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We come here to-day to commemorate one of the epoch-making events of the long struggle for the rights of man -- the long struggle for the uplift of humanity. Our country -- this great republic -- means nothing unless it means the triumph of a real democracy, the triumph of popular government, and, in the long run, of an economic system under which each man shall be guaranteed the opportunity to show the best that there is in him. That is why the history of America is now the central feature of the history of the world; for the world has set its face hopefully toward our democracy; and, O my fellow citizens, each one of you carries on your shoulders not only the burden of doing well for the sake of your own country, but the burden of doing well and of seeing that this nation does well for the sake of mankind.

There have been two great crises in our country's history: first, when it was formed, and then, again, when it was it was perpetuated; and, in the second of these great crises -- in the time of stress and strain which culminated in the Civil War, on the outcome of which depended the justification of what had been done earlier, you men of the Grand Army, you men who fought through the Civil War, not only did you justify your generation, not only did you render life worth living for our generation, but you justified the wisdom of Washington and Washington's colleagues. If this republic had been founded by them only to be split asunder into fragments when the strain came, then the judgement of the world would have been that Washington's work was not worth doing. It was you who crowned Washington's work, as you carried to achievement the high purpose of Abraham Lincoln.

Now, with this second period of our history the name of John Brown will be forever associated; and Kansas was the theater upon which the first act of the second of our great national life dramas was played. It was the result of the struggle in Kansas which determined that our country should be in deed as well as in name devoted to both union and freedom; that the experiment of democratic government on a national scale should succeed and not fail…

It was a heroic struggle; and, as is inevitable with all such struggles, it had also a dark and terrible side. Very much was done of good, and much also of evil; and, as was inevitable in such a period of revolution, often the same man did both good and evil. For our great good fortune as a nation, we, the people of the United States as a whole can now afford to forget the evil, or, at least, to remember it without bitterness, and to fix our eyes with pride only on the good that was accomplished…

I do not speak of this struggle of the point past merely from the historic standpoint. Our interest is primarily in the application to-day of the lessons taught by the contest of half a century ago. It is of little use for us to pay lip loyalty to the mighty men of the past unless we sincerely endeavor to apply to the problems of the present precisely the qualities which in other crises enabled the men of that day to meet those crises. It is half melancholy and half amusing to see the way in which well-meaning people gather to do honor to the men who, in company with John Brown, and under the lead of Abraham Lincoln, faced and solved the great problems of the nineteenth century, while, at the same time, these same good people nervously shrink from, frantically denounce, those who are trying to meet the problems of the twentieth century in the spirit which was accountable for the successful resolution of the problems of Lincoln's time…

In every wise struggle for human betterment one of the main objects, and often the only object, has been to achieve in large measure equality of opportunity. In the struggle for this great end, nations rise from barbarism to civilization, and through it people press forward from one stage of enlightenment to the next. One of the chief factors in progress is the destruction of
special privilege. The essence of any struggle for healthy liberty has always been, and must always be, to take from some one man or class of men the right to enjoy power, or wealth, or position, or immunity, which has not been earned by service to his or their fellows. That is what you fought for in the Civil War, and that is what we strive for now.

At many stages in the advance of humanity, this conflict between the men who possess more than they have earned and the men who have earned more than they possess is the central condition of progress. In our day it appears as the struggle of free men to gain and hold the right of self-government as against the special interests, who twist the methods of free government into machinery for defeating the popular will. At every stage, and under all circumstances, the essence of the struggle is to equalize opportunity, destroy privilege, and give to the life and citizenship of every individual the highest possible value both to himself and to the commonwealth. That is nothing new. All I ask in civil life is what you fought for in the Civil War…

I stand for the square deal. But when I say that I am for the square deal, I mean not merely that I stand for fair play under the present rules of the game, but that I stand for having those rules changed so as to work for a more substantial equality of opportunity and of reward for equally good service…

Now, this means that our government, national and state, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics…

The true friend of property, the true conservative, is he who insists that property shall be the servant and not the master of the commonwealth; who insists that the creature of man's making shall be the servant and not the master of the man who made it. The citizens of the United States must effectively control the mighty commercial forces which they have themselves called into being.

There can be no effective control of corporations while their political activity remains. To put an end to it will be neither a short nor an easy task, but it can be done.

We must have complete and effective publicity of corporate affairs, so that the people may know beyond peradventure whether the corporations obey the law and whether their management entitles them to the confidence of the public. It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes; it is still more necessary that such laws should be thoroughly enforced. Corporate expenditures for political purposes, and especially such expenditures by public service corporations, have supplied one of the principal sources of corruption in our political affairs.

It has become entirely clear that we must have government supervision of the capitalization, not only of public service corporations, including, particularly, railways, but of all corporations doing an interstate business…It is my personal belief that the same kind and degree of control and supervision which should be exercised over public service corporations should be extended also to combinations which control necessaries of life, such as meat, oil, and coal, or which deal in them on an important scale. I have no doubt that the ordinary man who has control of them is much like ourselves. I have no doubt he would like to do well, but I want to have enough supervision to help him realize that desire to do well…

Combinations in industry are the result of an imperative economic law which cannot be repealed by political legislation. The effort at prohibiting all combination has substantially failed.
The way out lies, not in attempting to prevent such combinations, but in completely controlling them in the interest of the public welfare. For that purpose the Federal Bureau of Corporations is an agency of first importance. Its powers, and, therefore, its efficiency, as well as that of the Interstate Commerce Commission, should be largely increased…

The absence of effective state, and, especially, national, restraint upon unfair money getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need is to change the conditions which enable these men to accumulate power which it is not for the general welfare that they should hold or exercise. We grudge no man a fortune which represents his own power and sagacity, when exercised with entire regard to the welfare of his fellows…We should permit it to be gained only so long as the gaining represents benefit to the community. This, I know, implies a policy of a far more active governmental interference with social and economic conditions in this country than we have yet had, but I think we have got to face the fact that such an increase in governmental control is now necessary.

No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered -- not gambling in stocks, but service rendered. The really big fortune, the swollen fortune, by the mere fact of its size acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means. Therefore, I believe in a graduated income tax on big fortunes, and in another tax which is far more easily collected and far more effective -- a graduated inheritance tax on big fortunes, properly safeguarded against evasion and increasing rapidly in amount with the size of the estate…

The right to regulate the use of wealth in the public interest is universally admitted. Let us admit also the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good…No man can be a good citizen unless he has a wage more than sufficient to cover the bare cost of living, and hours of labor short enough so that after his day's work is done he will have time and energy to bear his share in the management of the community, to help in carrying the general load. We keep countless men from being good citizens by the conditions of life with which we surround them. We need comprehensive workmen's compensation acts, both state and national laws to regulate child labor and work for women, and, especially, we need in our common schools not merely education in book learning, but also practical training for daily life and work. We need to enforce better sanitary conditions for our workers and to extend the use of safety appliances for our workers in industry and commerce, both within and between the states…

I do not ask for overcentralization; but I do ask that we work in a spirit of broad and far-reaching nationalism when we work for what concerns our people as a whole. We are all Americans. Our common interests are as broad as the continent. I speak to you here in Kansas exactly as I would speak in New York or Georgia, for the most vital problems are those which affect us all alike. The national government belongs to the whole American people, and where the whole American people are interested, that interest can be guarded effectively only by the national government. The betterment which we seek must be accomplished, I believe, mainly through the national government.

The American people are right in demanding that New Nationalism, without which we cannot hope to deal with new problems. The New Nationalism puts the national need before sectional or personal advantage. It is impatient of the utter confusion that results from local legislatures attempting to treat national issues as local issues. It is still more impatient of the
impotence which springs from overdivision of governmental powers, the impotence which makes it possible for local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. This New Nationalism regards the executive power as the steward of the public welfare. It demands of the judiciary that it shall be interested primarily in human welfare rather than in property, just as it demands that the representative body shall represent all the people rather than any one class or section of the people...

If our political institutions were perfect, they would absolutely prevent the political domination of money in any part of our affairs. We need to make our political representatives more quickly and sensitively responsive to the people whose servants they are. More direct action by the people in their own affairs under proper safeguards is vitally necessary. The direct primary is a step in this direction, if it is associated with a corrupt practices act effective to prevent the advantage of the man willing recklessly and unscrupulously to spend money over his more honest competitor. It is particularly important that all moneys received or expended for campaign purposes should be publicly accounted for, not only after election, but before election as well. Political action must be made simpler, easier, and freer from confusion for every citizen. I believe that the prompt removal of unfaithful or incompetent public servants should be made easy and sure in whatever way experience shall show to be most expedient in any given class of cases.

One of the fundamental necessities in a representative government such as ours is to make certain that the men to whom the people delegate their power shall serve the people by whom they are elected, and not the special interests. I believe that every national officer, elected or appointed, should be forbidden to perform any service or receive any compensation, directly or indirectly, from interstate corporations; and a similar provision could not fail to be useful within the states.

The object of government is the welfare of the people. The material progress and prosperity of a nation are desirable chiefly so far as they lead to the moral and material welfare of all good citizens…The prime problem of our nation is to get the right type of good citizenship, and, to get it, we must have progress, and our public men must be genuinely progressive.

Charles Merriam, “Recent Tendencies,” 1903

[Charles Merriam was one of the founders of the kind of political science that dominates today’s universities. In this chapter, Merriam outlines the tenets of what was in 1903 the new political science. The rejection of the principles of the founding is a prominent theme. – editor]

In the last half of the nineteenth century there appeared in the United States a group of political theorists differing from the earlier thinkers in respect to method and upon many important doctrines of political science. The new method was more systematic and scientific than that which preceded it…

The doctrines of these men differ in many important respects from those earlier entertained. The individualistic ideas of the “natural right” school of political theory, indorsed in the Revolution, are discredited and repudiated. The notion that political society and government are based upon a contract between independent individuals and that such a contract is the sole source of political obligation, is regarded as no longer tenable…

In the refusal to accept the contract theory as the basis for government, practically all the political scientists of note agree. The old explanation no longer seems sufficient, and is with
practical unanimity discarded. The doctrines of natural law and natural rights have met a similar fate…

The present tendency, then, in American political theory is to disregard the once dominant ideas of natural rights and the social contract, although it must be admitted that the political scientists are more agreed upon this point than is the general public. The origin of the state is regarded, not as the result of a deliberate agreement among men, but as the result of historical development, instinctive rather than conscious; and rights are considered to have their source not in nature, but in law. This new point of view involves no disregard of or contempt for human liberty, but only a belief that the earlier explanation and philosophy of the state was not only false but dangerous and misleading.

The modern school has, indeed, formulated a new idea of liberty, widely different from that taught in the early years of the Republic. The “Fathers” believed that in the original state of nature all men enjoy perfect liberty, that they surrender a part of this liberty in order that a government may be organized, and that therefore the stronger the government, the less the liberty remaining to the individual. Liberty is, in short, the natural and inherent right of all men; government the necessary limitation of this liberty…

The Revolutionary idea of the nature of liberty was never realized in actual practice, and recent political events and political philosophy have combined to show that another theory of liberty has been generally accepted…[L]iberty is not a natural right which belongs to every human being without regard to the state or society under which he lives. On the contrary, it is logically true and may be historically demonstrated that “the state is the source of individual liberty.” It is the state that makes liberty possible, determines what its limits shall be, guarantees and protects it…[M]en do not begin with complete liberty and organize government by sacrificing certain parts of this liberty, but on the contrary they obtain liberty only through the organization of political institutions. The state does not take away from civil liberty, but is the creator of liberty — the power that makes it possible.

Liberty, moreover, is not a right equally enjoyed by all. It is dependent upon the degree of civilization reached by the given people, and increases as this advances. The idea that liberty is a natural right is abandoned, and the inseparable connection between political liberty and political capacity is strongly emphasized. After an examination of the principle of nationality, and the characteristic qualities of various nations or races, the conclusion is drawn that the Teutonic nations are particularly endowed with political capacity. Their mission in the world is the political civilization of mankind…

Closely related to the theory of liberty is the doctrine as to the purpose or function of the state. In the days of the Revolution, it was thought that the end of the political society is to protect the life, liberty, and property of its citizens, and beyond this nothing more. The duty of the state was summed up in the protection of individual rights…In more recent times there has been in America a decided tendency to react against the early “protection theory” of government, and to consider that the aim of the state is not limited to the maintenance of law and order in the community and defence against foreign foes. In the new view, the state acts not only for the individual as such, but in the interests of the community as a whole. It is not limited to the negative function of preventing certain kinds of action, but may positively advance the general welfare by means and measures expressly directed to that end. This opinion is shared by such authorities as Woolsey, Burgess, Wilson, Willoughby and others. To these thinkers it appears that the duty of the state is not and cannot be limited to the protection of individual interests, but must be regarded as extending to acts for the advancement of the general welfare in all cases.
where it can safely act, and that the only limitations on governmental action are those dictated by experience or the needs of the time. . . .

At yet another point the drift away from the Revolutionary theory is evident; namely, in relation to the division of governmental powers. The generally accepted theory since the eighteenth century has been that all governmental powers may be divided into the legislative, the executive, and the judicial; that in every free government; these powers should be carefully separated and a distinct set of officers should administer each class of them. This has long been regarded as a "fundamental" of political theory and of constitutional law as well. Viewing the situation from the standpoint of administrative law, however, a new line of division has been recently drawn... The primary functions of the state may be divided... into politics, "the expression of the will of the state," and administration, "the execution of that will." "Politics" includes constitution-making, legislation, selection of governmental officers, and the control of the function of executing the will of the state. This function of politics is discharged by constitutional conventions, legislatures, the judiciary, and the political parties. "Administration," on the other hand, may be divided into two classes: the administration of justice, commonly called the judicial authority, and the administration of government, which includes what is ordinarily termed the executive authority, together with other functions of a quasi-judicial or semi-scientific or statistical character...

In conclusion, it appears that recent political theory in the United States shows a decided tendency away from many doctrines that were held by the men of 1776. The same forces that have led to the general abandonment of the individualistic philosophy of the eighteenth century by political scientists elsewhere have been at work here and with the same result. The Revolutionary doctrines of an original state of nature, natural rights, the social contract, the idea that the function of the government is limited to the protection of person and property, — none of these finds wide acceptance among the leaders in the development of political science. The great service rendered by these doctrines, under other and earlier conditions, is fully recognized, and the presence of a certain element of truth in them is freely admitted, but they are no longer generally received as the best explanation for political phenomena. Nevertheless, it must be said that thus far the rejection of these doctrines is a scientific tendency rather than a popular movement. Probably these ideas continue to be articles of the popular creed, although just how far they are seriously adhered to it is difficult to ascertain. As far as the theory of the function of government is concerned, it would seem that the public has gone beyond the political scientists, and is ready for assumption of extensive powers by the political authorities. The public, or at least a large portion of it, is ready for the extension of the functions of government in almost any direction where the general welfare may be advanced, regardless of whether individuals as such are benefited thereby or not. But in regard to the conception of natural right and the social-contract theory, the precise condition of public opinion is, at the present time, not easy to estimate.


THAT the publication of the "Origin of Species" marked an epoch in the development of the natural sciences is well known to the layman. That the combination of the very words origin and species embodied an intellectual revolt and introduced a new intellectual temper is easily overlooked by the expert. The conceptions that had reigned in the philosophy of nature and
knowledge for two thousand years, the conceptions that had become the familiar furniture of the mind, rested on the assumption of the superiority of the fixed and final; they rested upon treating change and origin as signs of defect and unreality. In laying hands upon the sacred ark of absolute permanency, in treating the forms that had been regarded as types of fixity and perfection as originating and passing away, the "Origin of Species " introduced a mode of thinking that in the end was bound to transform the logic of knowledge, and hence the treatment of morals, politics, and religion…

Few words in our language foreshorten intellectual history as much as does the word species…[C]hanges in the living thing are orderly; they are cumulative; they tend constantly in one direction; they do not, like other changes, destroy or consume, or pass fruitless into wandering flux; they realize and fulfil. Each successive stage, no matter how unlike its predecessor, preserves its net effect and also prepares the way for a fuller activity on the part of its successor. In living beings, changes do not happen as they seem to happen elsewhere, any which way; the earlier changes are regulated in view of later results. This progressive organization does not cease till there is achieved a true final term, a telos, a completed, perfected end…Nature as a whole is a progressive realization of purpose strictly comparable to the realization of purpose in any single plant or animal…

There are, indeed, but two alternative courses. We must either find the appropriate objects and organs of knowledge in the mutual interactions of changing things; or else, to escape the infection of change, we must seek them in some transcendent and supernal region. The human mind, deliberately as it were, exhausted the logic of the changeless, the final, and the transcendent, before it essayed adventure on the pathless wastes of generation and transformation…

As we have already seen, the classic notion of species carried with it the idea of purpose…The Darwinian principle of natural selection cut straight under this philosophy. If all organic adaptations are due simply to constant variation and the elimination of those variations which are harmful in the struggle for existence that is brought about by excessive reproduction, there is no call for a prior intelligent causal force to plan and preordain them…

No one can fairly deny that at present there are two effects of the Darwinian mode of thinking. On the one hand, there are making many sincere and vital efforts to revise our traditional philosophic conceptions in accordance with its demands. On the other hand, there is as definitely a recrudescence of absolutistic philosophies; an assertion of a type of philosophic knowing distinct from that of the sciences…an appeal through experience to something that essentially goes beyond experience. This reaction affects popular creeds and religious movements as well as technical philosophies. The very conquest of the biological sciences by the new ideas has led many to proclaim an explicit and rigid separation of philosophy from science.

Old ideas give way slowly; for they are more than abstract logical forms and categories. They are habits, predispositions, deeply engrained attitudes of aversion and preference…Old questions are solved by disappearing, evaporating, while new questions corresponding to the changed attitude of endeavor and preference take their place. Doubtless the greatest dissolvent in contemporary thought of old questions, the greatest precipitant of new methods, new intentions, new problems, is the one effected by the scientific revolution that found its climax in the "Origin of Species."

[Richard Ely was a prominent Progressive economist and a leader in the Social Gospel movement; after his graduate studies in Germany, where he was exposed to German idealism and Hegelian state theory, he returned to teach at Johns Hopkins University, where he was a professor to Woodrow Wilson. In this excerpt we can clearly see the influence of German idealism, especially that of Immanuel Kant, on Ely’s political and economic thought. – CB]

We all crave happiness. Happiness is an end of life which is worthy of effort, but it is an end which must be subordinated to another end if it is to be pursued successfully; and this other end is service. But service means sacrifice; apparently the opposite of happiness. We reach this paradox then: Happiness is a worthy end of our efforts; but if we place it before ourselves as the direct and immediate end to be striven for, we cannot reach it. It will elude us. It will be to us like the water all about Tantalus, the cold flood welling ever to his chin, yet always retreating from his fiery lips; like the fruit over his head which the winds whirled skyward through the air:

"Whenso'er,  
The old man fain to cool his burning tongue,  
Clutched with his fingers at the branches fair."

Individual lives repeat the race-history. If you would attain to happiness seek something else. Poets, philosophers, and prophets, all tell us this, for to all it comes as the result of the deepest insight and the ripest experience. But all go further. You must cast aside the thought of happiness as a chief aim. You may not keep it concealed in a corner of your mind and heart as after all the main thing, but a thing to be reached in a round-about-way. You cannot successfully juggle with yourself. You must in very truth renounce yourself to find yourself, and give up yourself to save yourself...

But shall we heap paradox on paradox? We have already found that while the craving for happiness is natural and the desire for happiness is legitimate, we shall lose it if we seek it. We have discovered that the secret of life is renunciation. We must sacrifice our life to receive it in fullness. "Surely, then, self-sacrifice is an end," we may be told. By no means. Self-sacrifice in itself is no virtue and may not be made an end in itself. Self-sacrifice pursued as an end leads to a gloomy asceticism which would have us refuse the joy of life as something bad and hateful to the Giver of all good things. Self-sacrifice bears its fruit of peace and happiness and life only when it is pursued indirectly.

Have we not seen this in those who have found the secret of life? Have we not noticed how those whose life is wholly given to others--perhaps in some far-away land, deprived of almost everything which we hold dear--speak of their privileges? Have we never heard a noble woman, wholly given to good works in a dreary slum of a great city, and who in the opinion of a host of admiring friends is almost ready for canonization, resent the thought that her life was one of self-sacrifice? Undoubtedly. And there is one word that gives the key to these paradoxes. What is it? We know what it is: Love--love, the secret of the universe. Sacrifice is not an end in itself, but sacrifice is the condition of service. The law of society is service. This is the supreme law of society from which no one can escape with impunity. Ethical teachers now approach unanimity in the assertion that the criterion of right conduct is social well-being. The welfare of society is the test of conduct in the individual. It would be interesting to take four great writers--a theologian, a jurist, a professor of natural science, and a student of society--and to discover their
entire and complete harmony in the view that the purpose of the rules of right individual conduct is the welfare of society.

Richard T. Ely, “Socialism in America,” 1886

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SOCIALISM IN AMERICA.

Socialism is a vague expression, used to group together a multiplicity of ideas which have, nevertheless, this in common, that they contemplate the introduction of radical and thorough-going social reforms. Even more than this may be said. Socialism seeks such a reconstruction of society that the entire products of labor shall accrue to the laborer. It would extend the application of St. Paul’s injunction—“If a man will not work neither shall he eat”—to all men impartially. Socialism aims, then, not to abolish capital—a folly which no sane man ever contemplated—but it desires to do away forever with a distinct class of capitalists.

Slavery was formerly defended because it established the union of capital and labor in the same hands, and Southerners used to argue that only through such a union could domestic peace be permanently preserved. Little heed was then given to these philosophic advocates of slavery, but the Socialist now comes forward and maintains the essential accuracy of their position; arguing, however, that labor and capital must be united in the hands of the working-man and not in the hands of a master. All the instruments of production must become the common property of the toilers, and to them must be transferred the product of labor without deduction of interest, rent and profits. Thus much may perhaps be said of all who are properly called Socialists, whether they
hold to anarchy, communism, voluntary coöperation, or state socialism. Socialism thus includes men of peace and revolutionists, advocates of dynamite and preachers of the Gospel of Christ, "the first Socialist," as He is often called.

The term is also applied to some to whom it does not belong in any unqualified sense. Professorial Socialists and Christian Socialists, as a rule, are not believers in any form of pure socialism, though there may be exceptions among them. Usually they are men who simply recognize the social side of man's nature and believe that men can perform certain economic functions in some kind of coöperation more advantageously than in any other manner; who, indeed, go still further and hold that many economic functions can be performed in no other manner. They would, however, often maintain that the performance of these functions was not advocated as an introduction to pure socialism but in order to further industrial initiative and activity in their own proper sphere. It may in general be said of these men that they lay stress on the doctrine of human brotherhood, and repudiate the idea that any human being or any class is exempt from social duties.

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Modern socialism awaits a transformation of economic life on a larger national basis, and looks with comparative indifference on the early American communism just described. Its germs were
brought to this country by Germans after the revolution of 1848 in Europe, and since that time German and French emigrants have continued to import into this country the seeds of our present socialism. It grew slowly at first, and did not attain any considerable proportions much before 1878. It is stronger now than it ever has been before in American history.

Organized American socialism must be divided into two general classes: anarchy and state socialism, or socialism proper.

Anarchy is not socialism, in the strict sense of the term, but extreme individualism. Anarchists would abolish all government, for they believe that it is a needless evil. If that is the best government which governs least, then, say they:

"The very best government of all
Is that which governs not at all."

The anarchists hold, however, that the absence of authority will produce a natural and spontaneous order, and this order, they think, will be true socialism. Some of them call themselves communistic anarchists, because they believe anarchy and communism to be compatible. It is not easy to understand how the anarchists picture the future to themselves, but it is probable that they think of industry as organized and conducted by unions of artisans, and hold that these unions will be united in federations. Some evidently believe in government and what must amount to a state, although perhaps called by another name. When their ideas are analyzed, it will be found that it is simply the present state-forms to which objection is raised and not the state in itself. This is not true of all, however, for there are anarchists who believe that the social principle in man is a sufficient bond of unity, and will, without force, enable men to carry on coöperative production. It is only necessary in their opinion to abolish all iniquitous laws and institutions, particularly "the beast of private property," in order to allow free course for the naturally good qualities in man.
A party of anarchists is, however, of recent date. Such a party is the International Working People’s Association, with head-quarters at Chicago. This party, as distinct from the state socialists, appeared to have been formally organized in Pittsburgh, Pennsylvania, in the fall of 1883. They then adopted a manifesto, from which the following words are quoted: “What we would achieve is, therefore, plainly and simply: First: Destruction of the existing class-rule by all means, i. e. by energetic, relentless, revolutionary and international action. Second: Establishment of a free society based upon coöperative organization of production.” As a rule, these internationalists also attack religion and the family in bitter terms, because these are pillars of existing society.

The members of this party regard the existing state as so utterly bad that reform within it is out of the question, and they counsel all adherents of their cause to abstain from the use of the ballot. Like the Russian Nihilists, by whom, indeed, they have been influenced, they believe that it is first of all necessary to destroy what exists, as reconstruction is not possible until our present institutions are completely demolished. Their remedies are gun-powder, petroleum and dynamite, and their cry is “Away with religion, away with the family, away with the state.”

The number of adherents of this party can be estimated with difficulty. It has evidently grown rapidly during the past two years, but it may be doubted if its enrolled adherents exceed fifteen thousand. Yet there are doubtless two or three hundred thousand who accept their views. They form one branch of the Central Labor Union of Chicago, in which a large number of working-men are represented, all of whom are willing to parade with them, and many of whom accept their extreme position. The Federative Union of Metal Workers of America also accept these views, and adherents may be found in other organizations which, as such, do not hold these views, or, indeed, hold quite opposite opinions. The chief danger to the country from this party seems to be this: in time of excitement and restlessness or open revolt, when men in a frenzy of anger are looking about for some one to lead them, those who have been trained in this party may step forward as leaders. At such a time, a few men who believe in violence and destruction, as a matter of principle, may do great damage.
There is another party, composed chiefly of English-speaking laborers, called the "International Workmen’s Association" and indicated by the letters I. W. A., not I. W. P. A. or International Working People’s Association. The chief strength of this party is between the Mississippi and the Pacific Ocean. It is a secret society and said to be about as strong as the I. W. P. A. It likewise is violent and revolutionary, but its members appear generally to believe in state socialism. The third organized socialistic party is called the "Socialistic Labor Party," which advocates the establishment of state socialism by peaceful means, if possible. It repudiates violence as a means of agitation, but considers the ballot useful for purposes of propaganda. The members of this party seek reform from the existing state, and several of their demands must meet the approval of all right-minded people. Their official organ is the "Sozialist" of New York. The daily "Volkszeitung" of New York, and the daily "Tageblatt" of Philadelphia are widely circulated organs. Their views are presented in Groulund’s "Co-operative Commonwealth."

From socialism, as such, the American people, in the writer’s opinion, have nothing to fear. So long as Socialists confine themselves to peaceful methods there is no reason why their right of free speech should be abridged or even feared. It were wiser to seek to learn anything from them, which they have to teach, than to become alarmed. It is the glory of America that she has faith to believe that only such institutions as rest upon sound common sense and approved experience will be supported by the people. It is to be hoped that we will never imitate the disastrous folly of older nations, and attempt the suppression of an idea by physical force.

The only real danger which can threaten the future of our country must proceed from private sin and public wrong. The true patriot, unmoved by frightened and angry denunciation, will close his ears to incendiary utterances, whether they be those of the poor and ignorant who would destroy wealth, or those of the rich and cultured who would shoot down working-men like dogs; for such an one will recognize the fact that righteousness is the only sure foundation for American institutions, and he will endeavor to plant them firmly on that rock.

Richard T. Ely.
Richard T. Ely, “The Inheritance of Property,” 1891

From The North American Review, Volume 153, Issue 416, July 1891

THE INHERITANCE OF PROPERTY.

BY PROFESSOR RICHARD T. ELY, OF JOHNS HOPKINS UNIVERSITY.

The chief modern industrial problem is often stated to be the distribution of property. What is wanted is widely-diffused property, and it is desired to bring about this wide diffusion without injustice, and without injury to the springs of economic activity.

Many proposals are brought forward which aim to produce a more general prosperity. Two of the best-known are the single tax and socialism. These, however, apart from all other considerations, encounter the strongest obstacles to their introduction because they are so averse to powerful private interests. Wise social reform will always seek for the line of least resistance. It is granted that the end proposed by socialism and the single tax is desirable in so far as it contemplates a wide distribution of wealth; but before committing ourselves to any extreme doctrines it is well to ask, What can be done without radical change?—in other words, what can we accomplish in order to ameliorate the condition of the masses without departure from the fundamental principles of the existing social order? When we reflect upon it, we find that there are many things, and that these are quite sufficient to occupy the thoughts and energies of well-wishers of their kind for a long time to come. At the present time I feel inclined to classify the chief things required to bring about an improved condition of society in the United States under three heads, namely:

First—Education in its broadest sense, including kindergartens, manual training, technical schools, colleges, and universities.

Second—The abolition of private monopoly, and the substitution therefor of public ownership and management of all those en-
THE INHERITANCE OF PROPERTY.

Enterprises which are by nature monopolies, like railways, gas and electric-lighting businesses, telegraphs, telephones, etc.

Third—A reform of the laws of inheritance.

What can be done by a regulation of inheritance to change the distribution of property, and consequently of the opportunities and income which property yields? Once in a generation nearly all property changes owners, and that gives opportunity for bringing about the greatest changes within half a century. There is a perpetual flow of property from the dead to the living, and it is possible by means of law to exercise much influence over this current. When we attempt to bring about reform and improvement by a wise regulation of inheritance, we have a solid basis of experience to help us. One part of such legislation which naturally suggests itself is the taxation of the estates of deceased, and such estates are taxed to a greater or less extent in nearly all—perhaps in all—great modern nations. We may mention England, Australia, New Zealand, and Switzerland as countries with particularly instructive experience in the taxation of inheritances. Pennsylvania, New York, and Maryland in the United States have experience which is valuable as far as it goes. Three of the countries named, Australia, New Zealand, and Switzerland, have taxation of inheritances which amounts to a conscious attempt to influence the distribution of property.

Some one may interrupt at this point with the objection, "You are proposing measures which impair the rights of private property." The objection is not valid. The right of inheritance is one right, and the right of private property is another and a distinct right. He has made but little progress in the fundamental principles of jurisprudence who does not see how clearly separated are these two rights. The right of property means an exclusive right of control over a thing, but the right of inheritance means the transfer of this right in one manner or another. If there is no will, it means the right of some one to succeed to property, and this right is a product of positive law. If a will is made, the right of inheritance means, not an exclusive right of control vested in a person, but the right of a person to say who shall exercise the right of property over things which were his while he was living, after he is dead, and, consequently, after he has lost all rights of property because the dead have no proprietary rights whatever.
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The right of private property in itself is not an unlimited one, but is limited and regulated to an increasing extent by all modern nations. Let one but think what this right implies. It implies, among other things, my right to fence in a certain portion of the earth’s surface, and to exclude others from it and use it as I see fit, subject only to such general regulations as may exist to prevent the abuse of private property. These regulations, however, as they are general in character, must always leave untouched many gross abuses. But when we come to the claim that my right of disposing of property by last will and testament is practically unlimited, it means not only my right to regulate the use of certain portions of the earth’s surface, or claims to certain portions of other valuable things in this earth, during my lifetime, but for all future time. There are those, indeed, who go so far as to hold that a man may establish certain regulations for the use of property after he is dead and gone, and that these regulations must be binding upon all future generations. Could any claim be more monstrous? It is in itself the extremeest radicalism. We may say, in fact, that it is the furthest reach which radicalism has yet attained.

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The modern man thinks it a right thing in itself that he should be able to tell what shall become of his property after his death, but millions of human beings have lived and died who have thought it a thing right in itself that the laws of inheritance should exclude the right to make a will. This merely illustrates the changing, fluctuating ideas concerning inheritance. In the States of the American Union for some time after our Revolutionary War, the right of the eldest son to receive a double portion of his father’s estate obtained, and it was spoken of as “being according to the law of nature and the dignity of birthright.” As a matter of fact, the laws of inheritance direct the disposition of most property, and they gradually so form our opinions that we look upon what they provide as naturally right, although they provide one thing in one country or state, and another thing in another country or state. It has been said that even when wills are made in modern times they as a rule do little more than carry out the provisions of the law. Perhaps there is no department of life in which law has a greater effect upon public opinion.

If it is the function of the law to regulate inheritance, what should be the purpose of the law? We may say that the law has three purposes. The first is to gratify the desire of the individ-
ual to direct the disposition of his property after his death. This, however, is altogether minor and subordinate. The dead have no legal rights, and we should not allow their wishes to interfere with the living. The second purpose of the law is the chief one, and that is the preservation and security of the family. The third purpose is the welfare of society in general; and under this head we may say that the preservation of small properties is important, and that the idea of justice which demands that a person should make a fair return for that which he receives is one which ought to be kept in view.

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The right of disposing of property by will and testament may be left intact—and should be so left in the public interest—with the limitations already mentioned and to be mentioned presently. After all legally-recognized claims are satisfied, it is beneficial rather than otherwise to allow a person to dispose of the rest of his estate by will, although it should be clearly recognized that this is a matter over which the law has control, and that no human being has a right to say what shall take place on this earth, or what use shall be made of anything he may leave, after he is dead and gone.

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All inheritances of every sort should be taxed, provided the share of an heir exceeds a certain amount. The state or the local political unit—as town or city—must be recognized as a co-heir entitled to a share in all inheritances. A man is made what he is by family, by town, or the local political circle which surrounds him, and by the state in which he lives, and all have claims which ought to be recognized. Taxation of inheritance is the means whereby this claim of the state and town may secure recognition. It should, however, be borne in mind that it is a peculiar tax, and rests upon a different basis from the ordinary tax. The justification which appeals to me most strongly is that the political organisms are co-heirs. There are, however, many different stand-points from which the taxation of inheritances can be justified. Property which comes by inheritance is an income received without toil. It is for the one receiving it an unearned increment of property, and on this account may properly be taxed. The most satisfactory basis upon which property can rest is personal toil and exertion of some kind, and when property comes otherwise than as a return for social service, a special tax finds a good solid basis in justice.

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The use to be made of the funds acquired by the taxation of inheritances, and by establishing the co-heirship of town and state, must vary according to time and place.

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too much to be delayed out of the ordinary taxation.

The States of the Union, and many of the towns, ought to go into forestry, purchasing large tracts of land, especially on mountains and along river courses, and covering these with trees. States and cities have allowed the ownership of valuable public works to slip away from them into the hands of private corporations. Water-works, gas works, street-car lines, and the like might be purchased and operated at cost. All great cities require a larger number of parks, especially of small parks in the crowded sections. Sanitary measures may be mentioned, and some of these are expensive. They, however, lower the death-rate and improve the health of the community. There are many cities which ought to buy slums and tear down the houses in them. The city of Manchester, England, bought quite a large tract of land in the centre of the city, which was the worst slum region in it, and tore down all the houses. It then leased the land for a limited term of years, to be built up with houses according to plans and specifications laid down. The result has been a remarkable improvement in Manchester, and it is said that, when these leases fall in, Manchester will be one of the richest, if not the richest, municipal corporation in the world. London has recently decided to undertake a similar improvement, but it is stated that in the case of London this will involve great expense.

School funds ought to be increased until they become great enough, with the aid of current taxation, to provide the entire population with the best educational facilities of every sort, including manual training, kindergartens, public libraries, universities, industrial museums, art-galleries, and the like. It would be especially desirable to improve the schools in the rural communities, establishing good high-schools wherever the population is sufficient to furnish them with pupils. Good schools in the country districts would tend to keep people in the country,
for now many leave the country and go to the cities purposely to educate their children. It is on every account desirable to make the country pleasanter and more attractive as a place of abode. Another fund may be suggested as suitable to be accumulated out of property inherited by the State and town, and that would be a highway fund, designed to help to improve the streets and roads of the State. The income of this fund could be distributed to towns and counties in such a manner as to encourage them in the improvement of roads and streets. It might be provided, for example, that for every two or three dollars expended by the local political unit one should be granted from the fund.

I believe the line of reform proposed in this article will stand every test which can be applied to it. It is, as already mentioned, a reform which meets with approval wherever tried, and with increasing approval the longer it is tried. It is a reform especially in keeping with democratic institutions, and it has succeeded best in democratic countries. So perfectly is it in keeping with true democracy that the purer, the more complete, and the more cultured the democratic countries have become in which this reform has been tried, the more they are inclined to move further along the same line. It is entirely compatible with the fundamental principles of the existing social order, and does not interfere with its normal and peaceful evolution. It antagonizes no other line of progress, but helps forward every other true reform. It provides ample public funds when accompanied by a rational system of taxation, and yet lays a burden heavy to be borne on no one.

We may examine this reform of the laws of inheritance with respect to the family, and we find that it tends to the development of the family as an institution far better than the existing laws in the United States. It recognizes the solidarity of the family. The husband is responsible to the wife and the wife to the husband, and both are responsible for the children they have brought into the world. It coördinates rights and duties. It may be stated, however, in this connection that duty should be extended among the various members of a family; in particular the reciprocal duties of parents and children should be sharpened and strengthened. The duty of support—and adequate support in proportion to means—should apply both to parents and to children, parents supporting the children in their youth, and children

From Harper’s New Monthly Magazine, Volume 74, Issue 444, May 1887

SOCIAL STUDIES.
Second Series.
I.—THE NATURE AND SIGNIFICANCE OF CORPORATIONS.
BY RICHARD T. ELY.

What a glorious thing, then, is this triumph of democracy! It means that we are approaching nearer to the purpose for which humanity exists. It is a fulfilment of the destiny of mankind. Democracy has already made long strides toward conquest in the domain of political life. We are now entering the era of the gradual triumph of the democratic principle in industrial life, and the peculiar significance of the modern corporation is that it must carry with it the progress of democracy in industry.

The observation that we have as yet by no means attained democracy in industrial life can scarcely be necessary. On the contrary, it is evident that, in marked contradistinction to the general prevalence of political democracy, the production of material good things on a vast scale is still largely conducted despotically. Huge industrial establishments are under the unrestrained control of a single man. At his will they are set in motion; at his will they stand still; at his will capital and labor unite, and are fruitful; at his will they are parted, and remain barren. Men come and go at his bidding. He knows no superior, and recognizes no limitations. He calls an attempt at control "dictation," and resents it with anger.

But this is one extreme. The other extreme is democratic industrialism as represented by co-operative production of workers who furnish both labor power and capital power. The many decide on a course of economic action either directly or indirectly by chosen representatives, and take upon themselves the consequences, whatever they may be, whether they bring prosperity or adversity. Economic democracy has thus begun, and has already won achievements of which the general public is almost in entire ignorance.
There is no limitation whatever to the right of the state to determine the character of corporations. It might be provided as a condition of incorporation that the principle of publicity of all accounts should be universally introduced, that all difficulties with labor should be arbitrated, that directors should be liable for double or treble their investments, that they should further be criminally liable for deceit or fraud practised either upon the public or the share-holders, that a certain portion, as for example ten per centum, of all profits should accrue to the state, and that the entire property should revert to the public after a certain period. These illustrations are for the most part taken from actual experience. Of course this general principle does not apply to nearly the same extent to existing corporations when the matter is viewed either from a legal or an ethical stand-point. But it applies unreservedly to future corporations, and to some considerable extent to existing corporations when they seek a renewal of their charters. Most corporate charters now exist under the reserved right of the state to change them, but this change must not be of such a character as to be equivalent to taking their property, or any part of it, without adequate compensation. This general principle has been affirmed by the highest judicial authority of our land.

But the realization of the democratic ideal is ever difficult. It is the ripe fruit of a long course of evolution. It requires high average intelligence, a good degree of general moral culture, and persistent effort to attain suitable life-forms through which it can act. This last point is perhaps of chief importance in the United States, where there is a general inclination to undervalue the power of institutions and their effect on character. Great progress has been made in certain features of our industrial civilization, and it has been primarily due to improvement in the mechanism of economic society. There is no evidence that in morals or intelligence we are decidedly superior to our fathers fifty years ago, but we have a vastly better banking system. It is one which makes honesty profitable and discourages theft. Likewise diminished fraud in State and city government in many parts of the country is perhaps chiefly attributable to an improved administrative machinery, which renders dishonesty difficult and dangerous. If it is the part of wisdom to pray, "Lead us not into temptation," it is equally the part of wisdom for a people, so far as possible, to remove every temptation to wrong-doing by its public servants, and to place before them every incentive to virtuous conduct.

From: The Century: A Popular Quarterly, Volume 55, Issue 5, March 1898

FRATERNALISM VS. PATERNALISM IN GOVERNMENT.

BY RICHARD T. ELY.

With the reign of Charles I.

There is a great deal of paternalism in the United States, and it is found in the industrial field. It is a paternalism of private corporations performing public functions, because it is claimed that the people are not intelligent and moral enough to perform them directly through their own agents. Arguments used in favor of this paternalism are precisely similar to arguments used in favor of the old political paternalism—namely, the need of intelligence and integrity superior to that of the mass of the people. Like the old political paternalism, it is irresponsible and rejects all claims to control in the interests of the public as an invasion of sacred rights. Like the old political paternalism, those who represent this modern industrial paternalism enjoy large revenues, and they let others labor and fight and die for them. They support their own private armed troops exactly as did the old feudal lords, and the basis of both claims is divine private rights.

Paternalism of a private character—as opposed, I mean, to governmental paternalism—has made alarming progress among us in recent years. The paternalism to which I refer is a paternalism of the rich, and it is a paternalism which they should resist. Inequalities of the most injurious character are by many held justifiable, because it is claimed that we need the very rich to plan, organize, and carry on all important enterprises. Where would our railways be, it is asked, if we did not have among us men who count their money by the million? There is scarcely a town in the land where the people are not waiting for a rich man to start some enterprise. Business, churches, schools, all wait upon the movements of the rich. The idea of self-help dwindles. People fold their hands and wait.

Wealth is antagonistic to its growth.

We may insist upon public support of public institutions, and at the same time afford full scope for the largest amount of private philanthropy. Private parties can do what, as a matter of fact, states cannot at present be persuaded to do, even if it is their proper function. We must, as practical men, take into account the existing situation. Private persons can also go ahead of public opinion and lead it, ever placing high ideals before us. The loftiest conceptions of civilization must ever first dawn in a few minds, and the truest excellence frequently requires vigorous support of strong arms, and that for a long time, before it can secure anything like general recognition.

Perhaps it is now plain to my readers why selfishness must demand very limited functions of the state, and why we must insist upon extended functions of the state. What is the ethical idea of the state? We may say paternalism. The state, and the state alone, stands for all of us. All other institutions are more or less exclusive, and stand for part of us—for some of us, not for all of us. As the state advances, as it becomes more ideal in its constitution and in its administration, as its paternal, ethical essence becomes purer, its functions must ever grow wider and wider. So-called self-help—that is, individual self-help—in protection of person and property, comes to be regarded as barbarism. Private enterprise in war, like Wallenstein’s in the Thirty Years’ War, is, thank God, abolished; and education, art, the care of the weak and dependent, and the nobler departments of social life, become to an increasing extent public in character. First the individual bears the burden; then perhaps the association of individuals; then, in the middle ages, the church; then, since the Reformation, the state, the greatest of all cooperative institutions,—that is, the people in their organic capacity,—takes up the work of civilization.
Theodore Roosevelt, “National Life and Character,” in *American Ideals*
**Theodore Roosevelt as a Reformer**

[Roosevelt has advanced the cause of Progressivism by combining the best of the “Hamiltonian” and “Jeffersonian” traditions, that is, he has prepared the way for faith in strong national government and democratic reforms…]

It is fortunate, consequently, that one reformer can be named whose work has tended to give reform the dignity of a constructive mission. Mr. Theodore Roosevelt’s behavior at least is not dictated by negative conception of reform. During the course of an extremely active and varied political career he has, indeed, been all kinds of a reformer…When an accident placed him in the Presidential chair, he consistently used the power of the Federal government and his own influence and popularity for the purpose of regulating the corporations in what he believed to be the public interest. No other American has had anything like so varied and so intimate an acquaintance with the practical work of reform as has Mr. Roosevelt; and when, after more than twenty years of such experience, he adds to the work of administrative reform the additional task of political and economic reconstruction, his originality cannot be considered the result of innocence. Mr. Roosevelt’s reconstructive policy does not go very far in purpose or achievement, but limited as it is, it does tend to give the agitation for reform the benefit of a much more positive significance and a much more dignified task…

What Mr. Roosevelt really did was to revive the Hamiltonian ideal of constructive national legislation…Of course Theodore Roosevelt is Hamiltonian with a difference. Hamilton’s fatal error consisted in his attempt to make the Federal organization not merely the effective engine of the national interest, but also a bulwark against the rising tide of democracy. The new Federalism or rather new Nationalism is not in any way inimical to democracy…The whole tendency of his programme is to give a democratic meaning and purpose to the Hamiltonian tradition and method. He proposes to use the power and the resources of the Federal government for the purpose of making his countrymen a more complete democracy in organization and practice; but he does not make these proposals, as Mr. Bryan does, gingerly and with a bad conscience. He makes them with a frank and full confidence in an efficient national organization as the necessary agent of the national interest and purpose. He has completely abandoned that part of the traditional democratic creed which tends to regard the assumption by the government of responsibility, and its endowment with power adequate to the responsibility as inherently dangerous and undemocratic. He realizes that any efficiency of organization and delegation of power which is necessary to the promotion of the American national interest must be helpful to democracy…

As the founder of a new national democracy, then, his influence and his work have tended to emancipate American democracy from its Jeffersonian bondage. They have tended to give a new meaning to popular government by endowing it with larger powers, more positive responsibilities, and a better faith in human excellence. Jefferson believed theoretically in human goodness, but in actual practice his faith in human nature was exceedingly restricted. Just as the older aristocratic theory had been to justify hereditary political leadership by considering the ordinary man as necessarily irresponsible and incapable, so the early French democrats, and Jefferson after them, made faith in the people equivalent to a profound suspicion of responsible official leadership. Exceptional power merely offered exceptional opportunities for abuse. He
refused, as far as he could, to endow special men, even when chosen by the people, with any opportunity to promote the public welfare proportionate to their abilities. So far as his influence has prevailed the government of the country was organized on the basis of a cordial distrust of the man of exceptional competence, training, or independence as a public official. To the present day this distrust remains the sign by which the demoralizing influence of the Jeffersonian democratic creed is most plainly to be traced. So far as it continues to be influential it destroys one necessary condition of responsible and efficient government, and it is bound to paralyze any attempt to make the national organization adequate to the promotion of the national interest. Mr. Roosevelt has exhibited his genuinely national spirit in nothing so clearly as in his endeavor to give to men of special ability, training, and eminence a better opportunity to serve the public. He has not only appointed such men to office, but he has tried to supply them with an administrative machinery which would enable them to use their abilities to the best public advantage; and he has thereby shown a faith in human nature far more edifying and far more genuinely democratic than that of Jefferson or Jackson.

Mr. Roosevelt, however, has still another title to distinction among the brethren of reform. He has not only nationalized the movement, and pointed it in the direction of a better conception of democracy, but he has rallied to its hammer the ostensible, if not the very enthusiastic, support of the Republican party. He has restored that party to some sense of its historic position and purpose. As the party which before the War had insisted on making the nation answerable for the solution of the slavery problem, it has inherited the tradition of national responsibility for the national good; but it was rapidly losing all sense of its historic mission, and, like the Whigs, was constantly using its principle and its prestige as a cloak for the aggrandizement of special interests…The Republican party is still very far from being a wholly sincere agent of the national reform interest. Its official leadership is opposed to reform; and it cannot be made to take a single step in advance except under compulsion. But Mr. Roosevelt probably prevented it from drifting into the position of an anti-reform party—which if it had happened would have meant its ruin, and would have damaged the cause of national reform. A Republican party which was untrue to the principle of national responsibility would have no reason for existence; and the Democratic party, as we have seen, cannot become the party of national responsibility without being faithless to its own creed.

THE REFORMATION OF THEODORE ROOSEVELT

[...But Roosevelt has not done enough to free Americans of their attachment to Founding principles.]

Before finishing this account of Mr. Roosevelt's services as a reformer, and his place in the reforming movement, a serious objection on the score of consistency must be fairly faced…If, in one respect, he has been emancipating American democracy from the Jeffersonian bondage, he has in another respect been tightening the bonds, because he has continued to identify democracy with the legal constitution of a system of insurgent, ambiguous, and indiscriminate individual rights…
Theodore Roosevelt, The Right of the People to Rule, 20 March 1912

THE great fundamental issue now before the Republican party and before our people can be stated briefly. It is, Are the American people fit to govern themselves, to rule themselves, to control themselves? I believe they are. My opponents do not. I believe in the right of the people to rule. I believe the majority of the plain people of the United States will, day in and day out, make fewer mistakes in governing themselves than any smaller class or body of men, no matter what their training, will make in trying to govern them. I believe, again, that the American people are, as a whole, capable of self—control and of learning by their mistakes. Our opponents pay lip—loyalty to this doctrine; but they show their real beliefs by the way in which they champion every device to make the nominal rule of the people a sham. I have scant patience with this talk of the tyranny of the majority. Wherever there is tyranny of the majority, I shall protest against it with all my heart and soul. But we are today suffering from the tyranny of minorities. It is a small minority that is grabbing our coal—deposits, our water—powers, and our harbor fronts. A small minority is battening on the sale of adulterated foods and drugs. It is a small minority that lies behind monopolies and trusts. It is a small minority that stands behind the present law of master and servant, the sweat—shops, and the whole calendar of social and industrial injustice. It is a small minority that is to—day using our convention system to defeat the will of a majority of the people in the choice of delegates to the Chicago Convention…

No sane man who has been familiar with the government of this country for the last twenty years will complain that we have had too much of the rule of the majority…Have our leaders always, or generally, worked for the benefit of human beings, to increase the prosperity of all the people, to give each some opportunity of living decently and bringing up his children well? The questions need no answer.

Now there has sprung up a feeling deep in the hearts of the people—not of the bosses and professional politicians, not of the beneficiaries of special privilege—a pervading belief of thinking men that when the majority of the people do in fact, as well as theory, rule, then the servants of the people will come more quickly to answer and obey, not the commands of the special interests, but those of the whole people. To reach toward that end the Progressives of the Republican party in certain States have formulated certain proposals for change in the form of the State government—certain new "checks and balances" which may check and balance the special interests and their allies. That is their purpose. Now turn for a moment to their proposed methods.

First, there are the "initiative and referendum," which are so framed that if the legislatures obey the command of some special interest, and obstinately refuse the will of the majority, the majority may step in and legislate directly…Then there is the recall of public officers, the principle that an officer chosen by the people who is unfaithful may be recalled by vote of the majority before he finishes his term. I will speak of the recall of judges in a moment — leave that aside — but as to the other officers, I have heard no argument advanced against the proposition, save that it will make the public officer timid and always currying favor with the mob. That argument means that you can fool all the people all the time, and is an avowal of disbelief in democracy…

Then there is the direct primary—the real one, not the New York one—and that, too, the Progressives offer as a check on the special interests. Most clearly of all does it seem to me that this change is wholly good—for every State. The system of party government is not written in our constitutions, but it is none the less a vital and essential part of our form of government. In
that system the party leaders should serve and carry out the will of their own party. There is no need to show how far that theory is from the facts, or to rehearse the vulgar thieving partnerships of the corporations and the bosses, or to show how many times the real government lies in the hands of the boss, protected from the commands and the revenge of the voters by his puppets in office and the power of patronage. We need not be told how he is thus entrenched nor how hard he is to overthrow. The facts stand out in the history of nearly every State in the Union. They are blots on our political system. The direct primary will give the voters a method ever ready to use, by which the party leader shall be made to obey their command. The direct primary, if accompanied by a stringent corrupt—practices act, will help break up the corrupt partnership of corporations and politicians.

My opponents charge that two things in my programme are wrong because they intrude into the sanctuary of the judiciary. The first is the recall of judges; and the second, the review by the people of, judicial decisions on certain constitutional questions. I have said again and again that I do not advocate the recall of judges in all States and in all communities… But — I say it so soberly — democracy has a right to approach the sanctuary of the courts when a special interest has corruptly found sanctuary there; and this is exactly what has happened in some of the States where the recall of the judges is a living issue. I would far more willingly trust the whole people to judge such a case than some special tribunal—perhaps appointed by the same power that chose the judge—if that tribunal is not itself really responsible to the people and is hampered and clogged by the technicalities of impeachment proceedings…

I am proposing merely that in a certain class of cases involving police power, when a State court has set aside as unconstitutional a law passed by the legislature for the general welfare, the question of the validity of the law—which should depend, as Justice Holmes so well phrases it, upon the prevailing morality or preponderant opinion—be submitted for final determination to a vote of the people, taken after due time for consideration.

And I contend that the people, in the nature of things, must be better judges of what is the preponderant opinion than the courts, and that the courts should not be allowed to reverse the political philosophy of the people…

Friends, our task as Americans is to strive for social and industrial justice, achieved through the genuine rule of the people. This is our end, our purpose. The methods for achieving the end are merely expedients, to be finally accepted or rejected according as actual experience shows that they work well or ill. But in our hearts we must have this lofty purpose, and we must strive for it in all earnestness and sincerity, or our work will come to nothing. In order to succeed we need leaders of inspired idealism, leaders to whom are granted great visions, who dream greatly and strive to make their dreams come true; who can kindle the people with the fire from their own burning souls…

**Progressive Party Platform, 1912**

The conscience of the people, in a time of grave national problems, has called into being a new party, born of the nation’s sense of justice. We of the Progressive party here dedicate ourselves to the fulfillment of the duty laid upon us by our fathers to maintain the government of the people, by the people and for the people whose foundations they laid.

We hold with Thomas Jefferson and Abraham Lincoln that the people are the masters of their Constitution, to fulfill its purposes and to safeguard it from those who, by perversion of its
intent, would convert it into an instrument of injustice. In accordance with the needs of each generation the people must use their sovereign powers to establish and maintain equal opportunity and industrial justice, to secure which this Government was founded and without which no republic can endure.

This country belongs to the people who inhabit it. Its resources, its business, its institutions and its laws should be utilized, maintained or altered in whatever manner will best promote the general interest.

It is time to set the public welfare in the first place.

The Old Parties. Political parties exist to secure responsible government and to execute the will of the people.

From these great tasks both of the old parties have turned aside. Instead of instruments to promote the general welfare, they have become the tools of corrupt interests which use them impartially to serve their selfish purposes. Behind the ostensible government sits enthroned an invisible government owing no allegiance and acknowledging no responsibility to the people.

To destroy this invisible government, to dissolve the unholy alliance between corrupt business and corrupt politics is the first task of the statesmanship of the day.

The deliberate betrayal of its trust by the Republican party, the fatal incapacity of the Democratic party to deal with the new issues of the new time, have compelled the people to forge a new instrument of government through which to give effect to their will in laws and institutions.

Unhampered by tradition, uncorrupted by power, undismayed by the magnitude of the task, the new party offers itself as the instrument of the people to sweep away old abuses, to build a new and nobler commonwealth.

A Covenant With the People. This declaration is our covenant with the people, and we hereby bind the party and its candidates in State and Nation to the pledges made herein.

The Rule of the People. The National Progressive party, committed to the principles of government by a self-controlled democracy expressing its will through representatives of the people, pledges itself to secure such alterations in the fundamental law of the several States and of the United States as shall insure the representative character of the government.

In particular, the party declares for direct primaries for the nomination of State and National officers, for nation-wide preferential primaries for candidates for the presidency; for the direct election of United States Senators by the people; and we urge on the States the policy of the short ballot, with responsibility to the people secured by the initiative, referendum and recall.

Amendment of Constitution. The Progressive party, believing that a free people should have the power from time to time to amend their fundamental law so as to adapt it progressively to the changing needs of the people, pledges itself to provide a more easy and expeditious method of amending the Federal Constitution.

Nation and State. Up to the limit of the Constitution, and later by amendment of the Constitution, if found necessary, we advocate bringing under effective national jurisdiction those problems which have expanded beyond reach of the individual States.

It is as grotesque as it is intolerable that the several States should by unequal laws in matter of common concern become competing commercial agencies, barter the lives of their children, the health of their women and the safety and well being of their working people for the benefit of their financial interests.

The extreme insistence on States' rights by the Democratic party in the Baltimore platform demonstrates anew its inability to understand the world into which it has survived or to
administer the affairs of a union of States which have in all essential respects become one people.

Equal Suffrage. The Progressive party, believing that no people can justly claim to be a true democracy which denies political rights on account of sex, pledges itself to the task of securing equal suffrage to men and women alike.

Corrupt Practices. We pledge our party to legislation that will compel strict limitation of all campaign contributions and expenditures, and detailed publicity of both before as well as after primaries and elections.

Publicity and Public Service. We pledge our party to legislation compelling the registration of lobbyists; publicity of committee hearings except on foreign affairs, and recording of all votes in committee; and forbidding federal appointees from holding office in State or National political organizations, or taking part as officers or delegates in political conventions for the nomination of elective State or National officials.

The Courts. The Progressive party demands such restriction of the power of the courts as shall leave to the people the ultimate authority to determine fundamental questions of social welfare and public policy. To secure this end, it pledges itself to provide:

1. That when an Act, passed under the police power of the State is held unconstitutional under the State Constitution, by the courts, the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the Act to become law, notwithstanding such decision.

2. That every decision of the highest appellate court of a State declaring an Act of the Legislature unconstitutional on the ground of its violation of the Federal Constitution shall be subject to the same review by the Supreme Court of the United States as is now accorded to decisions sustaining such legislation…

Social and Industrial Justice. The supreme duty of the Nation is the conservation of human resources through an enlightened measure of social and industrial justice. We pledge ourselves to work unceasingly in State and Nation for:

Effective legislation looking to the prevention of industrial accidents, occupational diseases, overwork, involuntary unemployment, and other injurious effects incident to modern industry;

The fixing of minimum safety and health standards for the various occupations, and the exercise of the public authority of State and Nation, including the Federal Control over interstate commerce, and the taxing power, to maintain such standards;

The prohibition of child labor;

Minimum wage standards for working women, to provide a "living wage" in all industrial occupations;

The general prohibition of night work for women and the establishment of an eight hour day for women and young persons;

One day’s rest in seven for all wage workers;

The eight hour day in continuous twenty-four hour industries;

…Publicity as to wages, hours and conditions of labor; full reports upon industrial accidents and diseases, and the opening to public inspection of all tallies, weights, measures and check systems on labor products;

Standards of compensation for death by industrial accident and injury and trade disease which will transfer the burden of lost earnings from the families of working people to the industry, and thus to the community;
The protection of home life against the hazards of sickness, irregular employment and old age through the adoption of a system of social insurance adapted to American use;

The development of the creative labor power of America by lifting the last load of illiteracy from American youth and establishing continuation schools for industrial education under public control and encouraging agricultural education and demonstration in rural schools;

The establishment of industrial research laboratories to put the methods and discoveries of science at the service of American producers;

We favor the organization of the workers, men and women, as a means of protecting their interests and of promoting their progress.

**Department of Labor.** We pledge our party to establish a department of labor with a seat in the cabinet, and with wide jurisdiction over matters affecting the conditions of labor and living.

**Country Life.** The development and prosperity of country life are as important to the people who live in the cities as they are to the farmers. Increase of prosperity on the farm will favorably affect the cost of living, and promote the interests of all who dwell in the country, and all who depend upon its products for clothing, shelter and food.

We pledge our party to foster the development of agricultural credit and co-operation, the teaching of agriculture in schools, agricultural college extension, the use of mechanical power on the farm, and to re-establish the Country Life Commission, thus directly promoting the welfare of the farmers, and bringing the benefits of better farming, better business and better living within their reach.

**High Cost of Living.** The high cost of living is due partly to worldwide and partly to local causes; partly to natural and partly to artificial causes. The measures proposed in this platform on various subjects such as the tariff, the trusts and conservation, will of themselves remove the artificial causes.

There will remain other elements such as the tendency to leave the country for the city, waste, extravagance, bad system of taxation, poor methods of raising crops and bad business methods in marketing crops.

To remedy these conditions requires the fullest information and based on this information, effective government supervision and control to remove all the artificial causes. We pledge ourselves to such full and immediate inquiry and to immediate action to deal with every need such inquiry discloses.

**Health.** We favor the union of all the existing agencies of the Federal Government dealing with the public health into a single national health service...

**Business.** We believe that true popular government, justice and prosperity go hand in hand, and, so believing, it is our purpose to secure that large measure of general prosperity which is the fruit of legitimate and honest business, fostered by equal justice and by sound progressive laws.

We demand that the test of true prosperity shall be the benefits conferred thereby on all the citizens, not confined to individuals or classes, and that the test of corporate efficiency shall be the ability better to serve the public; that those who profit by control of business affairs shall justify that profit and that control by sharing with the public the fruits thereof.

We therefore demand a strong National regulation of inter-State corporations. The corporation is an essential part of modern business. The concentration of modern business, in some degree, is both inevitable and necessary for national and international business efficiency. But the existing concentration of vast wealth under a corporate system, unguarded and
uncontrolled by the Nation, has placed in the hands of a few men enormous, secret, irresponsible power over the daily life of the citizen—a power insufferable in a free Government and certain of abuse.

This power has been abused, in monopoly of National resources, in stock watering, in unfair competition and unfair privileges, and finally in sinister influences on the public agencies of State and Nation. We do not fear commercial power, but we insist that it shall be exercised openly, under publicity, supervision and regulation of the most efficient sort, which will preserve its good while eradicating and preventing its ill.

To that end we urge the establishment of a strong Federal administrative commission of high standing, which shall maintain permanent active supervision over industrial corporations engaged in inter-State commerce, or such of them as are of public importance, doing for them what the Government now does for the National banks, and what is now done for the railroads by the Inter-State Commerce Commission.

Such a commission must enforce the complete publicity of those corporation transactions which are of public interest; must attack unfair competition, false capitalization and special privilege, and by continuous trained watchfulness guard and keep open equally all the highways of American commerce…

**Conservation.** The natural resources of the Nation must be promptly developed and generously used to supply the people's needs, but we cannot safely allow them to be wasted, exploited, monopolized or controlled against the general good. We heartily favor the policy of conservation, and we pledge our party to protect the National forests without hindering their legitimate use for the benefit of all the people.

**Tariff.** We believe in a protective tariff which shall equalize conditions of competition between the United States and foreign countries, both for the farmer and the manufacturer, and which shall maintain for labor an adequate standard of living.

Primarily the benefit of any tariff should be disclosed in the pay envelope of the laborer. We declare that no industry deserves protection which is unfair to labor or which is operating in violation of Federal law. We believe that the presumption is always in favor of the consuming public.

We demand tariff revision because the present tariff is unjust to the people of the United States. Fair dealing toward the people requires an immediate downward revision of those schedules wherein duties are shown to be unjust or excessive…

**Inheritance and Income Tax.** We believe in a graduated inheritance tax as a National means of equalizing the obligations of holders of property to Government, and we hereby pledge our party to enact such a Federal law as will tax large inheritances, returning to the States an equitable percentage of all amounts collected.

We favor the ratification of the pending amendment to the Constitution giving the Government power to levy an income tax…

**Conclusion.** On these principles and on the recognized desirability of uniting the Progressive forces of the Nation into an organization which shall unequivocally represent the Progressive spirit and policy we appeal for the support of all American citizens, without regard to previous political affiliations.
William Brennan, “To the Text and Teaching Symposium,” 12 October 1985

It will perhaps not surprise you that the text I have chosen for exploration is the amended Constitution of the United States, which, of course, entrenches the Bill of Rights and the Civil War amendments, and draws sustenance from the bedrock principles of another great text, the Magna Carta. So fashioned, the Constitution embodies the aspiration to social justice, brotherhood, and human dignity that brought this nation into being. The Declaration of Independence, the Constitution and the Bill of Rights solemnly committed the United States to be a country where the dignity and rights of all persons were equal before all authority. In all candor we must concede that part of this egalitarianism in America has been more pretension than realized fact. But we are an aspiring people, a people with faith in progress. Our amended Constitution is the lodestar for our aspirations. Like every text worth reading, it is not crystalline. The phrasing is broad and the limitations of its provisions are not clearly marked. Its majestic generalities and ennobling pronouncements are both luminous and obscure. This ambiguity of course calls forth interpretation, the interaction of reader and text. The encounter with the constitutional text has been, in many senses, my life’s work.

My approach to this text may differ from the approach of other participants in this symposium to their texts. Yet such differences may themselves stimulate reflection about what it is we do when we “interpret” a text. Thus I will attempt to elucidate my approach to the text as well as my substantive interpretation.

Perhaps the foremost difference is the fact that my encounters with the constitutional text are not purely or even primarily introspective; the Constitution cannot be for me simply a contemplative haven for private moral reflection. My relation to this great text is inescapably public. That is not to say that my reading of the text is not a personal reading, only that the personal reading perforce occurs in a public context, and is open to critical scrutiny from all quarters.

The Constitution is fundamentally a public text—the monumental charter of a government and a people—and a Justice of the Supreme Court must apply it to resolve public controversies. For, from our beginnings, a most important consequence of the constitutionally created separation of powers has been the American habit, extraordinary to other democracies, of casting social, economic, philosophical and political questions in the form of law suits, in an attempt to secure ultimate resolution by the Supreme Court. In this way, important aspects of the most fundamental issues confronting our democracy may finally arrive in the Supreme Court for judicial determination. Not infrequently, these are the issues upon which contemporary society is most deeply divided. They arouse our deepest emotions. The main burden of my twenty-nine terms on the Supreme Court has thus been to wrestle with the Constitution in this heightened public context, to draw meaning from the text in order to resolve public controversies…

There are those who find legitimacy in fidelity to what they call “the intentions of the Framers.” In its most doctrinaire incarnation, this view demands that Justices discern exactly what the Framers thought about the question under consideration and simply follow that intention in resolving the case before them. It is a view that feigns self-effacing deference to the specific judgments of those who forged our original social compact. But in truth it is little more than arrogance cloaked as humility. It is arrogant to pretend that from our vantage we can gauge accurately the intent of the Framers on application of principle to specific, contemporary questions. All too often, sources of potential enlightenment such as records of the ratification debates provide sparse or ambiguous evidence of the original intention. Typically, all that can be
gleaned is that the Framers themselves did not agree about the application or meaning of particular constitutional provisions, and hid their differences in cloaks of generality. Indeed, it is far from clear whose intention is relevant—that of the drafters, the congressional disputants, or the ratifiers in the states?—or even whether the idea of an original intention is a coherent way of thinking about a jointly drafted document drawing its authority from a general assent of the states. And apart from the problematic nature of the sources, our distance of two centuries cannot but work as a prism refracting all we perceive. One cannot help but speculate that the chorus of lamentations calling for interpretation faithful to “original intention”—and proposing nullification of interpretations that fail this quick litmus test—must inevitably come from persons who have no familiarity with the historical record.

Perhaps most importantly, while proponents of this facile historicism justify it as a depoliticization of the judiciary, the political underpinnings of such a choice should not escape notice…Those who would restrict claims of right to the values of 1789 specifically articulated in the Constitution turn a blind eye to social progress and eschew adaptation of overarching principles to changes of social circumstance…

To remain faithful to the content of the Constitution, therefore, an approach to interpreting the text must account for the existence of these substantive value choices, and must accept the ambiguity inherent in the effort to apply them to modern circumstances. The Framers discerned fundamental principles through struggles against particular malefactions of the Crown; the struggle shapes the particular contours of the articulated principles. But our acceptance of the fundamental principles has not and should not bind us to those precise, at times anachronistic, contours. Successive generations of Americans have continued to respect these fundamental choices and adopt them as their own guide to evaluating quite different historical practices. Each generation has the choice to overrule or add to the fundamental principles enunciated by the Framers; the Constitution can be amended or it can be ignored. Yet with respect to its fundamental principles, the text has suffered neither fate. Thus, if I may borrow the words of an esteemed predecessor, Justice Robert Jackson, the burden of judicial interpretation is to translate “the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century.”

We current Justices read the Constitution in the only way that we can: as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time. For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be their measure to the vision of our time. Similarly, what those fundamentals mean for us, our descendants will learn, cannot be the measure to the vision of their time…

Having discussed at some length how I, as a Supreme Court Justice, interact with this text, I think it time to turn to the fruits of this discourse. For the Constitution is a sublime oration on the dignity of man, a bold commitment by a people to the ideal of libertarian dignity protected through law. Some reflection is perhaps required before this can be seen.

The Constitution on its face is, in large measure, a structuring text, a blueprint for government. And when the text is not prescribing the form of government it is limiting the powers of that government. The original document, before addition of any of the amendments, does not speak primarily of the rights of man, but of the abilities and disabilities of government.
When one reflects upon the text’s preoccupation with the scope of government as well as its shape, however, one comes to understand that what this text is about is the relationship of the individual and the state. The text marks the metes and bounds of official authority and individual autonomy. When one studies the boundary that the text marks out, one gets a sense of the vision of the individual embodied in the Constitution.

As augmented by the Bill of Rights and the Civil War Amendments, this text is a sparkling vision of the supremacy of the human dignity of every individual. This vision is reflected in the very choice of democratic self-governance: the supreme value of a democracy is the presumed worth of each individual. And this vision manifests itself most dramatically in the specific prohibitions of the Bill of Rights, a term which I henceforth will apply to describe not only the original first eight amendments, but the Civil War amendments as well. It is a vision that has guided us as a people throughout our history, although the precise rules by which we have protected fundamental human dignity have been transformed over time in response to both transformations of social condition and evolution of our concepts of human dignity…

There is no worse injustice than wrongly to strip a man of his dignity. And our adherence to the constitutional vision of human dignity is so strict that even after convicting a person according to these stringent standards, we demand that his dignity be infringed only to the extent appropriate to the crime and never by means of wanton infliction of pain or deprivation. I interpret the Constitution plainly to embody these fundamental values…

Recognition of broad and deep rights of expression and of conscience reaffirm the vision of human dignity in many ways. They too redeem the promise of self-governance by facilitating—indeed demanding—robust, uninhibited and wide-open debate on issues of public importance. Such public debate is of course vital to the development and dissemination of political ideas. As importantly, robust public discussion is the crucible in which personal political convictions are forged. In our democracy, such discussion is a political duty, it is the essence of self government. The constitutional vision of human dignity rejects the possibility of political orthodoxy imposed from above; it respects the right of each individual to form and to express political judgments, however far they may deviate from the mainstream and however unsettling they might be to the powerful or the elite. Recognition of these rights of expression and conscience also frees up the private space for both intellectual and spiritual development free of government dominance, either blatant or subtle…

I do not mean to suggest that we have in the last quarter century achieved a comprehensive definition of the constitutional ideal of human dignity. We are still striving toward that goal, and doubtless it will be an eternal quest. For if the interaction of this Justice and the constitutional text over the years confirms any single proposition, it is that the demands of human dignity will never cease to evolve…

Calvin Coolidge, “Speech on the Occasion of the One Hundred and Fiftieth Anniversary of the Declaration of Independence,” 5 July 1926

The American Revolution represented the informed and mature convictions of a great mass of independent, liberty-loving, God-fearing people who knew their rights, and possessed the courage to dare to maintain them…

It was not because it was proposed to establish a new nation, but because it was proposed to establish a nation on new principles, that July 4, 1776, has come to be regarded as one of the
greatest days in history. Great ideas do not burst upon the world unannounced. They are reached by a gradual development over a length of time usually proportionate to their importance. This is especially true of the principles laid down in the Declaration of Independence. Three very definite propositions were set out in its preamble regarding the nature of mankind and therefore of government. These were the doctrine that all men are created equal, that they are endowed with certain inalienable rights, and that therefore the source of the just powers of government must be derived from the consent of the governed…

About the Declaration there is a finality that is exceedingly restful. It is often asserted that the world has made a great deal of progress since 1776, that we have had new thoughts and new experiences which have given us a great advance over the people of that day, and that we may therefore very well discard their conclusions for something more modern. But that reasoning cannot be applied to this great charter. If all men are created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just powers from the consent of the governed, that is final. No advance, no progress can be made beyond these propositions. If anyone wishes to deny their truth or their soundness, the only direction in which he can proceed historically is not forward, but backward toward the time when there was no equality, no rights of the individual, no rule of the people. Those who wish to proceed in that direction cannot claim to progress. They are reactionary. Their ideas are not more modern, but more ancient, than those of the Revolutionary fathers.

_**Herbert Hoover, “Rugged Individualism” Speech, 22 October 1928**_

…Before I enter upon that discussion of principles I wish to lay before you the proof of progress under Republican rule. In doing this I do not need to review its seventy years of constructive history. That history shows that the Republican party has ever been a party of progress. It has reflected the spirit of the American people. We are a progressive people. Our history of 150 years in the greatest epic of human progress. Tonight to demonstrate the constructive character of our Party, I need only briefly picture the advance of fundamental progress during the past seven and a half years since we took over the Government amidst the ruin of war…

The slogan of progress is changing from the full dinner pail to the full garage. Our people have more to eat, better things to wear, and better homes. We have even gained in elbow room in our homes…We have increased the security of his job to every man and woman. We have decreased the fear of old age, the fear of poverty, the fear of unemployment and these are fears which have always been amongst the greatest calamities of human kind…

It detracts nothing from the character and energy of the American people, it minimizes in no degree the quality of their accomplishments to say that the policies of the Republican Party have played a large part in the building of this progress of these last seven and one-half years…

It is sufficient to remind you of the restoration of employment to the millions who walked your streets in idleness to remind you of the creation of the budget system; the reduction of six billions of national debt which gave the impulse of that vast sum returned to industry and commerce; the four sequent reductions of taxes and thereby the lift to the living of every family; the enactment of an adequate protective tariff and immigration laws which have raised and safeguarded our wages from floods of goods or labor from foreign countries; the creation of credit facilities and many aids to agriculture; the building up of foreign trade; the care of
veterans, the development of aviation, of radio, of our inland waterways, our highways; the expansion of scientific research, of welfare activities, safer highways, safer mines, outdoor recreation, in better homes, in public health and the care of children. Nor do I need remind you that Government today deals with an economic and social system vastly more intricate and delicately adjusted than ever before. It now must be kept in perfect tune if we would not, through dislocation, have a breakdown in employment and in standards of living of our people. The Government has come to more and more touch this delicate web at a thousand points. Yearly the relations of Government to national prosperity becomes more and more intimate. It has only by keen large vision and cooperation by the Government that stability in business and stability in employment has been maintained during this past seven and a half years. Never has there been a period when the Federal Government has given such aid and impulse to the progress of our people, not alone to economic progress but to development of those agencies which make for moral and spiritual progress.

But in addition to this great record of contributions of the Republican Party to progress, there has been a further fundamental contribution — a contribution perhaps more important than all the others — and that is the resistance of the Republican Party to every attempt to inject the Government into business in competition with its citizens.

After the war, when the Republican Party assumed administration of the country, we were faced with the problem of determination of the very nature of our national life. Over 150 years we have builded up a form of self-government and we had builded up a social system which is peculiarly our own. It differs fundamentally from all others in the world. It is the American system. It is just as definite and positive a political and social system as has ever been developed on earth. It is founded upon the conception that self-government can be preserved only by decentralization of Government in the State and by fixing local responsibility; but further than this, it is founded upon the social conception that only through ordered liberty, freedom and equal opportunity to the individual will his initiative and enterprise drive the march of progress.

During the war we necessarily turned to the Government to solve every difficult economic problem — the Government having absorbed every energy of our people to war there was no other solution. For the preservation of the State the Government became a centralized despotism which undertook responsibilities, assumed powers, exercised rights, and took over the business of citizens. To large degree we regimented our whole people temporarily into a socialistic state. However justified it was in time of war if continued in peace time it would destroy not only our system but progress and freedom in our own country and throughout the world. When the war closed the most vital of all issues was whether Governments should continue war ownership and operation of many instrumentalities of production and distribution. We were challenged with the choice of the American system "rugged individualism" or the choice of a European system of diametrically opposed doctrines — doctrines of paternalism and state socialism. The acceptance of these ideas meant the destruction of self-government through centralization of government; it meant the undermining of initiative and enterprise upon which our people have grown to unparalleled greatness.

The Democratic administration cooperated with the Republican Party to demobilize many of her activities and the Republican Party from the beginning of its period of power resolutely turned its face away from these ideas and these war practices, back to our fundamental conception of the state and the rights and responsibilities of the individual. Thereby it restored confidence and hope in the American people, it freed and stimulated enterprise, it restored the Government to its position as an umpire instead of a player in the economic game. For these
reasons the American people have gone forward in progress while the rest of the world is halting and some countries have even gone backwards. If anyone will study the causes which retarded recuperation of Europe, he will find much of it due to the stifling of private initiative on one hand, and overloading of the Government with business on the other.

I regret, however, to say that there has been revived in this campaign a proposal which would be a long step to the abandonment of our American system, to turn to the idea of government in business. Because we are faced with difficulty and doubt over certain national problems which we are faced — that is prohibition, farm relief and electrical power — our opponents propose that we must to some degree thrust government into these businesses and in effect adopt state socialism as a solution...

Bureaucracy is ever desirous of spreading its influence and its power. You cannot give to a government the mastery of the daily working life of a people without at the same time giving it mastery of the peoples’ souls and thoughts. Every expansion of government means that government in order to protect itself from political consequences of its errors and wrongs is driven onward and onward without peace to greater and greater control of the country’s press and platform. Free speech does not live many hours after free industry and free commerce die.

It is false liberalism that interprets itself into the Government operation of business. The bureaucratization of our country would poison the very roots of liberalism that is free speech, free assembly, free press, political equality and equality of opportunity. It is the road, not to more liberty, but to less liberty. Liberalism should be found not striving to spread bureaucracy, but striving to set bounds to it. True liberalism seeks freedom first in the confident belief that without freedom the pursuit of all other blessings and benefits is vain. That belief is the foundation of all American progress, political as well as economic...

One of the great problems of government is to determine to what extent the Government itself shall interfere with commerce and industry and how much it shall leave to individual exertion. It is just as important that business keep out of government as that government keep out of business. No system is perfect. We have had abuses in the conduct of business that every good citizen resents. But I insist that the results show our system better than any other and retains the essentials of freedom...

One test of our economic and social system is its capacity to cure its own abuses. New abuses and new relationships to the public interest will occur as long as we continue to progress. If we are to be wholly dependent upon government to cure every evil we shall by this very method have created an enlarged and deadening abuse through the extension of bureaucracy and the clumsy and incapable handling of delicate economic forces. And much abuse has been and can be cured by inspiration and cooperation, rather than by regulation of the government...

Franklin D. Roosevelt, Commonwealth Club Address, 23 September 1932

…I want to speak not of politics but of government. I want to speak not of parties, but of universal principles. They are not political, except in that larger sense in which a great American once expressed a definition of politics, that nothing in all of human life is foreign to the science of politics...

The issue of government has always been whether individual men and women will have to serve some system of government or economics, or whether a system of government and economics exists to serve individual men and women. This question has persistently dominated
the discussion of government for many generations. On questions relating to these things men
have differed, and for time immemorial it is probable that honest men will continue to differ.

The final word belongs to no man; yet we can still believe in change and in progress.
Democracy, as a dear old friend of mine in Indiana, Meredith Nicholson, has called it, is a quest,
a never ending seeking for better things, and in the seeking for these things and the striving for
them, there are many roads to follow. But, if we map the course of these roads, we find that there
are only two general directions…

The American Revolution was a turning point in it. After the Revolution the struggle
continued and shaped itself in the public life of the country. There were those who because they
had seen the confusion which attended the years of war for American independence surrendered
to the belief that popular government was essentially dangerous and essentially unworkable.
They were honest people, my friends, and we cannot deny that their experience had warranted
some measure of fear. The most brilliant, honest and able exponent of this point of view was
Hamilton. He was too impatient of slow—moving methods. Fundamentally he believed that the
safety of the republic lay in the autocratic strength of its government, that the destiny of
individuals was to serve that government, and that fundamentally a great and strong group of
central institutions, guided by a small group of able and public spirited citizens, could best direct
all government.

But Mr. Jefferson, in the summer of 1776, after drafting the Declaration of Independence
turned his mind to the same problem and took a different view. He did not deceive himself with
outward forms. Government to him was a means to an end, not an end in itself; it might be either
a refuge and a help or a threat and a danger, depending on the circumstances. We find him
carefully analyzing the society for which he was to organize a government. "We have no
paupers. The great mass of our population is of laborers, our rich who cannot live without labor,
either manual or professional, being few and of moderate wealth. Most of the laboring class
possess property, cultivate their own lands, have families and from the demand for their labor,
are enabled to exact from the rich and the competent such prices as enable them to feed
abundantly, clothe above mere decency, to labor moderately and raise their families…"

You are familiar with the great political duel which followed; and how Hamilton, and his
friends, building toward a dominant centralized power were at length defeated in the great
election of 1800, by Mr. Jefferson’s party. Out of that duel came the two parties, Republican and
Democratic, as we know them today…

It was in the middle of the nineteenth century that a new force was released and a new
dream created. The force was what is called the industrial revolution, the advance of steam and
machinery and the rise of the forerunners of the modern industrial plant…This history of the last
century is accordingly in large measure a history of a group of financial Titans, whose
methods were not scrutinized with too much care, and who were honored in proportion as they
produced the results, irrespective of the means they used. The financiers who pushed the
railroads to the Pacific were always ruthless, often wasteful, and frequently corrupt; but they did
build railroads, and we have them today…

Clearly, all this calls for a re—appraisal of values. A mere builder of more industrial
plants, a creator of more railroad systems, an organizer of more corporations, is as likely to be a
danger as a help. The day of the great promoter or the financial Titan, to whom we granted
everything if only he would build, or develop, is over. Our task now is not discovery, or
exploitation of natural resources, or necessarily producing more goods. It is the soberer, less
dramatic business of administering resources and plants already in hand, of seeking to reestablish
foreign markets for our surplus production, of meeting the problem of under consumption, of adjusting production to consumption, of distributing wealth and products more equitably, of adapting existing economic organizations to the service of the people. The day of enlightened administration has come…

As I see it, the task of government in its relation to business is to assist the development of an economic declaration of rights, an economic constitutional order. This is the common task of statesman and businessman. It is the minimum requirement of a more permanently safe order of things…

Every man has a right to life; and this means that he has also a right to make a comfortable living. He may by sloth or crime decline to exercise that right; but it may not be denied him…

Every man has a right to his own property, which means a right to be assured, to the fullest extent attainable, in the safety of his savings…If, in accord with this principle, we must restrict the operations of the speculator, the manipulator, even the financier, I believe we must accept the restriction as needful, not to hamper individualism but to protect it.

This implication is, briefly, that the responsible heads of finance and industry instead of acting each for himself, must work together to achieve the common end. They must, where necessary, sacrifice this or that private advantage; and in reciprocal self—denial must seek a general advantage. It is here that formal government — political government, if you choose, comes in. Whenever in the pursuit of this objective the lone wolf, the unethical competitor, the reckless promoter, the Ishmael or Insull whose hand is against every man’s, declines to join in achieving an end recognized as being for the public welfare, and threatens to drag the industry back to a state of anarchy, the government may properly be asked to apply restraint. Likewise, should the group ever use its collective power contrary to the public welfare, the government must be swift to enter and protect the public interest…

Faith in America, faith in our tradition of personal responsibilities, faith in our institutions, faith in ourselves demands that we recognize the new terms of the old social contract. We shall fulfill them, as we fulfilled the obligation of the apparent Utopia which Jefferson imagined for us in 1776, and which Jefferson, Roosevelt and Wilson sought to bring to realization. We must do so, lest a rising tide of misery engendered by our common failure, engulf us all. But failure is not an American habit; and in the strength of great hope we must all shoulder our common load.

**Franklin D. Roosevelt, State of the Union Address 11 January 1944**

This Nation in the past two years has become an active partner in the world’s greatest war against human slavery.

We have joined with like-minded people in order to defend ourselves in a world that has been gravely threatened with gangster rule.

But I do not think that any of us Americans can be content with mere survival. Sacrifices that we and our allies are making impose upon us all a sacred obligation to see to it that out of this war we and our children will gain something better than mere survival.

We are united in determination that this war shall not be followed by another interim which leads to new disaster- that we shall not repeat the tragic errors of ostrich isolationism—
that we shall not repeat the excesses of the wild twenties when this Nation went for a joy ride on a roller coaster which ended in a tragic crash…

The best interests of each Nation, large and small, demand that all freedom-loving Nations shall join together in a just and durable system of peace. In the present world situation, evidenced by the actions of Germany, Italy, and Japan, unquestioned military control over disturbers of the peace is as necessary among Nations as it is among citizens in a community. And an equally basic essential to peace is a decent standard of living for all individual men and women and children in all Nations. Freedom from fear is eternally linked with freedom from want…

The overwhelming majority of our people have met the demands of this war with magnificent courage and understanding. They have accepted inconveniences; they have accepted hardships; they have accepted tragic sacrifices. And they are ready and eager to make whatever further contributions are needed to win the war as quickly as possible-if only they are given the chance to know what is required of them.

However, while the majority goes on about its great work without complaint, a noisy minority maintains an uproar of demands for special favors for special groups. There are pests who swarm through the lobbies of the Congress and the cocktail bars of Washington, representing these special groups as opposed to the basic interests of the Nation as a whole. They have come to look upon the war primarily as a chance to make profits for themselves at the expense of their neighbors—profits in money or in terms of political or social preferment…

If ever there was a time to subordinate individual or group selfishness to the national good, that time is now. Disunity at home—bickerings, self-seeking partisanship, stoppages of work, inflation, business as usual, politics as usual, luxury as usual these are the influences which can undermine the morale of the brave men ready to die at the front for us here…

Therefore, in order to concentrate all our energies and resources on winning the war, and to maintain a fair and stable economy at home, I recommend that the Congress adopt:

(1) A realistic tax law—which will tax all unreasonable profits, both individual and corporate…

(3) A cost of food law—which will enable the Government (a) to place a reasonable floor under the prices the farmer may expect for his production; and (b) to place a ceiling on the prices a consumer will have to pay for the food he buys.

It is my conviction that the American people will welcome this win-the-war measure which is based on the eternally just principle of "fair for one, fair for all..." Great power must be used for great purposes.

It is our duty now to begin to lay the plans and determine the strategy for the winning of a lasting peace and the establishment of an American standard of living higher than ever before known. We cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth— is ill-fed, ill-clothed, ill-housed, and insecure.

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.
We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed.

Among these are:
The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;
The right to earn enough to provide adequate food and clothing and recreation;
The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;
The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;
The right of every family to a decent home;
The right to adequate medical care and the opportunity to achieve and enjoy good health;
The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;
The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

America's own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world.

One of the great American industrialists of our day—a man who has rendered yeoman service to his country in this crisis-recently emphasized the grave dangers of "rightist reaction" in this Nation. All clear-thinking businessmen share his concern. Indeed, if such reaction should develop—if history were to repeat itself and we were to return to the so-called "normalcy" of the 1920’s—then it is certain that even though we shall have conquered our enemies on the battlefields abroad, we shall have yielded to the spirit of Fascism here at home.

I ask the Congress to explore the means for implementing this economic bill of rights- for it is definitely the responsibility of the Congress so to do. Many of these problems are already before committees of the Congress in the form of proposed legislation. I shall from time to time communicate with the Congress with respect to these and further proposals. In the event that no adequate program of progress is evolved, I am certain that the Nation will be conscious of the fact…
Franklin D. Roosevelt, Fireside Chat on Agricultural Adjustment Act and National Industrial Recovery Act, July 24, 1933

After the adjournment of the historical special session of the Congress five weeks ago I purposely refrained from addressing you for two very good reasons. First, I think that we all wanted the opportunity of a little quiet thought to examine and assimilate in a mental picture the crowding events of the hundred days which had been devoted to the starting of the wheels of the New Deal.

Secondly, I wanted a few weeks in which to set up the new administrative organization and to see the first fruits of our careful planning.

I think it will interest you if I set forth the fundamentals of this planning for national recovery; and this I am very certain will make it abundantly clear to you that all of the proposals and all of the legislation since the fourth day of March have not been just a collection of haphazard schemes, but rather the orderly component parts of a connected and logical whole.

Long before Inauguration Day I became convinced that individual effort and local effort and even disjointed Federal effort had failed and of necessity would fail and, therefore, that a rounded leadership by the Federal Government had become a necessity both of theory and of fact. Such leadership, however, had its beginning in preserving and strengthening the credit of the United States Government, because without that no leadership was a possibility. For years the Government had not lived within its income. The immediate task was to bring our regular expenses within our revenues. That has been done…

Now I come to the links which will build us a more lasting prosperity. I have said that we cannot attain that in a Nation half boom and half broke. If all of our people have work and fair wages and fair profits, they can buy the products of their neighbors, and business is good. But if you take away the wages and the profits of half of them, business is only half as good. It does not help much if the fortunate half is very prosperous; the best way is for everybody to be reasonably prosperous.

For many years the two great barriers to a normal prosperity have been low farm prices and the creeping paralysis of unemployment. These factors have cut the purchasing power of the country in half. I promised action. Congress did its part when it passed the Farm and the Industrial Recovery Acts. Today we are putting these two Acts to work and they will work if people understand their plain objectives.

First, the Farm Act: It is based on the fact that the purchasing power of nearly half our population depends on adequate prices for farm products. We have been producing more of some crops than we consume or can sell in a depressed world market. The cure is not to produce so much. Without our help the farmers cannot get together and cut production, and the Farm Bill gives them a method of bringing their production down to a reasonable level and of obtaining reasonable prices for their crops. I have clearly stated that this method is in a sense experimental, but so far as we have gone we have reason to believe that it will produce good results.

It is obvious that if we can greatly increase the purchasing power of the tens of millions of our people who make a living from farming and the distribution of farm crops, we shall greatly increase the consumption of those goods which are turned out by industry.

That brings me to the final step—bringing back industry along sound lines.

Last Autumn, on several occasions, I expressed my faith that we can make possible by democratic self-discipline in industry general increases in wages and shortening of hours sufficient to enable industry to pay its own workers enough to let those workers buy and use the
things that their labor produces. This can be done only if we permit and encourage cooperative action in industry, because it is obvious that without united action a few selfish men in each competitive group will pay starvation wages and insist on long hours of work. Others in that group must either follow suit or close up shop. We have seen the result of action of that kind in the continuing descent into the economic hell of the past four years.

There is a clear way to reverse that process: If all employers in each competitive group agree to pay their workers the same wages—reasonable wages—and require the same hours—reasonable hours—then higher wages and shorter hours will hurt no employer. Moreover, such action is better for the employer than unemployment and low wages, because it makes more buyers for his product. That is the simple idea which is the very heart of the Industrial Recovery Act.

On the basis of this simple principle of everybody doing things together, we are starting out on this nationwide attack on unemployment. It will succeed if our people understand it—in the big industries, in the little shops, in the great cities and in the small villages. There is nothing complicated about it and there is nothing particularly new in the principle. It goes back to the basic idea of society and of the Nation itself that people acting in a group can accomplish things which no individual acting alone could even hope to bring about.

Here is an example. In the Cotton Textile Code and in other agreements already signed, child labor has been abolished. That makes me personally happier than any other one thing with which I have been connected since I came to Washington. In the textile industry—an industry which came to me spontaneously and with a splendid cooperation as soon as the Recovery Act was signed—child labor was an old evil. But no employer acting alone was able to wipe it out. If one employer tried it, or if one State tried it, the costs of operation rose so high that it was impossible to compete with the employers or States which had failed to act. The moment the Recovery Act was passed, this monstrous thing which neither opinion nor law could reach through years of effort went out in a flash. As a British editorial put it, we did more under a Code in one day than they in England had been able to do under the common law in eighty-five years of effort. I use this incident, my friends, not to boast of what has already been done but to point the way to you for even greater cooperative efforts this summer and autumn.

We are not going through another winter like the last. I doubt if ever any people so bravely and cheerfully endured a season half so bitter. We cannot ask America to continue to face such needless hardships. It is time for courageous action, and the Recovery Bill gives us the means to conquer unemployment with exactly the same weapon that we have used to strike down child labor.

The proposition is simply this: If all employers will act together to shorten hours and raise wages we can put people back to work. No employer will suffer, because the relative level of competitive cost will advance by the same amount for all. But if any considerable group should lag or shirk, this great opportunity will pass us by and we shall go into another desperate winter. This must not happen.

We have sent out to all employers an agreement which is the result of weeks of consultation. This agreement checks against the voluntary codes of nearly all the large industries which have already been submitted. This blanket agreement carries the unanimous approval of the three boards which I have appointed to advise in this, boards representing the great leaders in labor, in industry, and in social service. The agreement has already brought a flood of approval from every State, and from so wide a cross-section of the common calling of industry that I know it is fair for all. It is a plan—deliberate, reasonable and just-intended to put into effect at once the
most important of the broad principles which are being established, industry by industry, through codes. Naturally, it takes a good deal of organizing and a great many hearings and many months, to get these codes perfected and signed, and we cannot wait for all of them to go through. The blanket agreements, however, which I am sending to every employer will start the wheels turning now, and not six months from now.

There are, of course, men, a few men, who might thwart this great common purpose by seeking selfish advantage. There are adequate penalties in the law, but I am now asking the cooperation that comes from opinion and from conscience. These are the only instruments we shall use in this great summer offensive against unemployment. But we shall use them to the limit to protect the willing from the laggard and to make the plan succeed.

In war, in the gloom of night attack, soldiers wear a bright badge on their shoulders to be sure that comrades do not fire on comrades. On that principle, those who cooperate in this program must know each other at a glance. That is why we have provided a badge of honor for this purpose, a simple design with a legend, "We do our part," and I ask that all those who join with me shall display that badge prominently. It is essential to our purpose.

Already all the great, basic industries have come forward willingly with proposed codes, and in these codes they accept the principles leading to mass reemployment. But, important as is this heartening demonstration, the richest field for results is among the small employers, those whose contribution will be to give new work for from one to ten people. These smaller employers are indeed a vital part of the backbone of the country, and the success of our plan lies largely in their hands.

Already the telegrams and letters are pouring into the White House—messages from employers who ask that their names be placed on this special Roll of Honor. They represent great corporations and companies, and partnerships and individuals. I ask that even before the dates set in the agreements which we have sent out, the employers of the country who have not already done so—the big fellows and the little fellows—shall at once write or telegraph to me personally at the White House, expressing their intentions of going through with the plan. And it is my purpose to keep posted in the post office of every town, a Roll of Honor of all those who join with me.

I want to take this occasion to say to the twenty-four Governors who are now in conference in San Francisco, that nothing thus far has helped in strengthening this great movement more than their resolutions adopted at the very outset of their meeting, giving this plan their instant and unanimous approval, and pledging to support it in their States.

To the men and women whose lives have been darkened by the fact or the fear of unemployment, I am justified in saying a word of encouragement because the codes and the agreements already approved, or about to be passed upon, prove that the plan does raise wages, and that it does put people back to work. You can look on every employer who adopts the plan as one who is doing his part, and those employers deserve well of every-one who works for a living. It will be clear to you, as it is to me, that while the shirking employer may undersell his competitor, the saving he thus makes is made at the expense of his country's welfare.

While we are making this great common effort there should be no discord and dispute. This is no time to cavil or to question the standard set by this universal agreement. It is time for patience and understanding and cooperation. The workers of this country have rights under this law which cannot be taken from them, and nobody will be permitted to whittle them away but, on the other hand, no aggression is now necessary to attain those rights. The whole country will
be united to get them for you. The principle that applies to the employers applies to the workers as well, and I ask you workers to cooperate in the same spirit…

James Bovard, “Cutthroat Competition and Dead Chickens,” April 1999

President Franklin Roosevelt's New Deal created much of the moral framework of contemporary political thought. The National Industrial Recovery Act (NIRA), a hallmark of Roosevelt's first hundred days in office, symbolizes blind faith in government as moral savior.

In a May 17, 1933, message, Roosevelt called for Congress to "provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and disastrous overproduction." Roosevelt demanded new power for the government because "employers cannot do this singly or even in organized groups, because such action increases costs and thus permits cutthroat underselling by selfish competitors unwilling to join in such a public-spirited endeavor." In Roosevelt's new ethics, the evil businessman was the one who charged low prices, and the "public-spirited" businessman was the one who colluded with other businessmen to gouge customers. The National Recovery Administration, created by the act, personified New Deal fairness, vesting unlimited arbitrary power in one person's hands and presuming that whatever he decreed was fair. Section 3 of the act allowed the president to personally impose codes of conduct on any industry. A 1934 Brookings Institution study of the NRA noted:

"A further expansion of the president's powers ... authorizes him, whenever he shall find that activities which he believes are contrary to the purpose of the law are being practiced in any trade or industry, to license business enterprises if he shall deem it essential to make effective a code of fair competition or agreement. No person shall, after a date which shall have been fixed in an announcement that licensing is required in an industry, engage in any business specified in such announcement unless he shall first have obtained a license pursuant to the regulations prescribed....

"Carrying on of business without a license where a license is required is made a criminal offense. The penalty is a fine not to exceed $500 or imprisonment not to exceed six months or both."

The study noted that "the licensing provision, giving the president the power of life or death over business enterprises, is the ultimate weapon of enforcement and the capstone of the powers granted to the president ... the most extraordinary extension of presidential power in American history." The final provision of the bill vested in the president the power "from time to time to cancel or modify any order, approval, license, rule, or regulation issued under this title." Sen. Carter Glass of Virginia denounced "the utterly dangerous effort of the federal government at Washington to transplant Hitlerism to every corner of this nation."

Roosevelt declared in 1933, "We recognize the right of the individual to seek and to obtain his own fair wage, his own fair profit, in his own fair way — just so long as in the doing of it he does not push down or hold down his neighbor." And to protect people, Roosevelt's policies gave government a right to "push down or hold down" whatever group or industry it chose. The NRA restricted working hours, inflated prices, and obliged businesses to form committees to severely restrict competition. Federal officials proceeded to sanction codes for
hundreds of industries, from the dog food industry (Code 450) to the shoulder pad manufacturing industry (Code 262). Code 348, governing the burlesque theatrical industry, dictated that no production could contain more than four stripteases.

Any violation of a code was an "unfair method of competition," and subjected violators to a fine of up to $500 for each offense, with each day considered a separate offense. New Jersey tailor Jack Magid was jailed for "charging 35 cents for pressing a suit," in violation of the NRA code that mandated a 40-cent charge. The NRA assumed that prosperity could be secured by restricting production and boosting prices — prosperity through "universal monopoly and universal scarcity," as critics quipped.

The inevitable result of Roosevelt's policies was to subjugate consumers to producers and to minimize freedom of contract in the name of social justice. The codes included the power to dictate minimum wages on an industry-by-industry basis. One result, according to a 1937 study, was that half a million black workers were thrown onto the relief rolls. (Black workers were often the first to be tossed out of work because of prejudice in the job market, among other factors.) Record-high unemployment was an agonizing problem at the time Roosevelt took office — but it is tricky to create more jobs by mandating higher wages. (Unemployment remained extremely high through 1939, declining only after the onset of the Second World War.)

With the arrival of the NRA, the time had come when the nation could no longer afford to allow chicken buyers to choose their chickens. In 1934, the Schechter brothers — who ran the largest poultry slaughterhouse in Brooklyn — were arrested for violating the federal code of fair competition for the Live Poultry Industry of the Greater New York Metropolitan Area. Their case arrived at the Supreme Court in 1935. The heart of the case — 10 of the alleged 18 violations — involved "straight killing," which the NRA defined as "the practice of requiring persons purchasing poultry for resale to accept the run of any half coop, coop, or coops, as purchased by slaughter house operators, except for culls."

Now, more than 60 years later, it is amusing to read the brief that the Roosevelt administration submitted to the Supreme Court. The Roosevelt administration brief fretted about "cutthroat competition" in the chicken slaughter business. The brief stressed that, under the 1934 fair-conduct rules, "purchasers ... shall not have the right to make any selection of particular birds." The brief noted, "The 'straight killing' requirement of the Code is really a requirement of straight selling." Letting buyers pick their birds, according to the Roosevelt administration, generated many "evils" — primarily that it made it more difficult for sellers to charge higher prices for all chickens. It is difficult to comprehend why the New Deal Brain Trust assumed that the fewer choices the buyer had, the more ethical trade became.

The administration's brief to the Supreme Court justified pervasive federal restrictions on chicken sales by quoting trial testimony: "One of petitioner's witnesses testified that members of the industry 'are looked upon as the worst type of businessmen in the world.'" Yet, 64 pages later in the same brief, the administration asserted: "The [NRA] codes will therefore consist of rules of competition deemed fair for each industry by representative members of that industry — by the persons most vitally concerned and most familiar with its problems." Apparently all that was necessary to make an industry ethical is to give "the worst type of businessmen" power to dictate rules for their competitors and customers and then have federal agents enforce the rules on everyone. (Ironically, the same presumption prevails today: many people assume that politicians are the "worst type of men," but allow politicians to impose edicts on everyone else and expect justice to result.)

The Supreme Court unanimously struck down the NIRA. The court decision asked:
"What is meant by 'fair competition' as the term is used in the act? Does it refer to a category established in the law, and is the authority to make codes limited accordingly? Or is it used as a convenient designation for whatever set of laws the formulators of a code for a particular trade or industry may propose and the president may approve ... as being wise and beneficent provisions...?"

The justices were dismayed at the sweep of the power granted in the act. Justice Cardozo observed that "here in effect is a roving commission to inquire into evils and upon discovery correct them ... the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered." The Court ruled that the NIRA was "an unconstitutional delegation of legislative power."

However, in the subsequent years, after Roosevelt's court-packing threat of 1937, the justices succumbed to whatever creative definition of fairness that Congress or federal agencies chose to proclaim. For instance, in 1942, Congress passed the Emergency Price Control Act, which created an Office of Price Administration. The OPA had sweeping power to set or strike down prices in any industry or activity that it considered to be "defense-related" — a vague term that could have encompassed practically the entire national economy. The act contained no substantive guidelines for the administrator's decisions but merely required prices that "in his judgment will be generally fair and equitable."

The Supreme Court upheld the law in 1944. Justice Owen Roberts bitterly dissented that "it is plain that this Act creates personal government by a petty tyrant instead of government by law." He also denounced the administrative system created by the statute as a parody of due process: "The court review is a solemn farce in which [courts] must go through a series of motions which look like judicial review but in fact are nothing but a catalogue of reasons why, under the scheme of the Act, the courts are unable to say that the Administrator has exceeded the discretion vested in him." Roberts's comment summarizes the "due process" offered by scores of other federal administrative regimes set up in that period and afterwards.

Though some of the programs and policies of the New Deal era have been terminated, the moral heritage of the New Deal continues to permeate American government and American political thinking. To recognize the moral void at the center of government power and to cease presuming that fairness lurks in the bowels of regulatory proceedings are the prerequisites for honest thinking about justice and fairness.


[Dewey was the most influential twentieth-century American philosopher. This short piece is a good summary of his political principles. In it he criticizes the political thought of America’s Founders. He proposes to replace it with a new relativistic and historicist understanding of liberty.—editor]

The emphasis of earlier liberalism upon individuality and liberty defines the focal points in discussion of the philosophy of liberalism today. This earlier liberalism was itself an outgrowth, in the late eighteenth and nineteenth centuries, of the earlier revolt against oligarchical
government, one which came to its culmination in the “glorious revolution” of 1688. The later was fundamentally a demand for freedom of the taxpayer from government arbitrary action in connection with a demand for confessional freedom in religion by the Protestant churches. In the later liberalism, expressly so called, the demand for liberty and individual freedom of action came primarily from the rising industrial and trading class and was directed against restrictions placed by government, in legislation, common law and judicial action, and other institutions having connection with the political state, upon freedom of economic enterprise. In both cases, governmental action and the desired freedom were placed in antithesis to each other. This way of conceiving liberty has persisted; it was strengthened in this country by the revolt of the colonies and by pioneer conditions.

Nineteenth-century philosophic liberalism added, more or less because of its dominant economic interest, the conception of natural laws to that of natural rights of the Whig movement. There are natural laws, it held, in social matters as well as in physical, and these natural laws are economic in character. Political laws, on the other hand, are man-made and in that sense artificial. Governmental intervention in industry and exchange was thus regarded as a violation not only of inherent individual liberty but also of natural laws—of which supply and demand is a sample. The proper sphere of governmental action was simply to prevent and to secure redress for infringement by one, the exercise of his liberty, of like and equal liberty of action on the part of others.

Nevertheless, the demand for freedom in initiation and conduct of business enterprise did not exhaust the content of earlier liberalism. In the minds of its chief promulgators there was included an equally strenuous demand for the liberty of mind, freedom of thought and its expression in speech, writing, print, and assemblage. The earlier interest in confessional freedom was generalized, and thereby deepened as well as broadened. This demand was a product of the rational enlightenment of the eighteenth century and of the growing importance of science. The great tide of reaction that set in after the defeat of Napoleon, the demand for order and discipline, gave the agitation for freedom of thought and its expression plenty of cause and plenty of opportunity.

The earlier liberal philosophy rendered valiant service. It finally succeeded in sweeping away, especially in its home, Great Britain, an innumerable number of abuses and restrictions. The history of social reforms in the nineteenth century is almost one with the history of liberal social thought. It is not, then, from ingratitude that I shall emphasize its defects, for recognition of them is essential to an intelligent statement of the elements of liberal philosophy for the present and any nearby future. The fundamental defect was lack of perception of historic relativity. This lack is expressed in the conception of the individual as something given, complete in itself, and of liberty as a ready-made possession of the individual, only needing the removal of external restrictions in order to manifest itself. The individual of earlier liberalism was a Newtonian atom having only external time and space relations to other individuals, save that each social atom was equipped with inherent freedom. These ideas might not have been especially harmful if they had been merely a rallying cry for practical movements. But they formed part of a philosophy and of a philosophy in which these particular ideas of individuality and freedom were asserted to be absolute and eternal truths; good for all times and all places.

This absolutism, this ignoring and denial of temporal relativity, is one great reason why the earlier liberalism degenerated so easily into pseudo-liberalism. For the sake of saving time, I shall identify what I mean by this spurious liberalism, the kind of social ideas represented by the “Liberty League” and ex-President Hoover. [Herbert Hoover was a Republican, defeated by
Franklin Roosevelt in the election of 1932] I call it a pseudo-liberalism because it ossified and narrowed generous ideas and aspirations. Even when words remain the same, they mean something very different when they are uttered by a minority struggling against repressive measures and when expressed by a group that, having attained power, then uses ideas that were once weapons of emancipation as instruments for keeping the power and wealth it has obtained. Ideas that at one time are means of producing social change assume another guise when they are used as means of preventing further social change. This fact is itself an illustration of historic relativity, and an evidence of the evil that lay in the assertion by earlier liberalism of the immutable and eternal character of their ideas. Because of this latter fact, the *laissez-faire* doctrine was held by the degenerate school of liberals to express the very order of nature itself. The outcome was the degradation of the idea of individuality, until in the minds of many who are themselves struggling for a wider and fuller development of individuality, individualism has become a term of hissing and reproach, while many can see no remedy for the evils that have come from the use of socially unrestrained liberty in business enterprise, save change produced by violence. The historic tendency to conceive the whole question of liberty as a matter in which individual and government are opposed parties has borne bitter fruit. Born of despotic government, it has continued to influence thinking and action after government had become popular and in theory the servant of the people.

I pass now to what the social philosophy of liberalism becomes when its inheritance of absolutism is eliminated. In the first place such liberalism knows that an individual is nothing fixed, given ready-made. It is something achieved, and achieved not in isolation, but the aid and support of conditions, cultural and physical, including in “cultural” economic, legal, and political institutions as well as science and art. Liberalism knows that social conditions may restrict, distort, and almost prevent the development of individuality. It therefore takes an active interest in the working of social institutions that have a bearing, positive or negative, upon the growth of individuals who shall be rugged in fact and not merely in abstract theory. It is as much interested in the positive construction of favorable institutions, legal, political, and economic, as it is in the work of removing abuses and overt oppressions.

In the second place, liberalism is committed to the idea of historic relativity. It knows that the content of the individual and freedom change with time; that this is as true of social change as it is of individual development from infancy to maturity. The positive counterpart of opposition to doctrinal absolutism is experimentalism. The connection between historic relativity and experimental method is intrinsic. Time signifies change. The significance of individuality with respect to social policies alters with change of the conditions in which individuals live. The earlier liberalism in being absolute was also unhistoric. Underlying it there was a philosophy of history which assumed that history, like time in the Newtonian scheme, means only modification of external relations; that it is quantitative, not qualitative and internal. The same thing is true of any theory that assumes, like the one usually attributed to Marx, that temporal changes in society are inevitable—that is to say, are governed by a law that is not itself historical. The fact is that the historicism and the evolutionism of nineteenth-century doctrine were only half-way doctrines. They assumed that historical and developmental processes were subject to some law or formula outside temporal processes.

The commitment of liberalism to experimental procedure carries with it the idea of continuous reconstruction of the ideas of individuality and of liberty in intimate connection with changes in social relations. It is enough to refer to the changes in productivity and distribution since the time when the earlier liberalism was formulated, and the effect of these
transformations, due to science and technology, upon the terms on which men associate together. An experimental method is the recognition of this temporal change in ideas and policies so that the latter shall coordinate with the facts instead of being opposed to them. Any other view maintains a rigid conceptualism and implies that facts should conform to concepts that are framed independently of temporal or historical change.

The two things essential, then, to thorough-going social liberalism are, first, realistic study of existing conditions in their movement, and, secondly, leading ideas, in the form of policies for dealing with these conditions in the interest of development of increased individuality and liberty. The first requirement is so obviously implied that I shall not elaborate it. The second point needs some amplification. Experimental method is not just messing around nor doing a little of this and a little of that in the hope that things will improve. Just as in the physical sciences, it implies a coherent body of ideas, a theory, that gives direction to effort. What is implied, in contrast to every form of absolutism, is that the ideas and theory be taken as methods of action tested and continuously revised by the consequences they produce in actual social conditions. Since they are operational in nature, they modify conditions, while the first requirement, that of basing them upon realistic study of actual conditions, brings about their continuous reconstruction.

It follows finally that there is no opposition in principle between liberalism as social philosophy and radicalism in action, if by radicalism is signified the adoption of policies that bring about drastic instead of piece-meal social changes. It is all a question of what kind of procedures that intelligent study of changing conditions discloses. These changes have been so tremendous in the last century, yes, in the last forty years, that it looks to me as if radical methods were now necessary. But all that the argument here requires is recognition of the fact that there is nothing in the nature of liberalism that makes it a milk-water doctrine, committed to compromise and minor “reforms.” It is worth noting that the earlier liberals were regarded in their days as subversive radicals.

What has been said should make it clear that the question of method in formation and execution of policies is the central thing in liberalism. The method indicated is that of maximum reliance upon intelligence. This fact determines its opposition to those forms of radicalism that place chief dependence upon violent overthrow of existing institutions as the method of effecting desired social change. A genuine liberal will emphasize as crucial the complete correlation between the means used and the consequences that follow. The same principle which makes him aware that the means employed by pseudo-liberalism only perpetuate and multiply the evils of existing conditions, makes him also aware that dependence upon sheer masses force as the means of social change decides the kind of consequences that actually result. Doctrines, whether proceeding from Mussolini or from Marx, which assume that because certain ends are desirable therefore those ends and nothing else will result from the use of force to attain them is but another example for the limitations put upon intelligence by any absolute theory. In the degree in which mere force is resorted to, actual consequences are themselves so compromised that the ends originally in view have in fact to be worked out afterwards by the method of experimental intelligence.

In saying this, I do not wish to be understood as meaning that radicals of the type mentioned have any monopoly of the use of force. The contrary is the case. The reactionaries are in possession of force, in not only the army and police, but in the press and the schools. The only reason they do not advocate the use of force is the fact that they are already in possession of it, so their present use of individual initiative and liberty is a striking example.
These facts illustrate the essential evil of reliance upon sheer force. Action and reaction are equal and in opposite directions, and force as such is physical. Dependence upon force sooner or later calls out force on the other side. The whole problem of the relation of intelligence to force is much too large to go into here. I can only say that when the forces in possession are so blind and stubborn as to throw all their weight against the use of liberty of inquiry and of communication, of organization to effect social change, they not only encourage the use of force by those who want social change, but they give the latter the most justification they ever have. The emphasis of liberalism upon the method of intelligence does not commit it to unqualified pacificism, but to the unrelenting use of every method of intelligence that conditions permit, and to search for all that are possible.

In conclusion, I wish to emphasize one point implied in the early part of the paper. The question of the practical significance of liberty is much wider that that of the relation of government to the individual, to say nothing of the monstrosity of the doctrine that assumes that under all conditions governmental action and individual liberty are found in separate and independent spheres. Government is one factor and an important one. But it comes into the picture only in relation to other matters. At present, these other matters are economic and cultural. It is absurd to conceive liberty as that of the business entrepreneur and ignore the immense regimentation to which workers are subjected, intellectual as well as manual workers. Moreover, full freedom of the human spirit and of individuality can be achieved only as there is effective opportunity to share in the cultural resources of civilization. No economic state of affairs is merely economic. It has a profound effect upon presence or absence of cultural freedom. Any liberalism that does not make full cultural freedom supreme and that does not see the relation between it and genuine industrial freedom as a way of life is a degenerate and delusive liberalism.

Lyndon B. Johnson, “Great Society” Speech,
Remarks at the University of Michigan, 22 May 1964

. . . I have come today from the turmoil of your Capital to the tranquility of your campus to speak about the future of your country.

The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation.

For a century we labored to settle and to subdue a continent. For half a century we called upon unbounded invention and untiring industry to create an order of plenty for all of our people. The challenge of the next half century is whether we have the wisdom to use that wealth to enrich and elevate our national life, and to advance the quality of our American civilization.

Your imagination, your initiative, and your indignation will determine whether we build a society where progress is the servant of our needs, or a society where old values and new visions are buried under unbridled growth. For in your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society.

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning.

The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a
feared cause of boredom and restlessness. It is a place where the city of man serves not only the needs of the body and the demands of commerce but the desire for beauty and the hunger for community.

It is a place where man can renew contact with nature. It is a place which honors creation for its own sake and for what it adds to the understanding of the race. It is a place where men are more concerned with the quality of their goals than the quantity of their goods.

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor.

So I want to talk to you today about three places where we begin to build the Great Society—in our cities, in our countryside, and in our classrooms.

Many of you will live to see the day, perhaps 50 years from now, when there will be 400 million Americans four-fifths of them in urban areas. In the remainder of this century urban population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must rebuild the entire urban United States.

Aristotle said: “Men come together in cities in order to live, but they remain together in order to live the good life.” It is harder and harder to live the good life in American cities today.

The catalog of ills is long: there is the decay of the centers and the despoiling of the suburbs. There is not enough housing for our people or transportation for our traffic. Open land is vanishing and old landmarks are violated.

Worst of all expansion is eroding the precious and time honored values of community with neighbors and communion with nature. The loss of these values breeds loneliness and boredom and indifference.

Our society will never be great until our cities are great. Today the frontier of imagination and innovation is inside those cities and not beyond their borders.

New experiments are already going on. It will be the task of your generation to make the American city a place where future generations will come, not only to live but to live the good life.

I understand that if I stayed here tonight I would see that Michigan students are really doing their best to live the good life.

This is the place where the Peace Corps was started. It is inspiring to see how all of you, while you are in this country, are trying so hard to live at the level of the people.

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution. Our parks are overcrowded, our seashores overburdened. Green fields and dense forests are disappearing.

A few years ago we were greatly concerned about the “Ugly American.” Today we must act to prevent an ugly America.

For once the battle is lost, once our natural splendor is destroyed, it can never be recaptured. And once man can no longer walk with beauty or wonder at nature his spirit will wither and his sustenance be wasted.

A third place to build the Great Society is in the classrooms of America. There your children’s lives will be shaped. Our society will not be great until every young mind is set free to scan the farthest reaches of thought and imagination. We are still far from that goal.
Today, 8 million adult Americans, more than the entire population of Michigan, have not finished 5 years of school. Nearly 20 million have not finished 8 years of school. Nearly 54 million—more than one-quarter of all America—have not even finished high school.

Each year more than 100,000 high school graduates, with proved ability, do not enter college because they cannot afford it. And if we cannot educate today’s youth, what will we do in 1970 when elementary school enrollment will be 5 million greater than 1960? And high school enrollment will rise by 5 million. College enrollment will increase by more than 3 million.

In many places, classrooms are overcrowded and curricula are outdated. Most of our qualified teachers are underpaid, and many of our paid teachers are unqualified. So we must give every child a place to sit and a teacher to learn from. Poverty must not be a bar to learning, and learning must offer an escape from poverty.

But more classrooms and more teachers are not enough. We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings—on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society.

The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority. They require us to create new concepts of cooperation, a creative federalism, between the National Capital and the leaders of local communities.

Woodrow Wilson once wrote: “Every man sent out from his university should be a man of his Nation as well as a man of his time.”

Within your lifetime powerful forces, already loosed, will take us toward a way of life beyond the realm of our experience, almost beyond the bounds of our imagination.

For better or for worse, your generation has been appointed by history to deal with those problems and to lead America toward a new age. You have the chance never before afforded to any people in any age. You can help build a society where the demands of morality, and the needs of the spirit, can be realized in the life of the Nation.

So, will you join in the battle to give every citizen the full equality which God enjoins and the law requires, whatever his belief, or race, or the color of his skin?

Will you join in the battle to give every citizen an escape from the crushing weight of poverty?

Will you join in the battle to make it possible for all nations to live in enduring peace—as neighbors and not as mortal enemies?

Will you join in the battle to build the Great Society, to prove that our material progress is only the foundation on which we will build a richer life of mind and spirit?
There are those timid souls who say this battle cannot be won; that we are condemned to a soulless wealth. I do not agree. We have the power to shape the civilization that we want. But we need your will, your labor, your hearts, if we are to build that kind of society.

Those who came to this land sought to build more than just a new country. They sought a new world. So I have come here today to your campus to say that you can make their vision our reality. So let us from this moment begin our work so that in the future men will look back and say: It was then, after a long and weary way, that man turned the exploits of his genius to the full enrichment of his life.

Lyndon B. Johnson, Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty, 16 March 1964

We are citizens of the richest and most fortunate nation in the history of the world. One hundred and eighty years ago we were a small country struggling for survival on the margin of a hostile land. Today we have established a civilization of free men which spans an entire continent. With the growth of our country has come opportunity for our people--opportunity to educate our children, to use our energies in productive work, to increase our leisure-opportunity for almost every American to hope that through work and talent he could create a better life for himself and his family.

The path forward has not been an easy one. But we have never lost sight of our goal: an America in which every citizen shares all the opportunities of his society, in which every man has a chance to advance his welfare to the limit of his capacities.

We have come a long way toward this goal. We still have a long way to go. The distance which remains is the measure of the great unfinished work of our society.

To finish that work I have called for a national war on poverty. Our objective: total victory.

There are millions of Americans--one fifth of our people--who have not shared in the abundance which has been granted to most of us, and on whom the gates of opportunity have been closed.

What does this poverty mean to those who endure it? It means a daily struggle to secure the necessities for even a meager existence. It means that the abundance, the comforts, the opportunities they see all around them are beyond their grasp. Worst of all, it means hopelessness for the young. The young man or woman who grows up without a decent education, in a broken home, in a hostile and squalid environment, in ill health or in the face of racial injustice—that young man or woman is often trapped in a life of poverty. He does not have the skills demanded by a complex society. He does not know how to acquire those skills. He faces a mounting sense of despair which drains initiative and ambition and energy.

Our tax cut will create millions of new jobs--new exits from poverty. But we must also strike down all the barriers which keep many from using those exits. The war on poverty is not a struggle simply to support people, to make them dependent on the generosity of others. It is a struggle to give people a chance. It is an effort to allow them to develop and use their capacities, as we have been allowed to develop and use ours, so that they can share, as others share, in the promise of this nation.

We do this, first of all, because it is right that we should. From the establishment of public education and land grant colleges through agricultural extension and encouragement to
industry, we have pursued the goal of a nation with full and increasing opportunities for all its citizens. The war on poverty is a further step in that pursuit.

We do it also because helping some will increase the prosperity of all. Our fight against poverty will be an investment in the most valuable of our resources--the skills and strength of our people. And in the future, as in the past, this investment will return its cost many fold to our entire economy. If we can raise the annual earnings of 10 million among the poor by only $1,000 we will have added 14 billion dollars a year to our national output. In addition we can make important reductions in public assistance payments which now cost us 4 billion dollars a year, and in the large costs of fighting crime and delinquency, disease and hunger.

This is only part of the story. Our history has proved that each time we broaden the base of abundance, giving more people the chance to produce and consume, we create new industry, higher production, increased earnings and better income for all. Giving new opportunity to those who have little will enrich the lives of all the rest.

Because it is right, because it is wise, and because, for the first time in our history, it is possible to conquer poverty, I submit, for the consideration of the Congress and the country, the Economic Opportunity Act of 1964. The Act does not merely expand old programs or improve what is already being done. It charts a new course. It strikes at the causes, not just the consequences of poverty. It can be a milestone in our one-hundred eighty year search for a better life for our people.

This Act provides five basic opportunities. It will give almost half a million underprivileged young Americans the opportunity to develop skills, continue education, and find useful work. It will give every American community the opportunity to develop a comprehensive plan to fight its own poverty--and help them to carry out their plans. It will give dedicated Americans the opportunity to enlist as volunteers in the war against poverty. It will give many workers and farmers the opportunity to break through particular barriers which bar their escape from poverty. It will give the entire nation the opportunity for a concerted attack on poverty through the establishment, under my direction, of the Office of Economic Opportunity, a national headquarters for the war against poverty.

This is how we propose to create these opportunities.

First we will give high priority to helping young Americans who lack skills, who have not completed their education or who cannot complete it because they are too poor. The years of high school and college age are the most critical stage of a young person's life. If they are not helped then, many will be condemned to a life of poverty which they, in turn, will pass on to their children. I therefore recommend the creation of a Job Corps, a Work-Training Program, and a Work Study Program. A new national Job Corps will build toward an enlistment of 100,000 young men. They will be drawn from those whose background, health and education make them least fit for useful work. Those who volunteer will enter more than 100 Camps and Centers around the country. Half of these young men will work, in the first year, on special conservation projects to give them education, useful work experience and to enrich the natural resources of the country. Half of these young men will receive, in the first year, a blend of training, basic education and work experience in Job Training Centers. These are not simply camps for the underprivileged. They are new educational institutions, comparable in innovation to the land grant colleges. Those who enter them will emerge better qualified to play a productive role in American society.

A new national Work-Training Program operated by the Department of Labor will provide work and training for 200,000 American men and women between the ages of 16 and 21.
This will be developed through state and local governments and non-profit agencies. Hundreds of thousands of young Americans badly need the experience, the income, and the sense of purpose which useful full or part-time work can bring. For them such work may mean the difference between finishing school or dropping out. Vital community activities from hospitals to libraries and settlement houses are suffering because there are not enough people to staff them. We are simply bringing these needs together.

A new national Work-Study Program operated by the Department of Health, Education, and Welfare will provide federal funds for part-time jobs for 140,000 young Americans who do not go to college because they cannot afford it. There is no more senseless waste than the waste of the brainpower and skill of those who are kept from college by economic circumstance. Under this program they will, in a great American tradition, be able to work their way through school. They and the country will be richer for it.

Second, through a new Community Action program we intend to strike at poverty at its source—in the streets of our cities and on the farms of our countryside among the very young and the impoverished old. This program asks men and women throughout the country to prepare long-range plans for the attack on poverty in their own local communities. These are not plans prepared in Washington and imposed upon hundreds of different situations. They are based on the fact that local citizens best understand their own problems, and know best how to deal with those problems. These plans will be local plans striking at the many untilled needs which underlie poverty in each community, not just one or two. Their components and emphasis will differ as needs differ. These plans will be local plans calling upon all the resources available to the community—federal and state, local and private, human and material. And when these plans are approved by the Office of Economic Opportunity, the federal government will finance up to 90% of the additional cost for the first two years. The most enduring strength of our nation is the huge reservoir of talent, initiative and leadership which exists at every level of our society. Through the Community Action Program we call upon this, our greatest strength, to overcome our greatest weakness.

Third, I ask for the authority to recruit and train skilled volunteers for the war against poverty. Thousands of Americans have volunteered to serve the needs of other lands. Thousands more want the chance to serve the needs of their own land. They should have that chance. Among older people who have retired, as well as among the young, among women as well as men, there are many Americans who are ready to enlist in our war against poverty. They have skills and dedication. They are badly needed. If the State requests them, if the community needs and will use them, we will recruit and train them and give them the chance to serve.

Fourth, we intend to create new opportunities for certain hard-hit groups to break out of the pattern of poverty. Through a new program of loans and guarantees we can provide incentives to those who will employ the unemployed. Through programs of work and retraining for unemployed fathers and mothers we can help them support their families in dignity while preparing themselves for new work. Through funds to purchase needed land, organize cooperatives, and create new and adequate family farms we can help those whose life on the land has been a struggle without hope.

Fifth, I do not intend that the war against poverty become a series of uncoordinated and unrelated efforts—that it perish for lack of leadership and direction. Therefore this bill creates, in the Executive Office of the President, a new Office of Economic Opportunity. Its Director will be my personal Chief of Staff for the War against poverty. I intend to appoint Sargent Shriver to
this post. He will be directly responsible for these new programs. He will work with and through existing agencies of the government.

This program—the Economic Opportunity Act—is the foundation of our war against poverty. But it does not stand alone. For the past three years this government has advanced a number of new proposals which strike at important areas of need and distress. I ask the Congress to extend those which are already in action, and to establish those which have already been proposed. There are programs to help badly distressed areas such as the Area Redevelopment Act, and the legislation now being prepared to help Appalachia. There are programs to help those without training find a place in today's complex society—such as the Manpower Development Training Act and the Vocational Education Act for youth. There are programs to protect those who are specially vulnerable to the ravages of poverty—hospital insurance for the elderly, protection for migrant farm workers, a food stamp program for the needy, coverage for millions not now protected by a minimum wage, new and expanded unemployment benefits for men out of work, a Housing and Community Development bill for those seeking decent homes. Finally there are programs which help the entire country, such as aid to education which, by raising the quality of schooling available to every American child, will give a new chance for knowledge to the children of the poor.

I ask immediate action on all these programs. What you are being asked to consider is not a simple or an easy program. But poverty is not a simple or an easy enemy. It cannot be driven from the land by a single attack on a single front. Were this so we would have conquered poverty long ago. Nor can it be conquered by government alone. For decades American labor and American business, private institutions and private individuals have been engaged in strengthening our economy and offering new opportunity to those in need. We need their help, their support, and their full participation. Through this program we offer new incentives and new opportunities for cooperation, so that all the energy of our nation, not merely the efforts of government, can be brought to bear on our common enemy.

Today, for the first time in our history, we have the power to strike away the barriers to full participation in our society. Having the power, we have the duty. The Congress is charged by the Constitution to "provide . . . for the general welfare of the United States." Our present abundance is a measure of its success in fulfilling that duty. Now Congress is being asked to extend that welfare to all our people.

The President of the United States is President of all the people in every section of the country. But this office also holds a special responsibility to the distressed and dispossessed, the hungry and the hopeless of this abundant nation. It is in pursuit of that special responsibility that I submit this Message to you today.

The new program I propose is within our means. Its cost of 970 million dollars is 1 percent of our national budget—and every dollar I am requesting for this program is already included in the budget I sent to Congress in January. But we cannot measure its importance by its cost. For it charts an entirely new course of hope for our people.

We are fully aware that this program will not eliminate all the poverty in America in a few months or a few years. Poverty is deeply rooted and its causes are many. But this program will show the way to new opportunities for millions of our fellow citizens. It will provide a lever with which we can begin to open the door to our prosperity for those who have been kept outside. It will also give us the chance to test our weapons, to try our energy and ideas and imagination for the many battles yet to come. As conditions change, and as experience illuminates our difficulties, we will be prepared to modify our strategy.
And this program is much more than a beginning. Rather it is a commitment. It is a total commitment by this President, and this Congress, and this nation, to pursue victory over the most ancient of mankind's enemies.

On many historic occasions the President has requested from Congress the authority to move against forces which were endangering the well-being of our country. This is such an occasion. On similar occasions in the past we have often been called upon to wage war against foreign enemies which threatened our freedom. Today we are asked to declare war on a domestic enemy which threatens the strength of our nation and the welfare of our people.

If we now move forward against this enemy—if we can bring to the challenges of peace the same determination and strength which has brought us victory in war—then this day and this Congress will have won a secure and honorable place in the history of the nation, and the enduring gratitude of generations of Americans yet to come.

Lyndon B. Johnson, Special Message to the Congress on Conservation and Restoration of Natural Beauty, 8 February 1965

To the Congress of the United States:

For centuries Americans have drawn strength and inspiration from the beauty of our country. It would be a neglectful generation indeed, indifferent alike to the judgment of history and the command of principle, which failed to preserve and extend such a heritage for its descendants. Yet the storm of modern change is threatening to blight and diminish in a few decades what has been cherished and protected for generations.

A growing population is swallowing up areas of natural beauty with its demands for living space, and is placing increased demand on our overburdened areas of recreation and pleasure. The increasing tempo of urbanization and growth is already depriving many Americans of the right to live in decent surroundings. More of our people are crowding into cities and being cut off from nature. Cities themselves reach out into the countryside, destroying streams and trees and meadows as they go. A modern highway may wipe out the equivalent of a fifty acre park with every mile. And people move out from the city to get closer to nature only to find that nature has moved farther from them.

The modern technology, which has added much to our lives can also have a darker side. Its uncontrolled waste products are menacing the world we live in, our enjoyment and our health. The air we breathe, our water, our soil and wildlife, are being blighted by the poisons and chemicals which are the by-products of technology and industry. The skeletons of discarded cars litter the countryside. The same society which receives the rewards of technology, must, as a cooperating whole, take responsibility for control.

To deal with these new problems will require a new conservation. We must not only protect the countryside and save it from destruction, we must restore what has been destroyed and salvage the beauty and charm of our cities. Our conservation must be not just the classic conservation of protection and development, but a creative conservation of restoration and innovation. Its concern is not with nature alone, but with the total relation between man and the world around him. Its object is not just man's welfare but the dignity of man's spirit.

In this conservation the protection and enhancement of man's opportunity to be in contact with beauty must play a major role. This means that beauty must not be just a holiday treat, but a
part of our daily life. It means not just easy physical access, but equal social access for rich and poor, Negro and white, city dweller and farmer.

Beauty is not an easy thing to measure. It does not show up in the gross national product, in a weekly pay check, or in profit and loss statements. But these things are not ends in themselves. They are a road to satisfaction and pleasure and the good life. Beauty makes its own direct contribution to these final ends. Therefore it is one of the most important components of our true national income, not to be left out simply because statisticians cannot calculate its worth.

And some things we do know. Association with beauty can enlarge man's imagination and revive his spirit. Ugliness can demean the people who live among it. What a citizen sees every day is his America. If it is attractive it, it adds to the quality of his the life. If it is ugly it can degrade his existence.

Beauty has other immediate values. It adds to safety whether removing direct dangers to health or making highways less monotonous and dangerous. We also know that those who live in blighted and squalid conditions are more susceptible to anxieties and mental disease.

Ugliness is costly. It can be expensive to clean a soot smeared building, or to build new areas of recreation when the old landscape could have been preserved far more cheaply.

Certainly no one would hazard a national definition of beauty. But we do know that nature is nearly always beautiful. We do, for the most part, know what is ugly. And we can introduce, into all our planning, our programs, our building and our growth, a conscious and active concern for the values of beauty. If we do this then we can be successful in preserving a beautiful America.

There is much the federal government can do, through a range of specific programs, and as a force for public education. But a beautiful America will require the effort of government at every level, of business, and of private groups. Above all it will require the concern and action of individual citizens, alert to danger, determined to improve the quality of their surroundings, resisting blight, demanding and building beauty for themselves and their children.

I am hopeful that we can summon such a national effort. For we have not chosen to have an ugly America. We have been careless, and often neglectful. But now that the danger is clear and the hour is late this people can place themselves in the path of a tide of blight which is often irreversible and always destructive.

The Congress and the Executive branch have each produced conservation giants in the past. During the 88th Congress it was legislative executive teamwork that brought progress. It is this same kind of partnership that will ensure our continued progress. In that spirit as a beginning and stimulus I make the following proposals:

THE CITIES

Thomas Jefferson wrote that communities "should be planned with an eye to the effect made upon the human spirit by being continually surrounded with a maximum of beauty." We have often sadly neglected this advice in the modern American city. Yet this is where most of our people live. It is where the character of our young is formed. It is where American civilization will be increasingly concentrated in years to come.

Such a challenge will not be met with a few more parks or playgrounds. It requires attention to the architecture of building, the structure of our roads, preservation of historical buildings and monuments, careful planning of new suburbs. A concern for the enhancement of beauty must infuse every aspect of the growth and development of metropolitan areas. It must be a principal responsibility of local government, supported by active and concerned citizens…
We now have two programs which can be of special help in creating areas of recreation and beauty for our metropolitan area population: the Open Space Land Program, and the Land and Water Conservation Fund. I have already proposed full funding of the Land and Water Conservation Fund, and directed the Secretary of the Interior to give priority attention to serving the needs of our growing urban population.

The primary purpose of the Open Space Program has been to help acquire and assure open spaces in urban areas. I propose a series of new matching grants for improving the natural beauty of urban open space. The Open Space Program should be adequately financed, and broadened by permitting grants to be made to help city governments acquire and clear areas to create small parks, squares, pedestrian malls and playgrounds.

In addition I will request authority in this program for a matching program to cities for landscaping, installation of outdoor lights and benches, creating attractive cityscapes along roads and in business areas, and for other beautification purposes. Our city parks have not, in many cases, realized their full potential as sources of pleasure and play. I recommend on a matching basis a series of federal demonstration projects in city parks to use the best thought and action to show how the appearance of these parks can better serve the people of our towns and metropolitan areas…

THE COUNTRYSIDE

Our present system of parks, seashores and recreation areas--monuments to the dedication and labor of far-sighted men--do not meet the needs of a growing population. The full funding of the Land and Water Conservation Fund will be an important step in making this a Parks-for-America decade.

I propose to use this fund to acquire lands needed to establish:
- Assateague Island National Seashore, Maryland-Virginia
- Tocks Island National Recreation Area, New Jersey-Pennsylvania
- Cape Lookout National Seashore, North Carolina
- Sleeping Bear Dunes National Lakeshore, Michigan
- Indiana Dunes National Lakeshore, Indiana
- Oregon Dunes National Seashore, Oregon
- Great Basin National Park, Nevada
- Guadalupe Mountains National Park, Texas
- Spruce Knob, Seneca Rocks National Recreation Area, West Virginia
- Bighorn Canyon National Recreation Area, Montana-Wyoming
- Flaming Gorge National Recreation, Utah-Wyoming
- Whiskeytown-Shasta-Trinity National Recreation Area, California.

In addition, I have requested the Secretary of Interior, working with interested groups, to conduct a study on the desirability of establishing a Redwood National Park in California. I will also recommend that we add prime outdoor recreation areas to our National Forest system, particularly in the populous East; and proceed on schedule with studies required to define and enlarge the Wilderness System established by the 88th Congress. We will also continue progress on our refuge system for migratory waterfowl.

Faulty strip and surface mining practices have left ugly scars which mar the beauty of the landscape in many of our States. I urge your strong support of the nationwide strip and surface mining study provided by the Appalachian Regional legislation, which will furnish the factual basis for a fair and reasonable approach to the correction of these past errors.
I am asking the Secretary of Agriculture to work with State and local organizations in developing a cooperative program for improving the beauty of the privately owned rural lands which comprise three-fourths of the Nation's area. Much can be done within existing Department of Agriculture programs without adding to cost.

The 28 million acres of land presently held and used by our Armed Services is an important part of our public estate. Many thousands of these acres will soon become surplus to military needs. Much of this land has great potential for outdoor recreation, wildlife, and conservation uses consistent with military requirements. This potential must be realized through the fullest application of multiple-use principles. To this end I have directed the Secretaries of Defense and Interior to conduct a "conservation inventory" of all surplus lands.

**HIGHWAYS**

More than any country ours is an automobile society. For most Americans the automobile is a principal instrument of transportation, work, daily activity, recreation and pleasure. By making our roads highways to the enjoyment of nature and beauty we can greatly enrich the life of nearly all our people in city and countryside alike.

Our task is two-fold. First, to ensure that roads themselves are not destructive of nature and natural beauty. Second, to make our roads ways to recreation and pleasure. I have asked the Secretary of Commerce to take a series of steps designed to meet this objective. This includes requiring landscaping on all federal interstate primary and urban highways, encouraging the construction of rest and recreation areas along highways, and the preservation of natural beauty adjacent to highway rights-of-way.

Our present highway law permits the use of up to 3% of all federal-aid funds to be used without matching for the preservation of natural beauty. This authority has not been used for the purpose intended by Congress. I will take steps, including recommended legislation if necessary, to make sure these funds are, in fact, used to enhance beauty along our highway system. This will dedicate substantial resources to this purpose.

I will also recommend that a portion of the funds now used for secondary roads be set aside in order to provide access to areas of rest and recreation and scenic beauty along our nation's roads, and for rerouting or construction of highways for scenic or parkway purposes. The Recreation Advisory Council is now completing a study of the role which scenic roads and parkways should play in meeting our highway and recreation needs. After receiving the report, I will make appropriate recommendations. The authority for the existing program of outdoor advertising control expires on June 30, 1965, and its provisions have not been effective in achieving the desired goal. Accordingly, I will recommend legislation to ensure effective control of billboards along our highways.

In addition, we need urgently to work towards the elimination or screening of unsightly, beauty-destroying junkyards and auto graveyards along our highways. To this end, I will also recommend necessary legislation to achieve effective control, including Federal assistance in appropriate cases where necessary. I hope that, at all levels of government, our planners and builders will remember that highway beautification is more than a matter of planting trees or setting aside scenic areas. The roads themselves must reflect, in location and design, increased respect for the natural and social integrity and unity of the landscape and communities through which they pass.

**RIVERS**

Those who first settled this continent found much to marvel at. Nothing was a greater source of wonder and amazement than the power and majesty of American rivers. They occupy a
central place in myth and legend, folklore and literature. They were our first highways, and some remain among the most important. We have had to control their ravages, harness their power, and use their water to help make whole regions prosper.

Yet even this seemingly indestructible natural resource is in danger. Through our pollution control programs we can do much to restore our rivers. We will continue to conserve the water and power for tomorrow's needs with well-planned reservoirs and power dams. But the time has also come to identify and preserve free flowing stretches of our great scenic rivers before growth and development make the beauty of the unspoiled waterway a memory. To this end I will shortly send to the Congress a Bill to establish a National Wild Rivers System…

TRAILS

The forgotten outdoorsmen of today are those who like to walk, hike, ride horseback or bicycle. For them we must have trails as well as highways. Nor should motor vehicles be permitted to tyrannize the more leisurely human traffic. Old and young alike can participate. Our doctors recommend and encourage such activity for fitness and fun.

I am requesting, therefore, that the Secretary of the Interior work with his colleagues in the federal government and with state and local leaders and recommend to me a cooperative program to encourage a national system of trails, building up the more than hundred thousand miles of trails in our National Forests and Parks.

There are many new and exciting trail projects underway across the land. In Arizona, a county has arranged for miles of irrigation canal banks to be used by riders and hikers. In Illinois, an abandoned railroad right of way is being developed as a "Prairie Path." In New Mexico utility rights of way are used as public trails. As with so much of our quest for beauty and quality, each community has opportunities for action. We can and should have an abundance of trails for walking, cycling and horseback riding, in and close to our cities. In the back country we need to copy the great Appalachian Trail in all parts of America, and to make full use of rights of way and other public paths.

POLLUTION

One aspect of the advance of civilization is the evolution of responsibility for disposal of waste. Over many generations society gradually developed techniques for this purpose. State and local governments, landlords and private citizens have been held responsible for ensuring that sewage and garbage did not menace health or contaminate the environment.

In the last few decades entire new categories of waste have come to plague and menace the American scene. These are the technological wastes--the by-products of growth, industry, agriculture, and science. We cannot wait for slow evolution over generations to deal with them. Pollution is growing at a rapid rate. Some pollutants are known to be harmful to health, while the effect of others is uncertain and unknown. In some cases we can control pollution with a larger effort. For other forms of pollution we still do not have effective means of control. Pollution destroys beauty and menaces health. It cuts down on efficiency, reduces property values and raises taxes.

The longer we wait to act, the greater the dangers and the larger the problem. Large-scale pollution of air and waterways is no respecter of political boundaries, and its effects extend far beyond those who cause it. Air pollution is no longer confined to isolated places. This generation has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide from the burning of fossil fuels…

In addition to its health effects, air pollution creates filth and gloom and deprecates property values of entire neighborhoods. The White House itself is being dirtied with soot from
polluted air. Every major river system is now polluted. Waterways that were once sources of pleasure and beauty and recreation are forbidden to human contact and objectionable to sight and smell. Furthermore, this pollution is costly, requiring expensive treatment for drinking water and inhibiting the operation and growth of industry…

A prime national goal must be an environment that is pleasing to the senses and healthy to live in. Our Government is already doing much in this field. We have made significant progress. But more must be done.

**Federal Government Activity**

I am directing the heads of all agencies to improve measures to abate pollution caused by direct agency operation, contracts and cooperative agreements. Federal procurement practices must make sure that the Government equipment uses the most effective techniques for controlling pollution. The Administrator of General Services has already taken steps to assure that motor vehicles purchased by the Federal Government meet minimum standards of exhaust quality.

**Clean Water**

Enforcement authority must be strengthened to provide positive controls over the discharge of pollutants into our interstate or navigable waters. I recommend enactment of legislation to:

--Provide, through the setting of effective water quality standards, combined with a swift and effective enforcement procedure, a national program to prevent water pollution at its source rather than attempting to cure pollution after it occurs.

--Increase project grant ceilings and provide additional incentives for multi-municipal projects under the waste treatment facilities construction program.

--Increase the ceilings for grants to State water pollution control programs.

--Provide a new research, and demonstration construction program leading to the solution of problems caused by the mixing of storm water runoff and sanitary wastes.

The Secretary of Health, Education, and Welfare will undertake an intensive program to clean up the Nation's most polluted rivers. With the cooperation of States and cities--using the tools of regulation, grant and incentives--we can bring the most serious problem of river pollution under control. We cannot afford to do less…

**Clean Air**

The enactment of the Clean Air Act in December of 1963 represented a long step forward in our ability to understand and control the difficult problem of air pollution. The 1966 Budget request of 24 million dollars is almost double the amount spent on air pollution programs in the year prior to its enactment. In addition, the Clean Air Act should be improved to permit the Secretary of Health, Education, and Welfare to investigate potential air pollution problems before pollution happens, rather than having to wait until the damage occurs, as is now the case, and to make recommendations leading to the prevention of such pollution. One of the principal unchecked sources of air pollution is the automobile. I intend to institute discussions with industry officials and other interested groups leading to an effective elimination or substantial reduction of pollution from liquid fueled motor vehicles…

**Pesticides**

Pesticides may affect living organisms wherever they occur. In order that we may better understand the effects of these compounds, I have included increased funds in the budget for use by the Secretaries of Agriculture, Interior, and Health, Education, and Welfare to increase their research efforts on pesticides so they can give special attention to the flow of pesticides through
the environment; study the means by which pesticides break down and disappear in nature; and to keep a constant check on the level of pesticides in our water, air, soil and food supply.

I am recommending additional funds for the Secretary of Agriculture to reduce contamination from toxic chemicals through intensified research, regulatory control, and educational programs. The Secretary of Agriculture will soon submit legislation to tighten control over the manufacture and use of agricultural chemicals, including licensing and factory inspection of manufacturers, clearly placing the burden of proof of safety on the proponent of the chemical rather than on the Government.

Research Resources

Our needs for new knowledge and increasing application of existing knowledge demand a greater supply of trained manpower and research resources. A National Center for Environmental Health Sciences is being planned as a focal point for health research in this field. In addition, the 1966 budget includes funds for the establishment of university institutes to conduct research and training in environmental pollution problems.

Legislation recommended in my message on health has been introduced to increase Federal support for specialized research facilities of a national or regional character. This proposal, aimed at health research needs generally, would assist in the solution of environmental health problems and I urge its passage. We need legislation to provide to the Departments of Agriculture and the Interior authority for grants for research in environmental pollution control in their areas of responsibility. I have asked the Secretary of Interior to submit legislation to eliminate the ceiling on pesticide research…

CONCLUSION

…the beauty of our land is a natural resource. Its preservation is linked to the inner prosperity of the human spirit. The tradition of our past is equal to today's threat to that beauty. Our land will be attractive tomorrow only if we organize for action and rebuild and reclaim the beauty we inherited. Our stewardship will be judged by the foresight with which we carry out these programs. We must rescue our cities and countryside from blight with the same purpose and vigor with which, in other areas, we moved to save the forests and the soil.

Lyndon B. Johnson, Statement by the President on the Proposed National Foundation on the Arts and Humanities, 10 March 1965

AT THE REQUEST of the subcommittee chairmen, I have today transmitted the administration's recommendations for a National Foundation on the Arts and Humanities to the Special Subcommittee on Labor of the House of Representatives, and the Special Subcommittee on Arts and Humanities of the Senate.

In the State of the Union address I said, "We must also recognize and encourage those who can be pathfinders for the Nation's imagination and understanding."

These recommendations are designed to secure such recognition and encouragement for those who extend the frontiers of understanding in the arts and in humanistic studies.

The humanities are an effort to explore the nature of man's culture and to deepen understanding of the sources and goals of human activity. Our recommendations recognize this effort as a central part of the American national purpose, and provide modest support to those whose work offers promise of extending the boundaries of understanding.

Pursuit of artistic achievement, and making the fruits of that achievement available to all its people, is also among the hallmarks of a Great Society.
We fully recognize that no government can call artistic excellence into existence. It must flow from the quality of the society and the good fortune of the Nation. Nor should any government seek to restrict the freedom of the artist to pursue his calling in his own way. Freedom is an essential condition for the artist, and in proportion as freedom is diminished so is the prospect of artistic achievement.

But government can seek to create conditions under which the arts can flourish; through recognition of achievements, through helping those who seek to enlarge creative understanding, through increasing the access of our people to the works of our artists, and through recognizing the arts as part of the pursuit of American greatness. That is the goal of this legislation.

In so doing we follow the example of many other nations where government sympathy and support have helped to shape great and influential artistic traditions.

This Congress will consider many programs which will leave an enduring mark on American life. But it may well be that passage of this legislation, modest as it is, will help secure for this Congress a sure and honored place in the story of the advance of our civilization.

Lyndon B. Johnson, Remarks of the President upon Signing the Public Broadcasting Act, 7 November 1967

Secretary Gardner, Senator Pastore, Chairman Staggers, Members of the Congress, Cabinet, ladies and gentlemen:

It was in 1844 that Congress authorized $30,000 for the first telegraph line between Washington and Baltimore. Soon afterward, Samuel Morse sent a stream of dots and dashes over that line to a friend who was waiting. His message was brief and prophetic and it read: "What hath God wrought?"

Every one of us should feel the same awe and wonderment here today. For today, miracles in communication are our daily routine. Every minute, billions of telegraph messages chatter around the world. Some are intercepted on ships. They interrupt law enforcement conferences and discussions of morality. Billions of signals rush over the ocean floor and fly above the clouds. Radio and television fill the air with sound. Satellites hurl messages thousands of miles in a matter of seconds. Today our problem is not making miracles--but managing miracles. We might well ponder a different question: What hath man wrought--and how will man use his inventions?

The law that I will sign shortly offers one answer to that question. It announces to the world that our Nation wants more than just material wealth; our Nation wants more than a "chicken in every pot." We in America have an appetite for excellence, too.

While we work every day to produce new goods and to create new wealth, we want most of all to enrich man's spirit. That is the purpose of this act. It will give a wider and, I think, stronger voice to educational radio and television by providing new funds for broadcast facilities. It will launch a major study of television's use in the Nation's classrooms and their potential use throughout the world. Finally--and most important--it builds a new institution: the Corporation for Public Broadcasting.

This Corporation will assist stations and producers who aim for the best in broadcasting good music, in broadcasting exciting plays, and in broadcasting reports on the whole fascinating range of human activity. It will try to prove that what educates can also be exciting.
It will get part of its support from our Government. But it will be carefully guarded from Government or from party control. It will be free, and it will be independent—and it will belong to all of our people.

Television is still a young invention. But we have learned already that it has immense—even revolutionary—power to change, to change our lives. I hope that those who lead the Corporation will direct that power toward the great and not the trivial purposes. At its best, public television would help make our Nation a replica of the old Greek marketplace, where public affairs took place in view of all the citizens.

But in weak or even in irresponsible hands, it could generate controversy without understanding; it could mislead as well as teach; it could appeal to passions rather than to reason. If public television is to fulfill our hopes, then the Corporation must be representative, it must be responsible—and it must be long on enlightened leadership.

I intend to search this Nation to find men that I can nominate, men and women of outstanding ability, to this board of directors…

What hath man wrought? And how will man use his miracles? The answer just begins with public broadcasting…So today we rededicate a part of the airwaves—which belong to all the people—and we dedicate them for the enlightenment of all the people.

I believe the time has come to stake another claim in the name of all the people, stake a claim based upon the combined resources of communications. I believe the time has come to enlist the computer and the satellite, as well as television and radio, and to enlist them in the cause of education.

If we are up to the obligations of the next century and if we are to be proud of the next century as we are of the past two centuries, we have got to quit talking so much about what has happened in the past two centuries and start talking about what is going to happen in the next century beginning in 1976. So I think we must consider new ways to build a great network for knowledge—not just a broadcast system, but one that employs every means of sending and of storing information that the individual can rise. Think of the lives that this would change:

--the student in a small college could tap the resources of a great university…
--the country doctor getting help from a distant laboratory or a teaching hospital;
--a scholar in Atlanta might draw instantly on a library in New York;
--a famous teacher could reach with ideas and inspirations into some far-off classroom, so that no child need be neglected. Eventually, I think this electronic knowledge bank could be as valuable as the Federal Reserve Bank.

And such a system could involve other nations, too—it could involve them in a partnership to share knowledge and to thus enrich all mankind.

A wild and visionary idea? Not at all. Yesterday's strangest dreams are today's headlines and change is getting swifter every moment.

I have already asked my advisers to begin to explore the possibility of a network for knowledge—and then to draw up a suggested blueprint for it…

We do have skeptic comments on occasions. But I don't want you to be that skeptic. I do believe that we have important things to say to one another—and we have the wisdom to match our technical genius.

In that spirit this morning, I have asked you to come here and be participants with me in this great movement for the next century, the Public Broadcasting Act of 1967.

The post-New Deal administrative state is unconstitutional, and its validation by the legal system amounts to nothing less than a bloodless constitutional revolution. The original New Dealers were aware, at least to some degree, that their vision of the national government's proper role and structure could not be squared with the written Constitution: The Administrative Process, James Landis's classic exposition of the New Deal model of administration, fairly drips with contempt for the idea of a limited national government subject to a formal, tripartite separation of powers. Faced with a choice between the administrative state and the Constitution, the architects of our modern government chose the administrative state, and their choice has stuck.

There is a perception among some observers, however, that this post-New Deal consensus has recently come under serious legal attack, especially from the now-departed Reagan and Bush administrations. But though debate about structural constitutional issues has clearly grown more vibrant over the past few decades, the essential features of the modern administrative state have, for more than half a century, been taken as unchallengeable postulates by virtually all players in the legal and political worlds, including the Reagan and Bush administrations. The post-New Deal conception of the national government has not changed one iota, nor even been a serious subject of discussion, since the Revolution of 1937…

I. THE DEATH OF CONSTITUTIONAL GOVERNMENT

The United States Congress today effectively exercises general legislative powers, in contravention of the constitutional principle of limited powers. Moreover, Congress frequently delegates that general legislative authority to administrative agencies, in contravention of Article I. Furthermore, those agencies are not always subject to the direct control of the President, in contravention of Article II. In addition, those agencies sometimes exercise the judicial power, in contravention of Article III. Finally, those agencies typically concentrate legislative, executive, and judicial functions in the same institution, in simultaneous contravention of Articles I, II, and III.

In short, the modern administrative state openly flouts almost every important structural precept of the American constitutional order.

A. The Death of Limited Government

The advocates of the Constitution of 1789 were very clear about the kind of national government they sought to create. As James Madison put it: "The powers delegated by the proposed Constitution to the federal government are few and defined." Those national powers, Madison suggested, would be "exercised principally on external objects, as war, peace, negotiation, and foreign commerce," and the states would be the principal units of government for most internal matters.

The expectations of founding-era figures such as James Madison are instructive but not controlling for purposes of determining the Constitution's original public meaning: the best laid schemes o’ mice, men and framers gang aft a-gley. The Constitution, however, is well designed to limit the national government essentially to the functions described by Madison.

Article I of the Constitution vests in the national Congress "[a]ll legislative powers herein granted," and thus clearly indicates that the national government can legislate only in accordance with enumerations. Article I then spells out seventeen specific subjects to which the federal legislative power extends: such matters as taxing and borrowing, interstate and foreign
commerce, naturalization and bankruptcy, currency and counterfeiting, post offices and post roads, patents and copyrights, national courts, piracy and offenses against the law of nations, the military, and the governance of the nation's capital and certain federal enclaves. Article IV further grants to Congress power to enforce interstate full-faith-and-credit requirements, to admit new states, and to manage federal territories and property. Article V grants Congress power to propose constitutional amendments.

This is not the stuff of which Leviathan is made. None of these powers, alone or in combination, grants the federal government anything remotely resembling a general jurisdiction over citizens' affairs. The Commerce Clause, for example, is a grant of power to regulate "Commerce . . . among the several States," not to regulate "all Activities affecting, or affected by, Commerce . . . among the several States." The Commerce Clause clearly leaves outside the national government's jurisdiction such important matters as manufacturing (which is an activity distinct from commerce), the terms, formation, and execution of contracts that cover subjects other than the interstate shipment of goods, and commerce within a state's boundaries.

Nor does the Necessary and Proper Clause, which the founding generation called the Sweeping Clause, grant general legislative powers to the national government. This clause contains two significant internal limitations. First, it only validates laws that "carry[] into Execution" other granted powers. To carry a law or power "into Execution" means to provide the administrative machinery for its enforcement; it does not mean to regulate unenumerated subjects in order to make the exercise of enumerated powers more effective. Second, and more fundamentally, laws enacted pursuant to the Sweeping Clause must be both "necessary and proper" for carrying into execution enumerated powers. As Patty Granger and I have elsewhere demonstrated at length, the word "proper" in this context requires executory laws to be distinctively and peculiarly within the jurisdictional competence of the national government -- that is, consistent with background principles of separation of powers, federalism, and individual rights. Thus, the Sweeping Clause does not grant Congress power to regulate unenumerated subjects as a means of regulating subjects within its constitutional scope.

Nor does the power of the purse give Congress unlimited authority, though here the limits are a bit fuzzy. The Constitution contains a Taxing Clause, but it does not contain a "spending clause" as such. Nevertheless, Congress acquires the power to spend from two sources. First, the Sweeping Clause permits Congress to pass appropriations laws -- provided that such laws "carry[] into Execution" an enumerated power and are "necessary and proper" for doing so. Second, as David Engdahl has pointed out, Congress's power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" seems to provide a general spending power. But a general power to spend is not a general power to regulate. Even if Congress can impose whatever conditions it pleases on the receipt of federal funds, those conditions are contractual in nature, a fact that limits both their enforceability and their scope. Moreover, it is not obvious that the Property Clause gives Congress wholly unlimited power to enact spending conditions, though identifying any limits on such power would require careful consideration of the meaning of the phrase "dispose of," the relationship between the Property Clause and the Sweeping Clause, and the viability of a general doctrine of unconstitutional conditions.

Admittedly, some post-1789 amendments to the Constitution expand Congress's powers beyond their original limits. For example, the Thirteenth and Fifteenth Amendments authorize Congress to enforce prohibitions against, respectively, involuntary servitude and racially discriminatory voting practices; the Fourteenth Amendment gives Congress power to enforce
that Amendment's numerous substantive constraints on states; and the Sixteenth Amendment permits Congress to impose direct taxes without an apportionment requirement. These are important powers, to be sure, but they do not fundamentally alter the limited scope of Congress's power over private conduct.

Of course, in this day and age, discussing the doctrine of enumerated powers is like discussing the redemption of Imperial Chinese bonds. There is now virtually no significant aspect of life that is not in some way regulated by the federal government. This situation is not about to change. Only twice since 1937 has the Supreme Court held that a congressional statute exceeded the national government's enumerated powers, and one of those holdings was overruled nine years later. Furthermore, both cases involved the direct regulation of state governments in their sovereign capacities. To the best of my knowledge, the post-New Deal Supreme Court has never invalidated a congressional intrusion into private affairs on ultra vires grounds; instead the Court has effectively acquiesced in Congress's assumption of general legislative powers.

The courts, of course, are not the only, or even the principal, interpreters of the Constitution. Under the Constitution, it is emphatically the province and duty of the President to say what the law is -- and hence to veto bills that contravene constitutional limits. During their twelve years in office, however, the Reagan and Bush administrations made no serious attempt to resuscitate the doctrine of enumerated powers. I do not know of a single instance in which President Reagan or President Bush vetoed or even opposed legislation on the ground that it exceeded Congress's enumerated powers. Furthermore, I am aware of only one instance in the Reagan-Bush era in which the Justice Department formally opposed legislation on such grounds; a 1986 opinion from the Office of Legal Counsel stated that Congress did not have the enumerated power to enact a national lottery.

Thus, the demise of the doctrine of enumerated powers, which made possible the growth of the modern regulatory state, has encountered no serious real-world legal or political challenges, and none are on the horizon.

B. The Death of the Nondelegation Doctrine

The Constitution both confines the national government to certain enumerated powers and defines the institutions of the national government that can permissibly exercise those powers. Article I of the Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Article II provides that "[t]he executive Power shall be vested in a President of the United States of America." Article III specifies that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The Constitution thus divides the powers of the national government into three categories -- legislative, executive, and judicial -- and vests such powers in three separate institutions. To be sure, the Constitution expressly prescribes some deviations from a pure tripartite scheme of separation, but this only underscores the role of the three Vesting Clauses in assigning responsibility for governmental functions that are not specifically allocated by the constitutional text.

Although the Constitution does not contain an express provision declaring that the Vesting Clauses' allocations of power are exclusive, it is a mistake in principle to look for such an express declaration. The institutions of the national government are creatures of the Constitution and must find constitutional authorization for any action. Congress is constitutionally authorized to exercise "[a]ll legislative Powers herein granted," the President is
authorized to exercise "[t]he executive Power," and the federal courts are authorized to exercise "[t]he judicial Power of the United States." Congress thus cannot exercise the federal executive or judicial powers for the simple reason that the Constitution does not vest such power in Congress. Similarly, the President and the federal courts can exercise only those powers vested in them by the Constitution: the general executive and judicial powers, respectively, plus a small number of specific powers outside those descriptions. Thus, any law that attempts to vest legislative power in the President or in the courts is not "necessary and proper for carrying into Execution" constitutionally vested federal powers and is therefore unconstitutional.

Although the Constitution does not tell us how to distinguish the legislative, executive, and judicial powers from each other, there is clearly some differentiation among the three governmental functions, which at least generates some easy cases. Consider, for example, a statute creating the Goodness and Niceness Commission and giving it power "to promulgate rules for the promotion of goodness and niceness in all areas within the power of Congress under the Constitution." If the "executive power" means simply the power to carry out legislative commands regardless of their substance, then the Goodness and Niceness Commission's rulemaking authority is executive rather than legislative power and is therefore valid. But if that is true, then there never was and never could be such a thing as a constitutional principle of nondelegation -- a proposition that is belied by all available evidence about the meaning of the Constitution. Accordingly, the nondelegation principle, which is textually embodied in the command that all executory laws be "necessary and proper," constrains the substance of congressional enactments. Certain powers simply cannot be given to executive (or judicial) officials, because those powers are legislative in character.

A governmental function is not legislative, however, merely because it involves some element of policymaking discretion: it has long been understood that some such exercises of discretion can fall within the definition of the executive power. The task is therefore to determine when a statute that vests discretionary authority in an executive (or judicial) officer has crossed the line from a necessary and proper implementing statute to an unnecessary and/or improper delegation of distinctively legislative power. While I cannot complete that task here, the core of the Constitution's nondelegation principle can be expressed as follows: Congress must make whatever policy decisions are sufficiently important to the statutory scheme at issue so that Congress must make them. Although this circular formulation may seem farcical, it recognizes that a statute's required degree of specificity depends on context, takes seriously the well-recognized distinction between legislating and gap-filling, and corresponds reasonably well to judicial application of the nondelegation principle in the first 150 years of the nation's history. If it does not precisely capture the true constitutional rule of nondelegation, it is a plausible first approximation.

In any event, it is a much better approximation of the true constitutional rule than is the post-New Deal positive law. The Supreme Court has not invalidated a congressional statute on nondelegation grounds since 1935. This has not been for lack of opportunity. The United States Code is filled with statutes that create little Goodness and Niceness Commissions -- each confined to a limited subject area such as securities, broadcast licenses, or (my personal favorite) imported tea. These statutes are easy kills under any plausible interpretation of the Constitution's nondelegation principle. The Supreme Court, however, has rejected so many delegation challenges to so many utterly vacuous statutes that modern nondelegation decisions now simply recite these past holdings and wearily move on. Anything short of the Goodness and Niceness Commission, it seems, is permissible.
The rationale for this virtually complete abandonment of the nondelegation principle is simple: the Court believes -- possibly correctly -- that the modern administrative state could not function if Congress were actually required to make a significant percentage of the fundamental policy decisions. Judicial opinions candidly acknowledge this rationale for permitting delegations. For example, the majority in *Mistretta v. United States* declared that "our jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives." When faced with a choice between the Constitution and the structure of modern governance, the Court has had no difficulty making the choice.

Contrary to conventional wisdom, neither did the Reagan and Bush administrations. Neither President Reagan nor President Bush ever vetoed or opposed legislation on the express ground that it violated the nondelegation doctrine. Nor, to my knowledge, did the Reagan-Bush Justice Departments ever formally make such an objection to proposed or actual legislation.

Thus, the demise of the nondelegation doctrine, which allows the national government's now-general legislative powers to be exercised by administrative agencies, has encountered no serious real-world legal or political challenges, and none are on the horizon.

**C. The Death of the Unitary Executive**

Article II states that "[t]he executive Power shall be vested in a President of the United States of America." Although the precise contours of this "executive Power" are not entirely clear, at a minimum it includes the power to execute the laws of the United States. Other clauses of the Constitution, such as the requirement that the President "take Care that the Laws be faithfully executed," assume and constrain this power to execute the laws, but the Article II Vesting Clause is the constitutional source of this power -- just as the Article III Vesting Clause is the constitutional source of the federal judiciary's power to decide cases.

Significantly, that power to execute the laws is vested, not in the executive department of the national government, but in "a President of the United States of America." The Constitution thus creates a unitary executive...

Of course, the President cannot be expected personally to execute all laws. Congress, pursuant to its power to make all laws "necessary and proper for carrying into Execution" the national government's powers, can create administrative machinery to assist the President in carrying out legislatively prescribed tasks. But if a statute vests discretionary authority directly in an agency official (as do most regulatory statutes) rather than in the President, the Article II Vesting Clause seems to require that such discretionary authority be subject to the President's control...

Congress and the President have fought hard in recent years over control of the federal administrative machinery, and the courts have adjudicated such disputes in some high-profile cases...

**D. The Death of the Independent Judiciary**

Article III provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The judges of all such federal courts are constitutionally guaranteed tenure during good behavior as well as assurance that their salaries will not be diminished during their time in office. One of the principal functions of administrative agencies is to adjudicate disputes, yet "administrative adjudicators plainly lack the essential attributes that Article III requires of any
decisionmaker invested with 'the judicial Power of the United States.' Is adjudication by administrative agencies therefore another instance of abandonment of a fundamental constitutional principle?

Maybe. Administrative adjudication is problematic only if it must be considered an exercise of judicial power. But an activity is not exclusively judicial merely because it is adjudicative -- that is, because it involves the application of legal standards to particular facts. Much adjudicative activity by executive officials -- such as granting or denying benefits under entitlement statutes -- is execution of the laws by any rational standard, though it also fits comfortably within the concept of the judicial power if conducted by judicial officers. This overlap between the executive and judicial functions is not surprising; under many pre-American conceptions of separation of powers, the judicial power was treated as an aspect of the executive power.

Agency adjudication is therefore constitutionally permissible under Article III as long as the activity in question can fairly fit the definition of executive power, even if it also fairly fits the definition of judicial power. Some forms of adjudication, however, are quintessentially judicial. The conviction of a defendant under the criminal laws, for example, is surely something that requires the exercise of judicial rather than executive power. Although it is difficult to identify those activities that are strictly judicial in the constitutional sense, perhaps Justice Curtis had the right answer in Murray's Lessee v. Hoboken Land & Improvement Co. when he suggested that the Article III inquiry merges with questions of due process: if the government is depriving a citizen of "life, liberty, or property," it generally must do so by judicial process, which in the federal system requires an Article III court; but if it is denying a citizen (to use discredited but useful language) a mere privilege, it can do so by purely executive action. Wherever the line is drawn, however, at least some modern administrative adjudication undoubtedly falls squarely on the judicial side. Most notably, the imposition of a civil penalty or fine is very hard to distinguish from the imposition of a criminal sentence (especially when the criminal sentence is itself a fine)…

E. The Death of Separation of Powers

The constitutional separation of powers is a means to safeguard the liberty of the people. In Madison's famous words, "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The destruction of this principle of separation of powers is perhaps the crowning jewel of the modern administrative revolution. Administrative agencies routinely combine all three governmental functions in the same body, and even in the same people within that body.

Consider the typical enforcement activities of a typical federal agency -- for example, of the Federal Trade Commission. The Commission promulgate substantive rules of conduct. The Commission then considers whether to authorize investigations into whether the Commission's rules have been violated. If the Commission authorizes an investigation, the investigation is conducted by the Commission, which reports its findings to the Commission. If the Commission thinks that the Commission's findings warrant an enforcement action, the Commission issues a complaint. The Commission's complaint that a Commission rule has been violated is then prosecuted by the Commission and adjudicated by the Commission. This Commission adjudication can either take place before the full Commission or before a semi-autonomous Commission administrative law judge. If the Commission chooses to adjudicate before an
administrative law judge rather than before the Commission and the decision is adverse to the
Commission, the Commission can appeal to the Commission. If the Commission ultimately finds
a violation, then, and only then, the affected private party can appeal to an Article III court. But
the agency decision, even before the bona fide Article III tribunal, possesses a very strong
presumption of correctness on matters both of fact and of law.

This is probably the most jarring way in which the administrative state departs from the
Constitution, and it typically does not even raise eyebrows. The post-New Deal Supreme Court
has never seriously questioned the constitutionality of this combination of functions in agencies.
Nor, to the best of my knowledge, did Presidents Reagan or Bush ever veto or object to
legislation on this ground.

II. WHAT IS TO BE DONE?

The actual structure and operation of the national government today has virtually nothing
to do with the Constitution. There is no reasonable prospect that this circumstance will
significantly improve in the foreseeable future. If one is not prepared (as I am) to hold fast to the
Constitution though the heavens may fall, what is one supposed to do with that knowledge?

One option, of course, is to argue directly that the Constitution, properly interpreted in
accordance with its original public meaning, is actually flexible enough to accommodate the
modern administrative state. But although some of the claims I make in Part I with respect to
Articles II and III may ultimately prove to be wrong in some important respects, the most
fundamental constitutional problems with modern administrative governance -- unlimited federal
power, rampant delegations of legislative authority, and the combination of functions in
administrators -- are not even remotely close cases…

A second option is to insist that the administrative state can be reconciled with the
Constitution if only we reject the methodology of original public meaning…

A third option, pursued at length by Bruce Ackerman, is to argue that the Constitution
has been validly amended, through means other than the formal process of Article V, in a fashion
that constitutionalizes the administrative state. Professor Ackerman claims that the ratifications
of the original Constitution and the Reconstruction Amendments were knowingly "illegal" under
then-governing formal norms for the ratification of fundamental law. The New Deal, he
contends, reflected a similarly self-conscious rejection of the formal mechanisms for
constitutional change. According to Professor Ackerman, if the formally deficient "ratifications"
of the Constitution and the Reconstruction Amendments are legally valid, it is difficult to see
why the same cannot be true of the formally deficient "ratification" of the New Deal structure of
governance via the 1936 election and the concomitant Revolution of 1937…

There remains [another] option: acknowledge openly and honestly, as did some of the
architects of the New Deal, that one cannot have allegiance both to the administrative state and
to the Constitution. If, however, one then further follows the New Deal architects in choosing the
administrative state over the Constitution, one must also acknowledge that all constitutional
discourse is thereby rendered problematic. The Constitution was a carefully integrated document,
which contains no severability clause. It makes no sense to agonize over the correct application
of, for example, the Appointments Clause, the Exceptions Clause, or even the First Amendment
when principles as basic to the Constitution as enumerated powers and nondelegation are no
longer considered part of the interpretative order. What is left of the Constitution after excision
of its structural provisions, however interesting it may be as a matter of normative political
theory, simply is not the Constitution. One can certainly take bits and pieces of the Constitution
and incorporate them into a new, hypothetical document, but nothing is fostered other than intellectual confusion by calling that new document the Constitution…
Ronald Reagan, First Inaugural Address, 20 January 1981

…the business of our nation goes forward. These United States are confronted with an economic affliction of great proportions. We suffer from the longest and one of the worst sustained inflations in our national history. It distorts our economic decisions, penalizes thrift, and crushes the struggling young and the fixed-income elderly alike. It threatens to shatter the lives of millions of our people.

Idle industries have cast workers into unemployment, causing human misery and personal indignity. Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement and keeps us from maintaining full productivity.

But great as our tax burden is, it has not kept pace with public spending. For decades, we have piled deficit upon deficit, mortgaging our future and our children’s future for the temporary convenience of the present. To continue this long trend is to guarantee tremendous social, cultural, political, and economic upheavals.

You and I, as individuals, can, by borrowing, live beyond our means, but for only a limited period of time. Why, then, should we think that collectively, as a nation, we are not bound by that same limitation?

We must act today in order to preserve tomorrow. And let there be no understanding—we are going to begin to act, beginning today.

The economic ills we suffer have come upon us over several decades. They will not go away in days, weeks, or months, but they will go away. They will go away because we, as Americans, have the capacity now, as we have had in the past, to do whatever needs to be done to preserve this last and greatest bastion of freedom.

In this present crisis, government is not the solution to our problem.

From time to time, we have been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. But if no one among us is capable of governing himself, then who among us has the capacity to govern someone else? All of us together, in and out of government, must bear the burden. The solutions we seek must be equitable, with no one group singled out to pay a higher price.

We hear much of special interest groups. Our concern must be for a special interest group that has been too long neglected. It knows no sectional boundaries or ethnic and racial divisions, and it crosses political party lines. It is made up of men and women who raise our food, patrol our streets, man our mines and our factories, teach our children, keep our homes, and heal us when we are sick—professionals, industrialists, shopkeepers, clerks, cabbies, and truckdrivers. They are, in short, "We the people," this breed called Americans…

So, as we begin, let us take inventory. We are a nation that has a government—not the other way around. And this makes us special among the nations of the Earth. Our Government has no power except that granted it by the people. It is time to check and reverse the growth of government which shows signs of having grown beyond the consent of the governed.

It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people. All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.

Now, so there will be no misunderstanding, it is not my intention to do away with government. It is, rather, to make it work—work with us, not over us; to stand by our side, not
ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it.

If we look to the answer as to why, for so many years, we achieved so much, prospered as no other people on Earth, it was because here, in this land, we unleashed the energy and individual genius of man to a greater extent than has ever been done before. Freedom and the dignity of the individual have been more available and assured here than in any other place on Earth. The price for this freedom at times has been high, but we have never been unwilling to pay that price.

It is no coincidence that our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government. It is time for us to realize that we are too great a nation to limit ourselves to small dreams. We are not, as some would have us believe, doomed to an inevitable decline. I do not believe in a fate that will fall on us no matter what we do. I do believe in a fate that will fall on us if we do nothing. So, with all the creative energy at our command, let us begin an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope.

We have every right to dream heroic dreams. Those who say that we are in a time when there are no heroes just don’t know where to look. You can see heroes every day going in and out of factory gates. Others, a handful in number, produce enough food to feed all of us and then the world beyond. You meet heroes across a counter—and they are on both sides of that counter. There are entrepreneurs with faith in themselves and faith in an idea who create new jobs, new wealth and opportunity. They are individuals and families whose taxes support the Government and whose voluntary gifts support church, charity, culture, art, and education. Their patriotism is quiet but deep. Their values sustain our national life.

I have used the words "they" and "their" in speaking of these heroes. I could say "you" and "your" because I am addressing the heroes of whom I speak—you, the citizens of this blessed land. Your dreams, your hopes, your goals are going to be the dreams, the hopes, and the goals of this administration, so help me God.

We shall reflect the compassion that is so much a part of your makeup. How can we love our country and not love our countrymen, and loving them, reach out a hand when they fall, heal them when they are sick, and provide opportunities to make them self-sufficient so they will be equal in fact and not just in theory?

Can we solve the problems confronting us? Well, the answer is an unequivocal and emphatic "yes." To paraphrase Winston Churchill, I did not take the oath I have just taken with the intention of presiding over the dissolution of the world’s strongest economy.

In the days ahead I will propose removing the roadblocks that have slowed our economy and reduced productivity. Steps will be taken aimed at restoring the balance between the various levels of government. Progress may be slow—measured in inches and feet, not miles—but we will progress. Is it time to reawaken this industrial giant, to get government back within its means, and to lighten our punitive tax burden. And these will be our first priorities, and on these principles, there will be no compromise.

On the eve of our struggle for independence a man who might have been one of the greatest among the Founding Fathers, Dr. Joseph Warren, President of the Massachusetts Congress, said to his fellow Americans, "Our country is in danger, but not to be despaired of.... On you depend the fortunes of America. You are to decide the important questions upon which rests the happiness and the liberty of millions yet unborn. Act worthy of yourselves."
Well, I believe we, the Americans of today, are ready to act worthy of ourselves, ready to do what must be done to ensure happiness and liberty for ourselves, our children and our children’s children…
Reagan, “OSHA,” in *Reagan, in His Own Hand*
Reagan, “Man’s Castle,” in Reagan, in His Own Hand
Reagan, “Paperwork and Bureaucrats,” in *Reagan, in His Own Hand*
Reagan, “Inflation,” in *Reagan, in His Own Hand*
Bovard, *Lost Rights*

The rights of hundreds of thousands of Americans have been shredded by federal proclamations of the sanctity of species such as the Soccorro isopod, the Texas wild-rice plant, the fringe-toed lizard, the kanab ambersnail, and fairy shrimp. At the time the Endangered Species Act (ESA) was enacted in 1973, most congressmen and most Americans believed that the act would apply only to high-profile cases such as that of bald eagles. During most of the 1970s, the Interior Department was restrained in its enforcement, with the only major controversy involving the snail darter around a large dam in Tennessee. Yet, beginning in the mid-to-late 1980s, environmental organizations and federal bureaucrats vastly broadened the sweep of the law.

In Austin, Texas, 3,000 farmers and other Texans marched in 1994 to denounce the Fish and Wildlife Service (FWS) for its proposal to quarantine 800,000 acres of land across 33 Texas counties to protect the golden-cheeked warbler. Property values dived by over $300 million in Travis County alone after the FWS designated much of the county as "protected habitat" for endangered species.

The FWS designated a quarter of a million acres of land as protected habitat for the California gnatcatcher in 1991. The Building Industry Association of Southern California estimated that that designation could destroy as many as 200,000 jobs. The FWS’s action was struck down in 1994 by a federal judge who ruled that the agency violated federal law by refusing to publicly disclose the information that it used to justify its seizure of control over the private land.

More than 1,000 species are now on the endangered list and thousands more could be added in the next few years. It requires almost no evidence for the U.S. Interior Department to proclaim a species endangered or threatened. And once government bureaucrats have unilaterally made that decision, they can seize dictatorial control over the use of property in any area in which the threatened species resides — or might reside. For instance, in New Jersey, 77-year-old Grace Heck was prohibited from building a home on land she had bought for her retirement because the FWS ruled that there was a federally protected plant species "within five miles of the proposed project site."

The essence of the ESA is that every type of insect and animal must have absolute rights superior to those of human beings. As a Wall Street Journal editorial noted, "Enforcement of the act is being effectively steered by the BANANA: Build Absolutely Nothing Anywhere Near Anything." Each endangered species that the government adds to its list increases the arbitrary power of FWS agents to confiscate and control property belonging to individual Americans. As former Interior Department chief economist Richard Stroup observes, "The Fish and Wildlife Service faces no budget constraint on the number of acres it can control in the name of endangered species, so it always wants more."

The FWS's listing process for endangered species makes a mockery of any concept of due process. In 1995, the FWS proposed to add seven mussels found in Alabama to the list of ESA-protected species. Sen. Richard Shelby of Alabama protested:

"Scientific deception on the part of the FWS has gone on long enough. Under current law, the FWS is the investigator, author, decision maker, enforcer and appeals court for all endangered species. That is very similar to hiring one person to serve your county as the police officer, prosecutor, defense lawyer, judge, jury and appeals court."

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Shelby also complained: "I firmly believe that the FWS has little valid scientific information about the location, history, population status, life cycle needs and host fish requirements of these mussels, as well as the activities which adversely affect them."

While federal bureaucrats claim to carefully weigh the evidence before slapping on the endangered label on a species, the soaring number of such Designations in recent years is actually the result of a court order and a political deal. In late 1992, after George Bush had blown the presidential election, lame-duck Republicans settled a lawsuit by an environmental group by imposing a "critter quota" — promising that the Interior Department would designate almost 400 additional species in the following four years. In February 1995, the Wall Street Journal reported:

"The Bush administration pledged that the Fish and Wildlife Service would, by September 30, 1996, propose listing all species "for which substantial information exists to warrant listing them as either endangered or threatened." The service had a list of these species — 382 to be exact. Substitutions could be made, with proper reasoning, and certain species could be dropped from the backlog list, but only with voluminous scientific justification that in most cases would be hard to come by."

Thus, according to the terms of the settlement, it now requires far more scientific evidence not to list a species than is required to list it. This is a fascinating inversion of due process and common sense, creating an overwhelming bias against private property rights.

Some Interior Department officials believe that the Endangered Species Act requires human beings to act like sacrificial animals. John Shuler, a Montana rancher was fined $4,000 by the Interior Department for shooting a grizzly bear that was heading to attack him. Grizzly bears had been mauling Shuler's sheep for months. When he heard a disturbance late one night, he grabbed his gun and went outside. He saw three grizzlies attacking his sheep — and a fourth one heading towards him. The man shot the bear that was charging him and then retreated to the safety of his home.

The Interior Department sued Shuler and the case was heard before one of the agency's administrative law judges. As Ike Sugg of the Competitive Enterprise Institute, the most effective critic of the ESA in the nation, observed:

"In an unprecedented application of human criminal law standards of self-defense to wild animals, the judge held that Mr. Shuler 'was blameworthy to some degree in bringing about the occasion for the need to use deadly force.' In other words, it was Mr. Shuler's fault: He 'purposefully placed himself in the zone of imminent danger of bear attack.'" (It is only because of the unrealistic assumptions of the ESA that the grizzly is considered endangered in Montana and other areas of the Northwest. There are plenty of grizzly bears in Canada — but the U.S. law pretends that they don't exist for purposes of declaring them endangered in Idaho and Montana.)

On October 26, 1993, dozens of homes and tens of thousands of acres in Riverside County were burned as a direct result of policies imposed by the Fish and Wildlife Service. The FWS designated 77,000 acres in Riverside County as a "rat preserve" for the kangaroo rat. Homeowners in that area knew that the buildup of brush posed a grave fire danger and sought to lightly plow their land in order to create firebreaks. But the Fish and Wildlife Service repeatedly threatened prison sentences and fines of up to $100,000 against homeowners who sought to protect their homes against fire hazards in the area of "protected" rat habitat. Sugg wrote shortly after the fire:

"The designation of brush as protected habitat — and restrictions on controlled burns and other methods to keep brush down — fueled the destructiveness of the fires. To protect the
kangaroo rat from people, the Fish and Wildlife Service prevented people from protecting themselves and their property from fire.

One homeowner saved his home by disobeying the FWS threats and using a tractor to create firebreaks on his land shortly after the fire broke out.

Federal agents can seize the assets of landowners, farmers, and others on the basis of a mere suspicion of violating the Endangered Species Act. Property rights advocates bitterly complain that the Interior Department's asset-forfeiture operations have been completely arbitrary and unjust. The Interior Department was unable to provide any estimate of the total amount of property it had confiscated, in response to my phone calls and press inquires.

The Fish and Wildlife Service announced in May 1997 that it expected to soon have 18 million acres of private land locked up under so-called habitat conservation plans restricting owners' use. In addition, more than 10 million other acres of private and public land have come under either temporary or quasi-permanent control of federal environmental dictates as a result of the Endangered Species Act. The total amount of land that has been affected by the ESA is equivalent to cordonning off the entire states of Massachusetts, Vermont, New Hampshire, and Connecticut.

Republicans captured the Congress in 1994 in part because of widespread anger by property owners and business owners about rampages by environmental agents. However, Speaker Gingrich made Rep. Sherwood Boehlert (R-N.Y.) co-chairman of an environmental task force he set up. Boehlert ranks almost dead last of all Republican congressmen in his support of free-market policies. After being named co-chairman, Boehlert participated in a Sierra Club-organized demonstration that demonized Republican environmental reform efforts. In the Senate, the leading bill to "reform" the ESA, sponsored by Sen. Dirk Kempthorne (R-Idaho), could actually increase the power of federal agents over landowners and does little or nothing to fix the law's basic defects. Appallingly, the Kempthorne bill does not require the government to provide any compensation to citizens whose property is deep-frozen by federal edicts. Perhaps Kempthorne believed that keeping compensation for victims out of the bill would help him avoid an "extremist" label. But, perhaps even more surprisingly, Kempthorne and his cosponsors also believe that the government has a right to blindfold the citizens it robs. His bill would sharply reduce the amount of information that citizens could get regarding ESA listing processes and underlying data under the Freedom of Information Act. This provision is one more illustration of the naiveté of citizens expecting politicians to protect their rights against the bureaucracy.
Lords of the Flies

The United States Government is forcing landowners to spend millions of dollars to protect an endangered bug.

IKE C. SUGG

WHEN President Nixon signed the Endangered Species Act in 1973, he inadvertently codified Aldo Leopold's stylish but stupid aphorism, "To keep every cog and wheel is the first precaution of intelligent tinkering." Should we lament the extinction of smallpox, or expand the ESA to protect unique life forms such as various viruses for future generations? Before we "Save the fungus among us!" as Gary Larson once quipped, we might want to reconsider what we are already trying to save—and, more importantly, how we are going about it.

At present, the ESA protects 33 species of insect. While most Americans might not think twice about stepping on a bug, the federal penalty if the bug turns out to be a rare one can amount to $200,000 in fines and one year in jail. And the same goes for modifying the habitat of such a species—even if the critters in question do not actually live on the land in question. In short, the ESA authorizes the Federal Government to prohibit anything that might encroach on or disturb species that are classified as "threatened" or "endangered."

Consider the case of the Delhi sands flower-loving fly, featured in a recent NBC Nightly News report on "The Fleeing of America." This fly is a native of the Colton Dunes in California's San Bernardino and Riverside Counties. It is known to live on less than 200 acres, all but 10 of which are privately owned. The fly spends most of its life underground, in a larval stage, and lives for only about a week above ground. During that short period of time, the males find mates and breed. After these encounters the females deposit their eggs beneath sandy soil. Then the adult flies die and the cycle begins anew.

them, then make a 90-degree turn to the north, where the flyway passes to
30 feet, and follow that path for 700 feet. At the end of the flyway, the flies
will make a 90-degree turn to the west and cross a four-lane street, on the other
side of which their habitat awaits.

Assuming that the flies will understand and follow the flight path laid out
for them, one wonders how they will make it across the busy street. Common
sense suggests that oncoming traffic

The extinction of the Delhi sands
flower-loving fly in the immediate future is a likely event,
according to the Interior Department’s own report.

would pose a greater threat than an overly narrow flyway. The county pro-
posed to retain an 18-foot-wide migration corridor for the fly, but the Service
said that the proposal was “not biologi-
cally justified” and threatened to sue the
county if it went forward without “miti-
gating” for the flyway. In other words, the county will have to buy the Delhi sands flower-loving fly yet another pre-
serve.

It gets worse. These intolerant insects live alongside imperiled people, in an area of historically high
unemployment and economic distress. To attract industry and create jobs,
the 10,000-acre Agua Mansa Enterprise Zone was established in 1986, one of California’s first enterprise
zones. It offers specific tax advantages to businesses that locate within
the zone, but there is a fly in the
omission.

For CanFibre, Inc., a Canadian manufacturer of recycled fiberboard, the Delhi sands flower-loving fly has added $450,000 to the cost of

building a plant in the Agua Mansa. The Fish & Wildlife Service claimed that CanFibre’s entire 300-acre
property was occupied by the fly, and that the company would have to give up 65 acres to “mitigate.” Tom
Olsen, a biologist who consulted on the project, says the government demands rest on “theoretical horse manure.”

“Less than 10 acres of suitable habitat exists on the property,” says Olsen. Indeed, his biologists “had [only] two
sightings of males flying over the prop-
erty; there was no evidence of use by females, and the two males we identified could have been the same fly.” As with the hospital, the feds backed off on halting the project, but they collected a cool $650,000 in cash.

Such exertion—wherein landowners fork over money, land, or both in ex-
change for permission to use their own land to compensate under the ESA. Indeed, that’s what “habitat conserva-
tion plans” are all about. The cost of obtaining such permission has deterred at least one firm, Trism, Inc., from locating in the zone. “What they want is a fly park,” said a Trism representative.

Since then, the Fish & Wildlife Serv-
ic has come up with a new idea: it has announced that it wants to set aside 200 to 300 acres in the enterprise zone for yet another fly preserve (that makes three, for those who are keeping count). The Service claims this preserve will actually make things easier for the area’s beleaguered landowners. Rather than forcing individual property owners and developers to run the regulatory gaun-
let for development permits one at a time—an expensive and time-consuming process—the Service wants to create one grand extinction scheme through which landowners pay collectively.

Such region-wide habitat conserva-
tion plans are supposed to be good for everyone. The fly gets a big preserve, and the landowners get “regulatory cer-
tainty.” Since the fly preserve will be clearly defined, landowners will know

up front whether the government is going
to take their land. Those who own
land nearby will pay a “development
migration fee” to help compensate their neighbors whose land is to be included in the preserve. In other words, those who have flies on their land will be dispossessed, while those who do not have flies on their land will be robbed. Despite the admission in the Fifth Amendment: “nor shall private property be taken for public use, without just compensation,” the Federal Govern-
ment is here proposing not to distribute this cost across the whole public through taxation, but rather to impose it on a handful of people who happen to own neighboring property.

Local planners say the preserve land is worth approximately $55,000 per acre. That means a 300-acre fly preserve will cost $10.5 million, to be paid by those
who develop land that is completely devoid of endangered flies. Because the ESA requires such “mitigation” to be paid only when “actual death or injury” occurs to protected wildlife, and because those who will be paying the mitigation do not have such wildlife on their land, the government’s extinction scheme is patently contrary not only to the Constitution but also to the Act it is supposedly enforcing. Many landowners will capitulate any-
way. For those with lien on their property and notes to pay, fighting the feds is a losing proposition. In their view, it is a choice of being allowed to develop
some land or none at all. Environmentalists claim such plans are totally volun-
tary, but in reality they present a Hob-
son’s choice.

Even if developers buy into the scheme, it is likely to take them years to come up with the millions necessary to pay for the preserve. And even if the dispossessed landowners eventually get paid $35,000 an acre for their land, that may be far less than what it is really worth. San Bernardino County paid between $150,000 and $400,000 per acre for the nearby hospital site. As luck would have it, the most expensive land was where the eight flies were found. Now the flies are the de facto owners of prime real estate, taken on their
behalf by the Federal Government.

While some might argue that the ends justify the means, in this case it appears that the ESA is causing all this trouble for nothing. “The ex-
tinction of the Delhi sands flower-

FACTS $100. OPINIONS $1.
Violating the Endangered Species Act just might be the best thing Michael Rowe ever did. While most of Mr. Rowe's law-abiding neighbors lost their homes to the October fires that destroyed an estimated $1 billion of property in Southern California, breaking the law saved his. By clearing a firebreak in habitat designated for an "endangered" species, Mr. Rowe spared his family's house from the blaze.

For fear of prosecution, Mr. Rowe will not say that he actually broke the law. Even if he did, he maintains, it is unlikely the government would prosecute him. As he puts it: "I don't think they're that stupid." The Endangered Species Act's mandates are directly implicated in much of California's recent fire-borne tragedy.

Nevertheless, Mr. Rowe's anger is palpable, and perfectly justified. In 1991, Mr. Rowe, his wife and three children moved into a cramped one-bedroom house on their 20-acre hilltop ranch 80 miles east of Los Angeles. That same year, after saving enough money to expand their house, Mr. Rowe was told that his ranch was part of a "study area" for the Stephen's kangaroo rat, a species protected by the Endangered Species Act. Thus Mr. Rowe was denied the use of his property -- essentially because the government wants to turn it into a rat preserve.

The so-called "K rat" was listed as an endangered species in 1988. Since then about $100 million has been spent to protect it. Some 77,000 acres of private property have been designated as K-rat study areas in Riverside County, where Mr. Rowe lives. Study areas are strictly "protected." Of the land actually occupied by the K rat, 80% is currently off limits to human disturbance. The rodent's "historical range" encompasses some 500,000 acres of Riverside County. Those who can afford it must pay nearly $2,000 an acre to develop any of that land -- occupied or not.

California property owners may smell a rat, but it is hardly the only species that impinges on their property rights. Already the spotted owl has restricted the use of 4.2 million acres. With the listing of the California gnatcatcher in March, more than 400,000 acres of Southern California coastal sage scrub were put off limits (a third of them, incidentally, in Riverside County). Only 5% of the gnatcatcher's total habitat can be released for constructive use.

Amazingly, Interior Secretary Bruce Babbitt says these examples present a "model" of "ecosystem management," which will actually "enhance the position of private property owners."
Mr. Babbitt and other defenders of the Endangered Species Act like to note how "flexible" the law is for property owners.

It is true, in Mr. Rowe's case, that if he came up with $5,000 to hire a biologist, he might be allowed the use of his land. If a biological survey found no K rats, then Mr. Rowe could earn the right to use his own land by paying the government $1,950 an acre in "development mitigation fees" -- to subsidize the purchase of occupied habitat elsewhere. The presence of a single rat, however, would negate even this limited option.

"I can't afford any of that!" Mr. Rowe exclaims. But then again, he can't afford to lose his house either. So when the Winchester fire came roaring over a nearby hilltop around 1 a.m. on Oct. 27, Mr. Rowe jumped on his tractor and hastily made a firebreak to protect his property. Mr. Rowe "disced" (or turned over) a swath of ground before the fires arrived. He lost a shed and suffered other minor damage, but saved his house.

Others weren't so lucky. That one fire burned 25,100 acres and destroyed some 30 homes. So angry are the fire victims that they are banding together to fight the Endangered Species Act. "I blame those public-minded asses and environmentalists who don't let us clear the brush," said Ishmael Garcia, whose house was destroyed for that very reason. Anna Klimko, another Riverside County resident who lost her house, reported that "neighbors of mine who went ahead and disced their property still have their houses."

The issue of clearing ground to protect houses has come up before, of course. During the fire season of 1992, the Riverside County Fire Department ordered Mr. Rowe's neighbors to "abate the flammable vegetation," something they were eager to do. But the U.S. Fish and Wildlife Service (FWS) warned in a letter that "discing of the firebreak would harm" the K rat, and thus "is not authorized" by the Endangered Species Act.

In a separate letter to Mr. Rowe -- whose property was threatened by his neighbors' vegetation -- FWS wrote: "It should be noted that the Act provides for both criminal and civil penalties" for discing -- in this case, going to federal prison or being fined up to $100,000. (FWS sent a copy of the letter to an "FWS Law Enforcement Office" in Gardena, Calif.) Instead, FWS wrote, "mowing the site" would keep Mr. Rowe out of trouble and protect his property, too. Unfortunately, that claim isn't true, as Ms. Klimko discovered this year. She mowed her property and lost her home. "The mowed areas still burned," she laments angrily.

And that was the problem, not just with the K rat in Riverside County but with the gnatcatcher in Orange and San Diego counties, where fires took hundreds of homes as they tore through "protected" habitat. The designation of brush as protected habitat -- and restrictions on controlled burns and other methods to keep brush down -- fueled the destructiveness of the fires. According to the Orange County fire chief, clearing brush "could have stopped" the Laguna Beach fire.

This lesson was lost on Mr. Babbitt, however. Rather, "the lesson of these fires," he told media at a Los Angeles fire station, "is that we've got to keep the people away from the fire hazard." (Keeping the fire hazard away from the people was apparently not worth considering.) With such declarations Mr. Babbitt seems to endorse an alarming principle: The property rights of humans may be violated, but the habitat of certain animals may not be.

It is hard to know what to think when environmentalists assert that their favorite regulations "protect the public." If such regulations protected the public, Riverside County's fire hazard would have been mitigated. But it wasn't, and along with many others, Mr. Rowe's next-door neighbors suffered the consequences. The October firestorm scorched about 80% of their
property, leaving them and their cattle in the middle of a cleared field at 2 a.m. surrounded by fire.

This pitiful story raises a question: Whose habitat is it, anyway? In FWS's 1992 letter to Mr. Rowe, it warned that harming or harassing a K rat would be considered a "take" under the Endangered Species Act. This includes "significant habitat modification or degradation where it actually kills or injures wildlife." But when the act was passed in 1973, it conspicuously lacked such language. Indeed, specific language in an earlier draft -- language that prohibited habitat modification on private property -- was deleted from the final bill. As with federal wetlands regulations, the Endangered Species Act has metastasized over time.

Mr. Rowe wonders: "By what authority do these do-gooders, with their tract homes and condos that destroyed prior habitat, determine that my property should remain open space for them to have hills to look at?" He notes that "not one of the advocates for preservation of the K rats owns property in the designated habitat preserves." His suggestion: "Let them bring their checkbooks, purchase the property and they can look at it all they want."

Gideon Kanner, “California’s Rat Killer Gets Off,” 1995

Wall Street Journal, 24 May 1995

When the story of his arrest first broke, it sounded like something that a clever film studio flack might have dreamed up as a publicity stunt for a farce about life in rural California. But alas, it was all too real. In February 1994, some 20 armed federal and state Fish & Wildlife types descended on Mr. Lin's farm and seized an alleged instrument of crime: his tractor. That's right, a tractor -- a big, blue, closed-cab Ford tractor, which the Feds duly impounded and carted off. They also charged Mr. Lin with criminal conduct. Mr. Lin thought he was plowing his land to raise Chinese vegetables. But according to the Feds that was a crime because his plow ran over five rats.

Rats? Is rodenticide a federal offense? According to the Feds the answer is "yes" when it involves Tipton kangaroo rats, a creature protected under the Endangered Species Act. Actually, the question of whether disturbing the habitat of an endangered species is a forbidden "taking" of the critters is an open question now pending before the U.S. Supreme Court. Which is another reason why the Feds' zeal in turning this trivial incident into a high-profile federal prosecution is rather strange.

Ordinarily, disputes over land-use regulations give rise to administrative or civil proceedings, but here, for reasons that defy comprehension, the Feds decided to flex their muscles in a no-holds-barred criminal prosecution. They threatened Mr. Lin with a three-year prison term and a $300,000 fine. For good measure, they demanded that he give up title to 363 acres of his 720-acre holding for which he had paid $1.5 million, and that he also pay another $172,425 to fund the operation of a wildlife preserve.

These draconian demands bore no rational relation to the severity of the "crime" with which Mr. Lin had been charged. This was hardly some sort of hardened toxics-dumping, stream-polluting, eco-criminal to be made an example of. Mr. Lin is a successful businessman who decided to turn his entrepreneurial talents to raising bok choy and bamboo shoots for the growing local Asian produce market. He may have been victimized by the sellers of the land, who, he charges, failed to disclose that it was the habitat of endangered species. Since Mr. Lin speaks no English, there is at best a serious question as to whether he even knew about these regulations, though the Feds insisted that they had sent letters advising of their existence. Even
so, it is difficult to see why serving a cease and desist order or suing for an injunction would not have been quite sufficient without all the pseudo cops-and-robbers dramatics.

Mr. Lin's arrest infuriated California Central Valley farmers, who organized rallies on his behalf. Their protests included high school marching bands, and hundreds of people and tractors jammed Fresno streets to demonstrate solidarity with Mr. Lin. Still, the Feds hung tough. "Further facts will be shown in open court, and I believe they will substantiate the appropriateness of the actions of the U.S. Fish and Wildlife Service and the U.S. attorney," wrote Marvin L. Plannert, Regional FWS director, in a June 27, 1994, letter to the editor of the Sacramento Bee.

Sure enough, things started looking bad for Mr. Lin. In short order the news media blossomed out with a laundry list of his alleged transgressions: He was said to have a criminal record and was wanted in Taiwan; he was guilty of tax fraud; and he even falsified information to get a driver's license. But as it turned out, none of it was true.

All right, you say, so maybe Mr. Lin is not Public Enemy No. 1, but what about those criminal charges of willful rodenticide? Won't he have to answer for those? Not really. When push came to shove, the Feds folded and dropped the criminal charges against Mr. Lin. Evidently, they didn't have much of a case, and also, as charged in a stinging Sacramento Bee editorial, they didn't have the stomach to face a jury and have to answer for their campaign of vilification and character assassination. They have now filed charges against Mr. Lin's corporation instead.

To be sure, the Feds managed to affix a fig leaf onto their settlement with Mr. Lin. He "donated" $5,000 to a local habitat conservation fund. And he agreed not to farm his land until he gets a permit to do so, which is estimated to take six months. For their part, the Feds will give up trying to seize it. And so, the end of this prosecution came not with a bang, but with a giggle, leaving one to wonder what could have possessed American government officials to behave in such a disgraceful way.

California's late Chief Justice Roger Traynor once wrote that there are notions embedded in the law that have never been cleaned and pressed and might disintegrate if they were. The complex welter of laws and regulations enacted in the past quarter-century, in an emotional atmosphere of "protecting the environment" at all costs, is an illustration of such concerns.

These often unrealistic but zealously enforced laws also implicate the perverse notion at large among the bureaucrats that individual rights in property are some sort of constitutional poor relation that is undeserving of protection, in spite of the Constitution's clear language to the contrary. However well intended these regulations may have been at the time of their adoption, Mr. Lin's travails, and the government attitude they reveal, demonstrate an urgent need for a congressional overhaul and make clear why the property rights movement is growing in strength and conviction.

In the end, a legal regime that exalts human rights in a Bill of Rights but in practice seeks to subordinate those rights to the well-being of rats, is surely in need of some serious "cleaning and pressing." The sooner the better.
Jonathan Tolman, “The Dry Facts about Wetlands,” 1993

Wall Street Journal, 25 August 1993

Yesterday, as part of Bill Clinton's wetlands plan, the Environmental Protection Agency promulgated a final rule to help protect the nation's wetlands. This regulation, known as the Tulloch rule, adds a final twist to the bizarre evolution of wetland regulation.

No environmental issue has caused as much populist revolt as the federal government's role in regulating wetlands. But beyond all the environmental and property-rights rhetoric, few people realize that this entire regulatory scheme stems from one small section of a 20-year-old law, one that does not even mention the word "wetland."

The current regulatory apparatus has not evolved in an atmosphere of open debate and democratic voting. It has been created by the obscure memos and legal briefs of judges, lawyers and bureaucrats. It has been the agencies and the courts that have defined and enforced their own interpretation of the statute, regardless of the original intent of Congress.

The most significant part in this whole drama of wetland regulation is that virtually none of the major players have been elected officials. The changes that have taken place have never been passed by the House and Senate. Only last month did Sens. Max Baucus (D., Mont.) and John Chafee (R., R.I.) decide to introduce a bill that, if passed, would codify the status quo.

In 1972, Congress passed the Federal Water Pollution Control Act. Tucked away in a little corner of the act was the prohibition of discharging dredged or "fill" materials into navigable waters without a federal permit, known as Section 404. To those in Congress who voted for the act in 1972 this small passage must have seemed innocuous and hardly open to inventive interpretations.

At first the Army Corps of Engineers, the agency in charge of writing permits, interpreted the passage to mean only what it obviously says -- waters that could actually be navigated. But in 1975 the corps redefined navigable waters to include other U.S. waters.

Apparently this was still a little too ambiguous, so in 1977 the corps redefined its redefinition to include such things as wetlands. A wetland is just what it sounds like-land that is wet. But just because it is wet, does that mean that it is a navigable water?

In U.S. v. Riverside Bayview Homes (1985) the Supreme Court decided the question. In writing the opinion for the court, Justice Byron White commented, "it may appear unreasonable to classify land, wet or otherwise, as waters." The appearance of unreasonableness, however, did not stop the court.

According to Justice White, Congress knew that the EPA and the corps had changed the definition of a navigable water. The record shows that while there were numerous debates over what should be done about wetlands, Congress never passed a bill changing the definition -- either to accept the new definition or to reject it. "Nonetheless," according to Justice White, "the evident breadth of congressional concern for protection of water quality and aquatic ecosystems suggests that it is reasonable for the Corps to interpret the term `waters' to encompass wetlands. . . ."

Other court cases following U.S. v. Riverside Bayview Homes granted broad discretion to the EPA and the corps in determining what was a navigable water. By 1987, navigable waters had evolved into land that needed only to be occasionally wet. According to the current Corps of Engineers wetland delineation manual, visible water is no longer necessary. An area could be considered a "navigable water" if it contained the right kinds of plants and soil.

After finally resolving what they thought Congress meant by navigable waters, the bureaucrats and the lawyers then turned their attention to the meaning of "discharge of dredged
material." A few cases, such as Avoyelles Sportsmen's League v. Marsh and Rybachek v. U.S. EPA, have challenged the definition, but the real turning point came this month.

To settle the pending lawsuit of North Carolina Wildlife Federation v. Tulloch, the government has completely redefined "discharge of dredged material." The new definition includes not only the addition of material, but also activities such as clearing and excavation. With the deftest legal sleight of hand, subtraction has magically turned into addition.

According to the Interior Department, there are roughly 104 million acres of wetlands nationwide. Requiring a federal permit for any development on this land will have significant effects on its property value. The city of Anchorage, Alaska, commissioned a county-by-county analysis of the state of Arkansas, which has 2.76 million acres of wetlands. The study found that because of reduced land value, local governments would lose more than $183 million in property tax revenue in the first year. If the Arkansas analysis is correct, local governments nationwide may lose up to $6.9 billion in property taxes in the same period.

But there may be a bright side to this redefinition. This kind of regulation could be the solution to many of the government's problems, not just wetlands. For example, if you declare that the removal of material from the Treasury is the same as adding material to it, you could solve the budget crisis in a matter of weeks.

The government hasn't taken all leave of its senses though. It astutely noted in the Tulloch regulation that "navigable waters do not include prior converted cropland." However, it isn't clear whether this exception applies to those areas of Iowa that the Coast Guard has been patrolling recently.

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"A Judge's Lament," 1993

Wall Street Journal, 8 April 1993

A federal judge has decided to become a whistle-blower. He is blowing the whistle on the federal government, the way it makes its laws now, and the consequences of those laws for American citizens.

Readers may recall that we have editorialized here about Bill Ellen, a marine engineer from Mathews, Virginia, who is now serving six months in federal prison for running afoul of the government's wetlands police. As a result of those editorials, our mailbox and fax tray regularly fill with someone's account of another person who is falling down the wetlands rabbit hole. Others want to retell past stories of experience with the government's byzantine wetlands regulations, arguing that the manner of their enforcement violates common sense.

In 1990, Ocie Mills and his son Carey completed 21-month prison terms for dumping unpolluted sand on a lot with the state of Florida's permission. The feds, led by the U.S. Army Corps of Engineers, had arrested them for filling in wetlands.

Since his release, Mr. Mills has tried to have his conviction overturned. He argues, in part, that the government's wetlands regulations are built on a single reference in the 1972 Clean Water Act that prohibits placing pollutants, without a permit, into the "navigable waters of the United States." That definition has now been stretched beyond reason to include patches of earth that would barely keep a rubber duck afloat, including glorified potholes and manmade ditches.

Last week, U.S. District Court Judge Roger Vinson, of the northern Florida district, refused to set aside the convictions of Mr. Mills and his son, but he did issue a blistering attack on the expansive regulatory authority that the Corps of Engineers has assumed. Judge Vinson marveled that the Clean Water Act has been twisted into wording "worthy of Alice in
Wonderland" so that "a landowner who places clean fill dirt on . . . dry land may be imprisoned" for "discharging pollutants into navigable waters."

Judge Vinson said the Florida land that Ocie Mills was trying to build a home on was clearly not a wetland. He does agree that Congress had the authority to delegate the definition of "navigable waters" to the Corps even if their definitions are absurd. But he warns it is dangerous for Congress to abdicate its power to define a felony to an unelected administrative agency. These concluding words of Judge Vinson are worth quoting at length:

"A jurisprudence which allows Congress to impliedly delegate its criminal lawmaking authority to a regulatory agency such as the Army Corps -- so long as Congress provides an `intelligible principle' to guide that agency -- is enough to make any judge pause and question what has happened. Deferent and minimal judicial review of Congress's transfer of its criminal lawmaking function to other bodies, in other branches, calls into question the vitality of the tripartite system established by our Constitution. It also calls into question the nexus that must exist between the law so applied and simple logic and common sense. Yet that seems to be the state of the law. Since this court must apply the law as it exists, and cannot change it, there is nothing further that can be done at this level."

The judge's lament goes a long way toward explaining the explosion of interest in property rights in legislatures across the country. Bills to prevent arbitrary " takings " of property have been introduced in Congress and in 21 states. The experience of Ocie Mills and others prompted both houses of the Florida Legislature to pass a bill ordering a study of how environmental regulation can negate property rights.

Next Wednesday, a House Public Works subcommittee chaired by Ohio Rep. Douglas Applegate will begin hearings on the reauthorization of the Clean Water Act that spawned the Corps' nightmarish wetlands regs. It would be nice to think that the problems Judge Vinson has identified will be given the attention of the committee's Members.

“News from CPSC”

U.S. Consumer Product Safety Commission Alerts

[9 April 2002] California Man Sentenced for Importing Illegal Toys

The U.S. Consumer Product Safety Commission (CPSC) announced today that Steve Thai, owner of the now defunct Super Rambo Inc., of Los Angeles, Calif., was sentenced to three years probation and ordered to pay a $20,000 fine for importing children's toys that violate federal law. Thai is the first individual sentenced for a criminal conviction related to CPSC's mandatory children's toy standards.

U.S. District Judge Lourdes G. Baird handed down the sentence against the 41-year-old Thai after he pled guilty in August 2001 to four counts of violating CPSC's small parts requirements for children's toys. The Judge also ordered that Thai, and any company with which he is associated in any way, must conduct pre-importation testing and evaluation to ensure compliance with CPSC's standards.

"CPSC is pleased that the Court is requiring the testing of toys that Thai's companies import," said CPSC Acting Chairman Thomas Moore. "This case should alert all toy importers, manufacturers, and distributors that CPSC is willing to prosecute individuals who place children at risk of serious injury."
Thai’s business illegally imported toy trucks, racing cars, planes, wind-up robots, and trains. Despite repeated notice from the CPSC that he was violating the law, Thai continued to import the illegal toys. Toys with small parts are a choking hazard for children under 3.

Every year CPSC recalls numerous children’s products that could contribute to unnecessary deaths or injuries. In 2000, there were 151,000 children (under 15 years old) that were treated in hospital emergency rooms due to toy related incidents, resulting in 17 deaths.


The U.S. Consumer Product Safety Commission (CPSC) announced today a court ruling imposing a $300,000 civil penalty against a firm for not reporting a serious product hazard - the first time such a penalty ever has been awarded by a court for a company's failure to report. The ruling was made in a civil penalty action brought on CPSC's behalf by the Department of Justice's Office of Consumer Litigation against Mirama Enterprises Inc., which does business as Aroma Housewares Co., in San Diego, Calif., a small importer and distributor of juice extractors (juicers) and other household appliances.

"Whenever a company fails to report its knowledge of a hazardous product to CPSC, it will pay a civil penalty that hurts," said CPSC Acting Chairman Thomas Moore. "If the company refuses to settle, we'll get the penalty in court."

U.S. District Court Judge Judith N. Keep, of the Southern District of California, also stressed the deterrent value of civil penalties, saying that there 'has to be teeth to the [Consumer Product Safety] Act." Judge Keep noted that not knowing about the statutory requirement, not understanding the defect, or blaming the problem on consumer misuse do not excuse a company from the requirement to report a hazardous product...

In January 2002, Judge Keep held the company liable before trial, based on the existing evidence and legal arguments. The judge imposed the fine following a separate three-day hearing on an appropriate amount. She heard evidence on several factors including the severity of the risk of injury, Aroma's ability to pay, and Aroma's behavior.

This was the first time ever that a federal court found that a company had violated the reporting statute and ordered a civil penalty. CPSC civil penalties previously collected from companies that failed to report product hazards were paid as a result of voluntary settlements.

Aroma Housewares Co. conducted a joint recall with CPSC of about 40,000 of these juice extractors in June 1999. For more information on the recall, call Aroma at (800) 276-6286 or go the press release.

[11 November 2002] California Company Pleads Guilty To Importing and Selling Dangerous Children’s Toys

The U.S. Consumer Product Safety Commission (CPSC) is announcing today that STK International Inc. (STK), of Los Angeles, Calif., must pay $270,000 in civil and criminal penalties for importing and selling dangerous children’s toys. STK must pay a $120,000 criminal penalty and the company and its President Stuart T. Kole must collectively pay a $150,000 civil penalty. Additionally, STK, Kole, and other officials of STK are enjoined from violating CPSC’s toy and art material regulations and must comply with an injunction mandating that the company’s toys are tested before importation.

The combined fine is the largest ever to be imposed against a company that violated the small parts requirement. This requirement is aimed at protecting young children from toys that
could present a choking or aspiration hazard. This case also represents the first time both civil and criminal fines were levied against a company for toy-related violations.

"CPSC has a vigorous nationwide program that detects and catches repeat offenders of federal safety laws," said CPSC Chairman Hal Stratton. "Working closely with our partners at the Justice Department and the U.S. Customs Service, we want to send a clear message to toy importers: there will be consequences for those who bring unsafe products into our country."

This is the second fine imposed on STK, which is a general merchandise importer, in the past five years. In May 1997, STK was ordered by CPSC to pay an $80,000 civil penalty for importing and selling over 90,000 toys and art materials that violated the small parts and labeling laws, respectively. Through continued monitoring of STK’s imports and retail surveillance between June 1997 and July 2002, CPSC determined that Kole and the company committed additional violations of the ban on small parts for children’s toys and labeling and testing requirements for art materials. This led CPSC and the Department of Justice to bring 12 criminal misdemeanor counts against the company, along with civil charges against STK and Kole for importing and selling banned and misbranded hazardous substances.

In addition to the payment of the penalties, STK and Kole must abide by the Federal Hazardous Substances Act (FHSA), including the FHSA provisions for children’s toys and art materials. The company must also ensure that independent age grading and small-parts testing are conducted prior to importation, if the toys are age-graded for children under 3.

The civil penalty against STK is the result of the importation and sale of clock tambourines, which were recalled in November 1997; wind-up helicopters; pencil sets; and various other toys, games, and art materials. The criminal fine stems from the company’s importation of 110,000 children’s toys that CPSC recalled in August 2001. Dollar stores nationwide sold the toys, which can break, releasing small parts that pose a choking hazard to young children. The toys included a "2 Piece Tambourine Set," "Bathtime Water Wheel," "Funny Loco Wind-Up," and the "Pull Back Duck in Boat." Consumers should take the toys away from children immediately, and return them to STK International for a full refund. Consumers should call STK International toll-free at (800) 536-7855 between 8 a.m. and 5 p.m. PT Monday through Friday for information about where to send the toys.

The Department of Justice’s Office of Consumer Litigation and the U.S. Attorney’s Office in Los Angeles handled the cases on CPSC’s behalf.

[30 March 2005] Hamilton Beach/Proctor-Silex Inc. Agrees to Pay $1.2 Million Civil Penalty

The U.S. Consumer Product Safety Commission (CPSC) announced today that Hamilton Beach/Proctor-Silex Inc., (HB/PS) of Glen Allen, Va., has agreed to pay a $1.2 million civil penalty. The penalty, which has been provisionally accepted by the Commission, settles allegations that the company failed to report to CPSC in a timely manner defects with three separate products: countertop toasters, juice extractors, and slow cookers. Under federal law, manufacturers, importers, distributors, and retailers must immediately report information about potentially hazardous products to the Commission.

“Companies who report late to CPSC about incidents or injuries involving their products prevent us from taking action to protect consumers from harm,” stated CPSC Chairman Hal Stratton. “CPSC will not hesitate to enforce the law against those companies who do not report
critical safety information in a timely way, but our goal is to have companies work cooperatively with us to keep consumers safe.”

In agreeing to settle this matter, HB/PS denies that it violated the Consumer Product Safety Act by failing to report its countertop toasters, juice extractors, and slow cookers in a timely manner. HB/PS says it continues to improve its methods for satisfying all CPSC reporting requirements…

[22 March 2005] Record Civil Penalty Levied Against Graco Children’s Products Inc.  

CPSC, Graco announce new recall of 1.2 million toddler beds

The U.S. Consumer Product Safety Commission (CPSC) today announced a provisional settlement with one of the nation’s largest children’s product manufacturers for the largest civil penalty levied in CPSC history. CPSC has provisionally imposed a $4 million penalty against Graco Children’s Products Inc., of Exton, Pa., for failing to inform the government in a timely manner about more than 12 million products that posed a danger to young children nationwide. CPSC and Graco also are announcing the recall today of about 1.2 million toddler beds, sold between February 1994 and March 2001, because a child’s arm or leg can become entrapped in the guard rails or footboard. The company’s failure to report the toddler beds is one of the violations leading to today’s penalty.

“CPSC is at the forefront of protecting children from products that can cause serious injuries,” stated CPSC Chairman Hal Stratton. “Today’s announcement demonstrates our commitment to protecting American families by holding companies accountable for keeping safety information from us.”

Graco, which acquired the Century brand name in 1998, is now owned by Newell Rubbermaid Inc. From 1991 through 2002, Graco and Century failed to report defects in juvenile products that the Commission said could create substantial product hazards or unreasonable risks of injury or death to young children. According to the CPSC, the company failed to report hundreds of incidents and injuries involving 16 different products. The products, all used by young children, include infant carriers, high chairs, infant swings, strollers and toddler beds. The injuries range from contusions and fractures to strangulation (including some fatalities).

The CPSC and Graco are also finalizing corrective action plans for two additional products that were manufactured between 1994 and 2001 and are addressed by today’s penalty.

Stratton added, “We want companies to take their reporting responsibilities very seriously. The action taken by Newell Rubbermaid to identify these critical safety failures by companies they purchased and take the necessary measures to improve product safety is a positive step that other companies should follow.”

[12 April 1993] Taco Bell Corp. Announces Voluntary Recall Of Promotional Items

PRODUCT: Approximately 500,000 Lowly Worm and Huckle Cat finger puppets and 80,000 Rocky & Bullwinkle inflatable balls distributed free by Taco Bell restaurants. The finger puppets were distributed free in Taco Bell Kid's Meals from January 25 through March 28, 1993 and the inflatable balls were distributed free in Taco Bell Kid's Meals from March 29 through March 31, 1993.

PROBLEM: Taco Bell received complaints that the finger puppets became stuck on the tongues of three children; and several complaints that blowing up the balls caused slight dizziness.
WHAT TO DO: Return both products to any Taco Bell location and receive a complimentary original Taco. Consumers with questions may call toll-free at 1-800-374-8220.

In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Taco Bell Corp. of Irvine, CA announced a voluntary recall of items recently distributed in two Kid's Meal promotions by Taco Bell restaurants throughout the United States.

"The Busy World of Richard Scarry" finger puppets, Lowly Worm and Huckle Cat, were recalled, as well as Rocky & Bullwinkle inflatable balls. Taco Bell received complaints that the finger puppets had become stuck on the tongues of three children and several complaints that blowing up the balls caused slight dizziness.

A spokesperson for Taco Bell said, "Taco Bell has elected to recall both items voluntarily from our stores to eliminate any possibility of future customer discomfort and inconvenience. We want to continue to ensure the comfort and safety of our customers."

According to the manufacturer, both products were tested in accordance with CPSC regulations. Approximately 500,000 finger puppets were distributed free in Taco Bell Kid's Meals from January 25 through March 28, 1993. About 80,000 inflatable balls, also free in Kid's Meals, were distributed from March 29 through March 31, 1993.

Consumers may return both products to any Taco Bell location and receive a complimentary original Taco. A toll-free consumer hotline has been established at 1-800-374-8220 to respond to consumer inquiries.


After a recent serious injury caused by a lawn dart, the U.S. Consumer Product Safety Commission reissued its warning that lawn darts are banned and should be destroyed. Effective on December 19, 1988, CPSC banned the sale of all lawn darts in the United States. Pointed lawn darts, intended for use in an outdoor game, have been responsible for the deaths of three children. The most recent injury occurred last week in Elkhart, Ind., when a 7-year-old boy suffered a brain injury after a lawn dart pierced his skull.

"CPSC banned lawn darts in 1988, but some of these dangerous products may still be in garages, basements, or second-hand stores," said CPSC Chairman Ann Brown. "Parents should destroy these banned lawn darts immediately."

Before the 1988 ban, lawn darts were sold in sets that usually included four large darts and two targets. Lawn darts also were sold in packages with other sports equipment. The darts typically are about 12 inches long with a heavy metal or weighted plastic tip on one end and three plastic fins on a rod at the other end. The darts are intended to be grasped by the rod and thrown underhand toward a target. Lawn darts can cause skull punctures and other serious injuries. CPSC urges consumers to discard or destroy all lawn darts immediately. They should not be given away since they may be of harm to others.
[28 February 2002] CPSC, Dansk International Designs Ltd. Announce Recall of Ice Cream Scoops

In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Dansk International Designs Ltd., of White Plains, N.Y., is voluntarily recalling about 190,000 ice cream scoops. A cap at the end of the handle of the scoop can fly off with substantial force, especially if the scoop is immersed in hot water. The metal cap poses a risk of impact injury to nearby consumers.

Dansk has received 10 reports of the caps on these scoops flying off, sometimes traveling several feet. No injuries have been reported.

All the recalled Dansk ice cream scoops are made of aluminum and have a 4.5-inch handle. They were sold in four styles: the plain 3.5-inch spade, the plain 2.5-inch scoop, the Penguin-shaped 2.5-inch scoop and the Snowman-shaped 2.5-inch scoop. Each of the scoops is silver colored. The plain scoop and plain spade have the word "DANSK" written on the handle. Ice cream scoops sold by Dansk with a black cap at the end of the handle are not part of this recall.

Dansk Factory Outlet Stores and Lenox Warehouse Clearance Centers nationwide sold these ice cream scoops between January 1988 and November 2001 for about $9.

Consumers should stop using these ice cream scoops immediately, and return them to any Dansk or Lenox Factory Outlet store for a $20 coupon…

[31 May 2002] CPSC, Southern Wood Products Announce Recall of Children's Toy Box

PRODUCT: Children's toy box - Southern Wood Products of Sparta, Tenn., is voluntarily recalling about 600 toy boxes that measure 24 inches by 16 inches by 35 inches. The toy boxes were sold in the following colors: oak, white, cherry, and natural. The recalled toy boxes have manufacture date codes of 8502-021502A and 8502-030702A on a sticker located on the back or bottom of unit. The sticker also has the company's name and address. JC Penney sold the toy box through its catalogue from Feb 2002 until March 2002. The toy box was manufactured in the USA.

PROBLEM: The middle lid support hinge can collapse suddenly and cause an injury to a child's head, neck, fingers, or hands; or can become an entrapment hazard to young children.

INCIDENTS/INJURIES: None reported.

[4 September 2002] CPSC, Team Beans LLC Announce Recall of "Bottle Cap Bear" Key Chains

In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Team Beans LLC, of East Brunswick, N.J., is recalling about 8,000 "Bottle Cap Bear" key chains. A miniature "Coca-Cola" bottle that attaches to the body of the plush bear key chain can come off, posing a choking hazard to young children. Team Beans LLC imported the key chains as part of a licensing agreement with The Coca-Cola Co.

Team Beans LLC has not received any reports of bottles attached to the key chains coming off. This recall is being announced to prevent the possibility of injuries…
Consumers should take the key chains away from children immediately, and return them to Team Beans for a refund or credit plus postage…

[9 October 2002] CPSC, Bikepro, Inc. Announce Recall of Baby Walkers

In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Bikepro, Inc. of Pico Rivera, Calif., is voluntarily recalling about 50,000 baby walkers.

The baby walkers can fit through a standard doorway and are not designed to stop at the edge of a step. Babies using these baby walkers could be seriously injured or killed if they fall down stairs.

Bikepro, Inc. has not received any reports of injuries involving these walkers. This recall is being conducted to prevent the possibility of injury…

Consumers should stop using these walkers immediately and return them to the store where purchased for a full refund…

CPSC worked with industry to revise the voluntary standard for baby walkers to address injuries from falls down stairs. The revised standard was published in 1997. Children falling down stairs in walkers have accounted for most baby walker-related injuries. New walkers that meet the voluntary standard have special features that stop the walker at the top step. Baby walker-related injuries to children under 15 months old have declined over 60 percent from an estimated 20,100 in 1995 to 7,400 in 2000.


The U.S. Consumer Product Safety Commission (CPSC) urges holiday shoppers to make sure the sleepwear they purchase for children is either flame-resistant or snug-fitting to reduce the risk of burns. Loose-fitting T-shirts and other loose-fitting clothing made of cotton or cotton blends should not be used for children's sleepwear, because they can catch fire easily and burn rapidly. *Burns often occur when children, who are dressed for bed, play with fire (matches, lighters, candles, burners on stoves) just before bedtime and just after rising in the morning.*

"Snug-fitting cotton and flame-resistant sleepwear are the safest choices for children's sleepwear," said Chairman Hal Stratton. "T-shirts and other loose fitting clothing can catch fire more easily, and cause serious burn injuries. Parents can identify snug-fitting sleepwear at the store by yellow tags attached to the garment."

CPSC sets national safety standards for children's sleepwear flammability. These standards protect children from serious burn injuries if they come in contact with a small flame. Under federal safety rules, garments sold as children's sleepwear for sizes larger than nine months must be either flame-resistant or snug-fitting.

Flame-resistant garments are made from inherently flame-resistant fabrics or are treated with flame retardants and do not continue to burn when removed from a small flame. Snug-fitting sleepwear is made of stretchy cotton or cotton blends that fit closely against a child's body. Snug-fitting sleepwear is less likely than loose T-shirts to come into contact with a flame and does not ignite as easily or burn as rapidly, because there is little air under the garment to feed a fire.

CPSC requires hang tags and permanent labels on snug-fitting children's sleepwear, made of non-flame-resistant fabrics, to remind consumers that because the garment is not flame-resistant, it must fit snugly for safety. The yellow hangtag for snug-fitting garments says: "For
child's safety, garment should fit snugly. This garment is not flame resistant. Loose-fitting garment is more likely to catch fire." The permanent label says "Wear snug-fitting. Not flame resistant" and is sewn into the neck of the garment. Parents should look for tags that say the garment is flame-resistant or snug-fitting.

[13 July 2005] CPSC, Value City Announce Recall of Blow Dart Guns

The U.S. Consumer Product Safety Commission, in cooperation with the firm named below, today announced a voluntary recall of the following consumer product. Consumers should stop using recalled products immediately unless otherwise instructed.

Name of Product: African Blow Dart Guns
Units: About 300
Hazard: Consumers may have mistakenly purchased the dart guns thinking it was a decorative walking stick, posing the risk of injury if someone used the gun for its intended purpose.
Incidents/Injuries: None.
Description: The blow dart gun is a 51-inch long decorative wooden tube with an attached pouch containing five darts. The brown, bamboo-shaped gun has a black, small barrel-like container attached to the top.
Manufactured in: Indonesia
Sold at: Value City stores nationwide from June 2005 through July 1, 2005 for about $5.
Remedy: Consumers should secure the blow dart gun and darts and return them to any Value City store for a full cash refund.

[18 October 2005] CPSC, Target Announce Recall of Jumbo Pencils with Sharpeners

The U.S. Consumer Product Safety Commission, in cooperation with the firm named below, today announced a voluntary recall of the following consumer product. Consumers should stop using recalled products immediately unless otherwise instructed.
Name of Product: Jumbo Pencils with Sharpeners
Units: About 176,000
Hazard: The sharpener’s razor blade is exposed when the cover is removed. Also, the pencil sharpener hole is large enough to allow a finger to fit inside. This poses a laceration hazard to children and adults.
Incidents/Injuries: Target has received 17 reports involving the pencil sharpeners, including 12 children and adults who received cuts to their fingers from the sharpener’s razor blade.
Description: The jumbo pencil has a red eraser on the end and comes with a pencil sharpener. Pencils are either short, 8 ½ inches long and one inch wide, or long, 15 inches long and ½ inch wide. The pencils are blue, red or striped. The sharpeners are pink or blue and come in a clear plastic pouch. Model number 70505 is printed on the pouch.

 Manufactured in: China

 Sold at: Target Stores nationwide from July 2005 through August 2005 for about $1.

 Remedy: Consumers should take the recalled jumbo pencil with sharpeners away from children immediately and return them to the nearest Target store for a GiftCard of $1 plus applicable state tax.