



ADVANCE SHEET– MARCH 19, 2021

President's Letter

In light of the controversies over the New York Times 1619 Project and the recently abolished Trump administration 1776 Commission, we thought it would be interesting to publish an excerpt from the reflections on this subject of one of America's best-known historians, the late Arthur Schlesinger, Jr. While his books on Jackson, FDR and the Kennedys have been decried by some as partisan history, though their vivid prose is conceded by all, two books written in the last stage of his life are less readily turned to the use of Democratic party politics, the first being his book on *The Imperial Presidency* (1973) and the second his polemical *The Disuniting of America: Reflections on a Multicultural Society* (1991, revised edition 1998). We here present the last chapter and Epilogue of the latter.

In lieu of the usual judicial opinion, we set out here the present writer's review in 2013 of the letters of Learned Hand, edited by his grand-daughter, Professor Constance Jordan of the Claremont Graduate School. Professor Jordan spoke about the book at the Bar Library; her talk was broadcast and recorded by C-Span and can be viewed at the following link:

<https://www.c-span.org/video/?316757-1/judge-learned-hand>

Our third article is an address by our founder, George William Brown, on *The Origins of Civil Liberty in Maryland*, delivered to the Maryland Historical Society in 1850.

George W. Liebmann



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Play Ball!

Between now, and the date for the next scheduled Advance Sheet, April 2, major league baseball will have returned. The Orioles are scheduled to begin their season on April 1 in Boston. I thought I would say a few words about Baltimore's version of the American pastime since I cannot remember ever going to a game without seeing numerous members of the bench and bar.

When I was seven, the Orioles were in the World Series, winning it in four straight against the Los Angeles Dodgers, who are the current World Series champions and a team that on paper, looks to be amongst the greatest of all time. The Orioles – not so much. There are some signs for optimism, but really not a whole lot. For example, several years ago they drafted a catcher by the name of Adley Rutschman who is described by some as not just a can't miss prospect, but a can't miss superstar. Yet we can probably guess what is already going through his mind: "Six years from now, will I look better in Yankee pinstripes or Dodger blue?" Glad I am no longer a seven year old Orioles fan, it cannot be an easy thing to be.

Although it is difficult to predict if we are coming down the stretch with that which shall remain nameless, plans have been announced that would allow the Orioles to begin the season with the park at up to 25% capacity. In that Camden Yards holds 45,791 and the average attendance at home games in 2019 was 16,347, probably not going to be a significant problem.

Still, hope springs eternal, especially in the spring and especially when it comes to baseball. No matter how badly things have been in my life at a particular point in time, they never really felt quite as bad when I walked through the turnstile and saw the field in front of me.

Soon, the boys will be back in town and hopefully by the end of the summer perhaps the only one wearing a mask will be the catcher. I hope to see you there.

Joe Bennett



Targeted as a Spy: Surveillance of an American Diplomat in Communist Romania

Hear It From The Man Who Lived It!

On Tuesday, March 23, 2021, at 6:00 p.m., Ernest H. Latham, Jr. will speak on his book *Targeted as a Spy: Surveillance of an American Diplomat in Communist Romania*. The lecture will be presented by way of Zoom. We invite those that will be watching to participate by contributing their questions. Zoom is an interactive platform.

An often overlooked aspect of the Cold War was the extent of diplomatic espionage that went on in the countries behind the Iron Curtain. Every Western Diplomat stationed in Soviet-bloc countries was targeted as a spy by the security apparatus in the respective countries. With the opening of archives in Eastern Europe, the extent of this diplomatic espionage can be revealed for the first time.

Ernest H. Latham, Jr. was a career foreign service officer who served the United States in various posts around the world. From 1983 to 1987, he served as cultural attaché at the American Embassy in Bucharest. During his time in Romania, Dr. Latham was targeted as a spy by the brutal Communist dictatorship of Nicolae Ceausescu and subjected to constant surveillance by the dreaded Securitate, Ceausescu's secret police.

Dr. Latham's book is a collection of the surveillance reports that he was able to obtain from the Romanian archives following the collapse of the Communist regime. They reveal the extent of the surveillance to which Western diplomats were subjected and, more importantly, they reveal a great deal about the system and society that produced these materials.

With an introduction by Ernest Latham, this book should be essential reading for students of the Cold War and for anyone interested in the mindset and functioning of totalitarian regimes.


If you would like to join us for what should be a fascinating evening, please e-mail me at jwbennett@barlib.org and I will forward the **Zoom Link** to you the week of the program. If technology is not your cup of tea, do not let that stop you. Zoom is incredibly easy to use and we will send you the very simple instructions to use Zoom should you need them. Stay safe and we hope to see you with us on March 23.

Time: 6:00 p.m., Tuesday, March 23, 2021.



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The Disuniting of America

Reflections on a
Multicultural Society



Revised and Enlarged Edition

ARTHUR M.
SCHLESINGER, JR.

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5



E Pluribus Unum?

The attack on the common American identity is the culmination of the cult of ethnicity. That attack was mounted in the first instance by European Americans of non-British origin (“unmeltable ethnics”) against the British foundations of American culture; then, latterly and massively, by Americans of non-European origin against the European foundations of that culture. As Theodore Roosevelt’s foreboding suggests, the European immigration itself palpitated with internal hostilities, everyone at everybody else’s throats—hardly the “mono-

cultural” crowd portrayed by ethnocentric separatists. After all, the two great “world” wars of the twentieth century began as fights among European states. Making a single society out of this diversity of antagonistic European peoples is a hard enough job. The new salience of non-European, nonwhite stocks compounds the challenge. And the non-Europeans, or at least their self-appointed spokesmen, bring with them a resentment, in some cases a hatred, of Europe and the West provoked by generations of Western colonialism, racism, condescension, contempt, and cruel exploitation.

I

Will not this rising flow of non-European immigrants create a “minority majority” that will make Eurocentrism obsolete by the twenty-first century? This is the fear of some white Americans and the hope (and sometimes the threat) of some nonwhites.

Immigrants were responsible for a third of population growth during the 1980s. More arrived than in any decade since the second of the century. And the composition of the newcomers changed dramatically. In 1910 nearly 90 percent of immigrants came from Europe. In the 1980s more than 80 percent came from Asia and Latin America.

Still, foreign-born residents constitute less than 10 percent of the population today as against nearly 15 percent when the first Roosevelt and Wilson were worrying about hyphenated Americans. Stephan Thernstrom doubts that the minority majority will ever arrive. The

black share in the population has grown rather slowly—9.9 percent in 1920, 10 percent in 1950, 11.1 percent in 1970, 12.1 percent in 1990. Neither Asian-Americans nor Hispanic-Americans go in for especially large families; and family size in any case tends to decline as income and intermarriage increase. “If today’s immigrants assimilate to American ways as readily as their predecessors at the turn of the century—as seems to be happening,” Thernstrom concludes, “there won’t be a minority majority issue anyway.”

America has so long seen itself as the asylum for the oppressed and persecuted—and has done itself and the world so much good thereby—that any curtailment of immigration offends something in the American soul. No one wants to be a Know-Nothing. Yet uncontrolled immigration is an impossibility; so the criteria of control are questions the American democracy must confront. We have shifted the basis of admission three times this century—from national origins in 1924 to family reunification in 1965 to needed skills in 1990. The future of immigration policy depends on the capacity of the assimilation process to continue to do what it has done so well in the past: to lead newcomers to an acceptance of the language, the institutions, and the political ideals that hold the nation together.

II

Is Europe really the root of all evil? The crimes of Europe against lesser breeds without the law (not to mention even worse crimes—Hitlerism and Stalinism—

against fellow Europeans) are famous. But these crimes do not alter other facts of history: that Europe was the birthplace of the United States of America, that European ideas and culture formed the republic, that the United States is an extension of European civilization, and that nearly 80 percent of Americans are of European descent.

When Irving Howe, hardly a notorious conservative, dared write, “The Bible, Homer, Plato, Sophocles, Shakespeare are central to our culture,” an outraged reader (“having graduated this past year from Amherst”) wrote, “Where on Howe’s list is the *Quran*, the *Gita*, Confucius, and other central cultural artifacts of the peoples of our nation?” No one can doubt the importance of these works nor the influence they have had on other societies. But on American society? It may be too bad that dead white European males have played so large a role in shaping our culture. But that’s the way it is. One cannot erase history.

These humdrum historical facts, and not some dastardly imperialist conspiracy, explain the Eurocentric slant in American schools. Would anyone seriously argue that teachers should suppress the European origins of American civilization? or that schools should cater to the 20 percent and ignore the 80 percent? Of course the 20 percent and their contributions should be integrated into the curriculum too, which is the point of cultural pluralism.

But self-styled “multiculturalists” are very often ethnocentric separatists who see little in the Western heritage beyond Western crimes. The Western tradition, in this view, is inherently racist, sexist, “classist,” hegemonic;

irredeemably repressive, irredeemably oppressive. The spread of Western culture is due not to any innate quality but simply to the spread of Western power. Thus the popularity of European classical music around the world—and, one supposes, of American jazz and rock too—is evidence not of inherent appeal but of “the pattern of imperialism, in which the conquered culture adopts that of the conqueror.”

Such animus toward Europe lay behind the well-known crusade against the Western-civilization course at Stanford (“Hey-hey, ho-ho, Western culture’s got to go!”). According to the National Endowment for the Humanities, students can graduate from 78 percent of American colleges and universities without taking a course in the history of Western civilization. A number of institutions—among them Dartmouth, Wisconsin, Mt. Holyoke—require courses in third-world or ethnic studies but not in Western civilization. The mood is one of divesting Americans of the sinful European inheritance and seeking redemptive infusions from non-Western cultures.

III

One of the oddities of the situation is that the assault on the Western tradition is conducted very largely with analytical weapons forged in the West. What are the names invoked by the coalition of latter-day Marxists, deconstructionists, poststructuralists, radical feminists, Afrocentrists? Marx, Nietzsche, Gramsci, Derrida, Foucault, Lacan, Sartre, de Beauvoir, Habermas, the Frankfurt

“critical theory” school—Europeans all. The “unmasking,” “demythologizing,” “decanonizing,” “dehegemonizing” blitz against Western culture depends on methods of critical analysis unique to the West—which surely testifies to the internally redemptive potentialities of the Western tradition.

Even Afrocentrists seem to accept subliminally the very Eurocentric standards they think they are rejecting. “Black intellectuals condemn Western civilization,” Professor Pearce Williams says, “yet ardently wish to prove it was founded by their ancestors.” And, like Frantz Fanon and Léopold Senghor, whose books figure prominently on their reading lists, Afrocentric ideologues are intellectual children of the West they repudiate. Fanon, the eloquent spokesman of the African wretched of the earth, had French as his native tongue and based his analyses on Freud, Marx, and Sartre. Senghor, the prophet of Negritude, wrote in French, established the Senegalese educational system on the French model and, when he left the presidency of Senegal, retired to France.

Western hegemony, it would seem, can be the source of protest as well as of power. Indeed, the invasion of American schools by the Afrocentric curriculum, not to mention the conquest of university departments of English and comparative literature by deconstructionists, poststructuralists, etc., are developments that by themselves refute the extreme theory of “cultural hegemony.” Of course, Gramsci had a point. Ruling values do dominate and permeate any society; but they do not have the rigid and monolithic grip on American democracy that academic leftists claim.

Radical academics denounce the “canon” as an instrument of European oppression enforcing the hegemony of the white race, the male sex, and the capitalist class, designed, in the words of one professor, “to rewrite the past and construct the present from the perspective of the privileged and the powerful.” Or in the elegant words of another—and a professor of theological ethics at that: “The canon of great literature was created by high Anglican assholes to underwrite their social class.”

The poor old canon is seen not only as conspiratorial but as static. Yet nothing changes more regularly and reliably than the canon: compare, for example, the canon in American poetry as defined by Edmund Clarence Stedman in his *Poets of America* (1885) with the canon of 1935 or of 1985 (whatever happened to Longfellow and Whittier?); or recall the changes that have overtaken the canonical literature of American history in the last half-century (who reads Beard and Parrington now?). And the critics clearly have no principled objection to the idea of the canon. They simply wish to replace an old gang by a new gang. After all, a canon means only that because you can’t read everything, you give some books priority over others.

Oddly enough, serious Marxists—Marx and Engels, Lukacs, Trotsky, Gramsci—had the greatest respect for what Lukacs called “the classical heritage of mankind.” Well they should have, for most great literature and much good history are deeply subversive in their impact on orthodoxies. Consider the present-day American literary canon: Emerson, Jefferson, Melville, Whitman, Hawthorne, Thoreau, Lincoln, Twain, Dickinson, William and Henry James, Henry Adams, Holmes,

Dreiser, Faulkner, O'Neill. Lackeys of the ruling class? Apologists for the privileged and the powerful? Agents of American imperialism? Come on!

It is time to adjourn the chat about hegemony. If hegemony were as real as the cultural radicals pretend, Afrocentrism would never have got anywhere, and the heirs of William Lyon Phelps would still be running the Modern Language Association.

IV

Is the Western tradition a bar to progress and a curse on humanity? Would it really do America and the world good to get rid of the European legacy?

No doubt Europe has done terrible things, not least to itself. But what culture has not? History, said Edward Gibbon, is little more than the register of the crimes, follies, and misfortunes of mankind. The sins of the West are no worse than the sins of Asia or of the Middle East or of Africa.

There remains, however, a crucial difference between the Western tradition and the others. Unlike other cultures, the West has conceived and acted upon ideals that expose and combat its own misdeeds. No other culture has built self-criticism into the very fabric of its being. The crimes of the West in time generated their own antidotes. They have provoked great movements to end slavery, to raise the status of women, to abolish torture, to combat racism, to promote religious tolerance, to defend freedom of inquiry and expression, to advance personal liberty and human rights.

Whatever the particular crimes of Europe, that continent is also the source—the *unique* source—of those liberating ideas of individual liberty, political democracy, equality before the law, freedom of worship, human rights, and cultural freedom that constitute our most precious legacy and to which most of the world today aspires. These are *European* ideas, not Asian, nor African, nor Middle Eastern ideas, except by adoption.

The freedoms of inquiry and of artistic creation, for example, are Western values. Consider the differing reactions to the case of Salman Rushdie: what the West saw as an intolerable attack on individual freedom the Middle East saw as a proper punishment for an evildoer who had violated the mores of his group. Individualism itself is looked on with abhorrence and dread by collectivist cultures in which loyalty to the group overrides personal goals—cultures that, social scientists say, comprise about 70 percent of the world's population.

There is surely no reason for Western civilization to have guilt trips laid on it by champions of cultures based on despotism, superstition, tribalism, and fanaticism. In this regard the Afrocentrists are especially absurd. The West needs no lectures on the superior virtue of those “sun people” who sustained slavery until Western imperialism abolished it (and sustain it to this day in Mauritania and the Sudan), who keep women in subjection, marry several at once, and mutilate their genitals, who carry out racial persecutions not only against Indians and other Asians but against fellow Africans from the wrong tribes, who show themselves either incapable of operating a democracy or ideologically hostile to the democratic idea, and who in their tyrannies and massacres, their

Idi Amins and Boukassas, have stamped with utmost brutality on human rights. Keith B. Richburg, a black newspaperman who served for three years as the *Washington Post's* bureau chief in Africa, saw bloated bodies floating down a river in Tanzania from the insanity that was Rwanda and thought: "There but for the grace of God go I. . . . Thank God my nameless ancestor, brought across the ocean in chains and leg irons, made it out alive. . . . Thank God I am an American."

Certainly the European overlords did little enough to prepare Africa for self-government. But democracy would find it hard in any case to put down roots in a tribal and patrimonial culture that, long before the West invaded Africa, had sanctified the personal authority of chieftains and ordained the obedience of the tribe. What the West would call corruption is regarded through much of Africa as no more than the prerogative of power. Competitive political parties, an independent judiciary, a free press, the rule of law are alien to African traditions.

It was the French, not the Algerians, who freed Algerian women from the veil (much to the irritation of Frantz Fanon, who regarded unveiling as symbolic rape); as in India it was the British, not the Indians, who ended (or did their best to end) the horrible custom of *suttee*—widows burning themselves alive on their husbands' funeral pyres. And it was the West, not the non-Western cultures, that launched the crusade to abolish slavery—and in doing so encountered mighty resistance, especially in the Islamic world (where Moslems, with fine impartiality, enslaved whites as well as blacks). Those many brave and humane Africans who are struggling

these days for decent societies are animated by Western, not by African, ideals. White guilt can be pushed too far.

The Western commitment to human rights has unquestionably been intermittent and imperfect. Yet the ideal remains—and movement toward it has been real, if sporadic. Today it is the *Western* democratic tradition that attracts and empowers people of all continents, creeds, and colors. When the Chinese students cried and died for democracy in Tiananmen Square, they brought with them not representations of Confucius or Buddha but a model of the Statue of Liberty.

V

The great American asylum, as Crèvecoeur called it, open, as Washington said, to the oppressed and persecuted of all nations, has been from the start an experiment in a multiethnic society. This is a bolder experiment than we sometimes remember. History is littered with the wreck of states that tried to combine diverse ethnic or linguistic or religious groups within a single sovereignty. Today's headlines tell of imminent crisis or impending dissolution in one or another multiethnic polity. The luck so far of the American experiment has been due in large part to the vision of the melting pot. "No other nation," Margaret Thatcher has said, "has so successfully combined people of different races and nations within a single culture."

But even in the United States, ethnic ideologues have not been without effect. They set themselves

against the old American ideal of assimilation. They call on the republic to think in terms not of individual but of group identity and to move the polity from individual rights to group rights. They have made a certain progress in transforming the United States into a more segregated society. They have done their best to turn a college generation against Europe and the Western tradition. The Afrocentric and bilingual curricula they would impose on the public schools are well designed to exclude minority children from the American mainstream. They tell minority groups that the Western democratic tradition is not for them. They encourage minorities to see themselves as victims and to live by alibis rather than to claim the opportunities opened for them by the potent combination of minority protest and white guilt. They fill the air with recrimination and rancor and have remarkably advanced the fragmentation of American life.

Yet I believe the campaign against the idea of common ideals and a single society will fail. Gunnar Myrdal was surely right: for all the damage it has done, the upsurge of ethnicity is a superficial enthusiasm stirred by romantic ideologues and unscrupulous hucksters whose claim to speak for their minorities is thoughtlessly accepted by the media. I doubt that the ethnic vogue expresses a yearning for apartheid among the minorities themselves. Indeed, the more the ideologues press the case for ethnic separatism, the less they appeal to the mass of their own groups. They have thus far done better in intimidating the white majority than in converting their own constituencies.

"No nation in history," writes Lawrence Fuchs, the political scientist and immigration expert in his fine book

The American Kaleidoscope, “had proved as successful as the United States in managing ethnic diversity. No nation before had ever made diversity itself a source of national identity and unity.” The second sentence explains the success described in the first, and the mechanism for translating diversity into unity has been the American Creed, the civic culture—the very assimilating, unifying culture that is today challenged, and not seldom rejected, by the ideologues of ethnicity.

A historian’s guess is that the resources of the Creed have not been exhausted. Americanization has not lost its charms. Many sons and daughters of ethnic neighborhoods still want to shed their ethnicity and move to the suburbs as fast as they can—where they will be received with far more tolerance than they would have been 70 years ago. Others may enjoy their ethnic neighborhoods but see no conflict between foreign descent and American loyalty. Unlike the multiculturalists, they celebrate not only what is distinctive in their own backgrounds but what they hold in common with the rest of the population. The desire for achievement and success in American society remains a potent force for assimilation. Gunnar Myrdal’s assessment still holds true today: “The minority peoples of the United States are fighting for status in the larger society; the minorities of Europe are mainly fighting for independence from it.”

The ethnic identification often tends toward superficiality. The sociologist Richard Alba’s study of children and grandchildren of immigrants in the Albany, New York, area shows the most popular “ethnic experience” to be sampling the ancestral cuisine. Still, less than half the respondents picked that, and only one percent ate ethnic

food every day. Only one-fifth acknowledged a sense of special relationship to people of their own ethnic background; less than one-sixth taught their children about their ethnic origins; almost none was fluent in the language of the old country. "It is hard to avoid the conclusion," Alba writes, "that ethnic experience is shallow for the great majority of whites."

If ethnic experience is a good deal less shallow for blacks, it is because of their bitter life in America, not because of nostalgia for Africa. Yet even black Americans, who have the strongest reasons for cynicism and despair, fight bravely and patriotically for their country, would move to the suburbs if income and racism would permit, and riot in the inner city not because they want separatism but because they want the same amenities and opportunities as white Americans.

As for Hispanic-Americans, first-generation Hispanics born in the United States speak English fluently, according to a Rand Corporation study; more than half of second-generation Hispanics give up Spanish altogether. A 1996 survey reported that among five educational goals, 51 percent of Hispanic parents regarded learning English as most important as against 11 percent for Spanish and 4 percent for "learning about Hispanic culture." Asked how soon Hispanic-American children should be taught English, 63 percent said as soon as possible; only 17 percent felt their children should be taught Spanish first. When PEN, the international organization of writers, held a Latino Literature Festival in New York, the Latino writers concluded: "We didn't want any more 'barrioization.' We are, we declared, American writers." When *Vista*, an English-language monthly for Hispanics,

asked its readers what historical figures they most admired, Washington, Lincoln, and Theodore Roosevelt led the list, with Benito Juárez trailing as fourth, and Eleanor Roosevelt and Martin Luther King, Jr., tied for fifth. So much for ethnic role models. Latinos are the most recent wave of immigrants and also those who can most easily return to their homelands. Yet the majority aspire to be Americans first.

Professor Andrew Hacker, author of a valuable and admonitory book *Two Nations: Black and White, Separate, Hostile, Unequal*, remarks about the children of new immigrants in his classes at Queens College in New York City: "The vast majority of immigrant parents intend to stay and see their children become fully-fledged Americans. . . . Hardly any of these parents are pressing for multicultural textbooks, or to have their particular nationalities written into the lessons. Their dream is to have their sons and daughters do well."

What is even more fatal to identity politics and the cult of ethnicity is the simple fact that many, probably most, Americans are of mixed ancestry. They do not see themselves as belonging to a single ethnic group. And the mix is growing every day. The wedding notices in any newspaper testify to the equanimity with which people marry people of different ancestry, religion, and race. So many Jewish-Americans marry outside their faith that Jewish leaders worry about the future of the American Jewish community. More Japanese-Americans marry Caucasians than they do other Japanese-Americans. Over seventy percent of American Indians marry non-Indians. Black-white marriages, banned in nineteen states until the Supreme Court banned the bans in 1967, have risen

from 2.6 percent of all marriages by blacks in 1970 to 12.1 percent in 1993 and continue to rise each passing year.

The multicultural enthusiasm has encouraged the classification of Americans for census or affirmative action purposes into ethnic and racial categories. But the mixing process has in its turn led to protests by multi-ethnic Americans who insist on their right to reject particularist identities. In 1996 thousands of mixed-race Americans joined the Multiracial Solidarity March in Washington to press the government to add a multiracial category to the 2000 census.

Whatever the Census Bureau eventually does, the mixing process will continue. Derek Walcott, condemning Europe's ethnic cleansing in his 1993 Nobel Prize lecture, spoke of lands where "citizens would intermarry as they chose, from instinct, not tradition, until their children find it increasingly futile to trace their genealogy." America is more and more that way. Tiger Woods—one-fourth Thai, one-fourth Chinese, one-fourth black, one-eighth white, and one-eighth American Indian—foreshadows the future. We can, I am sure, count on the power of sex—and of love—to defeat those who would seek to divide the country into separate ethnic communities.

VI

The ethnic revolt against the melting pot has reached the point, in rhetoric at least, though not I think in real-

ity, of a denial of the idea of a common culture and a single society. If large numbers of people really accept this, the republic would be in serious trouble.

“For thirty years,” the historian John Higham writes, “nation-building virtually disappeared from the agenda of academic historians,” and he calls on scholars to “take seriously the construction of national and universal as well as ethnic, racial, and particularistic loyalties.” “In the excitement of discovering how much there was to learn about the experiences of peoples formerly excluded from the historical record,” writes the western historian Patricia Nelson Limerick, “we have backed away from any vision of human ground; we have, instead, divided American life into a set of experiences. . . . Did we, by virtue of that emphasis, unintentionally cut some of the ground under empathy, compassion, fellow feeling, and understanding? Might it be time to build some of that foundation back in?”

The question poses itself: how to build back that foundation? How to restore the balance between *unum* and *pluribus*? The old American homogeneity disappeared well over a century ago, never to return. Ever since, we have been preoccupied in one way or another with the problem, as Herbert Croly phrased in 80 years back in *The Promise of American Life*, “of preventing such divisions from dissolving the society into which they enter—of keeping such a highly differentiated society fundamentally sound and whole.” This required, Croly believed, an “ultimate bond of union.” There was only one way by which solidarity could be restored, “and that is by means of a democratic social ideal.”

The genius of America lies in its capacity to forge a single nation from peoples of remarkably diverse racial, religious, and ethnic origins. It has done so because democratic principles provide both the philosophical bond of union and practical experience in civic participation. The American Creed envisages a nation composed of individuals making their own choices and accountable to themselves, not a nation based on inviolable ethnic communities. The Constitution turns on individual rights, not on group rights. Law, in order to rectify past wrongs, has from time to time (and in my view often properly so) acknowledged the claims of groups; but this is the exception, not the rule.

Our democratic principles contemplate an open society founded on tolerance of differences and on mutual respect. In practice, America has been more open to some than to others. But it is more open to all today than it was yesterday and is likely to be even more open tomorrow than today. The persistent movement of American life has been from exclusion to inclusion.

Historically and culturally this republic has an Anglo-Saxon base; but from the start the base has been modified, enriched, and reconstituted by transfusions from other continents and civilizations. The movement from exclusion to inclusion causes a constant revision in the texture of our culture. The ethnic transfusions affect all aspects of American life—our politics, our literature, our music, our painting, our movies, our cuisine, our customs, our dreams. Black Americans in particular have influenced the ever-changing national culture in many ways. “Not since ancient Rome conquered and then sur-

rendered to the culture of its Greek slaves and freedmen,” observes Orlando Patterson, “has the culture of a dominant world civilization been so enormously influenced by so small a minority of people.”

Black Americans have lived here for centuries, and, unless one believes in racist mysticism, they belong far more to American culture than to the culture of Africa. Their history is part of the Western democratic tradition, not an alternative to it. Henry Louis Gates Jr., reminds us of James Baldwin’s remark about coming to Europe to find out that he was “as American as any Texas G.I.” No one does black Americans more disservice than those Afrocentric ideologues who would define them out of the West.

It is only in the last half century that white America has begun to acknowledge and confront the racism that has disfigured the national past. Only in the last half century have white Americans finally grown conscious of the racial oppression practiced so unconsciously for the greater part of American history—practiced at the expense of the ideal of equality enshrined in our sacred documents.

Progress has been made and cannot be denied. If anyone had told me half a century ago that in my lifetime, with black Americans only twelve percent of the population, I would see a black general as chairman of the Joint Chiefs of Staff, black justices on the Supreme Court, a black governor of Virginia, black mayors of Atlanta, Birmingham, New Orleans, and other southern cities (as well as of New York, Chicago, Washington, Los Angeles, Philadelphia, Detroit, Seattle, St. Louis, Kansas City),

not to mention blacks playing in the major leagues, I would have been happy but incredulous. Yet all this has taken place.

Why then do some observers believe that relations between the races are getting worse? The great Tocqueville answered that question a century and a half ago. Explaining why in the years before the French Revolution those parts of France that had enjoyed most improvement also exhibited most discontent, Tocqueville wrote, "It is not always when things are going from bad to worse that revolutions break out. . . . Patiently endured so long as it seemed beyond redress, a grievance comes to appear intolerable once the possibility of removing it crosses men's minds. For the mere fact that certain abuses have been remedied draws attention to the others and they now appear more galling; people may suffer less, but their sensibility is exacerbated." So improvements in people's lot may at the same time quicken the spirit of protest.

"The sociological truths," writes Orlando Patterson, "are that America, while still flawed in its race relations . . . , is now the least racist white-majority society in the world; has a better record of legal protection of minorities than any other society, white or black; offers more opportunities to a greater number of black persons than any other society, including all those of Africa; and has gone through a dramatic change in its attitude toward miscegenation over the past 25 years."

The interplay of diverse traditions produces the America we know. "Paradoxical though it may seem," Diane Ravitch has well said, "the United States has a common culture that is multicultural." That is why uni-

fyng political ideals coexist so easily and cheerfully with diversity in social and cultural values. Within the overarching political commitment, people are free to live as they choose, ethnically and otherwise. Differences will remain; some are reinvented; some are used to drive us apart. But as we renew our allegiance to the unifying ideals, we provide the solvent that will prevent differences from escalating into antagonism and hatred.

One powerful reason for the movement from exclusion to inclusion is that the American Creed facilitates the appeal from the actual to the ideal. When we talk of the American democratic faith, we must understand it in its true dimensions. It is not an impervious, final, and complacent orthodoxy, intolerant of deviation and dissent, fulfilled in flag salutes, oaths of allegiance, and hands over the heart. It is an ever-evolving philosophy, fulfilling its ideals through debate, self-criticism, protest, disrespect, and irreverence; a tradition in which all have rights of heterodoxy and opportunities for self-assertion. The Creed has been the means by which Americans have haltingly but persistently narrowed the gap between performance and principle. It is what all Americans should learn, because it is what binds all Americans together.

Let us by all means in this increasingly mixed-up world learn about those other continents and civilizations. But let us master our own history first. Lamentable as some may think it, we inherit an American experience, as America inherits a European experience. To deny the essentially European origins of American culture is to falsify history.

Americans of whatever origin should take pride in

the distinctive inheritance to which they have all contributed, as other nations take pride in their distinctive inheritances. Belief in one's own culture does not require disdain for other cultures. But one step at a time: no culture can hope to ingest other cultures all at once, certainly not before it ingests its own. As we begin to master our own culture, then we can explore the world.

Our schools and colleges have a responsibility to teach history for its own sake—as part of the intellectual equipment of civilized persons—and not to degrade history by allowing its contents to be dictated by pressure groups, whether ideological, economic, religious, or ethnic. The past may sometimes offend one or another group; that is no reason for rewriting history. Giving pressure lobbies vetoes over textbooks and courses betrays both history and education. Properly taught, history will convey a sense of the variety, continuity, and adaptability of cultures, of the need for understanding other cultures, of the ability of individuals and peoples to overcome obstacles, of the importance of critical analysis and dispassionate judgment in every area of life.

Above all, history can give a sense of national identity. We don't have to believe that our values are absolutely better than the next fellow's or the next country's, but we have no doubt that they are better *for us*, reared as we are—and are worth living by and worth dying for. For our values are not matters of whim and happenstance. History has given them to us. They are anchored in our national experience, in our great national documents, in our national heroes, in our folkways, traditions, and standards. People with a different history will have differing values. But we believe that our own are better

for us. They work for us; and, for that reason, we live and die by them.

It has taken time to make the values real for all our citizens, and we still have a good distance to go, but we have made progress. If we now repudiate the quite marvelous inheritance that history bestows on us, we invite the fragmentation of the national community into a quarrelsome spatter of enclaves, ghettos, tribes. The bonds of cohesion in our society are sufficiently fragile, or so it seems to me, that it makes no sense to strain them by encouraging and exalting cultural and linguistic apartheid.

The American identity will never be fixed and final; it will always be in the making. Changes in the population have always brought changes in the national ethos and will continue to do so; but not, one must hope, at the expense of national integration. The question America confronts as a pluralistic society is how to vindicate cherished cultures and traditions without breaking the bonds of cohesion—common ideals, common political institutions, common language, common culture, common fate—that hold the republic together.

Our task is to combine due appreciation of the splendid diversity of the nation with due emphasis on the great unifying Western ideas of individual freedom, political democracy, and human rights. These are the ideas that define the American nationality—and that today empower people of all continents, races, and creeds.

“What then is the American, this new man? . . . Here individuals of all nations are melted into a new race of men.” Still a good answer—still the best hope.

Epilogue



MULTICULTURALISM, MONOCULTURALISM, AND THE BILL OF RIGHTS: UPDATE ON THE CULTURE WARS

Culture *wars*? The military metaphor may be a bit melodramatic; but for a decade these so-called wars have indeed agitated the American educational scene, remolding curriculums, revising canons, perplexing ad-

ministrators, infuriating alumni, and otherwise disturbing the peace.

The immediate cause of this turbulence, as we have seen, is the challenge of “multiculturalism”—a neologism that suddenly invaded public discussion. It is odd that the word should be new, since the United States has been from birth a multicultural nation. But through most of American history what we now term multiculturalism had been regarded as merely a stage in the absorption of newcomers into a common American nationality and culture.

Recently multiculturalism has emerged not alone as a word but as an ideology and a mystique. In its mild form, it calls attention to neglected groups, themes, and viewpoints and redresses a shameful imbalance in the treatment of minorities both in the actualities of life and in the judgments of history. It does this within a conception of a shared culture.

However, multiculturalism also assumes a militant form in which it opposes the idea of a common culture, rejects the goals of assimilation and integration, and celebrates the immutability of diverse and separate ethnic and racial communities. Extreme separationists, while often flourishing the multicultural flag, in fact rush beyond true multiculturalism into ethnocentrism, the belief in the superior virtue of their own ethnic group.

Militant multiculturalism and ethnocentrism are fueled by understandable historic resentments. Though the American theory opens citizenship to all who subscribe to the Constitution and the laws, American practice was long confined and circumscribed. Non-Anglo-Saxon

whites were snubbed and shunned. Most black Americans were slaves until 1865. Women could not vote until 1920.

But if practice betrayed theory in the short run, in the longer run theory has modified practice. The movement from exclusion to inclusion, uneven but persevering, is one of the grand themes of American history. This is what has enabled a miscellany of polyglot peoples to form a single nation. Yet militant multiculturalists, instead of recognizing the beauty of *e pluribus unum*, prefer to dismiss *unum* and exalt *pluribus*.

All this comes at a time when the murderous disintegration of one country after another around the globe gives new urgency to the question: what holds a nation together? "We look with some mixture of sadness and superiority," writes William Raspberry, "at the breakup of the Soviet Union and Yugoslavia into ethnic enclaves and fail to see how fragmented a society we in the United States are becoming. . . . We are abandoning even the *myth* that we are all Americans. . . . We are not yet as ethnically riven as, say, Yugoslavia. But don't ever imagine that it couldn't happen here."

Maybe it could happen here, but, as noted earlier, sex and love provide a potent antidote. And strong counterstatements to disuniting multiculturalism have appeared in recent writings by the political scientists Lawrence Fuchs and Peter Salins, the historians Philip Gleason, John Higham, and David Hollinger, the sociologist Todd Gitlin and the journalists Bill Raspberry, Stanley Crouch, Jim Sleeper, William Pfaff, and Richard Bernstein. The debate roars on, and it may be of inter-

est to take a look at issues that have acquired new salience.

I

Identity politics has produced a bizarre exchange of positions between the traditional right and the traditional left. Historically the right has been particularist, affirming the complex density of life, venerating established institutions, disdaining glittering generalities. Historically the left has been universalist, embracing all humanity in broad abstractions and spacious dreams. But the cult of ethnicity has given the left a direction that, in the view of radicals of an older school, threatens not only the disuniting of nations but the disuniting of the left itself.

In Great Britain the brilliant Marxist historian Eric Hobsbawm condemns identity politics for its reduction of the left to a coalition of self-centered minority groups and interests. The political project of the left, Hobsbawm writes, should be “for *all* human beings. However we interpret the words, it isn’t liberty for shareholders or blacks, but for everybody. It isn’t equality for members of the Garrick Club or the handicapped, but for everybody. It is not fraternity only for old Etonians or gays, but for everybody.” The identity groups, however, “are about themselves, for themselves, and nobody else. . . . That is why the Left cannot *base* itself on identity groups.”

In the United States Todd Gitlin, a 1960s activist before he turned sociologist, similarly deplores what he calls “the twilight of common dreams.” In the past the left affirmed the broad human condition and the equal-

ity of all persons; it was the right that rested on primordial differences among classes, nations, races. Liberal politicians used to put together balanced tickets to create majority coalitions for general objectives; the old ethnic politics was a force for social cohesion. The new ethnic politics, Gitlin points out, is obsessed with group difference and inculcates thereby a “go-it-alone mood,” every tribe for itself.

The result? “Today it is the Right that speaks a language of commonalities. . . . To be on the Left, meanwhile, is to doubt that one can speak of humanity at all.” Gitlin may overdo the enthusiasm of the right for universalist values, but he is surely correct in his argument that the cult of ethnicity has confused and enfeebled the left. Even the Democratic party suffered for a period from a plague of institutionalized “caucuses” representing minorities concerned more with ventilating their own grievances than with strengthening the party.

II

Identity politics has produced another bizarre effect. The Bill of Rights is once more in peril, especially its cornerstone, the First Amendment, that cherished guardian of our freedoms of speech, press, worship, assembly, and petition. In the good old days the First Amendment was a target of attack by the right. Conservatives and hyper-patriots were the ardent advocates of repression and censorship. Many still are, but today they are joined in the assault on the First Amendment by identity groups on the left. Even more ironically, the rising demand for re-

pression and censorship is centered in our universities—the places above all where unlimited freedom of expression had previously been deemed sacred. And those who now lead the assault on the Bill of Rights do so in the name of the multicultural society.

The reach of the First Amendment has been widened through the years by the process of “incorporation,” and the widening has been saluted, especially in academic circles, as one of the glories of American jurisprudence. Recall some of the noble phrases that have confirmed, strengthened, and extended freedoms of expression. “The question in every case,” said Justice Holmes, “is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.” “No danger flowing from speech,” said Justice Brandeis, “can be deemed clear and present, unless the incidence of evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by processes of education, the remedy to be applied is more speech, not enforced silence.” I have earlier quoted Justice Holmes’s point that freedom means not just “free thought for those who agree with us”—what great virtue resides in that?—“but freedom for the thought that we hate.”

Freedom for the thought that we hate: this is the proposition that now falls under attack from a multicultural perspective. Through most of the twentieth century, the thought that we hated was totalitarian political thought: fascism, Nazism, communism. Many argued

then that free speech should not be permitted to become the means of destroying the freedom of speech; that liberty should be denied to those who would use liberty to crush liberty. Under pressure, first of hot war, then of cold war, the Supreme Court gave ground from time to time in construing First Amendment protection of hateful ideological utterance. But in the main the Bill of Rights survived hot and cold wars intact.

Thus in the midst of the Second World War, at a time of the highest patriotic fervor with the life of the nation truly at risk, the Court threw out as a violation of the First Amendment a West Virginia statute requiring school children to salute and pledge allegiance to the American flag. "Freedom to differ," Justice Jackson wrote for the Court, "is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

Justice Jackson memorably continued; "If there be any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . . If there are any circumstances which permit an exception, they do not now occur to us." Alas, they now occur to the practitioners of identity politics. But the Court handed down its decision against compulsory flag salutes and pledges of allegiance on Flag Day in 1943 when young Americans were fighting and dying for that flag on many fronts around the planet; and the American people then, far from denouncing the Court, applauded the decision as a pretty good statement of what we were fighting for.

Through the Cold War, the Court generally held the line for the First Amendment. In *Brandenburg v. Ohio*, it reaffirmed and reformulated Holmes's clear and present danger test. In the *Skokie* case, it upheld the right of neo-Nazis to parade down the streets of an Illinois town inhabited by Holocaust survivors and their families. Wounded feelings were not deemed a persuasive reason for cancelling constitutional protection. As Justice Brennan wrote in *Texas v. Johnson*, a case in which a protestor burned an American flag: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

III

This is the interpretation of the Bill of Rights that champions of identity politics are determined to overthrow. The account by Henry Louis Gates, Jr., of a black reaction applies also to other identity groups: "Civil liberties are regarded by many as a chief obstacle to civil rights. . . . The byword among many black activists and black intellectuals is no longer the political imperative to protect free speech; it is the moral imperative to suppress 'hate speech.'"

The very term "hate speech" is new. It does not appear as a concept or even as an index entry in Leonard Levy's *Encyclopedia of the American Constitution* (1986) or in M. Glenn Abernethy's *Civil Liberties under the*

Constitution (1989) or in Kermit E. Hall's *Oxford Companion to the Supreme Court* (1992). Nor does the related term "political correctness" make it either as a concept or as an index entry in those useful works.

Now free speech is not an absolute. We regulate speech every day through statutes punishing libel, slander, perjury, false advertising, criminal solicitation, and so on. No judgment can escape the balancing of competing values. But in a free democracy the presumption must always lie in favor of the freedom of speech unless an overwhelming practical case can be made for regulation and censorship.

The elevation of hate speech carries with it a new view of the Constitution. The traditional understanding has been that the Constitution is a charter for individuals and that the Bill of Rights adds further specific protection for individuals. But identity politics regards groups rather than individuals as the basic constitutional units and would thereby curtail individual rights in order to protect group rights. Thus Professor Kathryn Abrams of the Cornell Law School deplores "the constitutional habit of considering rights-bearers as unaffiliated individuals." She contends that "expression is overprotected" in the United States and that "we need limits on free expression in intellectual life" in order to enhance "respect for and recognition of politically marginalized groups."

Impressed by the phenomenon of Nazi anti-Semitism, the Supreme Court had a brief fling with the concept of "group libel" during and after the Second World War. But its favorable judgment (by a 5-to-4 vote) in *Beauharnais v. Illinois* (1952) was effectively nullified

in subsequent decisions. Nor have Congress and state legislatures elected to follow the group libel path. After all, the theory of the Constitution as the palladium not of individual but of group rights rejects the American conception of civil liberties so powerfully argued by Holmes, Brandeis, Jackson, and Brennan.

Yet the group-rights theory is driven by anguished emotions—the emotions of Holocaust survivors in Skokie, the emotions of women long subjected to harassment and abuse, the emotions of blacks spurned and humiliated, the emotions of all denigrated and persecuted minorities. Democratic governments, with memories of the Holocaust and apprehensions about growing ethnic tensions, are understandably and honorably concerned to arrest the spread of ethnic and racial hatred. The United Nations led the way with the International Convention on the Elimination of All Forms of Racial Discrimination (1966) calling on signatories to declare as “an offence punishable by law all dissemination of ideas based on racial superiority, or hatred.”

Various nations have followed the group-rights course. One can understand why Germany, in the light of its own horrid past, defines neo-Nazis and Holocaust deniers as clear and present dangers and takes action to ban them. But western countries with secure democratic traditions have also adopted laws punishing (I quote the British Racial Relations Act of 1965) the circulation of materials fomenting “hatred against any section of the public in Great Britain distinguished by color, race, ethnic or national origins,” including “threatening, abusive, or insulting” words. Section 319 of Canada’s criminal code is similarly designed to prohibit hate propaganda di-

rected against racial and religious groups. Many democratic countries have similar statutes.

IV

Such precedents reinforce the argument for censorship of hate speech in the United States. The problem acquires peculiar poignancy in educational settings. Does not the protection of indefensible speech prevent minority students from joining the life of the university on equal terms? Does not hate speech, by subverting equality, undercut the very premises of education? Does not the Constitution protect equality as well as liberty? Is not the Fourteenth Amendment as much a part of the Constitution as the First? “The law of equality and the law of freedom of speech,” writes Catharine MacKinnon, “are on a collision course in this country.”

This line of argument appeals to harassed administrators and promotes the institutionalization of identity politics through speech codes, monitoring of lectures, toleration of destruction of college newspapers, even surveillance of informal conversations (including jokes)—all diminishing the zone of free and uninhibited comment.

The obsession with “insensitivity”—the feeling that it is OK to ban words when they hurt someone’s feelings—is a major source of the attack on the First Amendment. Unquestionably verbal slurs and insults by campus bullies can upset and intimidate defenseless individuals. But is the injury words inflict on sensibilities sufficiently weighty and enduring to require so drastic a remedy as a contraction of the First Amendment? Surely

there are many ways short of censorship by which educational leaders can discourage and condemn bigotry.

The hurt-feelings standard can be carried a little far. When Henry Louis Gates, Jr., dared characterize Afrocentrism as a “‘voodoo’ methodology,” fourteen scholars, led by the chairs of the department of anthropology at Johns Hopkins, of the department of religion at Trinity, and of the department of black studies at the University of Massachusetts, earnestly rebuked him as “grossly insensitive” on the ground that his comment “debases the religious beliefs and practices of millions” of voodoo worshippers. They even compared him to George Bush.

At the end of this insensitivity road lie the Ayatollah Khomeini and *The Satanic Verses*. Does the fact that *The Satanic Verses* hurts the feelings of fundamentalist Muslims really justify the *fatwa*, the sentence of death pronounced against Salman Rushdie? Bernard Shaw said, “All great truths begin as blasphemies.” The hurt-feelings standard, if imposed in the past, would have silenced Mark Twain, Ambrose Bierce, Mr. Dooley, H. L. Mencken, and so many others whose scorching wit has enlivened, illuminated, and improved American life.

In any case, how successful have anti-racist statutes been in stopping the dissemination of racist ideas? In Germany racist graffiti and harassment of Jews, homosexuals, and foreigners have increased. Britain reports no diminution in racism. In Canada, feminists, wielding the legal theories of Catharine MacKinnon, rejoiced when the Canadian Supreme Court affirmed the power of the state to ban literary and visual expression that “degrades” and “dehumanizes” women. But the main consequence has been the seizure by Canadian customs of

books ordered by lesbian bookshops. Neither the European nor the Canadian experience demonstrates that censorship is more effective than free discussion in bringing about a tolerant and harmonious society.

When hate speech leads on to physical assault and violence, that is another matter and one requiring prompt and sharp counteraction. But plenty of existing statutes deal with violent crime. And it may well be a good idea to provide for the enhancement of punishment when hate is demonstrably the motive for violence. But driving *thoughts* underground may only cause them to explode later.

Moreover, the censorship of racist expression might well create precedents for future censorship of other sorts of expression. Some multiculturalists brush aside this point on the ground that freedom of speech is overrated as a boon for minorities. "African-Americans and other people of color," Professor Charles Lawrence, then of the Stanford Law School, has written, "are skeptical about the argument that even the most injurious speech must remain unregulated because, in an unregulated marketplace of ideas, the best ones will rise to the top. Experience tells quite the opposite. People of color have seen too many demagogues elected by appealing to America's racism."

One wonders where Professor Lawrence has been over the last half century. Experience tells on the contrary that, in the unregulated marketplace of ideas, talk of "white supremacy" has vanished and the idea of racial equality has been accepted in principle, if not, alas, in practice. It was precisely the First Amendment, Henry Louis Gates, Jr., reminds us, that "licensed the protests,

the rallies, the organization and the agitation that galvanized the nation.” There are few better arguments for the Bill of Rights than the revolution in race relations over the last half century.

No one needs the First Amendment more than those who seek to change society. Radicals are always in the minority, and minorities gain most from the protections of the Bill of Rights. Free speech may at times be offensive, odious, repulsive, an instrument of domination and oppression; but historically free speech has been far more significant as a means—no, *the* means—of liberation. As Norman Corwin, whom the more venerable will remember as the author half a century ago of that once celebrated radio program on the Bill of Rights called “We Hold These Truths,” recently put it: “The Bill of Rights doesn’t offer freedom *from* speech. To silence an idea because it might offend a minority doesn’t protect that minority. It deprives it of the tool it needs most—the right to talk back.”

There is no more self-emasculating position for reformers than the curtailment of debate and expression. And the censorship strategy, on top of everything else, hands the free speech issue to the right, casts racists as champions of the First Amendment, and diverts attention from the poison they spew.

It is ironic that what the multiculturalists began as a joyous celebration of diversity ends as a grim crusade for conformity.

V

The left has no monopoly on political correctness—and this should lead prudent multiculturalists to question even further the wisdom of the censorship strategy. “The censor,” Louis Menand sagely observes, “always rings twice.” The right has its own version of political correctness; and, if political correctness becomes the rule, the right can turn out far larger crowds for monoculturalism than the left can for multiculturalism.

The monoculturalists are hyperpatriots, fundamentalists, evangelicals, laissez-faire doctrinaires, homophobes, anti-abortionists, pro-assault-gun people, and other zealots. They inveigh against ideas and books they deem blasphemous, atheistic, socialistic, secular humanistic, pornographic, and/or un-American and seek to impose on the hapless young their own pinched, angry, monistic concept of America.

Leftwing political correctness is more systematically thought out and more pretentious in its rationalization. It concentrates its corrective program on institutions of higher education. Rightwing political correctness is more primitive and more emotional. It concentrates its corrective program on public schools, public libraries, local newspapers, and local radio and television stations.

Leftwing political correctness is an irritation and a nuisance. It becomes a threat to the young only when it invades the public schools, as indeed it has done in its Afrocentric guise in several of our cities. So long as it operates in higher education, it runs up against students

who are mature enough to take care of themselves and, if not mature, are hard to persuade of anything anyway.

Rightwing political correctness catches kids before they are old enough to take care of themselves and in environments where they are rarely exposed to clashes of opinion. It is a weapon with which small-town bigots, conducting pogroms against Darwin, Marx, J. D. Salinger, Judy Blume, and other villains, seize control of school committees and library boards and terrorize teachers, librarians, and students.

Monoculturalists abuse history as flagrantly as multiculturalists. They sanitize the past and instill their own set of patriotic heroes and myths. This of course has happened before. I recently came upon a statement written by my father and adopted by the American Historical Association in 1941. "Genuine patriotism," the statement says,

no less than honesty and sound scholarship, requires that textbook authors should endeavor to present a truthful picture of the past. Those who oppose this view would seem to believe that the history of the United States contains things so disgraceful that it is unsafe for the young to hear of them . . . To omit controversial question from the historical account, as is sometimes urged, would be to garble and distort the record. The history of the American people has been hammered out on the anvil of experience. It is a story of achievement, often against heavy odds. Some of the most glorious

passages have consisted in the struggle to overcome social and economic injustices.

The religious right is particularly well organized, well funded, and ruthless. It plays a conspicuous role in demanding the removal of heretical books from public schools and libraries. It backs the movement to force schools to place the Genesis doctrine of "creationism" on the same scientific level as evolution. One conservative religious outfit, Citizens for Excellence in Education, recently unmasked Halloween as a pagan holiday under cover of which witches pursue their wicked schemes. The Reverend Pat Robertson has even resurrected the old theory that the ills of the modern world are due to the diabolical work of Adam Weishaupt and the Illuminati in eighteenth-century Bavaria.

Remember Mr. Dooley's definition of a fanatic: someone who "does what he thinks th' Lord would do if He only knew th' facts in th' case." Honest, God-fearing, unsophisticated persons who believe they are executing the Lord's will are even a greater menace to the Bill of Rights than self-important sophisticates on college campuses who at least do not see themselves as designated batters for the Almighty.

Political correctness, whether of the left or the right, is a blight on a free democracy. The First Amendment has served the republic well. Whittling it down puts our liberties at risk. As Tocqueville wrote a century and a half ago, "It is by the enjoyment of a dangerous freedom that Americans learn the art of rendering the dangers of freedom less formidable."

Constance Jordan (ed.), *Reason and Imagination: The Selected Correspondence of Learned Hand* (New York: Oxford, 2013), 435 pp.

Reviewed by George W. Liebmann

This selection from around 65,000 pieces of correspondence, edited by Learned Hand's grand-daughter, Professor Emerita of English at the Claremont Graduate School, could not have been better done. Both Hand's letters and the letters of his correspondents are included; some of the most notable exchanges are with Bernard Berenson, Philip Littell, Walter Lippmann, and Felix Frankfurter.

Hand's opinions, standards and career are a reproach to the judges of our time. Only twice in nearly half a century did he declare a statute unconstitutional: in the *Schechter* case under duress of superior authority and in *Baldwin v. Seelig* involving a clear discrimination against out-of-state producers.. He viewed the 'due process' clauses of the federal Constitution in their substantive aspects with abhorrence and at one point proposed five different ways of repealing them. "They contradict the very presupposition of a democratic state." For him, legislatures were the supreme organs to reconcile social differences; they might make mistakes, but these were subject to swift self-correction; not so the judgments of courts. "Lawsuits however large the jury cannot be in the end a substitute for personal confidence in leaders." Nonetheless, "an enforced pause in revolutionary changes may be a condition upon the very continuance of democratic societies." If a chamber of revision to provide second thoughts was needed, it should be legislative in character. The delaying powers of the British House of Lords after 1911 made sense to him; it would have greater legitimacy if members were appointed for life rather than by inheritance, a development which has since occurred. America's accidental substitute for this was the Senate, whose rural bias checks transient majorities.

The role of courts in his view was that of the magistrates described by Aristotle in the third book of the *Nicomachean Ethics*: restoration of the status quo (corrective justice) when litigants commit crimes and civil wrongs disruptive of society's compromises. Change in these was for the ruler: a monarch or dictator in authoritarian systems, a legislature in democratic ones.. The judge's job was to discover through "reason and imagination" how past legislators would address each new problem. This, Justice Scalia to the contrary notwithstanding, requires more than a dictionary, but the framers' values and intentions were not to be confused with those of the judge. "[Judges'] authority would disappear as soon as their decisions had no greater professed authority than the beliefs of the judges as to what was proper and just. Let them be on guard that they assume no more than an overwhelming consensus."

He scandalized both 'liberals' and his frequent correspondent Justice Frankfurter by concluding that the only possible intention that would justify the school segregation decision was a purpose to abolish all race distinctions, and in the end doubted that the courts could legitimately find such a purpose.

These aspects of Hand's position are well known, but not as well known as they should be.

What lends this volume its interest is Hand's remorseless intellectual candor and integrity, and his passing observations on the politics of his era, which suggest that not only was Hand a fine judge, but that he would have made a fine Secretary of State,.

Hand's comments on the cavalcade of presidents communicate this. For him, William McKinley was a "pharasaical jellyfish," (a description which some may think fits the present incumbent). Theodore Roosevelt, whom he supported, had "real breadth of vision, foresight. . . granting his violence and lying, his personal untruthfulness, he is today the best patriot we have." As for William Howard Taft, he told Frankfurter "you are a little hard on the old boy. Forgive his exaltation of his prerogative, and remember what constitutionalism did for the country during its first century." Wilson provided "an example of personal government and reliance upon the executive alone which is much the worst of my time. . . he is not genuinely rational. Washington is now a place where you get no hearing unless you come from the proper crowd." "Wilson has been increasingly for me the type of statesman which I most distrust and individually a most repellent human being, the American president for whom I have achieved the greatest personal dislike. . . his greatest failing, the gift of inspiring others, particularly women, with a sense of the loftiness of his moral principles. Men like Wilson are soothsayers, misleaders of the children of men."

"Harding seems to me to be impossible. . . an appeal to apathy, little Americanism and the tacit assumption that the old crowd of wirepullers playing in with the big interests is on the whole most to be trusted." He began with high regard for Hoover: "I am for Hoover on any ticket, Soviet included." However, "Hoover's crabbed and somewhat churlish nature was a great defect." But, "I have perhaps an extreme leaning toward the tough-minded. Hoover, whatever his faults, , seems to look rather that way." In the depth of the Depression, he found Hoover "a timid soul," though some of his actions, probably the Hoover Moratorium, the nomination of Cardozo and the signing of the Norris-La Guardia Act "justify the hopes of those of us who continue to believe in him." Later, during the Second World War, he was to allude to "that old cobra Hoover whose teeth are pretty well gone but who can still spit poison and does."

He considered that FDR as war leader had "an ability to get the true balance of values and a courage to risk everything upon the cast." However, "win or lose, our revered system of checks and balances is gone. The American people is getting used to the idea that when the wind blows, the Captain is the boss and what he says goes." As for the New Dealers, "I rather like their ideas but their techniques do not please me." The President had "a nonreflective feeling toward the ruling classes. . . willingness to fan incendiary animosities." Yet he "conquered a terrible [personal] calamity." "I do not for an instant suppose that he could stand any competent cross-examination by a hostile economist on any of the issues. Maybe if we had a nation of patient cows, it would have been better to let things alone and feed the down and outers until things picked u yp." Roosevelt "as I look back was not a really likeable person. I don't believe I could possibly have loved him. I disbelieve in his generosity."

He had no direct comment on Truman, though he credited Dean Acheson with bringing "a note of wisdom, competence and honesty into public asffairs." As for Eisenhower, "you

must judge with the utmost lenity, his position is nearly impossible. He cannot rule as a coalition president—that won't wash. He is not a clever man but he is something better than that—he is a just and selfless man.” “If one looks to the Democrats one sees a typical egalitarian party that will deny nothing to the ordinary voter, and will not hesitate to endanger the whole stability of the country by financial excess. If one looks to the Republicans, one sees as fantastic and outrageous an appeal to primitive passions as we have ever had there.”

His views on foreign policy included a conviction that Stimson erred in trying to curb the Japanese in China. In Mexico in 1913, he told Frankfurter, “I should help anyone who had a chance [to stop the fire]. . . your duties are to avoid entangling your country.” Versailles sought to “right every wrong that has been done for the last four hundred years and create more grievances than before.” He considered that Korea was a distraction from Europe which should be settled, and that further military involvement in Asia was unwise. He believed in a concert “in which Britain and Russia and ourselves would be recognized for what we are.” He understood that “People do not take sides so much because of their economic interests as because of some wounding of their self-esteem.” an observation with great pertinence to today's Middle East.

Though acknowledging the need for ameliorative legislation, he believed that “a general presumption of laissez-faire is the proper basis of government.” He stated a conservative case for legislation like the minimum wage, which “gives us hope of meeting its cost by increased efficiency. . . A means of ascertaining who of the race is fit to survive without mingling the fit and unfit in a vague class half fed and half educated.” As for the evils of his time, which extended to aesthetics as well as politics, “if I were to lay my finger on the rotten spot, I would say it was the sense of nationality.” Americans were “a self-sufficient, aggressive people, who have never known and do not believe that this is a world of misery and terrors.”

On the antitrust laws, his views are unfashionable today. He told Senator Harley Kilgore, who asked his advice about legislation: “although the economic question is vital, it is not as important as the political one. . . the impact upon the social habits of those affected by the proposed combination. . . it is one thing to be independently engaged in business and another to be employed by others, to be employed in a small business is different from being employed in a very large one. The reflective appraisal of these and an eventual decision between them are of the very essence of legislation.” Congress made that appraisal shortly thereafter in enacting the Celler-Kefauver and bank merger statutes which the courts applying economic criteria alone have nullified..

He had no formal religious faith other than “a general sense of responsibility outside of his purely personal aims and those of them he loves.”

“[Judges] have got ourselves into the mess we are in here in America by failing to remember how strictly our duties should be interpretive.” An appellate judge's work “ought preeminently to be an interpretation of the more permanent relations of men.” “Holmes' background of acquaintance with letters and history kept him from the chief

danger. . . the automatic self-affirmation of ideas because they fit into one's own sub-conscious predispositions."

There is hardly a line in these letters that does not stand as an indictment of today's Supreme Court and today's legal academy. Their editor has displayed a very sharp eye in identifying issues of enduring significance; few, if any, lawyers could have done as well. The notes are both sophisticated and unobtrusive. Professor Jordan is not responsible for the small type face, but its effect is to give readers larger helpings of caviar than they would normally receive from a book of this size,

The reviewer is the author of *Diplomacy Between the Wars* and of *The Last American Diplomat*, both published by Palgrave Macmillan

THE ORIGIN AND GROWTH OF CIVIL LIBERTY IN MARYLAND.

A DISCOURSE

DELIVERED BY

GEO. WM. BROWN,

BEFORE THE

Maryland Historical Society,

Baltimore, April 12, 1850,

BEING THE

FIFTH ANNUAL ADDRESS TO THAT ASSOCIATION.



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1850.

DISCOURSE.

MR. PRESIDENT AND

GENTLEMEN OF THE HISTORICAL SOCIETY:

IN this age and country we do not much love to contemplate the past. The legends and time-honored traditions which form so large a part of the intellectual store of many nations have no place in our literature. Society is so constituted that most of us seek and therefore find little leisure for rest or recreation, and still less for looking backward. Every hour brings with it so much engrossing labor, or such a variety of pursuits and cares, and the age is so crowded with startling events, that the transactions of the present time only, seem to be worthy of our serious attention, and, contrasted with them, those of the past fade into insignificance as if they were mere shadows and unrealities.

Twice a day the never resting press spreads before our eyes the current history of the whole civilized world. Not a battle is fought, nor a dynasty subverted, nor does any other event of real or supposed importance happen any where within the outermost boundaries of civilization, but the account speeds back to us faster than the winds can waft it, borne aloft over land and ocean by the mighty arm of steam, or shot through the wires of the telegraph with a rapidity so great that it defies calculation. As the sun in the short cycle of twenty-four hours looks down upon the inhabitants of the whole earth, making one and the same solar day for all, so we, by the wonderful agency of steam and magnetism, may be almost said to live on the same actual day in the midst of events which occur among other people and in distant lands. A happy effect of this wonderful circulation of thought and intelligence is, doubtless, to expand our views beyond the narrow confines of our own homes and country, and to enlarge our sympathies so as to enable us to embrace within them the interests of the whole human family,

but its effect also is, to concentrate our thoughts still more intensely upon the occurrences of the present time to the exclusion of the past.

The existence of this Society and of associations of a similar kind, which have recently been established in many of the States, and the encouragement which they have received, amounting to something more than a permission to live, may be regarded as a favorable omen. They not only embody in themselves a protest against the practical and utilitarian spirit of the times, but are an evidence of a reverent desire on the part of their members to do justice to the memory of our forefathers who have left us so largely their debtors.

No people are connected with the past by stronger and more endearing ties than ourselves, although, at first sight, it might seem to be otherwise. We justly attribute to the free institutions of our country the extraordinary prosperity which as a nation we have always enjoyed;—but whence came those institutions? The distinctive character which they possess was impressed upon them at a recent period, but their origin lies hid in the distant past, and they were developed slowly and gradually by the events of many centuries. It may be said of them as has been said with reference to the intellectual treasures which we possess, that we who now live,

“Are the heirs of all the ages,
In the foremost ranks of time.”

All history shows that few things are of slower growth than civil liberty, and that it is easier either for individuals or nations to submit to be ruled by others, than to learn to control themselves. In some measure we, as a people, have learned the duties of self-government, and to practice them, under the favorable circumstances in which we are placed, seems to be so easy, that we can hardly comprehend that the habit was acquired by slow degrees and a transmitted experience. If we had attempted the experiment for ourselves, without the benefit of the instruction which we have derived from those who preceded us, we should have failed signally as others have done.

In order to establish a republic, much more is required than to set men free from the bonds of despotism, and to put the reins of authority in their own hands. Nor is it enough that the true interest of all requires that law and order should be the unvarying rule, nor even that a liberal and wise written constitution should be solemnly adopted. Our sister republics on this continent, if indeed such travesties of free

governments can be called republics, furnish an instructive lesson on this subject. Spain, while they remained her colonies, endeavored to trample out every spark of freedom, and, now that they have thrown off her yoke, they are not fitted for the new duties which they have assumed.

Nor is the case much better in enlightened Europe. Within a short space of time the old dynasties there have been shaken to their foundations. A veil has fallen from the eyes of men. The divine right of kings to govern, and the heaven-appointed duty of the people to submit to be governed without reference to the general welfare, have come to be regarded as impostures too gross to be seriously maintained out of Russia and Turkey. Even fortifications and standing armies, with which monarchs have been accustomed to hedge themselves round, have, in times of trial, proved, like the rest, a delusion. Late events have shown that in most of the countries of Europe there are destructive agencies at work, quite sufficient to subvert the old governments which have so long elevated the few at the expense of the many. They are permitted to stand, not through their own strength, but because there is not sufficient constructive power in the people to rebuild after a revolution. Men must learn self-control, self-government, before they are prepared to be republicans. True liberty is the farthest thing possible from anarchy and licentiousness. Those who have grown up in bondage can hardly be made to assume the part, and practice the moderation of men educated in the habits of regulated freedom.

Only two of all the men of Israel, who, in Egypt, had been hewers of wood and drawers of water for their tyrannical task-masters, were permitted to assist in laying the foundations of the Jewish commonwealth. Slaves they had been, and had been taught to submit and obey, but self-control, self-denial they could not learn, even from the teaching of their inspired lawgiver. The privations which their new freedom imposed, soon made them pine for their former slavery, and it was not until the old generation had died completely out, and a new and brave race, composed of those who had left Egypt in their youth and those who were born and nurtured in the free air of the desert, had taken its place, that the chosen people were permitted to enter and take possession of the promised land.

The men who laid the foundations of civil liberty, broad and deep, in this their land of promise, were the early colonists and their immediate successors, and they are worthy of all honor from us who have entered

into their labors. They were not fully aware of the consequences destined to result from the work in which they were engaged, but our gratitude is not the less due to them on that account. The real benefits which mankind were to derive from the discovery of a new continent, were not, as was at first supposed, in a large increase of wealth, nor even in finding an outlet for the crowded population of Europe. They were to spring from the new order of things, socially and politically, which has here been developed, and which is fast modifying the civilization of the world. More precious seeds were never sown in the fallow field of time than the English colonies which, in the seventeenth century, were planted along the eastern coast of North America. As the child is the father of the man, as the acorn enfolds within its shell the future oak, as the bubbling fountain gives birth and direction to the mighty river, so those insignificant colonies, the work mainly of individual enterprise, feeble in numbers, neglected in their infancy, struggling for existence against Indian foes, diseases, hardships and privations, contained within themselves principles of liberty, which in their development, naturally produced the free institutions under which we live and which we justly prize as the most valuable of our possessions.

But I pass from these general considerations to the subject to which I desire more especially to call your attention, the origin and growth of civil liberty in Maryland. It is a theme which I cannot hope to make generally interesting, for it will necessarily carry me into somewhat minute details, and, unfortunately, the early records of our State are not only few and scanty in themselves, but are barren of striking and romantic incidents, which are essential to render the pages of history animated and attractive.

The charter of Maryland bears date on the 20th of June, 1632. It was drawn in the lifetime of George Calvert, the first Lord Baltimore, for whose benefit it was designed, but he having died about two months before its execution, it was granted by Charles the First to Cecilius, the eldest son of George Calvert, to whom the title and fortune of his father had descended. Very different views have been taken and earnestly maintained of the true meaning of this instrument. It has been described by some as embodying a scheme of the strongest government known throughout the American Colonies, and has been praised by others as being not only liberal but even democratic in its character, and as making ample provision for the rights of the settlers. This difference of opinion has arisen from the ambiguity of some of its provi-

sions, but I think that it is not difficult to shew that the charter was designed to establish a government resembling that of England in the days of James the First, in which still more extensive powers were vested in the rulers than were claimed by the English executive, and fewer rights were secured to the people, than were then enjoyed in the parent country; and, indeed, it would be strange if it were otherwise, if we consider the source from which it originated. It is generally admitted either to have been the work of the first Lord Baltimore himself, or to have been prepared under his immediate direction, and it bears, in all its parts, the strongest intrinsic evidence that such was its origin. He was first knighted, and afterwards created Baron of Baltimore, by James the First, for about six years was one of his secretaries of state, and, through the life of that arbitrary and capricious monarch, continued to be a favorite. He was twice returned to parliament, in which body he was known as a supporter of the royal prerogative, and as a member of the court party as opposed to the country party. He is universally conceded to have been an able and conscientious man, but it is no reproach to him to say, that his sympathies and opinions, so far as they are known to us, all inclined him to favor a strong rather than a popular government.

The charter conveys, according to specified boundaries, which afterwards and for a long time were the source of much trouble and litigation, "a certain region," "in a country hitherto uncultivated in the parts of America." It was a compact between the sovereign and the proprietary, in which the latter undoubtedly had the best of the bargain, but as the former voluntarily parted with that which to him was of little value, and to which, at best, he had but small right, he certainly had no cause to complain. The grantee and his heirs were made true and absolute lords and proprietaries of the soil, and all that the sovereign reserved to himself was two Indian arrows of the country, to be delivered at the castle of Windsor every year, on Tuesday of Easter week, in token of allegiance, and the fifth part of the gold and silver—the latter, as it proved, a barren right.

The laws and institutions of the province were not required to be submitted to the crown for its approbation, and the right of taxation by it was expressly and forever abandoned. This last was a remarkable provision, and greatly strengthened the popular cause in the subsequent controversy with England, growing out of the right which it asserted of taxing the colonies.

Thus a government almost independent of the parent country, was created by the charter itself.

Maryland was, in the quaint language of the instrument, to be "eminently distinguished above all regions of that territory, and decorated with more ample titles." And to carry out this purpose, the proprietary was clothed with powers almost royal in their character and extent. He was to be the fountain of honor, and was permitted to adorn well deserving subjects inhabiting within the province, with whatsoever titles and dignities he should appoint, provided only that they were not to be such as were then used in England. There doubtless glittered before the imagination of the proprietary a long line of transatlantic nobility, of which he was to be the acknowledged head and founder. Their functions are not designated in the charter, but we must suppose that they were designed to be appropriate to elevated rank. The proprietary, if he so willed, had the power of establishing the feudal system perfect in all its parts. Express provision was made for manors, lords of manors and manorial-courts. Various manors were in fact granted, and in one or two cases, manor-courts appear to have been held, but this is the extent to which this feature of the charter was in practice preserved. It is, however, doing no injustice to the proprietary to suppose that he designed to create a new and vigorous aristocracy, who would sit as an upper house in the future parliaments which he intended to assemble, would fill the most important offices of the State, and by their wealth, power and dignity would form the surest support and brightest ornament of the vice-royal court, which he and his descendants were authorized to hold in the fair province of Maryland.

The proprietary had the power of creating ports of entry, of erecting towns into boroughs, and boroughs into cities, with such privileges and immunities as he might deem expedient, of pardoning offences, of taking command in chief of the forces, with as full and unrestrained power as any captain general of any army ever had, of declaring martial law, and of granting lands on such terms and tenure, as he thought proper.

He was the source of justice. He had the power of establishing courts, of abolishing them at will, and of determining their jurisdiction and manner of proceeding; and all process from them ran in his name and not in that of the king.

He was not only the head of the executive branch of the government, but he had the power of appointing officers of every description, and of creating and abolishing the offices themselves at his own pleasure.

He was the head of the church. That is, he had the power of erecting and founding churches, and was entitled to the patronage and advowsons appertaining to them.

He had also in certain cases and to a limited extent, the dangerous power of promulgating ordinances which were to have the force of laws; and he also claimed as a part of his prerogative, and occasionally practised, the equally dangerous power of dispensing with laws actually existing.

He was invested with all the royal rights which the Bishop of Durham enjoyed within the County Palatine of Durham, and this among other things gave him the right to all the game within the province.

In the end of the instrument, there is a sweeping clause, that in case any doubt shall arise as to the true meaning of any word of the charter, an interpretation was to be put upon it most *beneficial, profitable* and *favorable* to Lord Baltimore, his heirs and assigns.

Amid this imposing array of powers conferred on the proprietary, those granted to the people were neither numerous nor explicit. The most important right secured to them, was that the laws were to be enacted by the proprietary, with the advice and approbation of the free-men, or more properly freeholders of the province, or of their deputies.* The proprietary understood this clause to mean that *he* had the right of originating all laws, and that the people had nothing to do but *accept* or *reject* those which *he* might choose to propose.

But whatever may be the true meaning of the charter in this respect, it is clear that the legislative assemblies were to be called together at such times only as the proprietary might prescribe and in such form as he might think best, and he had the power of adjourning and dissolving them at pleasure. Thus their organization was left as indefinite as their functions.

It is a fact worthy of notice, as illustrative of the character of those

* The charter is in Latin, and it has been a matter of doubt whether the expressions "Liberi Homines" and "Liberi tenentes," which are therein used to indicate the same class persons, should be translated Free-men or Freeholders. As, however, the proprietary, by his ordinance of 1681, restricted the elective franchise to persons who were either freeholders or had a given amount of visible personal estate, and as this ordinance was always acquiesced in and became the settled policy of Maryland, it would seem to have been the established construction that all free-men were not as such entitled, by virtue of the charter, to vote for delegates to the General Assembly. If they had been so entitled, none could have been excluded for want of property.—*Charter of Maryland*, §§ 7 and 8; 2 *Bozman's Hist. of Md.* 47 note; *McMuhon's Hist. of Md.* 443, note 1.

times in which political rights were comparatively little discussed, that amid all the various and tempting allurements, held out by Lord Baltimore to induce the adventurous to enlist in the enterprise of planting the colony of Maryland, not a word is said of the form of government intended to be established. The conversion of the Indians was presented as a primary object. The land was described as being white unto the harvest, prepared to receive into its fruitful bosom the seed of the Gospel. The air was represented as mild and serene, of a medium temperature between the cold of New England and the burning heat of Florida. The bays and rivers were extolled as abounding in delicious fish, innumerable, the forests as swarming with game, the swine and deer as so abundant that they were troublesome rather than advantageous, and the soil so fertile that it afforded three harvests of Indian corn, or King's corn, as it was then called, in one year. But whether those who were invited to occupy this Western Paradise were to participate in the affairs of government, or to be ruled wholly by others, it was not considered material to communicate.*

If the view of the charter which I have given be correct, the people of Maryland are not mainly indebted to it for the freedom which they have always enjoyed.

We must look elsewhere for an explanation of the fact, and we find it in the character of the men who planted the colony, and the circumstances by which they were surrounded. The colonists consisted of some two hundred, for the most part Roman Catholics. They brought with them stout English hearts, in which were cherished fundamental principles of liberty, learned in a land where four hundred years before, *magna charta* had been extorted by the sturdy barons from the fears of King John, where parliaments met, and where trial by jury was established. They spoke the language in which Shakspeare had written. They belonged to the same period which produced a John Milton, whose "Speech for the liberty of unlicensed printing," rings even now in our ears like the voice of a trumpet. They were part of the same generation which a few years afterwards, appalled all Europe by a spectacle never before seen, the trial, condemnation and execution of an anointed king, for a violation of the rights of his subjects. It mattered little to such men whether their rights were more or less definitely settled by the parchment title under which the land was acquired. The

* See the Report of Maryland prefixed to Father White's narrative.

very ambiguity of the instrument operated in their favor, for it opened wide the door to a construction which became more and more liberal, as their strength and numbers increased. All the circumstances by which they were surrounded, favored the growth of free principles. They had settled themselves in a wilderness, where the artificial distinctions of life, must, to a great extent, be laid aside. The best man was he who was the bravest, the most useful, the most enterprising. All had to labor for subsistence, and nearly all with their own hands. The charter provided for nobles, but none were to be found, for nobles cannot live in a wilderness. There, stars and garters are out of place, and a coat of frieze is worth more than a coat of arms. The inhabitants consisted chiefly of planters, small farmers, mechanics, redemptioners, (or persons who were bound to render personal service for a term of years, to those who had paid the expenses of their emigration,) and a few official personages sent out by the proprietary. Some of them were persons of education and gentle birth, but the majority were doubtless such as usually compose the materials of which colonies are formed, men of little or no means, who go abroad in the hope of bettering their condition. They could not be called poor, for they had the means of comfortable subsistence in abundance around them, but their wealth consisted mainly in their capacity for labor.* The tendency of such men so situated was necessarily and inevitably towards the establishment of freer institutions than were contemplated by the charter. All that they needed was to be left free to work out their own destiny without foreign molestation, and this was secured to them for a considerable time, by the fact that the political and religious contest waged between the contending parties at home,

* The act of 1638, ch. 16, furnishes an illustration of the scanty means of the colonists. A water-mill having become necessary for the use of the people instead of the hand-mills which had previously sufficed to grind their corn, the Governor and Council were authorized to contract for its erection, provided the cost should not exceed 20,000 pounds of tobacco, or \$333 33½ cents, which was to be raised by general taxation in two years. *McSherry's Hist. of Md.* 56. 2 *Bozman*, 156. Education was not very extensively diffused among the settlers. The return of the election of a burgess for Mattapanient hundred, dated 14th of February, 1638, was signed by seven persons, of whom only one could write his name, the rest affixed their marks; and out of fifteen persons whose names were subscribed to the return for St. Mary's hundred, seven made their marks. On this Mr. Bozman remarks: "This gross deficiency in literature among our colonists is not however to be imputed to their colonial state. These persons, for the most part, were born and bred in England, and had left their country after the common period of acquiring literary attainments. It was the defect of the age in which they lived." 2 *Bozman*, 99.

left the British government little leisure to look after its remote and insignificant colonies.

For about a year after the colony was planted, the settlers were too busily occupied with building, planting, reaping, and the various other labors incident to their new situation, to find leisure for any thing else, but on the 26th of February, 1635, they were called together by the Governor for the purpose of making laws. Various bills were passed, but unfortunately no memorial of them remains, as most of the early records of the colony were seized and carried off to Virginia, in the outbreak known as Clayborne and Ingle's rebellion, where they were either lost or destroyed. But the bills passed never became laws, as the Proprietary refused his assent to them, for the reason, as is supposed, that they did not originate with himself.

The important business of legislation was thus put off for two years longer. In the year 1637 the second legislative assembly was summoned by the Governor, to meet at the little town of St. Mary's. It was a strangely constituted body. It met in one chamber. Governor Leonard Calvert, the brother of the Proprietary, presided, and his three councillors took their seats as members. All the freemen of the province, who chose to do so, were invited to attend in person, or to send delegates in their place, or to give their proxies to any individual of their own selection, authorizing him to vote for them. Thus was as near an approach made to a purely democratic body, as could well exist, and indeed from the condition of the colony it would not have been easy to form one of a different character. Some of the entries on the journal of the house sound strangely to us at this day. On the first day of their meeting, proclamation was made "that all freemen omitted in the writs of summons, that would claim a voice in the general assembly, should come and make their claim." Whereupon we read that "claim was made by John Robinson, carpenter, and was admitted." On the next day, "came Edward Bateman, of St. Mary's hundred, ship carpenter, and claimed a voice as a freeman, and made Mr. John Lewger, secretary, his proxy." "Also came John Langford, of the Isle of Kent, gentleman, high constable of the said island, who had given a voice in the choice of Robert Philpot, gentleman, to be one of the burgesses for the freemen of that island, and desired to revoke his voice, and to be personally put in the assembly, and was admitted." And so, by this simple process, Edward Bateman, the ship carpenter, by his proxy, John Robinson, the carpenter, and John Langford, the high constable,

were admitted to their seats as legislators, although the last had already voted for a regularly appointed delegate.

It is fortunate, perhaps, that political aspirants, even at this enlightened day, find it not quite so easy to obtain seats in the legislature of the State, either for themselves or their favorite candidates.

The house being at length organized, proceeded to business, and most pressing business it had on hand. For three years the colony had been struggling on in the midst of difficulties. Clayborne, who has been called the evil genius of Maryland, had not only set up a claim to the Isle of Kent, but is charged with having instigated the Indians to hostilities. The colonists were increasing in number, and were gradually extending themselves beyond the settlement at St. Mary's. There was urgent need of laws. They were surrounded by new circumstances, a new social relation, that of slavery unfortunately had, probably even then, sprung up among them, their dangerous Indian neighbors seemed to threaten them, their infant agriculture, commerce and institutions were all sadly in want of laws adapted to their situation. And a greater want in a community cannot well exist. Those who live under a system of just laws duly enforced do not, until deprived of them, appreciate the benefits which they confer. Like the common blessings of water and sunshine, they come to be regarded as things of course, for which no gratitude is due. But if they were suspended for a single day, we should then learn to estimate, more correctly, their importance. The laws, in truth, surround us like the atmosphere, they attend our steps when we walk abroad, and shield our homes from harm when we are absent; by a thousand unseen and unfelt influences, they minister to our comfort, protection and happiness. They are the embodied wisdom of the age which enacts them, its sense of justice speaking in enduring words.

But a serious difficulty stood in the way of the colonists. They had already, two years before, passed a series of laws which in mass had been rejected by the proprietary, and now, in his turn, he had prepared in England, a Code for their government, which they were assembled to ratify and adopt. The question was, would they do it, and important consequences for many years hung upon their decision. It does not appear that the laws proposed were, in themselves, objectionable. The proprietary had at heart the good of the colony, on which he had lavished large sums of money, and it was, doubtless, his desire to promote the welfare of the inhabitants while he protected what he deemed

his own rights.* The colonists, on their part, manifested for him, on various occasions, a high degree of respect and affection. But an important principle was involved. If they yielded to him the privilege of originating all laws, and reserved to themselves a mere negative on such as he might choose to propose, they surrendered, so long as the charter should endure, the dearest and most important right of freemen.

If, on the other hand, they rejected the Code, they must be prepared not only to engage in a serious controversy with their beneficent patron, but to forego the advantages of all legislation for an indefinite period. The matter is very briefly stated, but it is clear from the record, that the sturdy Marylanders did not hesitate for a moment. They could endure, if need were, to go without laws, but not to have laws made for them by another. When the question was taken, the Code of the proprietary was promptly *rejected*, but two of the members present voting for it, and those two were Governor Calvert himself, and Mr. Lewger, his Secretary. It is true that the two increased their vote by the proxies which they held; but I speak of the votes of the members present. Thus early was fought and won, the first battle for civil liberty in Maryland. The head of the popular movement appears to have been Captain Thomas Cornwaleys, one of the Governor's Council, and for a long time a man of note in the colony, and its military leader. It is to be lamented that a more full memorial of this brave soldier and patriot has not come down to us.

The house soon afterwards proceeded to pass laws for itself, but as the bills had not been matured in committee, the Governor proposed an adjournment, in order that the members might attend to their other business, while the bills were preparing. This was opposed by Cornwaleys, who replied significantly, that, "they could not spend their time in any business, better than in this for the country's good."

The bills were at length got ready and passed, forty-two in all, but, as the colonists probably anticipated, they shared the fate of their predecessors, and were in a body rejected by the proprietary. Their titles, however, have come down to us, and show that the fathers of Maryland set themselves in earnest to the great work of legislation. There is a bill providing for the probate of wills, another regulating the descent of land, another in restraint of liquors, and another for the liberties of the

* During the first two or three years of the colony, Cecilius Calvert, the proprietary, expended upon it upwards of £40,000 sterling.—*McMahon*, 197.

people. The colonists being thus deprived of the power of making laws for themselves, neither gave up in despair, nor had recourse to lynch-law, but resorted to a better expedient than either. They claimed that they brought with them, and were to be governed by, all the laws of England which were applicable to their situation, and this claim they never relinquished although the proprietary opposed it, on the ground that a wholesale adoption of the laws of England would interfere with his legislative rights. From this difference of opinion, a controversy arose long afterwards, in the year 1722, which lasted for ten years. As the courts only could decide what laws of England were applicable and what were not, the people of Maryland were advocating a principle, the establishment of which would give a large and somewhat dangerous discretion to the judges, especially, as their appointment and tenure of office rested entirely with the proprietary, but the people greatly preferred to encounter this danger and inconvenience rather than risk the liberties which were enjoyed in the mother country, by surrendering the protection of the laws under which those liberties had grown up. It is a note-worthy circumstance that the most serious controversy which ever arose between the proprietary and the people of Maryland, originated in the assertion by them of their right as English subjects, to be governed by the laws of England. The fact is a high practical testimonial to the substantial character of English liberty, which is the parent stock of our own.

At last both of these questions were determined in favor of the people. It was soon settled* that all legislation should originate in the legislature of the province, and not with the proprietary, but it was not settled until the year 1732, that in cases not otherwise provided for, "the rule of judicature was to be according to the laws, statutes, and reasonable customs of England *as used and practised within the province.*"†

Some time necessarily elapsed before the various departments of government became fully organized, as is singularly illustrated by an anecdote which is related of an early period of the colony. In 1648, a Miss Margaret Brent, on the death of Governor Leonard Calvert, was

* In 1639.

† *McMahon*, 127. From this period until the revolution, the courts continued to exercise the power of adopting and giving effect to such of the English Statutes as were accommodated to the condition of the province, without regard to the inquiry whether they had been practised upon, or enacted previously to 1732. *Ib.* 128.

appointed his administrator, and as the Governor had been the agent of his brother, the proprietary, under a power of attorney from him, it was judicially decided that Miss Brent was duly authorized to act as attorney in fact for the absent proprietary. She is described as having been possessed of a "masculine understanding," and at least appears to have been addicted to masculine pursuits; as she is said "to have been very actively employed in taking up lands, and in affairs of all kinds relating to property." To her great credit it is related, that by her personal influence and by a timely appropriation of a small sum from the estates of the proprietary, of which she had the management, she, on several occasions, pacified the soldiers in garrison at St. Inigoe's fort, who were ready to mutiny on account of the non-payment of their wages. Armed thus with a double right, Miss Brent presented herself before the legislature of the province, which was then in session, and made her application to have two votes in the house, one for herself and another as his lordship's attorney. But although the merit of this remarkable lady and her public services, were on a subsequent occasion handsomely acknowledged by the legislature, yet they probably thought that by granting the request they would establish a precedent, dangerous even at that early day, in favor of female rights, for we are told that the application "was refused peremptorily by the Governor Greene, and that the lady protested in form against all the proceedings of that assembly, unless she might be present and vote as aforesaid." Mr. Bozman, the learned historian of Maryland, endeavors to justify this proceeding on the part of the legislature, but whether successfully or not, I shall not stop to consider. Our Maryland lady, he thinks, may in character be aptly compared to Queen Elizabeth; if this be so, that fact may probably have weighed as strongly with the assembly and governor in the peremptory refusal with which they met her request, as the reasons on which the historian relies in vindication of the ungallant decision.*

I shall not weary you by a detail of the various difficulties which beset the founders of our State, or of the intestine commotions by which they were harassed. The controversies in England between Charles I. and his people, and Cromwell and the parliament, were not without effect on the affairs of the colony, and although strife and commotion were the immediate result, the progress of free principles in England undoubtedly gave an additional impulse to them here.

* 2 Bozman, 323.

It is every where in this country recognized as a fundamental principle of government, that the legislative, executive and judicial functions should be kept separate and distinct, but this wholesome rule was wholly disregarded in the proprietary government of Maryland.

The governor was at first in the habit of summoning by special writs such persons as he thought proper, to sit in the legislative assembly. This was an arbitrary power, liable to great abuse, and it happened that in the session of 1642, the number thus summoned gave the governor a majority over the regularly elected burgesses, thus taking the whole legislation out of the hands of the people. To remedy this inconvenience, the burgesses demanded that the assembly should be divided into two bodies, of which they should constitute the lower house. This reasonable request was at first refused, but about the year 1659, the division was permanently effected. Subsequently to this, the lower house was composed of delegates regularly elected by the people, and the upper house of the governor and his council, and the right of each individual to appear in person or by proxy, wholly ceased. In 1681, the proprietary, by a positive ordinance, restricted the elective franchise to freemen having a small property qualification, and this restriction was continued down to the adoption of the State Constitution, and was incorporated in it.*

The judiciary was strangely blended with the executive, and never became properly independent of it. The governor and his council sat as the High Court of Appeals of the province, and the inferior judges who were appointed by the proprietary, were removable at his pleasure. Still they could on occasions act with firmness and independence, for, in 1765, we find Frederick County Court deciding the British stamp act to be unconstitutional and void, and proceeding in the transaction of business without paying the least regard to its provisions.

The governor was the chancellor of the province, although his previous occupation might have been such, as, according to our notions, to have furnished a very unsuitable preparation for the performance of the responsible duties appertaining to the office. The last colonial governor, Robert Eden, a brother-in-law of the then Lord Baltimore, had previously been a lieutenant in the Coldstream Guards.†

* 2 Bozman, 216, 297 note; McMahon, 449, note 8.

† 1 Bland's Rep., 625, note.

The main security for the liberties of the people was in the house of delegates, who alone of the public servants were elected by the people, and who took care so to exercise their powers, as constantly to strengthen the popular cause. They claimed the right of originating all money bills, and an equal rank in point of privilege with the English house of commons. One of the expedients to which they resorted to increase their power, was to pass important laws with a proviso that they were to continue only for short and limited periods, which made frequent sessions of the general assembly, and a constant resort to it for the enactment of indispensable laws, absolutely necessary.

The intention of the charter to establish in Maryland a mixed form of government, of which a hereditary nobility was to be a prominent feature, was overruled by circumstances. Such a class can be sustained only in a country where the ownership of the soil is mainly vested in them, and where the masses are reduced to the condition of tenants, dependent on the landholders for support.* But in Maryland there were vast uncultivated tracts of land, lying in their primitive state, which the proprietary was more anxious to sell than the people were to purchase. Every man who chose, became a landholder, a proprietor in his own right. He had no occasion to look up to any other man for patronage, and still less for support or protection. Labor was the passport to independence and wealth. There was no place then for an aristocracy, for there was nothing to support it. Aristocracy is a plant which flourishes only in the sunshine of courts, here it was an exotic, and it died at once in the shade of our vast forests. So we find that the manors which were actually granted, subsisted only in name, and the lords of manors had, only for a short time, even that unsubstantial existence. The aristocratic provisions of the charter being thus incapable of being carried out in practice, were soon lost sight of by the proprietary, and excited no opposition on the part of the people; but in them the proprietary lost what would have been of material assistance in sustaining him in the exercise of the royal prerogatives with which he was clothed.

The proprietary government established by the charter, lasted, with slight interruptions, down to the American revolution; but long before that event the proprietaries, one after another, had silently relinquished the exercise of those powers which, as set forth in the charter, seemed

* This subject is more fully discussed in Burnap's *Life of Leonard Calvert*, Chapter X.

to threaten the liberties of the inhabitants. They usually resided in England, and in Maryland had no other means of enforcing their authority than through the agency of civil officers, who, although appointed by them, were generally selected from among the people, and shared their feelings and opinions. The charter itself soon became an object of jealousy to the British government, in consequence of the extensive privileges which it lavished on a subject; so that the proprietaries frequently encountered opposition, and seldom received support from that quarter, while, in Maryland, the people opposed a steady resistance to the exercise of every thing approaching arbitrary power. They were uniformly quick in perceiving, and prompt and tenacious in resisting, the slightest infringement of what they considered their rights—which they claimed to be not only those which were conferred by the charter and laws of the province, but all those, in addition; which were enjoyed by English subjects at home. No right or privilege once acquired by them was ever relinquished, but, on the contrary, became a means of increasing their power in all future controversies. The consequence was, that although Maryland continued to have a hereditary executive, it became, in essential matters, republican, and instead of being subjected to an arbitrary government, enjoyed one of mild and equal laws. The people were protected in their persons and property, and the latter was so distributed, that few were found who were either very rich or very poor—a condition of things most favorable to the growth and maintenance of civil liberty.

The discipline which they had undergone during the colonial period, was of incalculable service in the revolutionary struggle in which they were about to engage. They approached that great crisis not with the timid and hesitating steps of novices in public affairs, but with the resolute tread of men who from long experience in matters of government, and by the habit which they had acquired of resisting oppression from whatever quarter it came, and of weighing and judging of their rights, were fully prepared to engage in the fearful strife which awaited them, and, in the event of success, to lay wisely and well the foundations of a free commonwealth. No better proof can be adduced of the progress which the principles of true freedom had made among them, than the wisdom and moderation which they then exhibited.

In illustration of this, I shall for a short time ask your attention to a few of the events which occurred in the town of Baltimore previously to, and in the early part of, the revolutionary war. Although they are

not in themselves of much magnitude or importance, they possess some degree of interest for us, both on account of the local associations connected with them, and because they carry us into the heart, as it were, of a great movement, and show, by the manner in which it was conducted, the reason of the wide difference which exists between the American revolution and every similar occurrence of modern times. The time to which I refer embraces the critical and important period extending over rather more than two years, during which the committee of observation for the town and county of Baltimore sat here, and performed many important functions which, in a regularly constituted government, devolve upon the tribunals and officers of the law.* The province was then in a transition state; for the colonial government had virtually ceased to exist, and another had not yet been established in its place. Society was therefore, in a great measure, resolved into its original elements, and temporary expedients had to be resorted to, until a permanent constitution could be adopted. At the commencement of this period, when, in the face of domestic disorganization, every energy of the people had to be called forth to meet the impending war with Great Britain, the committees of observation came into existence. They were regularly elected by the qualified voters of the province who assembled for the purpose at the different county towns, and were sustained throughout in all their proceedings by the force of public opinion.†

They were, in fact, revolutionary tribunals, acting with vast force and efficiency, and for a time were the main spring of the popular movement.

In common with most of the public servants at that day, they were clothed with large discretionary powers, but they acted under the pressure of a responsibility, which was relied on as a sufficient guarantee against the abuse of the confidence reposed in them. The exigency of the crisis demanded that confidence should be freely bestowed, although in some cases it was withheld, or very reluctantly given. When, for instance, the assembly of South Carolina resolved to appoint deputies to attend the Continental Congress, a proposition was made to instruct their delegates as to the point to which they might pledge the colony.

* I have had the advantage of consulting the original records kept by the committee, which have been kindly lent to me for the present occasion by their owner, Peter Force, Esq., of Washington.

† See Appendix, note 1.

John Rutledge, the eminent patriot and orator of South Carolina, warmly opposed the proposition. But what shall we do, asked its advocates, if these delegates make a bad use of their power? Hang them! was his decided and impetuous reply.* John Rutledge was right, and it was somewhat in the spirit in which he spoke, that the people of Maryland acted, in the authority with which they invested the committees of observation.

These committees originated in a resolve of the Continental Congress, which met at Philadelphia, in September, 1774, in pursuance of which the delegates acting for themselves and the inhabitants of the several colonies which they represented, entered into an association, the object of which, among other things, was to put a stop to all trade with Great Britain and its possessions, to discontinue the purchase and use of East India tea, to encourage frugality, agriculture, arts and manufactures, and to discourage every species of extravagance and dissipation, and especially all kinds of gaming and expensive diversions and entertainments. As part of the plan to carry out this agreement, committees were to be chosen by the qualified voters in every county, city and town, whose business it was attentively to observe the conduct of all persons touching the association, and the names of all persons who violated its articles were to be published in the newspapers, to the end that all such foes to the rights of British America might be publicly and universally condemned as the enemies of American liberty, and that all dealings with such persons might be broken off.

Previously to this,† however, on the 27th of May, 1774, a public meeting had been called in Baltimore, at which the inhabitants had agreed to unite in an association of non-intercourse with Great Britain, had elected a committee to attend a general meeting of delegates from all parts of the province, to be held at Annapolis, and had appointed a committee of correspondence for the city and county of Baltimore.

But the resolve of Congress was intended to create a concert of action throughout the colonies, and the committees of observation thus established were, in Maryland, from time to time, clothed with such additional powers by the Provincial Convention at Annapolis, as were necessary to meet the emergency of the times.‡

* 4 Graham's History of the United States, p. 370.

† See Purviance's Narrative, pp. 12 and 13.

‡ See the Proceedings of the Convention, published in 1836.

They not only exercised all the authority requisite to carry out the measures agreed on by the articles of association established by Congress, but their permission was necessary in many cases before suits could be brought or executions issued. They were empowered to purchase arms and ammunition, and to raise money for that purpose, and others which were specified, by subscription, or in any other voluntary manner. They were authorized to enroll and equip troops, to impose fines not exceeding ten pounds on all disaffected persons who refused to enlist, to disarm such persons, as well as all those who refused to subscribe certain articles of association of the Freemen of Maryland, promulgated by the Provincial Convention, and to exact from non-associators, as they were called, security for their good behavior.

They were required to see that traders did not monopolize goods, or exact unreasonable prices for them; to hold up to public censure and odium those who, by acts or words, manifested hostility to the country, and to arrest, imprison and hand over to the council of safety, those who were guilty of offences calculated to disunite the inhabitants, or dangerous to their liberties.

A part of their duty, was to appoint sub-committees of correspondence, by means of which, at a period when neither the press nor the mails circulated information as rapidly as they now do, intelligence was communicated to every part of the country. When, for example, the harbor of Boston was closed by the arbitrary edict of the British Parliament, the committee of Philadelphia sent the news by express to Baltimore. It excited a determined spirit of resistance here, and the Baltimore committee of correspondence sped the alarming tidings onward to Annapolis, Alexandria, Norfolk, Portsmouth and Charleston.* It passed through the length and breadth of the land, like the fiery cross by which, on a sudden outbreak of war, the Scottish clans were in former times rallied around the banner of their chief; and with similar results. A thrill of indignation and resentment pervaded the whole people, and thus gradually were their hearts prepared for the impending war.

Immediately on the arrival of a vessel at the port of Baltimore, the

* This committee, however, was not appointed by the committee of observation, but at the public meeting, before mentioned, held in Baltimore previously to the election of the latter.—See Purviance's Narrative, p. 13. The incident is referred to here only as an instance of the efficient action of the revolutionary committees of correspondence.

master was required to appear before the committee, and state, on oath, whether or not he had imported goods contrary to the resolve of Congress, which prohibited all trade with Great Britain. If such goods were discovered, as they sometimes were, they were taken possession of by the committee and sold. The cost of the goods and charges, were, out of the proceeds of sale, paid to the importer, and the profits, if any there were, were, in conformity with the recommendation of Congress, remitted to Boston, for the benefit of the poor of that town, who were suffering under the oppression of the Boston port bill. Baltimore, although then a small town containing only about five thousand inhabitants, was engaged in a large and profitable commerce, the interruption of which inflicted a heavy blow on her growing prosperity; but such was the patriotism of her citizens that they cheerfully submitted to it, and fairly carried it out. It is to the credit especially of the mercantile part of the community, who were the greatest sufferers, that they were among the most prominent supporters of the measure: but their sacrifices have not received from posterity the gratitude to which they are justly entitled. The merchant princes of Tyre and of Florence, are inseparably associated in the memories of all, with the former glories of those cities, but the merchant patriots of Baltimore are already almost forgotten in the city where their ashes repose, and by whose fortunes they stood so steadfastly in the hour of her greatest need.

If it was reported that a trader had taken advantage of the necessities of the times to demand exorbitant prices for his goods, he was summoned to appear before the committee, and the matter was investigated. If the charge was proved, and a satisfactory atonement was not at once made, the offender was liable to be published to the world as an enemy of his country; and this was no trivial punishment, for it was equivalent to civil and social excommunication. No good citizen would associate or deal with one who in the time of trial had deserted the cause of American liberty.

The colonies were engaging with fearful odds against them, in a war with the leading power of the world, and it seemed to many here, as well as in Great Britain, that they would be annihilated at a single blow. They had more than a foreign enemy to contend with. In every part of the country there were intelligent and conscientious men, occupying the highest places in society and public office, who could not sympathize with the popular movement, and who held it to be their duty to oppose it as far as they dared. Many were bound to the parent

ERRATUM.

On page 23, beginning at line 12, read : " but such was the patriotism of her citizens, that they cheerfully submitted to *the measure*, and fairly carried it out. It is to the credit especially, of the mercantile part of the community, who were the greatest sufferers, that they were among *its* most prominent supporters."

country by the closest ties of relationship and affection, and there was then, moreover, as there always is in every community, a strong conservative force which upholds the established order of things whatever it may be, because it is established. To this class belong the timid, the prudent, the selfish and unenterprising, and not a few of those who have much to lose and little to gain by change. There is always beside a baser crew, which on the first outbreak joins the popular side; but in the hour of danger can only be kept in the ranks by the fear of the fate which awaits deserters. Some, but not many of all these classes there were in Baltimore, and with them the committee had to deal. In a war like that of the revolution, whoever is not for it is against it, and the most dangerous enemies are those, who while they take no active part in the strife, occupy themselves in sowing seeds of disaffection and discontent, and by their influence and example, operate on the fears and scruples of the timid and vacillating. An unpublished letter of General Washington, which has been placed in my hands by a gentleman of this city,* contains some pointed remarks on this subject. It is dated on the 6th of June, 1777, from his head quarters at Middlebrook, and is addressed to Major Apollos Morris, of Philadelphia, who appears to have been what was called in the language of that day, a neutral character, but which was generally understood to mean an enemy in disguise. "I must," says General Washington, "tell you in plain terms, that at this time a neutral character is looked upon as a suspicious one; and I would therefore advise you to leave a country, with the majority of whom you cannot agree in sentiment, and who are determined to assert their liberties by the ways and means which necessity, and not the love of war, has obliged them to adopt."

As in times of public commotion, martial law may rightfully supersede the office of the civil magistrate; so, on occasions of extreme peril, even liberty of speech may have to yield to the exigency of public safety. The Baltimore committee did not hesitate to act on this principle, and for the first application of it they selected a man who occupied a prominent position in the community. Information was given to them that the Rev. Mr. Edmiston† had publicly approved of the Quebec bill, and had also publicly asserted that all persons who mustered were guilty of treason, and that such of them as had taken the oath of alle-

* Brantz Mayer, Esq.

† Mr. Edmiston was the pastor of St. Thomas' Parish, in Garrison Forest, Baltimore county.

giance to the king of Great Britain, and afterwards took up arms, were guilty of perjury. The committee decided that such declarations had a tendency to defeat the measures recommended for the preservation of America, and that it was their duty to take notice of persons guilty of such offences. Whereupon, a copy of the charge was sent to Mr. Edmiston, and he was summoned to appear before them, which he accordingly did. After taking two hours to consider the matter, he admitted that he had spoken the words, but excused himself by alleging that they were uttered in the heat of political excitement. He explained away, as well as he could, the offensive charge contained in them, and solemnly promised in writing, to avoid, for the future, all similar cause of offence. The committee were satisfied with the apology and promise, and Mr. Edmiston was effectually silenced.

Soon afterwards the case of a man named James Dalglish was brought before the committee. He had, on different occasions, manifested, in offensive language, his hostility to the country, and expressed an intention of joining the British forces. The committee "resolved that he had discovered an incurable enmity to his country, and that it was dangerous to the common cause to encourage a person of such principles;" and they accordingly "published him to the world, as an enemy of the liberties of Americans." After this we hear no more of James Dalglish. A man thus stigmatized, was stripped of the power to harm. Further punishment was unnecessary. A stain was imprinted on his name which he carried with him wherever he might go.

But the committee did not rely wholly on moral suasion, or the force of public opinion, though it was seldom that any thing more efficient was required. If other means became necessary, it was not difficult to obtain a file of soldiers to enforce their decisions. And the name of a young officer, on whom special reliance seems to have been placed, appears more than once on the records of the committee. When its bold and able chairman, Mr. Samuel Purviance, undertook, on his own responsibility, and rather irregularly it must be confessed, to seize the person and papers of Governor Eden, the last proprietary governor of Maryland who was still living at Annapolis, though no longer in the exercise of his office, this young officer was selected to take charge of the enterprise. It failed through no fault of his, but because the zeal of the chairman of the Baltimore committee, overran the limits of prudence marked out by the authorities at Annapolis. They suffered the governor to depart in peace. The officer to whom I allude, was then

Captain Samuel Smith. Subsequently, he earned for himself an honorable place in his country's history, and his name is inseparably connected with the annals of this city, which he defended in 1814, as commander-in-chief against the British forces, and of which he was subsequently elected chief-magistrate. Those among us who marked the courage and fire which, at the advanced age of eighty-three, the veteran General Smith, then a private citizen, displayed, when in 1835 he was summoned in haste from Montebello, his country residence, to quell a frightful mob which had well nigh obtained possession of the city of Baltimore,* will know that in the youthful Captain Smith, the Baltimore committee had one to rely on who could not be turned aside from his purpose by fear or favor, while he was engaged in the service of his country.

The committee felt it especially incumbent on them to denounce the use of tea, but to banish this article was a work on which they required the co-operation of those against whom neither their best soldiers, nor public denunciation could avail. As wise and experienced men they knew that conciliation will often prevail where a command would only offend, and, therefore, they mildly and persuasively address the ladies of Baltimore, as follows: "However difficult," say the committee, "may be the disuse of any article which custom has rendered familiar and almost necessary, yet they are induced to hope that the ladies will cheerfully acquiesce in this self-denial, and thereby evince to the world a love to their friends, their posterity and their country." It is to be feared, however, that this advice was not always followed, for there is a tradition, which I have often heard, current in the family of a sturdy patriot, an ancestor of my own, who was a member of the committee, that the forbidden beverage frequently made its appearance even at his table, but, as it was always served in the coffee pot and poured out under the name of coffee, which he did not drink, and as he took instead of tea a cup of milk and water which was provided for him, neither the committee man, nor the community was the wiser, and his daughters thought that no great harm was done. It must not be supposed, however, that these ladies were deficient in patriotism. On the contrary, they cheerfully bore their share of the hardships and privations of the war, and, in common with the rest of the ladies of Baltimore, helped

* See Appendix, Note 2.

with their own hands to clothe the destitute soldiers whom, in 1781, La Fayette was leading to take part in the Virginia campaign.*

The committee sat, as I have said, for more than two years, during which period they exercised a large and somewhat indefinite power over the persons and property of the people, encountered and overcame domestic opposition, gave a powerful impulse to the war, and, when the town was threatened by the enemy, were mainly instrumental in putting it in a state of defence. Their records are not stained by a single act of violence or oppression. The highest fine which they inflicted, did not exceed £10 and seldom reached that amount, and only in a few instances did they exercise their power of making arrests, or of publishing in the newspapers the names of those who had manifested hostility to the cause of the country. Their proceedings, when contrasted with the bloody atrocities which characterized the revolutionary tribunals of France in the last century, demonstrate, as forcibly as any thing can, the wide difference between the people of the two countries, in their fitness for the enjoyment of civil liberty.†

The citizens of Baltimore, on their part, submitted with alacrity and cheerfulness to the control exercised by the committee, and, throughout the war, were honorably distinguished for their devotion to the cause of their country. They performed their full share in achieving its independence and in the establishment of the free institutions, state and national, under which we live.

* La Fayette, on his way to Virginia, passed through Baltimore, where he was hospitably entertained. The incident alluded to is thus related in McSherry's History of Maryland, p. 299. "Being invited to a ball, he was there remarked to be grave and sad. On being questioned by the ladies, as to the cause of his gloom, he replied, that he could not enjoy the gaiety of the scene, whilst his poor soldiers were without shirts and destitute of the necessaries of a campaign. 'We will supply them,' exclaimed these patriotic women. The pleasures of the ball-room were exchanged for the needle, and, on the next day, they assembled in great numbers to make up clothing for the soldiers out of materials advanced by their fathers and husbands."

General La Fayette preserved through life a grateful sense of the assistance thus generously rendered. On his visit to Baltimore in 1824, when the surviving officers and soldiers of the revolution were introduced to him, he remarked to a gentleman near him, "I have not seen among these, my friendly and patriotic commissary, Mr. David Poe, who resided in Baltimore when I was here, and out of his own very limited means supplied me with five hundred dollars to aid in clothing my troops, and whose wife, with her own hands, cut out five hundred pairs of pantaloons and superintended the making of them for the use of my men." On being informed that Mr. Poe was dead, but that his widow was still living, the General expressed an anxious desire to see her. The venerable lady heard this with tears of joy, and, on the next day, an interesting and touching interview took place between them.—*Niles' Register of 24th October, 1824.*

† See Appendix, Note 3.

We, of this generation, have received those institutions by direct inheritance, but like ungrateful heirs we too often forget the source from which they were derived. Towards such institutions the human race, through centuries of toil, has been gradually struggling upward and onward against oppressions, discouragements and disappointments innumerable. Every inch of ground has been won by hard contest against steady opposition, and whole generations have passed away without perceptible progress having been made. In vain efforts to hasten their advent, thousands of brave hearts have shed their blood in battle, or, less fortunate, have broken in dungeons in despair. To us they have descended by the accident of birth, not as our own property which we may waste or destroy, but as a sacred trust which posterity will demand at our hands, in all their integrity as we have received them.

They are not perfect, because they are the work of imperfect men and by such are administered; but it is one of their chief excellences that they are not cast in an unalterable mould, and that they embody no evils which time may not remedy. Time, according to Lord Bacon, is the greatest of all innovators, and he who would innovate wisely, must imitate time. The Creator himself deals thus with evil, an enemy and intruder though it be in his universe, patiently he bears with it, and is content to banish it at last by slow degrees and by the beneficent agency of good. But fanaticism will not wait a single day nor hour. Driven onward by the suggestions of its own ungoverned passions, which it mistakes for the whisperings of a divine voice, it engages in a fierce crusade against some one evil which it is determined to exterminate, although to do so it may first be necessary to perpetrate a crime. Thus a faction at the North would rend asunder the sacred ties which bind this people together for a senseless Wilmot Proviso, and a faction at the South would do the same thing for an equally senseless Slavery Proviso.

We have studied the lessons of the past in vain, if they do not teach us that civil liberty and all that is most valuable in the institutions under which we live, rest for their surest support and protection on the preservation of the Union. But for it, this country would have continued to this day a remote and feeble dependency of the British empire. The thirteen disunited colonies have grown to be thirty united States. If union was necessary once as a defence against the oppression of the mother country, it is incalculably more necessary now as a protection against domestic commotion and fraternal strife. There are, happily,

some things which are felt to be degraded by an attempt to subject their worth to the cold process of calculation, and among these should be numbered all that pertains to the honor and welfare of our common country. Unless we have some standard by which we can estimate the loveliness of peace and the wretchedness of war, the glory of national honor and the shame of national disgrace, the gain of progress and the loss of decline, it is in vain for us to attempt to calculate the value of the Union.

With us, here, the effort has never yet been made, and we may hope that it never will be. Even although the love of others should grow cold, it is natural and fitting that Maryland, which has been called the Heart State, because her place is in the very bosom of the Union, should cherish in her heart of hearts a loyal devotion and an unchanging affection for that Union which has been to her the source of countless blessings, by which the great achievements of the past have been accomplished, and through which alone the auspicious promises of the present can be fulfilled.

APPENDIX.

NOTE 1 TO PAGE 20.

A MEETING of the qualified voters of Baltimore county and town was assembled, after public notice, at the Court House, on Saturday the 12th of November, 1774.

Andrew Buchanan was chosen Chairman, and Robert Alexander, Clerk. The following persons were chosen the Committee of Observation :

FOR BALTIMORE TOWN.

Andrew Buchanan, Robert Alexander, William Lux, John Moale, John Merryman, Richard Moale, Jeremiah Townley Chase, Thomas Harrison, Archibald Buchanan, William Smith, James Calhoun, Benjamin Griffith, Gerard Hopkins, William Spear, John Smith, Barnet Eichelberger, George Woolsey, Hercules Courtenay, Isaac Griest, Mark Alexander, Samuel Purviance, Jun'r, Francis Sanderson, John Boyd, George Lindenberger, Isaac Vanbibber, Philip Rogers, David McMechen, Mordecai Gist, and John Deaver.

FOR BALTIMORE COUNTY.

Hundreds.

Patapsco, Lower—Charles Ridgely and Thomas Sollers.
Patapsco, Upper—Zachariah McCubbin, Charles Ridgely, son of William, and Thomas Lloyd.
Back River, Upper—Samuel Worthington, Benjamin Nicholson, T. C. Deye, John Cradock, Darby Lux and William Randall.
Back River, Lower—John Mercer and Job Garretson.
Middle River, Upper—Nicholas Merryman and William Worthington.
Middle River, Lower—H. D. Gough and Walter Tolley, Sen'r.
Soldier's Delight—George Risteau, John Howard, Thomas Gist, Sen'r, Thomas Worthington, Nathan Cromwell and Nicholas Jones.
Middlesex—Thomas Johnson and Maybury Helm.
Delaware—John Welsh, Rezin Hammond and John Elder.
North—Jeremiah Johnson and Elisha Dorsey.
Pipe Creek—Richard Richards, Frederick Decker and Mordecai Hammond.
Gunpowder, Upper—Walter Tolley, Jun'r, Jas. Gittings and Thos. Franklin.
Mine Run—Dixon Stansbury, Jun'r, and Josiah Slade.

And the following resolutions were passed :

Resolved, That the same, or any seven of them, have power to act in matters within the town of Baltimore, and that any five may act in matters, without the said town, in the said county.

Resolved, That T. C. Deye, Capt. Charles Ridgely, Walter Tolley, Jun'r, Benjamin Nicholson, Samuel Worthington, John Moale, Doctor John Boyd, and William Buchanan, or any three of them, be a committee to attend the General Meeting at Annapolis, on Monday, the 24th of this month.

Resolved, That Robert Alexander, Samuel Purviance, Jun'r, Andrew Buchanan, Doctor John Boyd, John Moale, Jeremiah Townley Chase, William Buchanan and William Lux, be a Committee of Correspondence for Baltimore county and Baltimore town, and that any four of them have power to act.

At a subsequent meeting of the voters of Baltimore county and town, held at the Court House on the 16th of January, 1775, the following persons were added to the Committee of Observation :

FOR BALTIMORE TOWN.

James Sterett, Charles Ridgely, Jun'r, William Goodwin, Dr. Charles Weisenthal and Thomas Ewing.

FOR BALTIMORE COUNTY.

Hundreds.

Patapsco, Lower—Charles Rogers, John Gorsuch, William McCubbin, William Wilkinson, Thomas Todd.
 Patapsco, Upper—James Croxall, John Ellicot, Edward Norwood.
 Back River, Upper—John Cockey, Edward Talbot, Joshua Stevenson, Edward Cockey and Ezekiel Towson.
 Middle River, Upper—Benjamin Rogers, Robert Cummings, Benjamin Buck, Joshua Hall, Gist Vaughan, Benjamin Merryman.
 Back River, Lower—George Mathews, John Buck.
 Middle River, Lower—Moses Galloway, George Goldsmith Presbury, Abraham Britton and Nicholas Britton.
 Soldier's Delight—Thomas Cradock, Charles Walker, Samuel Owings, Jr. Christopher Randall, Jr. Benjamin Wells.
 Middlesex—Jacob Myers, Richard Cromwell, Thomas Rutter.
 Delaware—Christopher Owings, Benjamin Lawrence, Nicholas Dorsey, Jr.
 North—John Hall, Stephen Gill, Jr.
 Pipe Creek—John Showers, George Everhart.
 Gunpowder, Upper—Samuel Young, Jesse Bussey, Thomas Gassaway Howard, James Bosley, William Cromwell, Zaccheus Barret Onion.
 Mine Run—Edmund Stansbury, John Stevenson, Daniel Shaw, William Slade, Jr. Joseph Sutton, John Stewart.

At a subsequent meeting, held on the 18th of May, 1775, the following persons were added to the Committee :

FOR BALTIMORE TOWN.

Daniel Bowley.

FOR BALTIMORE COUNTY.

Hundreds.

Middle River, Lower—John German, William Andrews, Edward Day,
William Allender.

Patapsco, Upper—Zachariah McCubbin.

Soldier's Delight—Doctor William Lyon.

This Committee served until the month of September in the following year, at which time a new election for Committees of Observation was held in the several counties throughout the Province, in pursuance of a resolution of the Provincial Convention, at Annapolis, which limited the number of the Baltimore Committee to thirty-seven.

The following is an extract from the records of the Committee:

“SATURDAY, 23 September, 1775.

“The poll for electing a Committee of Observation for this county, (Messrs. Robert Alexander, Jere. T. Chase, Thomas Harrison, John Moale and Wm. Buchanan, five of the delegates for this county in the late Provincial Convention, being judges of the election,) was this day closed, and the following gentlemen declared duly elected, viz :

- | | |
|---------------------------------|--------------------------------|
| 1. John Moale, | 20. John Smith, |
| 2. Jeremiah Townley Chase, | 21. Zachariah McCubbin, Jun'r. |
| 3. James Calhoun, | 22. Capt. Charles Ridgely, |
| 4. Benjamin Nicholson, | 23. Thomas Harrison, |
| 5. Andrew Buchanan, | 24. Benjamin Griffith, |
| 6. Thomas Sollers, | 25. William Randall, |
| 7. John Cradock, | 26. Thomas Gist, Sen'r. |
| 8. James Gittings, | 27. Stephen Cromwell, |
| 9. Robert Alexander, | 28. Isaac Griest, |
| 10. Samuel Purviance, Jun'r, | 29. Thomas Cockey Deye, |
| 11. William Wilkinson, | 30. Mordecai Gist, |
| 12. Charles Ridgely, son of Wm. | 31. John Stevenson, |
| 13. Walter Tolley, Jun'r, | 32. Ezekiel Towson, |
| 14. Darby Lux, | 33. Jeremiah Johnson, |
| 15. John Cockey, | 34. William Asquith, |
| 16. William Smith, | 35. John Eager Howard, |
| 17. William Buchanan, | 36. George Ristean, |
| 18. William Lux, | 37. Abraham Britton. |
| 19. John Boyd, | |

“And the following gentlemen were chosen Provincial Delegates, to continue for one year, viz :

Robert Alexander,
Benjamin Nicholson,
John Moale,

Walter Tolley, Jun'r,
Jeremiah Townley Chase.

"N. B.—The poll was kept open eleven days to give every freeholder and freeman full and sufficient time to vote."}

The following persons of those elected as above, declined to serve :

Thomas Cockey Deye, William Smith, Ezekiel Towson, William Randall, Stephen Cromwell and Jeremiah Johnson. Mordecai Gist became disqualified by the acceptance of a commission as Major in the regular forces, raised by order of the Convention.

The Committee, therefore, on the 4th of March, 1776, filled up the vacancies by electing the following persons :

John Gillis, Frederick Decker, John Merryman, Jr. John Sterrett, Gist Vaughan, Thomas Rutter, Samuel Worthington.

Capt. Charles Ridgely also resigned, but it does not appear that the vacancy thus created was filled by the appointment of another person in his place.

The last meeting of the Committee, elected on the 23d of September, 1775, so far as appears from the minutes, was held on the 12th of Oct., 1776.

The Bill of Rights and Constitution of the State of Maryland were completed and adopted by the Provincial Convention on the 3d of November, 1776, but as some time must necessarily elapse before the Government thus organized could go into full operation, the Convention, on the 11th of November, 1776, directed that new Committees of Observation should be elected for the different counties, with the same powers which they previously possessed, and that they should continue to act until the 10th of March next ensuing.

The records to which I have had access, contain no reference to the election of a Committee under this resolution, or of their proceedings.

NOTE 2 TO PAGE 26.

A more striking instance than the one referred to, could hardly be found, of the influence which, in a time of danger, may be exerted by an individual of strong will and of known conduct and courage. The Bank of Maryland had failed disgracefully, inflicting heavy and widely diffused losses on the people of Baltimore. A deep and just indignation was felt throughout the community, which was artfully directed against certain individuals who had been connected with the bank as directors or otherwise, and who were wrongfully suspected of a participation in the fraudulent conduct by which it had been ruined. Encouraged and sustained by this feeling, a mob threatened to destroy the houses of the obnoxious individuals. The city authorities had ample notice, but they made the fatal mistake of attempting to quell the outbreak by a show of force, without the reality. Citizens who were called on to defend the threatened houses, had wooden batons placed in their hands, and the use of arms was strictly forbidden. But the rioters were not to be thus overawed, and the defenders, of course, had the worst of the conflict which ensued. Bricks and stones were showered upon them and many were seri-

ously injured, until, at last, recourse was had to fire-arms, by which a number was killed and wounded, and the mob was subdued for a single night. But, on the next day, the use which had been made of weapons was denounced by those who should have sustained it, and the rioters became bolder and intent on greater mischief. Various houses were destroyed, the lives of many individuals were threatened, and for twenty-four hours civil authority was completely at an end in Baltimore. No one could tell what acts of violence would next be perpetrated, but the city was filled with rumors of meditated outrage. At this crisis, a few individuals called a meeting of the citizens at the Exchange, but when they came together they had no leader, and were uncertain how to act. A proposition was made and adopted to send for Gen. Smith, who was then at his country seat, two miles from the city, and the meeting waited with anxiety for his arrival. He came with alacrity, and his presence wrought an instantaneous change in the state of affairs. There was no longer any doubt, fear or uncertainty. He would allow no time to be lost in framing resolutions, and making speeches, and would hear of no temporizing with those who were setting all law at defiance. A leader had been found, who, aged as he was, at once took the direction into his own hands. In a few energetic words he insisted that an armed force should at once be organized, and that the rioters should be put down by force if necessary; but, he maintained, that they would not dare to attempt resistance. His plan was adopted by acclamation, and the meeting marched at once in a column with him at its head, to the neighborhood of the Washington monument, where it was organized into companies, who chose their own leaders. Arms were brought out from every receptacle where they could be found, and were in many instances placed in hands which had never used them before. Hundreds flocked to the rescue, and in a few hours, and for many nights afterwards, the whole city was patrolled by armed defenders ready to put down the mob, and anxious to find one. But none appeared. It vanished out of existence the moment that a competent force with a courageous leader was prepared to oppose it.

NOTE 3 TO PAGE 27.

The following extracts from the Minutes are given to illustrate more fully the manner in which the committee performed some of the various duties assigned to them.

The committee were watchful to protect the morals of the people, so far as lay in their power.

At a meeting on the 10th of April, 1775, the following resolution was passed:

Resolved, As the fairs usually held at Baltimore town are hurtful to the morals of the people and are a species of extravagance and dissipation which are forbid by the Continental Congress, that the committee of correspondence be directed to give public notice to the inhabitants of the town and county, that the committee advise them not to erect any booths, or be in any manner

concerned in countenancing the holding said fair during the continuance of our public distractions."

Complaint having been made to the committee, that a certain John Burns kept a billiard table, and that shuffle-boards are kept at John Smith's and at Abraham Gorman's, at all of which houses encouragement was given to gaming, and great disorders committed to the injury of the militia and the sailors and mariners employed in the public service as well as others, and the same being contrary to the regulations and resolves of the honorable, the Continental Congress, it was on the 17th of June, 1776,

"Resolved, That the chairman issue his summons for the said persons to attend the committee on the following day to answer the complaints alleged against them."

This summons probably had the desired effect of abating the nuisances in question, as no further action appears to have been taken by the committee in the matter.

A night watch for the town of Baltimore being found necessary, it was supplied by the public spirit of the inhabitants and the organization thereof was made by the committee, as appears by the following extract from their minutes.

"At a meeting of the committee on the 26th June, 1775, present Mr. SAMUEL PURVIANCE, Chairman, and forty-two members. WILLIAM LUX, Sec'y.

"The inhabitants of Baltimore town having found it absolutely necessary to establish a nightly watch in the said town, for the preservation of their property from robbery or fire, as well as to prevent any hostile attempts in this time of public confusion, and having had several meetings to digest a proper plan for the purpose, they unanimously agreed to recommend the same to the committee for their approbation and superintendence, which being done the committee highly approved of the measure. And a subscription being signed by every inhabitant, wherein he obliges himself to conform to the regulations adopted, and to attend personally, or provide a sufficient man in his room, which said man, so provided, to be a subscriber, or to pay seven shillings and six pence. The committee received the said subscription, and divided the subscribers into six companies for the Town, and one company for the Point, and then directed a general meeting of the subscribers to elect a captain for each company, which being done, the following gentlemen were returned, viz.

JAMES CALHOUN,	1st,	BARNET EICHELBERGER,	4th,
GEORGE WOOLSEY,	2nd,	GEORGE LINDENBERGER,	5th,
BENJ'N GRIFFITH,	3rd,	WILLIAM GOODWIN,	6th,

for Baltimore Town, and ISAAC VANBIBBER for the Point. But his district being thought rather too extensive, the committee thought it necessary to appoint JESSE HOLLINGSWORTH and GEORGE PATTEN to assist him in the arrangement of the watch.

"The committee then determined that the said watch shall consist of sixteen persons under the direction of a captain, to be appointed for the night, and that they shall patrol the streets from 10 o'clock at night until day-light next morning, and that the companies take it in rotation."

The following is a specimen of the manner of proceeding of the committee when complaint was made that goods were sold at exorbitant prices.

"Cornelius Garritson lodged an information before the committee against Messrs. Usher & Roe, charging them with having sold to him, the said Garritson, certain goods at a higher price than he had usually paid for them, and that they had sold the same kind of goods to himself and others some time ago at a much lower rate than he had now paid. Mr. Roe appeared to answer this charge, and said that Mr. Garritson had asked him for certain buttons which he confesses he had formerly sold to Mr. Garritson and others, at 2s. 6d. per dozen, but for which he now asked 3s. 6d. not being willing to sell the buttons, without, at the same time, selling some cloth to which they matched, but that he did at length agree to let Mr. Garritson have them at the price he formerly sold them. Mr. Garritson departed, and soon after returned and took the buttons from a young man who attended in Messrs. Usher & Roe's store, who insisted on having 3s. 6d. for them per dozen, which said Garritson paid. But as soon as Mr. Roe understood what his clerk had done, he called after Mr. Garritson with an intention to return him his money, but Mr. Garritson refused to return. Mr. Roe afterwards sent the money to said Garritson but he declined accepting it, choosing rather to lodge a complaint to the committee for the imposition. From the above representation it appeared to the committee that the same kind of goods have been incautiously sold at Messrs. Usher & Roe's store at different prices, and, in this instance, above the limitations ascertained by the Provincial Congress—but as it appears to have happened by mistake of their clerk, and as Mr. Roe offered immediately to rectify the mistake, the committee thought proper to dismiss the complaint, with a caution to Messrs. Usher & Roe that they be more careful in future in giving cause for the like complaints."

The committee endeavored to sustain the paper currency issued by the Province. Information having been lodged against Mr. James Moore, of Gunpowder, for refusing to take money issued by the Provincial Convention, tendered to him by Mr. Nathaniel Britain, the committee on the 29th of January, 1776, "*resolved*, that Messrs. Moore and Britain be summoned to attend on Monday next."

"On the 12th of February, 1776, Mr. James Moore appeared according to summons, and Messrs. Nathaniel Britain, Tunis Titus, and Jesse Bussy, appeared as evidences against him, all and each of whom being sworn, deposed, That Mr. Jas. Moore had refused to take bills of credit emitted by the Provincial Convention, when tendered to him, alleging that he was afraid they would not pass, else he should have no objection, and that the said James Moore had asserted, that he would not pay any tax towards the support of American measures, and that he thought all those who had taken the oaths of allegiance and mustered, when holding a place under government, guilty of perjury and rebellion. It being represented by Mr. Gittings, that Jesse Williams was a material witness on the occasion, it was *resolved*, that the further examination of this affair be postponed until Monday next, Mr. William Lux being security for Mr. Moore's attendance."

"Mr. James Moore, agreeable to promise, appeared again before the committee on the 19th of February, and, (after admitting the veracity of the charges exhibited against him in the depositions of Messrs. Nathaniel Britain, Jesse Bussy and Tunis Titus, taken before the committee,) voluntarily signed the following recantation :

"Whereas, I the subscriber, have unfortunately and inadvertently been guilty of actions tending to depreciate the currency emitted by the Convention of this Province, for the express purpose of defending those inestimable privileges transmitted to us by our ancestors, and expressed an aversion to pay any taxes for sinking said currency, and other ways discouraged people from mustering, enrolling and associating, but am now satisfied and convinced that such conduct is highly unbecoming the duty of an American, and tends immediately to obstruct the measures calculated to preserve the liberties of this country from the cruel and unrelenting oppressions of the British ministry, do most sincerely acknowledge the heinousness of such offence, beg pardon of my countrymen, and do hereby solemnly engage and promise not to be guilty of a like offence in future, but to conform to such measures as shall be adjudged necessary by the Continental Congress, or Conventions of this Province, for the preservation of the rights of America. As a further atonement for my misconduct, I request this acknowledgment to be published, in hopes it may deter others from committing the like offence. Witness my hand this 19th of February, 1776.

JAMES MOORE."

Whereupon it was "resolved that the above is satisfactory."

The following energetic proceedings were taken against Mr. Francis Sanderson, who had been elected a member of the first committee of observation, but who afterwards gave great offence by the manifestation of tory principles, and by accepting an appointment from the Proprietary government to the office of a justice of the peace, after those who had been previously in the commission had been summarily dismissed from office on account, it would seem, of their taking sides with the popular movement.

"May 8th, 1775. Mr. Francis Sanderson, once a member of this committee, but who, for some time past, had neglected his duty, by refusing or declining giving attendance at their meetings and other exceptionable conduct, did this day again unexpectedly appear among them. The committee reflecting on his late conduct, and uncertain as to the design of his coming among them at so critical a juncture, plainly informed Mr. Sanderson of their sentiments, that they could not but suspect a man of so variable principles and questionable conduct—that as matters of great moment frequently were agitated among them, they did not think it prudent or safe for them to sit in council with a person in whom they could have no confidence, and that therefore they would wish him to withdraw himself from the committee, till the sense of the county should be known concerning him at a future election.

"Mr. Sanderson declared that he was sensible of the impropriety and mistakes of his late conduct, but was now heartily disposed to concur in every measure that his countrymen should adopt for the preservation of their rights—that in the meantime he acquiesced in the intimation of the committee, and would, for the future, so conduct himself as, if possible, to recover the good opinion of his countrymen, and convince them of the sincerity of his present declarations."

The voters of the town and county were assembled on the 18th of May, 1775, "when the proceedings of the committee on the 8th of May, respecting Mr. Francis Sanderson, were read to the freemen of the county now convened, and their sentiments taken on the propriety of the committee's request to Mr.

Sanderson to decline acting as a committee man, till the sense of their constituents should be known on the matter; the freemen having heard what Mr. Sanderson had to offer, unanimously approved of the committee's prudent conduct, and do further resolve that until Mr. Sanderson shall give unequivocal evidence of his sincere attachment to the cause of his injured country, by a steady and uniform acquiescence in every measure which has or may be generally adopted for her preservation, they cannot approve of him as a man to act for them in committee, leaving it to the committee to determine how far he is otherwise entitled to public favor. The committee accordingly, (the business of the county having been finished,) fifty-two members being present, proceeded to consider and judge of Mr. Sanderson's case; and were of opinion, that as he had already acknowledged to the committee his error and late misconduct, and was sincerely sorry for the same, and was now willing to satisfy his countrymen by a public declaration of his present political opinion, as contained in a paper which he handed in, Mr. Sanderson be restored to the good opinion of his countrymen."

The paper handed in by Mr. Sanderson, was as follows :

"I hereby declare that I have resigned the office of a Justice of the Peace for Baltimore county, being now sensible that my appointment to that office, with others, in the manner, and at the time the same was done, was disagreeable to my friends, and tended to injure the cause of my distressed country. I further declare my readiness to engage heartily in the measures now carrying on for the preservation of American liberty, and for that purpose I have contributed to the purchase of arms and ammunition, and also to the poor of Boston and enrolled myself a soldier in a company of militia; and I trust my future conduct will evince the sincerity of my present declarations, and restore me to the favor and esteem of my countrymen, an event most ardently wished for by

FRANCIS SANDERSON."

But Mr. Sanderson, encouraged probably by the success of the British forces in New York, sometime afterwards again brought himself into trouble, as appears by the following extract from the minutes of the committee :

"At a special meeting of the committee on Saturday, 12th October, 1776—Present: Samuel Purviance, Chairman, William Lux, Vice-Chairman—W. Buchanan, B. Nicholson, T. Rutter, W. Asquith, J. Calhoun.

"Information being given to the committee, on oath, by Mr. David Evans, that Francis Sanderson had, in a conversation with him, spoken words 'tending to disunite the good people of this State, in the present opposition to Great Britain,' by order of the committee, 12th October, 1776, Francis Sanderson is required to attend this committee at Mr. Purviance's immediately, to answer a complaint exhibited against him for several words spoken by him, and tending to disunite the people of this State in their present opposition to Great Britain, and, in case he don't attend, Captain Cox is directed to bring him by force.

Per order

W. L., V. Chr'n.

"The said Francis Sanderson appeared in consequence of the warrant, and having nothing to offer in vindication of the charge, he was committed to

the custody of the guard for this night, in order to be sent to the Council of Safety, agreeably to the resolves of the Convention, in July, 1775.

Attested,

GEO. LUX, Sec'y."

The Council of Safety appear to have referred the case to the Provincial Convention, then in session at Annapolis, by which body the following proceedings were had :

"October 16, 1776. The Convention met.

"On reading a letter from Samuel Purviance, Jr., chairman of the committee of observation, from Baltimore county, respecting the conduct of Francis Sanderson, the same was taken into consideration, and the said Francis Sanderson called before the Convention, and on the examination of several witnesses, and hearing him in his defence,

"On motion of Mr. Paca, the question was put, That the said Francis Sanderson is guilty of delivering sentiments tending to discourage the American opposition to the hostile attempts of Great Britain ; that therefore he be reprimanded at the bar of this house by the president; that he give bond in the penalty of one thousand pounds, with good security, to be approved of by the committee of Baltimore county, to the president, conditioned, that he will not hereafter speak or do any matter or thing in prejudice or discouragement of the present opposition ; that he pay all the expenses incurred on account of his being apprehended, guarded, and brought to this Convention, and that thereupon he be discharged. Resolved in the affirmative."

"Francis Sanderson was then called to the bar of the house, and reprimanded accordingly."

The Committee manifested great energy and judgment in all their proceedings, and especially in enrolling and arming troops, accumulating munitions of war, and in placing the town of Baltimore in a condition of defence when in March, 1776, it was threatened with an attack from the enemy ; but a further selection from the minutes would swell this Appendix to an unreasonable size. The object of the insertion of the extracts which have been given, has been to gratify a reasonable curiosity, which has been expressed, to see in print the names of those in Baltimore who were prominent in the early revolutionary movement, and to exhibit the calm, determined and business-like manner in which a committee—chosen indiscriminately from the various walks of life, and responsible for all their proceedings to the people whose sentiments and feelings they represented—deliberated and acted in the very dangerous and difficult emergency in which they were placed, and the moderation and ability with which they exercised the large and somewhat indefinite powers with which they were clothed.

LEGAL
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&
MORE

Jacob A. Stein

LISTS

I was taking a cab to LaGuardia Airport hoping to catch the two o'clock shuttle back to Washington. As the cabdriver neared the Argosy Bookstore on East 59th Street, I felt a pull I could not resist. I told the cabby to stop. How could I leave New York without looking over the stock in the outside stalls at the Argosy?

The book I bought that day is *Minority Report*, the autobiography of Elmer Rice (1892–1967). I knew of Elmer Rice's interesting career. He started out as a New York City lawyer and became a successful playwright and novelist.

In the book, Mr. Rice records his observations on a jury trial he watched many years ago. He says he was interested more in the performance of one of the well-known trial lawyers than in the subject matter of the case,

as one might go to see a star, no matter what play. The analogy is close, for the conduct of a jury trial depends

more on the art of acting than upon the science of the law. Frequently all the legal knowledge a trial lawyer needs is an acquaintance with the rules of evidence, which are fairly simple. The day is won by obfuscation, trickery, and histrionics. I saw some notable performers of the time, among them Francis L. Wellman, who wrote several books on the art of cross-examination, and Dudley Field Malone, a smooth rhetorician, who later appeared in the Scopes evolution trial in Tennessee.

Things have changed since those days. Now a trial lawyer must give nights and days to mastering the documents and the depositions, the requests for admissions and the interrogatories. Once that is done there may be some consideration given to the dramatic. Shortly after Mr. Rice was admitted to the bar, he wrote the hit play that changed his life. It was a courtroom drama entitled *On Trial*.

Mr. Rice ends his autobiography with a list summarizing what he says life had taught him. Here is his list:

It is better to live than to die;
to love than to hate;
to create than to destroy;
to do something than to do nothing;
to be truthful than to lie;
to question than to accept;
to be strong than to be weak;
to hope than to despair;
to venture than to fear,
to be free than to be bound.

I like to read lists because I am a list man. Each morning I make a list. The list begins with the date and day of the week. Then follow numbered items identifying the cases of the moment, with a word or two on what needs to be done. Very often some guiding principle, not unlike those on Elmer Rice's list, finds its way in.

Below the main list I write in three or four items concerning which I detect a mental block that prevents me from doing what must be done. My block items vibrate with apprehensions and fear that if I act something will go wrong. But, as Elmer Rice says, it is better to do something than to do nothing. But there are things to be done that I just cannot do. Therefore I ask someone else to take the assignment, someone unaware that I am stumped. If no one is available, I go to a quiet room and close the door. I make a list of all the reasons I am hesitant. In a few minutes I can get at the source of the ominous vibrations. Often it is a sense that doing nothing is the best course.

There are many ways to do nothing. I write letters that are never sent. The drafting of the letter is a valuable exercise. It drains off bitterness, indignation, and confusion. The drafting requires research. It often requires doing something astonishing, like reading the file.

I find my lists from years ago turning up in books and coat pockets. The cases identified on the old lists are over. I can read each of the items without fear. I know how things turned out. Some won, some lost. All gone. Today's list is another story. Each of the items represents something to be done and great uncertainty and anguish concerning how things will turn out.

Anyone making a list to guide oneself through life must include most of Mr. Rice's list. It represents the concentrated wisdom of the human experience. What would be new would be to

discover someone who is able to perform, day in and day out, all that is necessary to attain the inner harmony that compliance with the list will bring. We do not need more wisdom. What we need is a Saint-John's-wort type of herbal tea that, once ingested, makes obedience to the list a physiological necessity.

Let me add something of my own to the wisdom literature: Better to jump out of bed in the morning and jog over to the American University track than to hope that a half hour's perfect repose will bring an insight that explains life's otherwise incomprehensible contradictions.

Jacob Stein took part in the Bar Library Lecture Series on January 21, 2009 with a presentation on "Perjury, False Statements & Obstruction of Justice." Generous with his time, Mr. Stein was generous in other ways as well as indicated by the language in the preface to the third volume of *Legal Spectator* from which the following was taken. Mr. Stein wrote "This book is not copyrighted. Its contents may be reproduced without the express permission of, but with acknowledgement to, the author. Take what you want and as much as you want." The works featured in the *Legal Spectator*, originally appeared in the *Washington Lawyer*, the *American Scholar*, the *Times Literary Supplement*, the *Wilson Quarterly*, and the ABA Litigation Section's publication. I want to thank Bar Library Board of Director Henry R. Lord for his time and efforts in reviewing the writings of Mr. Stein for inclusion in the *Advance Sheet*.