealthy were a threat to any government that got in their way, but with political connections and the expansive power of the new government at their disposal they would also prove to be a threat to liberty.²⁸⁰

The Constitution was a compromise document in many ways. It was a compromise between large and small states, between the Northern free states and the Southern slave states; and it was a compromise between liberal ideas and conservative ideas. Among the liberal innovations were the Bill of Rights, particularly the establishment clause and freedom of religion clause in the 1st Amendment, and the lack of constitutionalized property qualifications for suffrage and eligibility for office. Madison's *Notes on the Convention Debates* show us that there were indeed compromises made between the Southern slaveholders and the Northern merchants. The Southern slaveholders attempted to ensure that their already politically supported

²⁷⁹ For details, see Higgs, *Crisis and Leviathan*.

²⁸⁰ Richards, pp. 152-158.

economic interests continued to be so in the new government, giving the North various concessions such as the simple majority rather than two-thirds majority requirement to regulate commerce.

Albert Jay Nock traces the merchant-State in America back to the colonial governments (and beyond them, to England herself). In light of what we have seen, it may come as no surprise that he favored the Articles of Confederation over the Constitution as a more tolerable form of government. The Articles more closely approximated the classical liberal principles of the Revolution and the Declaration of Independence although British mercantilism had not been completely shaken off. Consequently, he saw the Constitution, with its greater centralization and expansive powers, as an ominous step back. Nock describes the Constitutional Convention as an industrial *coup d'Etat*.²⁸¹ He identifies the Convention as being made up “wholly of men representing the economic interests of the first division. The great majority of them, possibly as many as four-fifths, were public creditors; one-third were land-speculators; some were money-lenders; one-fifth were industrialists, traders, shippers; and many of them were lawyers.”²⁸² Rather than strengthening the Articles of Confederation, as the convention was expressly called for, the delegates tossed the Articles “into the wastebasket” and drafted a “constitution *de novo*.”²⁸³ The provision for amendment of the Articles provided by the Articles themselves was ignored. As we have seen, the ratification process was manipulated in favor of the Federalists, and the Constitution passed by a slim margin with only a fraction of the population voting. The United States

²⁸¹ Ibid., Ch. 5, Part III, p. 118.

²⁸² Ibid., p. 121.

²⁸³ Ibid.

government was successfully transformed into a new and improved version of the British merchant-state, though it would be many years until the mercantilists would be able to use the powerful new central government to institute their programs in full.

Against Nock it might be argued that he was relying upon the outdated Beard-Becker “economic-determinist” model of human motivation.²⁸⁴ That the Constitution had wealthy opponents is not in itself an argument against Nock’s thesis. The criticism implies the unlikely situation that every wealthy person would see his economic interests as being better served by a stronger central government, that they would recognize its potential benefit to them, and that they were in a position to benefit. It also implies that none of them placed the value of classical liberal ideas higher than their economic interests.

Rothbard, in volume three of *Conceived in Liberty*, argues that the Beard-Becker approach is indeed flawed. While it serves admirably in the analysis of statist government activities, it fails miserably when applied to antistatist events like the American Revolution. The Beard-Becker approach fails to appreciate the “necessarily primary role of *ideas* in guiding any revolutionary or opposition movement.”²⁸⁵ The rhetoric of the *Declaration*, of the political sermons, of Paine’s *Common Sense*, of *Cato’s Letters*, and other such speeches and writings, were indispensable to the Revolution. For people to be motivated by them, they had to believe the ideas conveyed in them and that belief generally had to be passionate enough to overcome the economic incentives of “selling out.” Rothbard argues:

²⁸⁴ The progressive historians Charles Beard and Carl Becker. The “economic determinist” model was the dominant school of American history in the 1920s and 1930s. I am indebted to my Committee Chair, Dr. James Stoner, for pointing this issue out to me.

²⁸⁵ Murray N. Rothbard, *Conceived in Liberty Vol. III: Advance to Revolution, 1760-1775* (New Rochelle, NY: Arlington House Publishers, 1976), p. 354.

Statists tend to be governed by economic motivation, with ideology serving as a smokescreen for such motives, while libertarians or antistatists are ruled principally and centrally by ideology, with economic defense playing a subordinate role. By this dichotomy we may at last resolve the age-old historiographical dispute over whether ideology or economic interests play the dominant role in historical motivation.²⁸⁶

Another flaw in the Beard-Becker approach is that it fails to “understand that there are no inherent economic conflicts in the free market; without government intrusion, there is no reason for merchants, farmers, landlords, et al. to be at loggerheads. Conflict is created only between those classes that rule the state and those that are exploited by the state.” The colonists did not begin coming into conflict with each other until some began to employ the State for their own benefit and/or the “nation.”

The conflict between the liberals and the conservatives, which can be traced back to its roots in England and is evident in the drafting and ratification of the Constitution, hints at a fundamental flaw in classical liberalism, which will become more apparent in part five.

²⁸⁶ Ibid. Note that Rothbard says “dominant role” not “only role.”

V. Post-Founding and the War of Southern Secession

When a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize

— Henry David Thoreau

Part five of this essay is concerned with major events and figures surrounding the American Civil War, with particular emphasis on the growing abolitionist and individualist anarchist movements. I focus mainly on the abolitionist writings of individualist anarchists Henry David Thoreau²⁸⁷ and Lysander Spooner. I argue also that the war, though not inevitable, was prefigured in the Constitution through the compromises on slavery and the extensive powers granted to the federal government. In so doing, I briefly sketch American history before, during, and after the war.

V.1 The Problem of Slavery

The founding of the United States of America under a written constitution was a monumental event in human history. Never before had a group of people come together to design and agree upon the structure of their own government. To be sure, not everyone had a say in the ratification of the new Constitution. The number of eligible voters was but a fraction of the total population of the several States. Forty-two of these were the representatives of each state (except for Rhode Island) sent to Philadelphia to discuss revising the Articles of Confederation. From May 25th, 1787 through September 17th, 1787, these representatives engaged in the project of crafting the Constitution. In the end, three refused to sign the document, largely because it lacked a Bill of Rights. All of the

²⁸⁷ It might be more accurate to call Thoreau a quasi-anarchist as will become evident by perusing the first few pages of “Civil Disobedience.”

states eventually ratified the Constitution, and the familiar Bill of Rights was introduced and ratified by December 15th, 1791. There have been seventeen amendments since the Bill of Rights. The Constitution was not perfect when it was first ratified and it is not perfect now, despite twenty-seven amendments, yet it has lasted longer than any other written form of government (though the US is certainly not the longest lived government in history). One of the flaws in the Constitution helped bring about one of the most catastrophic events in our country's history: the attempted secession of the southern slave-holding states, popularly known as the Civil War, but more properly termed the War of Southern Secession. This flaw in the Constitution was the embodiment of a fateful compromise over the issue of slavery between the northern and southern states.

About a third of the way through the Constitutional Convention, James Madison made the prescient observation that the main division of interests was in fact between the northern and southern states rather than between the large and small states. The states “were divided into different interests not by their size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves.”²⁸⁸

The issue of slavery constituted not merely economic and political divisions, but growing cultural and moral ones as well.²⁸⁹ Already in the convention, northern delegates were beginning to pose moral objections to slavery. Some, at least, in the North, recognized slavery as a violation of the principles human equality and individual liberty embodied in the Declaration of Independence. Roger Sherman of Connecticut remarked that he regarded the slave trade as iniquitous. Gouverneur Morris echoed Sherman,

²⁸⁸ James Madison *Notes of Debates in the Federal Convention of 1787, Reported by James Madison*, with an introduction by Adrienne Koch (Athens: Ohio University Press, 1987), p. 224; see also p. 295.

²⁸⁹ See pp. 409-413.

regarding slavery as a nefarious institution. Morris demanded, “Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens and let them vote.”²⁹⁰ Luther Martin of Maryland also recognized slavery as being “inconsistent with the principles of the revolution and dishonorable to the American character[.]”²⁹¹

The issue of state’s rights was already present in the convention as well. Oliver Ellsworth of Connecticut took a position not unsympathetic to that of other delegates: “The morality or wisdom of slavery are considerations belonging to the States themselves.”²⁹² Sherman, however, observed “that the abolition of Slavery seemed to be going on in the U.S. & that the good sense of the several States would probably by degrees compleat it.”²⁹³ He and others failed to see, however, how the compromises made over slavery would serve to artificially support the institution in the South.

The slavery compromise-flaw in the Constitution was given form in three separate places in the document. Let us have a look at the clauses:

Art. I, Sec. 2, Para. 3: Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

Art. I, Sec. 9, Para. 1: The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

²⁹⁰ Ibid., p. 411.

²⁹¹ Ibid., p. 502; Abraham Baldwin of GA regarded slaves as animals, however (see p. 506).

²⁹² Ibid., p. 503.

²⁹³ Ibid.

Art. IV, Sec. 2, Para. 3: No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

“Three fifths of all other Persons” was political code for black people held as slaves in the South. This first clause, the so-called “three-fifths compromise,” insured that every “five slaves counted as three free persons for both political representation and direct taxes.”²⁹⁴ Slaves, of course, were not themselves represented in the South, unless you count their masters as their representatives. Thus, Southern representation would be artificially inflated. Presciently, Gouverneur Morris argued that direct taxation is not of equal importance to representation, “for direct taxes would only be levied four times in the next seventy-two years, while the larger voice that southern slave masters obtained in the House and the electoral college had enormous impact, affecting not only scores of congressional decisions but virtually every aspect of the nation’s political fabric.”²⁹⁵

The second clause, as well as the third, together with the decision to enable Congress to regulate commerce by majority vote rather than two-thirds, became known as the “dirty compromise.”²⁹⁶ The South had little need to regulate commerce (at least at the time of the convention). The New England delegates and merchants, on the other hand, had an interest in regulating commerce to protect their young and growing industries. A two-thirds requirement would make regulating commerce exceedingly hard and give the minority group in Congress disproportionate leverage. On the other hand, a mere majority vote requirement would eventually give the Northern states power over commerce that could be injurious to the South as their populations grew to exceed that of

²⁹⁴ Richards, p. 137.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

the Southern states even with slaves partially counted. The second clause prevented Congress from banning the importation of slaves (i.e., from ending the international slave trade to the US) for twenty years until 1808, upon which time they promptly did so. The final clause, which became known as the “fugitive slave clause,” supported the Fugitive Slave Laws, obligating northern states to assist Southern slaveholders by hunting down and returning runaway slaves, effectively subsidizing the South’s institution of slavery.

One after another, northern states, starting with Vermont in 1777 and ending with New Jersey in 1804, set about to end slavery in the north either through “outright abolition or gradual emancipation.”²⁹⁷ An event transpired on July 13, 1787 that altered and amplified the North-South dynamic. The Continental Congress, under the Articles of Confederation, passed the Northwest Ordinance. The Northwest Ordinance created the Northwest Territory, the first organized territory of the United States, and banned slavery within it and any states arising out of it. This mapped the future westward expansion of the country, creating a geographical dividing line between free states and slave states, between the North and the South. National politics between the North and the South after ratification of the Constitution was flavored by the tension of maintaining a balance between the two in Congress and the Electoral College, a balance that collapsed following the Mexican War (1846-48).

It was not until the decade following the War of 1812 that slavery came to “fully divide the South from the North.” The last attempts to legalize slavery in Indiana and Illinois were defeated and “the free states were beginning to overwhelm the slave states in total population,” in large part due to immigration. “Already in 1819, the North

²⁹⁷ Jeffrey Rogers Hummel, *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* (Chicago: Open Court, 1997), p. 10.

outvoted the South in the lower house of Congress, 105 to 81. Only the Senate maintained a balance between the country's two sections: eleven free states to eleven slave states."²⁹⁸

When the territory of Missouri petitioned Congress for admission to the Union it was fought over by the North and the South. Would it be admitted as a free state or as a slave state? A remark from one of the delegates to the Constitutional Convention, Senator Rufus King, highlights the fact that the division of slavery was not merely a moral one: "The disproportionate power and influence allowed to the slave-holding states, was a necessary sacrifice to the establishment of the constitution[.] But the extension of this disproportionate power to the new states would be unjust and odious. The states whose power would be abridged, and whose burdens would be increased by the measure, cannot be expected to consent to it."²⁹⁹ The famous Missouri Compromise, proposed by Kentucky slaveowner and Speaker of the House, Henry Clay, maintained the sectional balance between the North and the South by admitting Missouri as a slave state and admitting Maine, a former district of Massachusetts, as a free state. Additionally, the remainder of the Louisiana Territory, with the exception of Missouri, would be closed to slavery north of the line running west from Missouri's southern border and open to slavery south of the line.

The conflict over Missouri galvanized the South to seek the expansion of slavery, however, while the North was not yet united in stopping the expansion of the institution. In the wake of the Missouri Compromise, Southerners also became ardent defenders of inviolate states' rights. They feared the power of the federal government to endanger their

²⁹⁸ Ibid., p. 12.

²⁹⁹ Ibid., p. 13.

slave institution. John Randolph of Roanoke in particular saw that if the Constitution's war powers authorized the federal government to finance "roads, canals, and other internal improvements" then they would also authorize the emancipation "of every slave in the United States."³⁰⁰

The conflict over slavery in the territories subsided for nearly a quarter of a century, but states' rights remained a contentious issue. Though a strict construction interpretation of the Constitution allowed tariffs for the purpose of revenue only, protectionist tariffs saw a steady rise after the War of 1812. The election of John Quincy Adams to the presidency in 1824 with the alleged aid of the so-called "corrupt bargain" with Henry Clay – which made possible the Tariff of Abominations, the rise of the Democratic Party, the subsequent victory of Andrew Jackson over Adams in 1828 – and Adams's famous career as an abolitionist Congressman afterward, helped to further polarize the country.³⁰¹ South Carolina, the state most heavily reliant on slavery, denounced the Tariff of Abominations as unconstitutional.

Vice-President John C. Calhoun developed the Doctrine of Nullification, which held that states had a right to nullify within their borders federal laws that were unconstitutional. The Nullification Doctrine was based on the compact, or contract, theory of the Constitution, which originated in the Constitutional Convention and the ratification process and held that in ratifying the Constitution the states had entered into a compact, the federal government was the agent of the states, and the states had a right to judge its infractions of the Constitution. South Carolina did not invoke nullification until 1832 when it nullified both the Tariff of Abominations and the Tariff of 1832. It

³⁰⁰ Ibid., p. 14.

³⁰¹ Robert V. Remini, *John Quincy Adams*, The American Presidents series, Arthur M. Schlesinger, Jr., General Editor, (New York: Henry Holt and Company, 2002).

threatened to secede if coerced. Henry Clay, the “Great Pacificator” staved off armed conflict again with the Compromise Tariff of 1833,³⁰² though out of principle, South Carolina nullified the Force Act of 1833, which permitted the President to use the national military to enforce the laws.

Calhoun revealed in a letter, however, that the contest over tariffs was actually about slavery. “I consider the Tariff act as the occasion, rather than the real cause of the present unhappy state of things[.] The truth can no longer be disguised, that the peculiar domestick *institution* of the Southern States, and the consequent direction, which that and her soil and climate have given to her industry, has placed them in regard to taxation and appropriations in opposite relation to the majority of the Union.”³⁰³ He argued that “[w]ithout the protection of states’ rights,” Southerners would have to rebel or submit and have their interests sacrificed.³⁰⁴

Also out of the tariff and nullification controversy we see the first systematic defenses by nationalists of the notion of perpetual Union that Lincoln would later adopt as a justification for preventing secession. “A permanent consolidated government had been what many of the Constitution’s framers had hoped for.”³⁰⁵ In 1830, Daniel Webster of Boston argued that the people ratified the Constitution not the states. In doing so they had created a consolidated government. The states therefore did not have a right to secession or to nullify national laws. Webster called for “Liberty *and* Union, now and forever, one and inseparable!”³⁰⁶ “Webster’s theory did not have the venerable tradition

³⁰² Hummel, pp. 15-19.

³⁰³ Quoted in *ibid.*, p. 19. Spelling unchanged from original.

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*, p. 18.

³⁰⁶ *Ibid.*, p. 18.

to match that of the compact theory[,]"³⁰⁷ however, and prohibition of secession would violate natural law in any case.

Over a decade later, President James Polk fought hard “to preserve national unity in the face of intense divisive pressures imposed by the proponents of slavery.”³⁰⁸ Ultimately, however, his aggressive war against Mexico (1846-48) in pursuit of “Manifest Destiny” opened up new territory for the North and the South to fight over. Senator Stephen Douglas was able to pass the Kansas-Nebraska Act of 1854, which potentially opened up the two territories to slavery by applying to them the doctrine of popular sovereignty. As Minnesota and Oregon were preparing to enter the Union as free states, this sparked off a race between both sides to populate Kansas and resulted in a good deal of fighting between the settlers. Kansas ended up rejecting a pro-slavery constitution, but the South was handed a victory by the Supreme Court with the Dred Scott decision. It was deemed that blacks were not citizens and never could be; they therefore could not sue in a federal court. Even more importantly, it was decided that the Missouri Compromise excluding slavery from the territories was unconstitutional, and that the “property rights of a slaveholder to his slaves merited full protection under the Constitution, particularly the protection of the Fifth Amendment’s due process clause” even if the slave(s) was taken to live in a free state or territory for an extended period of time.³⁰⁹ Tellingly for future events, Gouverneur Morris of Pennsylvania, over fifty years earlier on July 13, 1787, mentioned that he thought the distinction between the North and

³⁰⁷ Ibid.

³⁰⁸ John Seigenthaler, *James K. Polk*, The American Presidents series, Arthur M. Schlesinger, Jr., General Editor, (New York: Henry Holt and Company, 2003), p. 150.

³⁰⁹ Hummel, pp. 112-113.

the South groundless, but if it were “real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other.”³¹⁰

V.2 The Abolitionists

The “world’s first antislavery society” was organized in Philadelphia in 1775 by Quakers inspired by the liberating spirit of the Revolution, “and soon [after] similar organizations dotted the colonies.”³¹¹ Following the Revolution and the ratification of the Constitution, it was thought that slavery would eventually wither away in America. It is notable that the Constitution contains no mention of the term “slavery,” instead referring to slaves only obliquely by phrases like “other persons.” In the wake of ratification, anti-slavery fervor died down. At the same time that slavery was being ended around the world through emancipation and slave revolts, “American slavery enjoyed an economic resurgence,” thanks in large part to a cotton boom.³¹²

Jeffrey Rogers Hummel explains that “the last expression of Revolutionary antislavery” was the “colonization scheme,” which entailed “the removal of freed blacks to Africa[.]”³¹³ This policy was favored by abolitionists who, like Jefferson (though not an abolitionist himself) and Lincoln, “believed that a biracial American society was untenable.”³¹⁴ Though several thousand free blacks colonized the nation of Liberia that was established by the American Colonization Society after the War of 1812, in general freed blacks were not enthusiastic about the idea.³¹⁵

³¹⁰ Madison, pp. 285-86.

³¹¹ Hummel, p. 10.

³¹² Ibid., p. 12.

³¹³ Ibid., p. 19.

³¹⁴ Ibid.

³¹⁵ Ibid., p. 20.

In the 1830s, however, a young group of radical abolitionists swept onto the national scene.³¹⁶ They were strongly opposed to colonization. “Exasperated at the betrayal of the Revolutionary promise that American slavery would wither away, and marshaling all the evangelical fervor of the religious revivals then sweeping the country, they demanded immediate emancipation.”³¹⁷ One such radical abolitionist was William Lloyd Garrison. To him and his fellow abolitionists, slavery was a moral evil that must be condemned. He denounced colonization as racist and demanded immediate emancipation without compensation to the slaveholders as well as immediate and full political rights for all blacks.³¹⁸ He eschewed politics, however, opting instead for

[m]oral suasion and non-violent resistance...strategies. By agitation, he hoped to shame slaveholders into repentance. Indeed, he went so far as to denounce the Constitution for its proslavery clauses as ‘a covenant with death and an agreement with hell’. During one 4th of July celebration, he publicly burned a copy, proclaiming: ‘So perish all compromises with tyranny!’ He believed that if anything the North should secede. [And he was not the only one.] That way it could become a haven for runaway slaves.³¹⁹

On January 1, 1831, in Boston, he started a new weekly paper called *The Liberator*, on whose masthead appeared the slogan “No Union with Slave-Holders.”³²⁰ And in 1833, he “helped to organize the American Anti-Slavery Society[.] Two thousand local societies with 200,000 members had sprung into existence by 1840.”³²¹ This was a small percentage of the northern population, to be sure, but they were a vocal group and made

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Ibid., p. 21.

³¹⁹ Ibid. For information on the New England secessionists, see Thomas DiLorenzo, *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War*, (New York: Three Rivers Press, 2003 [2002]), pp. 93-101. There was also a strong movement for the middle states to secede and form a central confederacy; see pp. 101-106.

³²⁰ Ibid.

³²¹ Ibid.

themselves heard, and they were seen as part of an international movement by Southerners.

Another important abolitionist, on whom I am focusing because his work appears to have been influenced by La Boétie, was Henry David Thoreau. In 1848, he worked on an essay that was never published in his lifetime, called “Reform and the Reformers,” in which he “argued that persons feeling the urge to reform others should begin with themselves[.]”³²² His famous essay entitled “Resistance to Civil Government,” but popularly known as “Civil Disobedience,” is a “classic statement of the relation of the individual to the state.”³²³ He wrote it in response to being jailed for his refusal to pay his poll tax in protest over the Mexican-American War, which he considered immoral. In “Civil Disobedience,” first published in 1849, he argued that moral principles “are the private domain of the individual citizen, and governments are oppressive which attempt to legislate them.”³²⁴ In 1854, applying the principles set forth in “Resistance to Civil Government, he gave a speech titled “Slavery in Massachusetts” that was printed by Garrison in *The Liberator* on July 21. The speech, “a response to the apprehension in Boston in 1854 of the fugitive slave, Anthony Burns, and his forced return by state authorities to his owner in Virginia,” was given before anti-slavery protesters at Framingham.³²⁵

Thoreau begins his essay “Resistance to Civil Government” with a quotation from Thomas Jefferson but continues with a devastatingly insightful addendum:

³²² Wendell Glick, ed., *Great Short Works of Henry David Thoreau* (New York: Harper & Row, 1982), p. 118.

³²³ *Ibid.*, p. 133.

³²⁴ *Ibid.*

³²⁵ *Ibid.*, p. 246.

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 they will have. Government is at best but an expedient; but most governments are usually, and all governments are sometimes, inexpedient. The objections which have been brought against a standing army, and they are many and weighty, and deserve to prevail, may also at last be brought against a standing government. The standing army is only an arm of the standing government. The government itself, which is only the mode which the people have chosen to execute their will, is equally liable to be abused and perverted before the people can act through it. Witness the present Mexican war, the work of comparatively few individuals using the standing government as their tool; for, in the outset, the people would not have consented to this measure.

This American government, - what is it but a tradition, though a recent one, endeavoring to transmit itself unimpaired to posterity, but each instant losing some of its integrity?³²⁶

He admits that the American government is necessary, "for the people must have some complicated machinery or other, and hear its din, to satisfy that idea of government which they have."³²⁷

[Y]et this government never of itself furthered any enterprise, but by the alacrity with which it got out of its way. *It* does not keep the country free. *It* does not settle the West. *It* does not educate. The character inherent in the American people has done all that has been accomplished; and it would have done somewhat more, if the government had not sometimes got in its way. For government is an expedient by which men would fain succeed in letting one another alone; and, as has been said, when it is most expedient, the governed are most let alone by it. Trade and commerce, if they were not made of India rubber, would never manage to bounce over the obstacles which legislators are continually putting in their way; and, if one were to judge these men wholly by the effects of their actions, and not partly by their intentions, they would deserve to be classed and punished with those mischievous persons who put obstructions on the railroads.³²⁸

³²⁶ Ibid., p. 134.

³²⁷ Ibid.

³²⁸ Ibid., p. 135 (emphasis in original).

These passages, reminiscent of La Boétie, highlight an understanding of the role of custom in supporting and maintaining the institution of government. They also evince a Lockean understanding of the proper role of government and a sound grasp of economic theory.

His purpose, Thoreau says, is to speak not as an anarchist but as a practical citizen. He does not ask for “at once no government, but *at once* a better government.”³²⁹ He asks for a government in which individual conscience, not majorities, decides right and wrong. “[W]e should be men first, and subjects afterward”; consequently, it “is not desirable to cultivate a respect for the law,” to resign conscience to the legislator, but rather it is desirable to cultivate a respect for the right.³³⁰ The only obligation any of us has a right to assume is to do what we think is right.

Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice. A common and natural result of an undue respect for law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys and all, marching in admirable order over hill and dale to the wars, against their wills, aye, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart. They have no doubt that it is a damnable business in which they are concerned; they are all peaceably inclined. Now, what are they? Men at all? or small moveable forts and magazines, at the service of some unscrupulous man in power?³³¹

Thoreau continues to identify three classes of men who serve the State. One class is the mass of men who serve the State mindlessly with their bodies. Another class includes the “legislators, politicians, lawyers, ministers, and office-holders” who serve the state primarily with their minds; “and, as they rarely make any moral distinctions, they are as

³²⁹ Ibid. Emphasis in original.

³³⁰ Ibid.

³³¹ Ibid., p. 136.

likely to serve the devil, without realizing it, as God.”³³² The third class are “heroes, patriots, martyrs, reformers in the great sense, and *men*, [who] serve the State with their consciences also, and so necessarily resist it for the most part; and they are commonly treated by it as enemies.”³³³

How then should a man of conscience relate to the American government? Thoreau argues that men cannot, in good conscience, and without being disgraced, be associated with it. He “cannot for an instant recognize that political organization as *my* government which is the *slave’s* government also.”³³⁴ “All men recognize the right of revolution; that is, the right to refuse allegiance to and to resist government, when its tyranny or its inefficiency are great and unendurable.”³³⁵ To those who argue that things were not that bad, he replies that he would not make a fuss about taxes on certain imports. “All machines have their friction” and it would be a moral evil to make much ado about relatively nothing. However,

when friction comes to have its machine, and oppression and robbery are organized, I say, let us not have such a machine any longer. In other words, when a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country [Mexico] is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize.³³⁶

Voting is not the answer; it is like a game, playing with justice, and like any game it is accompanied by betting. As a voter we are each one voice out of many and are thus leaving the thing voted on up to the majority to decide. When we vote, we must not then be vitally concerned with the outcome, because even by voting for the right thing we

³³² Ibid., pp. 136-137.

³³³ Ibid., p. 137.

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Ibid.

have not done anything for it but rather merely expressed a feeble wish that it should prevail. By the time the majority votes for the abolition of slavery they will have done so because they have become indifferent to it or because it has all but withered away already. “A wise man will not leave the right to the mercy of chance, nor wish it to prevail through the power of the majority.”³³⁷ Thoreau echoes Garrison in rejecting any political means of effecting reform, even to the point of stating: “in this case the State has provided no way: its very Constitution is the evil.”³³⁸

He calls on all abolitionists to withdraw their support from the State. If the law requires you to commit injustice against another, then break the law. Against the charge that resisting even an unjust law is a cure worse than the disease, he points out that insofar as this is true it is because the government has made it so by being resistant to reform. “Under a government which imprisons any unjustly, the true place for a just man is also a prison.”³³⁹ “Cast your whole vote,” he argues,

not just a strip of paper merely, but your whole influence. A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs by its whole weight. If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose. If a thousand men were not to pay their tax-bills this year, that would not be a violent and bloody measure, as it would be to pay them, and enable the State to commit violence and shed innocent blood. This is, in fact, the definition of a peaceable revolution, if any such is possible. If the tax-gatherer, or any other public officer, asks me, as one has done, “But what shall I do?” my answer is, “If you really wish to do any thing, resign your office.” When the subject has refused allegiance, and the officer has resigned his office, then the revolution is accomplished. But even suppose blood should flow. Is there not a sort of blood shed when the conscience is wounded? Through this wound a man’s real manhood and immortality flow out, and he bleeds to an everlasting death. I see this blood flowing now.³⁴⁰

³³⁷ Ibid., p. 139.

³³⁸ Ibid., p. 143.

³³⁹ Ibid., p. 144.

³⁴⁰ Ibid., p. 145.

The only thing the state can reach, and punish, is our bodies. It possesses only superior physical strength (and that, as La Boétie has shown, is only what we as a people give it). It is we who compromise our minds. We are obligated by a higher law not to.

Thoreau ends his essay on “Resistance to Civil Government” with a restatement and extension of the promise of the Declaration of Independence and the Revolution:

The authority of government, even such as I am willing to submit to...is still an impure one: to be strictly just, it must have the sanction and consent of the governed. It can have no pure right over my person and property but what I concede to it. The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual. Is a democracy, such as we know it, the last improvement possible in government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State, until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly.³⁴¹

So long as the abolitionists believed that the Constitution sanctioned slavery, they were left with no other recourse but to amendment (a dubious prospect) or reject it as a moral evil. The Liberty Party, which viewed the Constitution “as antislavery in spirit” and accused the South of betraying the implicit constitutional understanding that slavery should disappear within United States[.]” was formed in 1839.³⁴² In 1845, Lysander Spooner gave them ammunition when he applied his legal genius to a demonstration of the unconstitutionality of slavery (in a book of that name). Spooner himself eschewed politics and recognized a higher law than that of man-made law, higher even than the Constitution, that is, natural law. If and insofar as the Constitution sanctioned slavery, it

³⁴¹ Ibid., p. 156; The passage continues and ends thus: “I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose, if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow-men. A State which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious State, which also I have imagined, but not yet anywhere seen.”

³⁴² Hummel, p. 28.

could have no binding force or authority. While he held slavery to be in violation of natural law, his purpose here was a final attempt to salvage the Constitution, to show that on its own terms the Constitution holds slavery to be illegal and unjust.

In *The Unconstitutionality of Slavery*, Spooner argues that the Constitution is a legal contract. As such, it must be evaluated using the ordinary legal rules of interpretation, the most important of which is

that all language must be construed “strictly” in favor of natural right. This rule is laid down by the Supreme Court of the United States in these words, to wit: “Where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with *irresistible clearness*, to induce a court of justice to suppose a design to effect such objects.”³⁴³

He then proceeds to demonstrate in exhaustive detail that slavery has never had any constitutional existence in this country, from the colonial charters and statutes to the state constitutions to the Articles of Confederation to the Constitution itself. The colonists brought with them “the common law of England, including the writ of *habeas corpus* (the essential principle of which...is to deny the right of property in man,)” and the “trial by jury.”³⁴⁴ Moreover, the Declaration of Independence declared that “all Men are created equal” with unalienable rights to “Life, Liberty, and the Pursuit of Happiness.”

Spoooner explicates thirteen other rules of interpretation and applies them to the Constitution. Among these are that “*the intention of the instrument must prevail*”³⁴⁵; “the intention of the constitution must be collected from its words”³⁴⁶; “we are always, if possible, to give a word some meaning appropriate to the subject matter of the instrument

³⁴³ Lysander Spooner, *The Unconstitutionality of Slavery* (New York: Burt Franklin, 1860), pp. 17-19 & 189. Italics in original. Spooner is citing the case *United States v. Fisher*, 2 Cranch, 390.

³⁴⁴ *Ibid.*, p. 21. The antiquated placement of the comma occurs in the original.

³⁴⁵ *Ibid.*, p. 157. All italics in this and the following rules are in the original.

³⁴⁶ *Ibid.*, p. 161.

itself”³⁴⁷; “where *technical* words are used, a technical meaning is to be applied to them”³⁴⁸; “the sense of every word, that is ambiguous in itself, must, *if possible*, be determined by reference to the rest of the instrument”³⁴⁹; “a contract must never, if it be possible to avoid it, be so construed, as that any one of the parties to it, assuming him to understand his rights, and to be of competent mental capacity to make *obligatory* contracts, may not reasonably be presumed to have consented to it”³⁵⁰; “where the prevailing principles and provisions of a law are favorable to justice, and general in their nature and terms, *no unnecessary exception* to them, or to their operation, is to be allowed”³⁵¹; “be guided, in doubtful cases, by the preamble”³⁵²; “one part of the instrument must not be allowed to contradict another, unless the language be so explicit as to make the contradiction inevitable”³⁵³; “‘An act of congress’ (and the rule is equally applicable to the constitution) ‘ought never to be construed to violate the law of nations, if any other *possible* construction remains’”³⁵⁴; “*all reasonable doubts must be decided in favor of liberty*”³⁵⁵; “*instruments must be so construed so as to give no shelter or effect to fraud*”³⁵⁶; “*we are never unnecessarily to impute to an instrument any intention whatsoever which it would be unnatural for either reasonable or honest men to entertain.*”³⁵⁷

³⁴⁷ Ibid., p. 165.

³⁴⁸ Ibid., p. 168.

³⁴⁹ Ibid., p. 180.

³⁵⁰ Ibid., p. 182.

³⁵¹ Ibid., p. 196.

³⁵² Ibid., p. 198.

³⁵³ Ibid., p. 199.

³⁵⁴ Ibid., p. 200.

³⁵⁵ Ibid.

³⁵⁶ Ibid., p. 201.

³⁵⁷ Ibid., pp. 204-205.

The terms slave and slavery appear nowhere in the Constitution. Following the above-given rules, we must interpret the phrase “We the people” in the preamble at its broadest, that is, to mean *all* of the people. We cannot presume blacks to have consented to a Constitution that made legal slaves of them. Accordingly, in the representation and direct taxation clause under Article I, Section 2, we cannot construe the phrase “free Persons” to mean nonslave” and “three fifths of all other Persons” as slaves. Rather, we are compelled to take “free Persons,” as a technical term used in England and the colonies, to mean “those persons possessed of the privilege of citizenship.”³⁵⁸ The phrase “three fifths of all other persons” can then only mean, astonishingly, resident aliens, that is, noncitizens living in the United States!³⁵⁹ Similarly, the phrases in Art. I, Sec. 8 and Art. IV, Sec. 2 regarding importation of persons and those bound to service or labor cannot be construed as referring to slaves. Without a constitutional basis, we can only say that slavery has been tolerated in America, and “[t]oleration of a wrong is not law. And especially the toleration of a wrong (i. e. the bare omission to punish it criminally,) does not legalize one’s claim to property obtained by such wrong.”³⁶⁰

Abolitionists eager for political ammunition against the institution of slavery eagerly welcomed *The Unconstitutionality of Slavery*. Spooner “insisted that the national government directly abolish slavery in the southern states.”³⁶¹ But most members of the Liberty Party believed that the national government should simply cordon off slavery and that abolition in the South would necessarily follow. Before long members of the “Whig and Democratic Parties centered their political careers around antislavery stands right out

³⁵⁸ Ibid., p. 43.

³⁵⁹ Ibid., pp. 242-247.

³⁶⁰ Ibid., p. 24. The antiquated placement of the comma occurs in the original.

³⁶¹ Hummel, p. 28.

of the Liberty Party's Platform."³⁶² Spooner wrote another abolitionist work before the Civil War titled "A Defense for Fugitive Slaves (1850)," in which he argues for the right of jury nullification, i.e., that juries have a right to judge the facts *and* the law in a case. This argument he expanded into one of his most famous works, "An Essay on the Trial By Jury."

Southerners were more worried about slave insurrections than they were of the political influence of the abolitionists, however. And in 1858, Spooner, impatient with the slow progress of politics and moral suasion, circulated pamphlets titled "A Plan for the Abolition of Slavery" and "To the Non-Slaveholders of the South." The former "apparently influenced John Brown, who tried to implement Spooner's plan in his abortive raid on Harper's Ferry, Virginia. After Brown had been captured and sentenced to hang, Spooner hatched a plan to kidnap Governor Henry Wise of Virginia and hold him as hostage in exchange for Brown."³⁶³ Due to lack of funds the plan was never carried out.

V.3 The War of Southern Secession

In 1860, Abraham Lincoln was elected to the office of President of the United States. He carried every free state except New Jersey from which he received four out of its seven electoral votes. He won only 40 percent of the popular vote and did not carry a single slave state. "Within ten of them, he did not get a single recorded vote."³⁶⁴ Nevertheless, Lincoln still won the election. For Southerners, the election of 1860 highlighted their minority position, a position they could only look forward to

³⁶² Ibid., p. 29.

³⁶³ George H. Smith, ed., *The Lysander Spooner Reader* (San Francisco: Fox & Wilkes, 1992), p. xvi.

³⁶⁴ Hummel, p. 130.

deteriorating further. Lincoln was not an abolitionist and “promised to enforce the Fugitive Slave Law and respect slavery in the existing states.”³⁶⁵ Southerners, however, were not reassured. A major faction of the “Republican Party did endorse further steps to divorce the general government from slavery. Lincoln appointed at least two of these radical Republicans: [William Henry] Seward as Secretary of State and Salmon P. Chase [author of the Liberty Party’s 1844 platform] as Secretary of the Treasury.”³⁶⁶ Furthermore, the Republican Party now had firm control of the national government’s patronage powers.

I have argued that the Civil War was prefigured in the compromises over slavery in the Constitution, though it was not inevitable. Initially, the South benefited from the compromises with an artificially enhanced representation in the federal government. However, the Southern states soon lost their advantage due to the ban on the importation of slaves in 1808 and the rapidly growing populations of the Northern states. The extensive powers granted to the federal government by the Constitution to regulate commerce (part of the slavery compromises) and the internal affairs of the several states made secession by the Southern states, when they were consigned to permanent minority status, almost inevitable.

Ironically, it was also the slavery compromises that helped to artificially prop up the institution of slavery in the South. In *Emancipating Slaves, Enslaving Free Men*, Jeffrey Rogers Hummel makes a compelling case that “[s]lavery flourished because the country’s political and legal structure socialized its enforcement costs”; “the economic

³⁶⁵ Ibid., p. 132.

³⁶⁶ Ibid.

viability of the peculiar institution rested on political power.”³⁶⁷ “Only one-fourth of white households owned slaves, and about half of those owned fewer than five. The typical Southerner was a yeoman or herdsman. [P]olitical power was concentrated in the hands of large planters[.]”³⁶⁸ Although slavery could achieve a higher output than wage labor in some industries such as cotton production due to overworking the slaves, slavery involved a great deal of deadweight loss (meaning loss due to changes in behavior). Slaves would intentionally avoid work, break tools, feign incompetence, etc. Moreover, on large plantations most slaves required overseers who needed to be paid.

The runaway slave was the system’s Achilles heel. Each fugitive slave did more than deprive the slaveholder of a valuable capital asset; if running away became easier, enforcement costs rose. This in turn reduced the value of remaining slaves. Manumission through self-purchase would become more appealing to slaveholders, but if they were to succumb to this appeal, the dissolution would accelerate. More manumissions meant more free blacks which further eased escape and raised costs until the viability of the peculiar institution itself came into question.³⁶⁹

Slaveholders used their state governments to socialize enforcement costs by conscription into slave patrols that largely fell onto small slaveholders and poor whites who owned no slaves. Southern states also passed laws prohibiting manumission through self-purchase and compelling deportation of free blacks, practices that a pro-slavery interpretation of the Constitution tolerated. The fugitive slave clause in the Constitution and corresponding Fugitive Slave Laws shifted onto the Northern states the cost of returning fugitive slaves who fled to there. Yet, by 1860, political support for slavery in general and the Fugitive

³⁶⁷ Ibid., p. 55.

³⁶⁸ Ibid., p. 22.

³⁶⁹ Ibid., p. 82.

Slave Laws in particular were declining sharply.³⁷⁰ Despite this decline, William Lloyd Garrison was right that slavery was more secure *in* the Union than out of it.

It is commonly thought that the Civil War was fought to end slavery. Nothing could be further from the truth. While the South probably did secede in order to protect its peculiar institution, if only because it made them extremely vulnerable to the Republican mercantilist program; Thomas DiLorenzo provides strong evidence in *The Real Lincoln* that the principal object of Lincoln's war was to preserve the Union. The editor of Lincoln's *Collected Works*, Roy Basler, commented that Lincoln barely mentioned slavery before 1854.³⁷¹ Lincoln had promised the South, upon assuming office, to respect the institution of slavery. He did consider slavery to be immoral but he also saw blacks as an inferior race.

I have no purpose to introduce political and social equality between the white and the black races. There is a physical difference between the two, which, in my judgment, will probably forever forbid their living together upon the footing of perfect equality, and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong having the superior position. I have never said anything to the contrary, but I hold that, notwithstanding all this, there is no reason in the world why the negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty, and the pursuit of happiness. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas he is not my equal in many respects – certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat bread, without the leave of anybody else, which his own hand earns, *he is my equal and the equal of Judge Douglas, and the equal of every living man.*³⁷²

³⁷⁰ DiLorenzo, p. 276.

³⁷¹ Roy P. Basler, ed., *Abraham Lincoln: His Speeches and Writings*, (New York: Da Capo Press, 1946), p. 23.

³⁷² Abraham Lincoln, "Lincoln's Reply to Douglas, Ottawa, Illinois, Aug. 21, 1858," in *The Lincoln-Douglas Debates*, Robert W. Johannsen, ed. (New York: Oxford University Press, 1965), pp. 52-53 (emphasis in original).

He preferred, if possible, to “free all the slaves, and send them to Liberia – to their own native land.”³⁷³ However, political expediency demanded that he settle instead for blocking the expansion of slavery. Lincoln’s primary agenda upon assuming office was the Whig economic agenda – the “American System” of his political idol, Henry Clay – and after the South began to secede, to preserve the Union: “My politics are short and sweet...I am in favor of a national bank...the internal improvement system and a high protective tariff.”³⁷⁴ In other words: “The American System...was the framework for a giant political patronage system[,]” the policies of which “tend to generate a centralization of governmental power[.]”³⁷⁵

The overwhelming desire of Lincoln and other Northerners to preserve the Union at all costs, against the principles of the Revolution, insured the onset of the Civil War. In his first inaugural address, he echoed Daniel Webster’s argument of thirty years previous, by repeating a phrase from the discarded Articles of Confederation, “I hold that...the Union of these States is perpetual.”³⁷⁶ He continued:

The Union is unbroken, and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States.

There needs to be no bloodshed or violence, and there shall be none unless it be forced upon the national authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government and to collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion, no using force against or among the people anywhere.³⁷⁷

³⁷³ Ibid., p. 51.

³⁷⁴ DiLorenzo, pp. 54-55.

³⁷⁵ Ibid., p. 59.

³⁷⁶ Hummel, p. 137.

³⁷⁷ Ibid., p. 138.

Rather than let the Southern states secede peacefully, as widespread sentiment in the North favored prior to the attack on Fort Sumter by the Confederacy, an attack Lincoln maneuvered them into for propaganda purposes, Lincoln was determined to fight a war to keep them in the Union and carry out his economic agenda, if necessary.³⁷⁸ He denounced secession as “an ingenious sophism” and argued that secession would destroy the government and lead to anarchy; both claims were false.³⁷⁹

In his Gettysburg Address, he “claimed that the war was being fought in defense of government by consent, but in fact exactly the opposite was true: The Federal government under Lincoln sought to deny Southerners the right of government by consent, for they certainly did not consent to remaining in the Union.”³⁸⁰ Lincoln’s theory of consent did not include the right to use popular sovereignty in support of chattel slavery, and rightly so, but we have seen that he was not prepared to give blacks political equality and he was more than willing to deny non-slaveholding Northerners and Southerners their freedom.

DiLorenzo raises a crucial question: why didn’t Lincoln, a man widely regarded as a master politician, apply his great skills to a serious effort at peaceful emancipation, such as had been done in nearly every other country in the world, instead of so readily going to war? The answer is that the issue of ending slavery was trotted out as a political and military propaganda tactic, even Lincoln admitted as much. In a letter to Horace Greeley he revealed his primary goal:

My paramount object in this struggle is to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave I would do it; and if I could save it by freeing some and leaving

³⁷⁸ See DiLorenzo, pp. 101, 118-122, & 135 and Hummel, pp. 139-140

³⁷⁹ DiLorenzo, p. 113.

³⁸⁰ Ibid., pp. 113-114.

others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union.³⁸¹

The Emancipation Proclamation, for example, purported to free all of the slaves in Confederate territory out of Lincoln's control but did not free slaves in conquered Confederate territory.³⁸²

In the North, the American System was finally enacted in full during the war. The first-ever national income tax in America was introduced in 1861. The Internal Revenue Act of 1862 tried to tax nearly everything, requiring the creation of a large bureaucracy, and was unprecedented at the time. "At the war's close the United States could boast higher taxation per capita than any other nation."³⁸³ But taxes covered only one-fifth of the war's monetary cost, so the North had to resort to steep protectionist tariffs, heavy borrowing, and monetary inflation. Internal improvement programs consisted of subsidies and grants for railroad construction, agriculture, education (agricultural, mechanical, and military related), and military related industries (the beginning of the military-industrial complex). "Because the tax structure and contract awards tended to favor economically integrated firms, the Civil War encouraged corporate concentration."³⁸⁴

Hummel argues convincingly that while the Republicans practiced neo-mercantilism in the North, the Confederacy embraced full-blown war socialism. The Confederacy, too, increased taxation and borrowed heavily but relied far more on monetary inflation (to a point that dwarfed that of the North). The Commissary and Quartermaster Bureaus would also confiscate food and other supplies from the people, paying at officially fixed prices with depreciating paper money. The southern people

³⁸¹ Ibid., p. 35.

³⁸² Ibid., p. 37; Hummel, p. 210.

³⁸³ Hummel, p. 223.

³⁸⁴ Ibid., p. 233.

experienced great hardship as a result and “state governments attempted to step in and aid suffering families” through social welfare policies.³⁸⁵ Unlike the North, the South lacked a developed industrial base and the Confederate government compensated by establishing government-owned military-industrial facilities. “When the authorities did purchase supplies from private firms, they dictated prices and profits.”³⁸⁶ This system of war socialism necessitated the growth of a large central bureaucracy. “A North Carolinian serving in the Rebel Congress complained toward the war’s close that the land was ‘alive’ with government officials, ‘thick as locusts in Egypt’.”³⁸⁷

Not only did the war’s economic policies on both sides violate the principles of limited government, Lincoln all but suspended the Constitution during the war. In 1861, he issued a decree suspending the writ of *habeas corpus*. He then proceeded to arrest thousands of political opponents without due process. One political opponent, Congressman Clement L. Vallandigham, was even deported. He suppressed free elections in Maryland and most other Northern states. He also suppressed the press that were not supportive of the war by shutting down papers, preventing circulation, arresting editors. Thomas DiLorenzo argues that Lincoln committed all, or nearly all, of the “train of abuses” the Declaration of Independence accused King George III of committing.³⁸⁸ And both the North and the South instituted conscription.

The war would have a lasting impact on American society and government. Lincoln fought a successful war to suppress the rights of secession and state’s rights, effectively destroying state sovereignty and making them mere subsidiaries of the federal

³⁸⁵ Ibid., p. 229.

³⁸⁶ Ibid., p. 236.

³⁸⁷ Ibid., p. 238.

³⁸⁸ For full details, see DiLorenzo, *The Real Lincoln*, Ch. 6, pp. 130-170, especially pp. 149-153 for the “train of abuses.”

government. It is instructive to note that the practice of referring to the United States as “it” rather than “them” began after the Civil War. The Union was “indissoluble”; not our rights or states’ rights but the federal government, the State, was “unalienable.”

Reconstruction also entailed severe costs for liberty. Not only had the Southern economy been almost completely destroyed by their war measures and the Federal military, Reconstruction imposed severe political and economic policies on the South. Among other things, the Southern states were blackmailed by Congress into ratifying the Fourteenth Amendment, which would have highly centralizing effects, “by prohibiting congressional representation by those states” until and unless they ratified it.³⁸⁹ When all initially refused, “Congress responded...by passing the Reconstruction Act of 1867, which established a comprehensive military dictatorship to run the governments of each of the ten states that were not yet restored to the Union” and made ratifying the amendment a requirement for lifting the military rule.³⁹⁰ The centralizing, mercantilist policies of the American System that were begun during the war were continued and expanded by the Republican Party during and after Reconstruction.

The foregoing is the soil out of which grew both the welfare-warfare state and modern radical libertarianism. The War of Southern Secession, popularly known as the Civil War, is thought of by many libertarians and some conservatives as the turning point in American history when the principles of the Revolution and the ideals of limited

³⁸⁹ Ibid., p. 207.

³⁹⁰ Ibid., p. 208. DiLorenzo points out that to this day the Fourteenth Amendment has not been properly ratified. By the time the Southern states finally ratified it, New Jersey and Ohio had “revoked their previous ratifications of the amendment. Congress failed to secure the constitutionally required three-fourths majority of the states, but simply issued a ‘joint resolution’ declaring the Amendment valid anyway” (p. 211).

government held by the Founders were discarded. However, even after the war, some scruples survived for a time and, though government continued to grow, big government as we have come to know it was decades off.

The early Progressive Era of the late 1800s and early 1900s brought some significant changes: namely, antitrust legislation (another term for corporate welfare), the Federal Reserve in 1913, the 16th Amendment (which constitutionalized the national income tax), and the 17th Amendment (which cut one of the last checks the states had on the federal government). This era also produced the only constitutional amendment to attempt social reform, the 19th Amendment. The Prohibition was unquestionably and predictably a monumental failure.

Government growth can occur in both scale and scope.³⁹¹ When the scale of government grows, the resources allocated to existing governmental functions are increased. Governments grow in scope when they take on new functions. The tendency of government growth does not proceed at a uniform rate. In the twentieth century, Western states have experienced an accelerated ratcheting up of the scale *and* scope of government in response to crises, such as the World Wars and the Great Depression.³⁹²

³⁹¹ For a survey of the problems involved in analyzing government growth, see Robert Higgs, "Eighteen Problematic Propositions in the Analysis of the Growth of Government," *The Review of Austrian Economics*, Vol. 5, No. 1 (1991): 3-40.

³⁹² See Higgs, *Crisis and Leviathan*. In the nineteenth century, the two major crises that resulted in a ratcheting up of government growth were the Civil War and the depression of the mid-1890s. The Cold War might be viewed as a protracted crisis; certainly the Korean and Vietnam Wars as well as the current War on Terrorism are good examples. Such crises tend to serve as excuses for government growth.

VI. A Radical Libertarian Critique of the State

Liberty: not the daughter but the mother of order.
– Pierre-Joseph Proudhon

Having given an overview of a radical libertarian natural law and natural rights theory, having examined La Boétie’s analysis of the nature of tyranny and subjection, and with the foregoing illustration of the conflict between liberty and power, I now turn on these grounds to sketching out a critique of the State.

VI.1 Social Power vs. State Power

One libertarian thinker who experienced World Wars I and II and the Great Depression (& New Deal) first-hand, at a time when most other defenders of classical liberal ideals were dead or retired, was Albert Jay Nock. Indeed, Nock was instrumental in spurring the development of modern libertarianism and conservatism. Nock saw the rise of statism in Europe and America as appalling, and he was in a perfect position to analyze the metamorphosis of Leviathan. Essentially, Nock, and subsequent libertarians like Murray Rothbard and Hans-Hermann Hoppe, came to see history as a race between social power – “the productive consequence of voluntary interactions”³⁹³ – and State power.

Echoing La Boétie’s analysis of tyranny, Nock notes in *Our Enemy, The State* (1935):

It is unfortunately none too well understood that, just as the State has no money of its own, so it has no power of its own. All the power it has is what society gives it, plus what it confiscates from time to time on one pretext or another; there is no other source from which State power can be drawn. Therefore every assumption of State power, whether by gift or seizure, leaves society with so much less power; there is never, nor can be,

³⁹³ Rothbard, *Conceived in Liberty Vol. I: The American Colonies in the Seventeenth Century*, p. 10.

any strengthening of State power without a corresponding and roughly equivalent depletion of social power.

Moreover, it follows that with any exercise of State power, not only the exercise of social power in the same direction, but the disposition to exercise it in that direction, tends to dwindle.³⁹⁴

Nock identifies three principal indices of the increase of State power. The first index is the degree of centralization of State power. The second is the degree to which the bureaucratic principle has been extended or expanded. The third is the degree to which poverty and mendicancy have been erected into a permanent political asset.³⁹⁵ The centralization of State power, not only into the federal government but also within it into the executive branch, has occurred through what Nock calls a curious

American variant of the *coup d'Etat*. Our national legislature was not suppressed by force of arms...but was bought out of its functions with public money; and as appeared most conspicuously in the elections of November, 1934, the consolidation of the *coup d'Etat* was effected by the same means; the corresponding functions in the smaller units [the states] were reduced under the personal control of the Executive.³⁹⁶

This centralization occurred concomitantly with a rapid expansion of the federal bureaucracy that set about to regulate, subsidize, or actually run all manner of economic and social functions, such as food production, communication, energy, charity, etc. The executive bureaucracies consolidated under their control legislative and decision-making powers formerly reserved to the national legislature, state and local governments, and voluntary social institutions, with the necessary consequence of crowding them out or making them subservient.

³⁹⁴ Albert Jay Nock, *Our Enemy, The State: A Study of Social Power vs. State Power and of The State in Colonial America* (Tampa: Hallberg Publishing Corporation, 1996 [1936]), p. 25.

³⁹⁵ *Ibid.*, pp. 29-31.

³⁹⁶ *Ibid.*, p. 30.

The proliferation of bureaucrats, subsidized farmers and businesses, and social welfare recipients served to create a vast subsidized voting block that would have every incentive to maintain and increase the power and benefits of their new positions. The inevitable result of this is that State power does not diminish. As the State consolidates its power, it often has to modify its practices, such as by shifting from direct subsidy to indirect control through legislation and regulations, and this often gives the appearance of diminishing State power. But State power is expressed through laws and regulations as much as it is through nationalized or subsidized industries and social welfare programs.

How and why does this accumulation of State power occur? One of the mechanisms that Nock cites is that same danger Thomas Jefferson worried over: “the consolidation [i.e., centralization] of our government by the noiseless and therefore unalarming instrumentality of the Supreme Court.”³⁹⁷ Also, like La Boétie he recognizes that politicians and even the people themselves use various devices – “certain formulas, certain arrangements of words, . . . the rehearsal of poetic litanies” – to soften the image of policies or glorify the State; these “stand as an obstacle in the way of our perceiving how far the conversion of social power into State power has actually gone.”³⁹⁸

It has already been noted that the exercise of State power not only diminishes or crowds out the exercise of social power but also the disposition to exercise it. Thus we see the people, who, growing ever more accustomed to the State taking responsibility for more and more functions formerly performed by society, increasingly look to the State to solve any and all problems that may arise, even the problems that the State inevitably causes due to its ineptitude in performing the functions properly left to society. Nock

³⁹⁷ Jefferson, quoted in *ibid.*, p. 36.

³⁹⁸ *Ibid.*, p. 37.

cites a perceptive observation from Herbert Spencer that “when State power is applied to social purposes, its action is invariably ‘slow, stupid, extravagant, unadaptive, corrupt and obstructive.’”³⁹⁹ It will now be fruitful to turn to theoretical work of scholars of the Austrian school of economics to explain in part why this is so.

VI.2 Profit Management vs. Bureaucratic Management

In order to understand why the State is so unsuited to social purposes it is important to distinguish between profit management and bureaucratic management. The eminent Austrian economist, Ludwig von Mises, teacher of Murray Rothbard and F. A. Hayek, in his book *Bureaucracy* (1944) and in other works, argues that bureaucratic management is the characteristic method of government and that it is appropriate only to government (not business, for example). Likewise, profit management is characteristic of the market and is not appropriate for necessary government functions (such as police or military). Unlike his student, Rothbard, Mises was not an anarcho-capitalist, though he came close with his arguments in favor of Jeffersonian local democracy and unlimited right to secession.

In a capitalist system of production, the capitalists, entrepreneurs, and farmers are beholden to the consumers. They must produce what the consumers want. “[I]f they fail to produce at the lowest possible cost what the consumers are asking for, they lose their office.”⁴⁰⁰ “Profit and loss are the instruments by means of which the consumers keep a tight reign on all business activities.”⁴⁰¹ Profit and loss accounting is made possible by

³⁹⁹ Ibid., p. 55.

⁴⁰⁰ Ludwig von Mises, *Bureaucracy* (New Haven: Yale University Press, 1944. Reprint. Grove City, PA: Libertarian Press, 1963), p. 25.

⁴⁰¹ Ibid.

the system of market prices, which necessarily depends upon private ownership of the means of production; the market price is also necessary to guide economic planning. Without a common denominator to weigh the costs of pursuing one plan out of countless others, of utilizing one factor of production among countless others, economic calculation would be impossible.

By its nature, bureaucratic management is incapable of economic calculation. It “is the method applied in the conduct of administrative affairs the result of which has no cash value on the market.”⁴⁰² There is no connection between revenue and expenditure in public administration; there is no market price for its achievements. The public services are concerned with spending money only. They are supported in whole or in part by taxes rather than sales. In the absence of the profit motive, it is necessary to impose thrift on the bureaucrat by regimentation. Consequently,

bureaucratic management is management bound to comply with detailed rules and regulations fixed by the authority of a superior body. The task of the bureaucrat is to perform what these rules and regulations order him to do. His discretion to act according to his own best conviction is seriously restricted by them.⁴⁰³

With profit management, on the other hand, “[t]here is no need to limit the discretion of subordinates by any rules or regulations other than that underlying all business activities, namely, to render their operations profitable.”⁴⁰⁴

For obvious reasons, then, a public enterprise in a market system, if it is to be operated without regard to profits, is also faced with the economic calculation problem. Since the behavior of the public is no longer a criterion of its usefulness, since every service can be improved by increasing expenditures, regimentation must be imposed

⁴⁰² Ibid., p. 51.

⁴⁰³ Ibid., p. 50.

⁴⁰⁴ Ibid.

upon the manager of a public enterprise. Extensive rules and regulations are required to guide the production of what, when, how much, and where. And unlike private enterprises, it is not a mark of failure to operate at a loss.

If the lack of any means of economic calculation is damaging to public enterprises in a market system, so too is it to socialism.

Socialism, that is, full government control of all economic activities, is impracticable because a socialist community would lack the indispensable intellectual instrument of economic planning and designing: economic calculation. The very idea of central planning is self-contradictory. A socialist central board of production will be helpless in the face of the problems to be solved. It will never know whether the projects considered are advantageous or whether their performance would not bring about a waste of the means available. Socialism must result in complete chaos.⁴⁰⁵

It is only because public enterprises exist within a country, and socialist states exist within an international system, the greater part of which operates as a market economy, that they are able to perform any kind of economic calculation at all. Under these conditions they are able to use the prices established in the rest of the national or international economy for their own economic calculation. Though even this mimicry is no real substitute for genuine economic calculation. And if every state were to adopt socialism, “there would be no more prices for factors of production and economic calculation would be impossible.”⁴⁰⁶

Government interference and impairment of the profit motive lead to the bureaucratization of private enterprise. There are a number of ways in which the government can interfere with business and impair the profit motive. The government may tax away all or most profits, fix prices, or limit profits in some other way. Such

⁴⁰⁵ Ibid., p. 62.

⁴⁰⁶ Ibid., p. 64; For a detailed treatment of the socialist-calculation problem, see Ludwig von Mises, *Socialism* (London: Jonathan Cape, 1969. Reprint. Indianapolis: Liberty Classics, The Liberty Fund, 1982).

policies inhibit innovation as they limit the benefits to the entrepreneur while leaving him all the risks. The imposition of rules and regulations on private enterprise impose operating costs as efforts are made either to comply with them or evade them. To the extent that private enterprise is driven to bureaucratization, it will become more dependent upon government bureaus; it will have to spend more time engaged in political competition, utilizing diplomacy or bribery, in order to gain an advantage over its rivals, while its economic competitiveness is eroded and its incentive to compete economically is decreased.

VI.3 Privately-Owned vs. Publicly-Owned Government

In *Democracy – The God That Failed* (2002), Hans-Hermann Hoppe, a major Austrian economist and a colleague of Murray Rothbard, makes a distinction between private ownership of government and public ownership of government. The characteristic historical example of the former is hereditary monarchy, of the latter, democracy.⁴⁰⁷ A privately-owned government is one in which the government is considered to be the personal property of an individual(s). In contrast,

[d]emocratic rule—in which the government apparatus is considered “public” property administered by regularly elected officials who do *not* personally own and are not viewed as owning the government but as its temporary *caretakers* or *trustees*—typically only follows personal rule and private government ownership [historically].⁴⁰⁸

⁴⁰⁷ It should be noted that dictatorships are an outgrowth of mass democracy. Despite any superficial resemblance to monarchy that it may have, in theory and practice a dictatorship tends to function like a publicly-owned government or a mass democracy. See Hoppe, *The Myth of National Defense*, pp. 6, 8, & 13.

⁴⁰⁸ Hans-Hermann Hoppe, *Democracy – The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (New Brunswick: Transaction Publishers, 2002), p. 17 (emphasis in original).

These two forms of government have systematically different effects on social time preference.

The Austrian theory of time preference holds that, *ceteris paribus*, people will prefer satisfaction of wants sooner rather than later. An individual with a higher degree of time preference will be more present-oriented, while a person with a low degree of time preference will be more future-oriented or far-sighted. Under a privately-owned government, the ruler and the people will tend to have relatively lower degrees of time preference than they would under publicly-owned or democratic government.

Hoppe offers two interrelated structural/institutional factors that drive the tendency towards higher time preference in democracies: “public” ownership of the government and free entry into it.

A democratic ruler can use the government apparatus to his personal advantage, but he does not own it. He cannot sell government resources and privately pocket the receipts from such sales, nor can he pass government possessions on to his personal heir. He owns the *current use* of government resources, but not their capital value. In distinct contrast to a king, a president will want to maximize not total government wealth (capital values and current income) but current income (regardless and at the expense of capital values). Indeed, even if he wished to act differently, he *could not*, for as public property, government resources are unsaleable, and without market prices economic calculation is *impossible*. Accordingly, it must be regarded as unavoidable that public-government ownership results in continual capital consumption. Instead of maintaining or even enhancing the value of the government estate, as a king would do, a president (as distinct from a king) has no interest in not ruining his country. For why would he *not* want to increase his confiscations if the advantage of a policy of moderation—the resulting higher capital value of the government estate—*cannot* be reaped privately, while the advantage of the opposite policy of higher taxes—*can* be so reaped? For a president, unlike for a king, moderation offers only disadvantages.⁴⁰⁹

This, of course, applies not only to presidents or prime ministers in a democracy but also to members of congress or parliament as well as to bureaucrats. Obviously not all

⁴⁰⁹ Ibid., p. 24 (emphasis in original).

politicians act in the manner described above, or at least do not intentionally pursue policies with such effects, but public-government ownership has the effect of encouraging such tendencies.

Moreover, in a modern democracy, entry into government is in principle open to everyone. In contrast, entry into government in a monarchy is restricted to the ruler and his family and friends. This has the effect of stimulating “the development of a clear ‘class consciousness’ on the part of the governed public and promotes opposition and resistance to any expansion of the government’s power to tax.”⁴¹⁰ Also, “government attempts at territorial expansion tend to be viewed by the public as the ruler’s private business, to be financed and carried out with his own personal funds. The added territory is the king’s, and so he, not the public, should pay for it. Consequently, of the two possible methods of enlarging his realm, war and military conquest or contractual acquisition [e.g., marriage], a private ruler tends to prefer the latter.”⁴¹¹

Free entry into government blurs the distinction between the rulers and the ruled. Anyone, in theory, can become part of the ruling class. The “class-consciousness” of the ruled is blurred. Pressure groups will inevitably attempt to influence politicians and get representatives elected in order to use the coercive power of the government apparatus to satisfy their short-run interests at the expense of others. Consequently, “public resistance against government power is systematically weakened.”⁴¹²

The combined effect of these two factors – “public” ownership of government and free entry into it – is conducive to a state of affairs, commonly used to refer to

⁴¹⁰ Ibid., p. 21.

⁴¹¹ Ibid., p. 23.

⁴¹² Ibid., pp. 25-26.

environmental issues, that can best be characterized as a “tragedy of the commons.”^{413,414}

Of course, the tendency of a higher social time preference under publicly-owned governments relative to privately-owned governments should be understood in conjunction with the tendency of government growth. The Jacobin-style, statist democracies have obviously won out over Jeffersonian-style democracy in the twentieth century. The transition from monarchy to democracy in the West has been characterized by rising public debt, high levels of taxation and inflation, increasing government intrusion into our every day lives, and the advent of total war. This is especially evident in the twentieth century. Consider, for example, the evidence presented by R.J. Rummel in his book, *Death by Government*, that governments have caused the deaths of an estimated 170 million of their own citizens in the past century, not to speak of the number of foreigners they have killed.⁴¹⁵

VI.4 Government vs. the State

Most people use the terms ‘government’ and ‘the State’ interchangeably. I have been doing so thus far. Given Nock’s analysis of social power and State power, it may seem as if he makes a similar distinction between society and government as does Thomas Paine in *Common Sense*. In fact, Nock carries the analysis further in two novel ways. He distinguishes clearly between government and the State, and identifies the State as being a fundamentally anti-social institution. Government, Nock argues in Lockean fashion, “implements the common desire of society, first, for freedom, and second, for

⁴¹³ See, for example, *Managing the Commons*, Garret Hardin and John Baden, eds. (San Francisco: W.H. Freeman, 1977).

⁴¹⁴ It should be noted that neither Hoppe nor the present author advocate a return to monarchy or deny that monarchy suffers from serious flaws as well.

⁴¹⁵ R.J. Rummel, *Death by Government* (New Brunswick: Transaction Publishers, 1994).

security. Beyond this it does not go; it contemplates no positive intervention upon the individual, but only a negative intervention.”⁴¹⁶ He favorably cites, and notes that it seems favorable to Paine as well, “the legendary king Pausole, who prescribed but two laws for his subjects, the first being, *Hurt no man*, and the second, *Then do as you please*; and the whole business of government should be the purely negative one of seeing that this code is carried out.”⁴¹⁷

Government, then, is a natural part of society; the State, on the other hand, has an altogether different origin and function. The State “did not originate in the common understanding and agreement of society; it originated in conquest and confiscation. Its intention, far from contemplating ‘freedom and security’ ... contemplated primarily the continuous economic exploitation of one class by another.” The State’s primary function is not to protect the natural rights of individuals through purely negative interventions but to maintain the stratification of society into a plutocratic, exploiting class and an exploited class through “innumerable and most onerous positive interventions.” The order of interest it reflects is “not social, but purely anti-social; and those who [administer] it, judged by the common standard of ethics, or even the common standard of law as applied to private persons, [are] indistinguishable from a professional-criminal class.”⁴¹⁸

Nock remarks that throughout history government has only existed where economic exploitation was either impractical or unprofitable. But where economic exploitation has been practical and profitable, the State has prevailed. A compelling reason for this is that economic theory tells us people will seek to satisfy their wants with

⁴¹⁶ Nock, p. 45.

⁴¹⁷ Ibid., p. 46.

⁴¹⁸ Ibid.

as little exertion as possible. Only two means exist for man to satisfy his needs and desires.⁴¹⁹ These are the economic means and the political means. The economic means consists of voluntary production and exchange of wealth and services. The political means, by contrast, consists of “the uncompensated appropriation of wealth produced by others[.]” As it is easier to take than to produce, men will, *ceteris paribus*, employ the political means whenever and as far as possible – exclusively, if possible, or in conjunction with the economic means. The State is the organization of the political means. In its primitive form we see that it is employed “by conquest, confiscation, expropriation, and the introduction of a slave economy.” In its modern form, the merchant-State employs “the apparatus of tariffs, concessions, rent-monopoly, and the like.” Thus corruption is unavoidable when the State apparatus is available.⁴²⁰

Nock notes that history shows that “the depletion of social power by the State can not be checked after a certain point of progress is passed.” Exactly when that point is reached in any given country or civilization it may be impossible to say until after the fact, but history furnishes no examples of reversals once State power has accumulated to a considerable degree. An excellent case study of this process is Rome. It became increasingly centralized and bureaucratized, strangling its own economy, as it slowly deteriorated. “Athens, on the other hand, collapse[d] quickly.”⁴²¹ Nock is not sure, in the 1930s, whether America had yet reached that point, but the prodigious acceleration of State power disturbed him greatly, particularly as there was no evidence then, nor is there now in the twenty-first century, of any inclination to retard or reverse it. This leaves us the question of how can the growth of State power be prevented in the first place? How

⁴¹⁹ On the economic and political means, Nock has drawn from historian Franz Oppenheimer’s *The State*.

⁴²⁰ *Ibid.*, p. 59.

⁴²¹ *Ibid.*, p. 61.

can we prevent the State from transforming into Leviathan? Or government from transforming into the State?

VI.5 The State as Territorial Monopolist

It is not completely clear from Nock's *Our Enemy, The State* what form his ideal government would take. All of the examples he offers are those of Native Americans and other 'primitive' peoples. Roy A. Childs, Jr., in a 1989 review of the book asserts that Nock was not an anarchist. One thing is clear, however; if Nock consistently believed in the principles expressed in the Declaration of Independence, and in his own criticisms of the State, then he would have to be classified as an anarchist. Any form of government perfectly consistent with natural rights must necessarily be completely voluntary and therefore anarchistic. This will become clearer if we establish an explicit definition of the State.

In *The Ethics of Liberty*, Rothbard defines the State, not inconsistently with standard definitions, as

that organization which possesses either or both (in actual fact, almost always both) of the following characteristics: (a) it acquires its revenue by physical coercion (taxation); and (b) it achieves a compulsory monopoly of force and ultimate decision-making power over a given territorial area. Both of these essential activities of the State necessarily constitute criminal aggression and depredation of the just rights of private property of its subjects (including self-ownership). For the first constitutes and establishes theft on a grand scale; while the second prohibits the free competition of defense and decision-making agencies within a given territorial area -- prohibiting the voluntary purchase and sale of defense and judicial services.⁴²²

⁴²² Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 2002 [1982]), p. 172. By "given territorial area" Rothbard means "beyond the area of each property owner's just property" (n. 11). The passage quoted in the text is immediately followed by: "Hence the justice of the vivid critique of the State by libertarian theorist Albert Jay Nock: 'The State claims and exercises the monopoly of crime' in a given territorial area. 'It forbids private murder, but itself organizes murder on a colossal scale. It

Thus, if Nock was consistent, and I think he was, then he would not countenance any institution purporting to be a government that did either (a) or (b) or both. Anarchism is not defined by a desire for no rules and no law. Rather, it opposes coercive monopolies like the State. Nock's definition of government seems perfectly consistent with anarchism.

This anarchistic notion of government runs counter to mainstream theories of political philosophers and political economists, however. The standard definition of the State given above is what most theorists, and most people for that matter, think of as government. If nothing else, it is thought, the State must have a monopoly over legislation, internal and external defense, and the courts. It is argued that these are "public goods" that the State must control in order to maintain law and order. Yet even this "nightwatchman" or "limited government" version of the State possesses an inherent contradiction.

As Hoppe, in *The Myth of National Defense*, cleverly puts it: It is widely accepted that every

"monopoly" is "bad" from the point of view of consumers. Monopoly here is understood in its classical sense as an exclusive privilege granted to a single producer of a commodity or service; i.e., as the absence of "free entry" into a particular line of production. In other words, only one agency, A, may produce a given good, x. Any such monopolist is "bad" for consumers because, shielded from potential new entrants into his area of production, the price of his product x will be higher and the quality of x lower than otherwise.⁴²³

punishes private theft, but itself lays unscrupulous hands on anything it wants, whether the property of citizen or alien." The quote from Nock is from *On Doing the Right Thing, and Other Essays* (New York: Harper and Brothers, 1928), p. 143.

⁴²³ Hans-Hermann Hoppe, *The Myth of National Defense: Essays on the Theory and History of Security Production* (Auburn: The Ludwig von Mises Institute, 2003), p. 5.

This proposition is clearly incompatible with the one that the State must have a territorial monopoly. Ought the first proposition be rejected? Economic theory and history have shown the classical conception of monopoly to be correct. Is there something special about the production of security that exempts it from this principle? Certainly the burden of proof is on those who would answer yes. In the aforementioned book edited by Hoppe, Austrian economists and historians offer a compelling case, indeed I would say a decisive case, that the answer is no.

If we cannot reject the proposition that every monopoly is bad, then we must reject as false the proposition that law and order require government (or rather, the State) to have a territorial monopoly. It is the very monopolistic nature of the State that enables it to grow beyond any constitutional limitations placed upon it and eventually transform into Leviathan before finally destroying itself. The first economist “to provide a systematic explanation for the failure of governments as security producers” was Gustave de Molinari (1818-1912), in his article “De la Production de la Sécurité (February 1849)” His argument, which follows along the same lines as those already made here, is worth quoting at length:

If there is one well-established truth in political economy, it is this:

That in all cases, for all commodities that serve to provide for the tangible or intangible needs of consumers, it is in the consumer’s best interest that labor and trade remain free, because the freedom of labor and trade have as their necessary and permanent result the maximum reduction of price.

And this: That the interests of the consumer of any commodity whatsoever should always prevail over the interests of the producer.

Now in pursuing these principles, one arrives at this rigorous conclusion:

That the production of security should, in the interests of the consumers of this intangible commodity, remain subject to the law of free competition.

Whence it follows: That no government should have the right to prevent another government from going into competition with it, or require consumers of security to come exclusively to it for this commodity...

Either this is logically true, or else the principles on which economic science is based are invalid. (Gustave de Molinari, *Production of Security* [New York: Center for Libertarian Studies, 1977], pp. 3-4)

If, on the contrary, the consumer is not free to buy security wherever he pleases, you forthwith see open up a large profession dedicated to arbitrariness and bad management. Justice becomes slow and costly, the police vexatious, individual liberty is no longer respected, the price of security is abusively inflated and inequitably apportioned, according to the power and influence of this or that class of consumers. (Molinari, *Production of Security*, pp. 13-14)⁴²⁴

VI.6 The Lockean Case Against Locke⁴²⁵

If the arguments given above are correct, then Locke's argument for the State fails on its own merits. According to Locke, all men are created by God, born equally free in a state of nature. Man, born with a God-given

title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property – that is, his life, liberty, and estate, against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves...each being, where there is no other, judge for himself and executioner...⁴²⁶

Locke argues that men will find it rational to voluntarily give up this equality of authority by setting up a government to protect their rights because these rights are imperfectly secure in a state of nature. Locke identifies “three principal defects of the state of natural

⁴²⁴ Quoted in *ibid.*, pp. 9-10. Hoppe relates that Molinari was “a prominent Belgian-born French economist, student of Jean-Baptiste Say, and teacher of Vilfredo Pareto, and for several decades the editor of *Journal des Économistes*, the professional journal of the French Economic Association, the *Société d'Économie Politique*” (p. 9). For an easy to access internet copy of “The Production of Security,” see www.praxeology.net/GM-PS.htm.

⁴²⁵ Much of the following discussion was inspired by Roderick Long's “The Nature of Law: Part II” in which I first encountered this argument.

⁴²⁶ Locke, VII.87, p. 304.

anarchy” as the reasons for this insecurity.⁴²⁷ Philosopher Roderick Long has insightfully labeled them the legislative defect, judicial defect, and executive defect, respectively.

Firstly, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the Law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding them in the application of it to their particular cases.

Secondly, in the State of Nature there wants a known and indifferent judge, with authority to determine all differences according to the established law. For every one in that state being both judge and executioner of the Law of Nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men's.

Thirdly, in the State of Nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended will seldom fail where they are able by force to make good their injustice. Such resistance many times makes the punishment dangerous, and frequently destructive to those who attempt it.⁴²⁸

“Locke concludes that these three defects may be remedied by centralizing the legislative, judicial, and executive functions in a constitutional government”⁴²⁹ that is restricted to protecting the rights of its citizens.

Where Locke goes wrong is that he conflates the absence of the *State* with the absence of *law*. Let us consider first the judicial defect. Locke argues that the state of nature “wants a known and indifferent judge, with authority to determine all differences according to the established law.”⁴³⁰ In other words, a third party is wanted as an

⁴²⁷ Roderick T. Long, “The Nature of Law: Part II,” *Formulations* 1, No. 4 (Summer 1994), <http://www.libertariannation.org/a/index.html>.

⁴²⁸ Locke, IX.124-126, p. 325.

⁴²⁹ Long, “The Nature of Law: Part II.”

⁴³⁰ Locke, IX.124-126, p. 325.

impartial arbiter as it is undesirable for men, being naturally partial to themselves, to act as judge in their own case. Yet as a territorial monopolist the State must necessarily judge in its own case when conflicts between itself and its citizens occur. It is no answer to this charge to reply that with the separation of powers under Constitutionalism the judicial branch can act as an impartial judge in conflicts between citizens and the other two branches. It is still a part of the State, and its judges are nominated and appointed by the other two branches; as such it would be naïve to assume that its interests are entirely pure. And, as Roderick Long points out, “What if the citizen’s complaint is with the judicial branch itself?”⁴³¹ The State, therefore, suffers from Locke’s judicial defect.

The State, too, suffers from the legislative defect. Locke argues that there “wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them.”⁴³² Certainly this is desirable. But consider the tens of thousands of pages of bureaucratic regulations and legislated laws that the United States government has produced and continues to produce at a prodigious rate. The bureaucratic regulations are not even subject to the electoral process as the bureaucrats are unelected officials within the executive branch. No one can possibly know all of these laws and regulations. Moreover, they tend to be vaguely worded so as to allow various arbitrary interpretations. Many of them contradict other regulations and laws. And it cannot honestly be said that the average citizen has consented to them. Virtually every modern democracy suffers from this defect. But autocratic States do as well.

⁴³¹ Long, “The Nature of Law: Part II.”

⁴³² Locke, IX.124-126, p. 325.

Why is it assumed that impartial arbiters and a commonly agreed upon set of laws require a monocentric legal system? In the past century, historians have discovered that the majority of legal systems have been polycentric rather than monocentric, meaning that they had no central or monopolistic authority. Consider the case of early Anglo-Saxon customary law:

A system of surety, known as borh, provided the foundation of Anglo-Saxon law. Under the borh system a set of ten to twelve individuals, defined at first by kinship but later by contractual agreement, would form a group to pledge surety for the good behavior of its members. The group would back up this pledge by paying the fines of its members if they were found guilty of violating customary law. A surety group thus had strong financial incentives to police its members and exclude those who persistently engaged in criminal behavior. Exclusion served as a powerful sanction[.]

The Anglo-Saxon courts, called moots, were public assemblies of common men and neighbors. The moots did not expend their efforts on creating or codifying law; they left that to custom and to essentially declaratory law codes of kings [declaratory because kings generally only codified customs already existing in society]. The outcome of a dispute turned entirely on the facts of the case, which were usually established through ritual oath-giving. [...]

Anglo-Saxon law had no category for crimes against the state or against society – it recognized only crimes against individuals. As in other customary legal systems, the moots typically demanded that criminals pay restitution or composition to their victims – or else face the hazards of outlawry and blood-feud. [...]⁴³³

Anglo-Saxon law also recognized and respected property rights, to the point that higher penalties were incurred for crimes in or about the home. The moot courts, like the borh, depended on voluntary cooperation.

⁴³³ Tom W. Bell, “Polycentric Law,” *Humane Studies Review* Vol. 7, No. 1 (Winter 1991), www.theihs.org/libertyguide/hsr/hsr.php/12.html. See also, Bruce L. Benson, *The Enterprise of Law: Justice Without the State* (San Francisco: Pacific Research Institute for Public Policy, 1990).

A favorite example of libertarians is the quasi-anarchistic legal system of Medieval Iceland. In “The Decline and Fall of Private Law in Iceland,” Roderick Long provides a good overview of the Icelandic Free Commonwealth:

In outline, the system's main features were these: Legislative power was vested in the General Assembly (*althingi*); the legislators were Chieftains (*godhar*; singular, *godhi*) representing their Assemblymen (*thingmenn*; singular, *thingmadhr*). Every Icelander was attached to a Chieftain, either directly, by being an Assemblyman, or indirectly, by belonging to a household headed by an Assemblyman. A Chieftaincy (*godhordh*) was private property, which could be bought and sold. Representation was determined by choice rather than by place of residence; an Assemblyman could transfer his allegiance (and attendant fees) at will from one Chieftain to another without moving to a new district. Hence competition among Chieftains served to keep them in line.

The General Assembly passed laws, but had no executive authority; law enforcement was up to the individual, with the help of his friends, family, and Chieftain. Disputes were resolved either through private arbitration or through the court system administered by the General Assembly. Wrongdoers were required to pay financial restitution to their victims; those who refused were denied all legal protection in the future (and thus, *e.g.*, could be killed with impunity). The claim to such compensation was itself a marketable commodity; a person too weak to enforce his claim could sell it to someone more powerful. This served to prevent the powerful from preying on the weak. Foreigners were scandalized by this “land without a king”; but Iceland's system appears to have kept the peace at least as well as those of its monarchical neighbors.⁴³⁴

The primary reasons for its decline and fall were 1) the introduction of Christianity, and 2) that it was not private enough, though the system flourished for nearly three hundred years. One of the principal flaws was that the number of chieftaincies were fixed by law and, over time, with the aid of Church tithes (especially the Churchstead fees paid to the private owner of the land each church was built on) as a guaranteed source of income, a relative handful of families were able to buy up a majority of them.

⁴³⁴ Roderick T. Long, “The Decline and Fall of Private Law in Iceland,” *Formulations* 1, No. 3 (Spring 1994), <http://www.libertariannation.org/a/index.html>. Italics in original.

Another prominent example of polycentric law is the Law Merchant, “a transnational system of customary law enforced by informal courts,”⁴³⁵ which spontaneously formed in late medieval Europe and “offered a *more* unified body of law than did the governmental systems with which it competed.”⁴³⁶ Modern credit bureaus, insurance companies, private arbitration firms, and the like serve similar functions of surety and assurance. Economic theory and the experience of history suggest that, far from being chaotic, polycentric legal systems tended to be voluntary, to converge on a relatively uniform set of law, and were far more adaptable than monocentric systems.

Now consider the executive defect, which the State also suffers from. Locke argues that the state of nature “often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended will seldom fail where they are able by force to make good their injustice. Such resistance many times makes the punishment dangerous, and frequently destructive to those who attempt it.”⁴³⁷ Why is it supposed that in a state of anarchy, an individual will have no recourse to enforcing the law but himself? Consider such voluntary systems as the thief-takers’ associations of early nineteenth century England or the vigilance committees of the old American frontier or the bohrs of Anglo-Saxon law. Voluntary citizen militias existed in colonial America. The modern private security industry is currently a growth industry. In contrast, a standing police and military are fairly unusual in history; indeed, the former is a relatively modern invention. Whereas market competition will be able to better keep private security and law enforcement in check, a State monopoly on the legal use of force

⁴³⁵ Albert Loan, “Institutional Bases of the Spontaneous Order: Surety and Assurance,” *Humane Studies Review* Vol. 7, No. 1 (Winter 1991), <http://www.theihs.org/libertyguide/hsr/hsr.php/13.html>.

⁴³⁶ Long, “The Nature of Law: Part II.”

⁴³⁷ Locke, IX.124-126, p. 325.

puts individual citizens at the mercy of an overwhelming force prone to corruption, arbitrariness, and general inefficiency.

Unfortunately, it has by now become clear that competition within a republican system of government, with the separation of powers and checks and balances of Constitutionalism, merely simulates market competition within a fundamentally monopolistic context and therefore does not provide an adequate check on ambition. “There has been a sufficient convergence of interests among the three branches of republican government that, despite occasional squabbles over details, each branch has been complicit with the others in expanding the power of the central government.”⁴³⁸

⁴³⁸ Roderick T. Long, “The Nature of Law: Parts II,” *Formulations* 1, No. 4 (Summer 1994). www.libertariannation.org/a/index.html.

VII. Conclusion

History is philosophy teaching by examples.
— Bolingbroke

This essay has been far reaching and I have no doubt bit off more than I could chew for a Master's thesis. I have attempted to sketch out to the best of my current understanding, and as far as possible with limited space and time, a radical libertarian theory of natural law and natural rights as well as a critique of the State in conjunction with La Boétie's analysis of the nature of tyranny and the psychology of subjection. I see the history of mankind as a race and conflict between liberty and power, between social power and state power, and I have attempted to illustrate that as well as the fundamental role of ideology in revolutionary movements through a sketch of early American history.

Many, if not most or all, of the ideas presented herein have no doubt evoked varying degrees of shock and skepticism. I myself would have reacted similarly a couple of years ago. It was partly out of a desire for logical consistency and partly over the puzzle of the seemingly never-ending cycle of nations and civilizations that led me to explore such radical notions as these. Why does every State or civilization in history seem to follow the same cycle from liberty and prosperity to increasing centralization, tyranny, and decay? The answer, of course, lies in human nature. But I think it also lies in the nature of our institutions. Human beings possess the capacity for great good and great evil. The incentive and disincentive structures of our institutions play a key role in channeling that capacity. As Lord Acton once said, "Power tends to corrupt, and absolute power corrupts absolutely," so why put into the hands of fallible and corruptible human beings the absolute power of a "compulsory monopoly of force and ultimate decision-

making power over a given territorial area”⁴³⁹ It seems to be a recipe for disaster, if not in the short-run then at least in the long-run for our posterity. I am not naïve; I do not believe that mankind will ever live in perfect peace and harmony. However, I do think that it is possible to learn from our past mistakes and make improvements upon our institutions as our ancestors tried to do. In the nature of the State there is an inherent contradiction that cannot be reconciled. Radical libertarians like Rothbard et al. hold out an alternative. Is anarcho-capitalism, or as Hoppe calls it, the Natural Order, viable? At the very least, I think it is deserving of serious study. And even if it turns out not to be, and the State really is a necessary evil, the Austro-libertarian analysis of the State can point us in the right direction in our efforts to control its flaws. In the final analysis, it is ideas that drive history, that uphold our institutions and unmake or remake them, that maintain the status quo and undermine it, through human action.

⁴³⁹ Rothbard, *The Ethics of Liberty*, p. 172.

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Vita

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