

# SHAW LESLIE MORTIER

VANISHING LANDMARKS

Leslie Shaw

# **Vanishing Landmarks**

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# **Leslie M. Shaw**

## **Vanishing Landmarks The Trend Toward Bolshevism**

### **IN JUSTIFICATION**

There are several types of intellect, with innumerable variations and combinations. Some see but do not observe. They note effects but look upon them as facts and never seek a cause. Tides lift and rock their boats but they ask not why. They stand at Niagara and view with some outward evidence of delight a stream of water and an awful abyss, but they lift neither their thoughts nor their eyes towards the invisible current of equal volume passing from Nature's great evaporator, over Nature's incomprehensible transportation system, back to the mountains, that the rivers may continue to flow to the sea and yet the sea be not full. That class will find little in this volume to commend, and much to criticise.

A man is not a pessimist who, when he hears the roar and sees the funnel-shaped cloud, directs his children to the pathway leading to the cyclone cellar. He is not a pessimist who, after noting forty years of boastful planning, realizes that war is inevitable, and urges preparedness. But the man is worse than a pessimist – he is a fool – who stands in front of a cyclone, rejoicing in the manifestation of the forces of nature, or faces a world war, expatiating on the greatness of his country and the patriotism and prowess of his countrymen.

It is commonly believed that Nero fiddled while Rome burned. Conceding that he did, it was relatively innocent folly compared to the way many Americans fiddled, and fiddled, and fiddled, and fiddled, until Germany was well on the way to world domination. Coming in at fabulous cost and incalculable waste, and saving the situation at the sixtieth minute of the eleventh hour, we not only claim a full day's pay but seem to resent that those who toiled longer, with no more at stake, are asking that honors be divided.

We are now facing a far worse danger than the armed hosts of the Central Powers – a frenzied mob each day extending its influence, and multiplying its adherents. Shall we again fiddle and fiddle, and fiddle and fiddle, or shall we both think and act?

For six thousand years the human race has experimented in governments and only China boasts of its antiquity. During this period almost every possible form of government was tried but nothing stood the test of the ages. The few surviving pages of the uncertain history of nations that have existed and are no more, give ample proof that the task of self-government is the severest that God in his wisdom has ever placed upon His children.

When this government was launched the world said it would not endure. It has both existed and prospered for more than a century and a quarter, but there is no thinking man between the seas, and no thinking man beyond the seas, who does not recognize that representative government, in the great republic, is still in its experimental stage. Even Washington declared he dared not hope that what had been accomplished or anything he might say would prevent our Nation from “running the course which has hitherto marked the destiny of nations.”

It is said that when Galusha Grow entered Congress he carried a letter of introduction to Thomas Benton, then just concluding his thirty years of distinguished service. Naturally, Senator Benton was pleased with the brilliant Pennsylvanian, for he said to him: “Young man, you have come too late. All the great problems have been solved.” Ah! they had not been. Mr. Grow lived to help solve some; others have since been solved; more confront us now than ever before in our history, and the sky is lurid with their coming. If we are to continue a great self-governing and self-governed nation,

we must spend some time in the study of statecraft, the most involved, the most complex, and, barring human redemption, the most important subject that ever engaged the attention of thinking men.

About the only subject which vitally affects all, and yet to which few give serious thought, is the science of government. Our farms and our factories, our mills and our mines, together with current news, much of it frivolous, and little of it thought-inspiring, engage our attention, but statecraft, as distinguished from partisan politics, is accorded scant consideration. In the first place we are too busy, and, secondly, we do not improve even our available time. A young New Englander was asked how his people spent their long winter evenings. "Oh," said he, "sometimes we sit by the fire and think, and sometimes we sit by the fire." It is the hope of the author that the following pages will invite attention to some problems that in his humble judgment must be thought out at the fireside, and must be wisely solved, if we expect to keep our country on the map, and our flag in the sky until the Heavens shall be rolled together as a scroll.

Recent years have demonstrated the abiding patriotism of the American people and their faith in the ever-increasing greatness of America. Few there be who would not gladly die for their country. The only thing they are not willing to do is to think, and then hold their conduct in obedience to their judgment. The future of our blessed land rests with those who can think, who will think, who can and will grasp a major premise, a minor premise and drawing a conclusion therefrom, never desert it.

It has become painfully commonplace to say that the American people can be trusted. While their good intentions can be relied upon, no nation will long exist on good intentions. The nations that have gone from the map have perished in spite of good intentions. The future of America rests not in the purity of motives, nor upon the intelligence, but in the wisdom of its citizens. In the realm of statecraft some of the most dangerous characters in history have been intelligent, pious souls, and some of the safest and wisest have been unlearned.

Socrates taught by asking questions. So far as possible he who is interested enough to read this volume will be expected to draw his own conclusions. The facts stated are historically correct. What deductions I may have drawn therefrom is relatively immaterial. The question of primary importance to you will be, and is, what conclusions you draw. And even your conclusions will be worthless to you and to your country unless your conduct as a citizen is in some degree influenced and controlled thereby.

From the monument that a grateful people had erected to a worthy son I read this extract from a speech he had made in the United States Senate: "He who saves his country, saves himself, saves all things, and all things saved bless him; while he who lets his country perish, dies himself, lets all things die, and all things dying curse him!"

*Leslie M. Shaw.*

Washington, D.C., March, 1919.

## CHAPTER I

### REPUBLIC VERSUS DEMOCRACY

Representative government and direct government compared.

The Fathers created a republic and not a democracy. Before you dismiss the thought, examine your dictionaries again and settle once and forever that a republic is a government where the sovereignty resides in the citizens, and is exercised through representatives chosen by the citizens; while a democracy is a government where the sovereignty also resides in the citizens but is exercised directly, without the intervention of representatives.

Franklin Henry Giddings, Professor of Sociology of Columbia University, differentiates between democracy as a form of government, democracy as a form of the state, and democracy as a form of society. He says: "Democracy as a form of government is the actual decision of every question of legal and executive detail, no less than of every question of right and policy, by a direct popular vote." He also says: "Democracy as a form of the state is popular sovereignty. The state is democratic when all its people, without distinction of birth, class or rank, participate in the making of legal authority. Society is democratic only when all people, without distinction of rank or class, participate in the making of public opinion and of moral authority."

The distinction, briefly and concisely stated, is this: One is direct government, the other representative government. Under a democratic form of government, the people rule, while in a republic they choose their rulers. In democracies, the people legislate; in republics, they choose legislators. In democracies, the people administer the laws; in republics, they select executives. In democracies, judicial questions are decided by popular vote; in republics, judges are selected, and they, and they only, interpret and construe laws and render judgments and decrees. I might add that in republics the people do not instruct their judges, by referendum or otherwise, how to decide cases. Unless the citizens respect both the forms of law and likewise judicial decisions, there is nothing in a republic worth mentioning.

When we speak of individuals and communities as being democratic, we correctly use the term. My father's family, for instance, like all New England homes of that period, was very democratic. It was so democratic that the school teacher, the hired man and the hired girl ate with the family. We sat at a common fireside and joined in conversation and discussed all questions that arose. It was a very democratic family; but it was not a democracy. My father managed that household.

In very recent years we have been using the word "democracy" when we have meant "republic." This flippant and unscientific manner of speaking tends to lax thinking, and is fraught with danger. A good illustration of careless diction is found in the old story that Noah Webster was once overtaken by his wife while kissing the maid. She exclaimed: "I am surprised!" Whereupon the great lexicographer rebuked her thus: "My dear Mrs. Webster, when will you learn to use the English language correctly? You are astonished. I'm surprised."

It is a well known fact that the meaning of words change with usage. Some recent editions of even the best dictionaries give democracy substantially the same definition as republic. They define a republic as a "representative democracy" and a democracy as a government in which the people rule through elected representatives. This gradual change in the meaning of the word would be perfectly harmless if our theory of government did not also change. Probably our change of conception of representative government is largely responsible for the evolution in the popular use of the word democracy.

A far more important reason why the term "democracy" should not be used improperly lies in the fact that every bolshevist in Russia and America, every member of the I. W. W., in the United States, as well as socialists everywhere, clamor for democracy. All of these people, many

of them good-intentioned but misguided, understand exactly what they mean by the term. They seek no less a democratic form of government as Professor Giddings defines it, than a democratic society as he defines that, and likewise financial and industrial democracy. They want not only equality before the law, but equality of environment and equality of rewards. Only socialists, near-socialists, anarchists and bolsheviki clamor for “democracy.” Every true American is satisfied with representative government, and that is exactly what the term republic means.



## EQUALITY

The expression, “All men are created equal,” does not signify equality of eyesight, or equality of physical strength or of personal comeliness. Neither does it imply equal aptitude for music, art or mechanics, equal business foresight or executive sagacity or statesmanship. Equality before the law is the only practicable or possible equality.

Why educate, if equality in results is to be the goal? Why practice thrift, or study efficiency, if rewards are to be shared independent of merit? Those who clamor most loudly for equality of opportunity, have in mind equality of results, which can be attained only by denying equality of opportunity. Equal opportunity in a foot race is secured when the start is even, the track kept clear and no one is permitted to foul his neighbor. But equality of results is impossible between contestants of unequal aptitude when all are given equality of opportunity.

The kind of “democracy” which the socialist and the anarchist demand, confessedly hobbles the fleet, hamstring the athletic and removes all incentive to efficiency. The keystone of representative government is rewards according to merit, and the buttresses that support the arch are freedom of action on the one side, and justice according to law on the other.

Republics keep a one-price store. Whoever pays the price, gets the goods. Democracy, on the contrary, expects voluntary toil, popular sacrifices and then proposes to distribute the resultant good either *pro rata* or indiscriminately. No one can read socialistic literature without recognizing that political, social, industrial and financial democracy is the goal of its endeavor. When the supreme conflict comes between organized government, organized liberty, organized justice and bolshevism under whatsoever garb it may choose to masquerade, I do not intend anyone shall “shake his gory head” at me and say that I helped popularize their universal slogan and international shibboleth. Unless we speedily give heed we shall be fighting to make America *unsafe* for democracy. Then we may have difficulty in explaining that we have meant all these years a very different thing than our language has expressed.

## CHAPTER II

# THE CONSTITUTIONAL CONVENTION

The republican character of the constitutional convention, the qualifications of the delegates, and the extent to which they trusted to the wisdom of the people.

The Constitutional Convention was a republican body, and not a mass meeting. George Washington presided. He was a delegate from Virginia. James Madison was another representative from the same state, and he wrote the greater part of the Constitution. Thomas Jefferson was in France, and had nothing whatever to do with drafting the great document, or in securing its adoption. Benjamin Franklin was a delegate from Pennsylvania. Roger Sherman was a representative of Connecticut. New York sent no delegate, but Alexander Hamilton, who with George Washington had early recognized that the League of Nations, or League of Sovereign States, which means the same, and which the old Articles of Confederation created, was proving an utter failure in practice, and had, therefore, urged from the beginning “a more perfect union,” attended and he was seated as a delegate from New York. His matchless vision led him to seek the incorporation of additional safeguards against bolshevism, as it is now called, and though his advice was not heeded it was Hamilton, more than any other man, with John Jay and James Madison his able supporters, who secured the ratification of the Constitution as drafted.

These, and the other delegates, representing the people of the several states, after much deliberation formulated the historic document beginning, “We the people.” It provides among other things that its ratification by *delegated conventions* in nine of the thirteen states shall make it binding upon the states so ratifying the same. It also provides that it can be amended in a similar *delegated convention* called at the request of chosen representatives in the legislatures of two-thirds of all the states, or by joint resolutions passed by two-thirds of the representatives of the people, in Congress assembled, when ratified by representatives of the people in three-fourths of the states, in their respective legislatures assembled.

Those who talk about “taking the government back to the people” would do well to remember that the American people have never voted upon any provision of the National Constitution, and there is no way provided by which they can, in any direct way, express their approval or disapproval. I repeat, the Fathers created a republic, and not a democracy. Washington speaks of “the delegated will of the nation” – never of the popular wish of the people.

## **THE FATHERS CONSULTED HISTORY**

The members of the Constitutional Convention were worthy of their seats. They were men of both learning and experience. They had read history. They knew that many attempts at representative government had been made and that all had failed. They also knew the path all these republics had taken on their way to oblivion. They were fully alive to the fact that the first step had always been from representative government to direct government; from direct government to chaos, from chaos to the man on horseback – the dictator; thence to monarchy. The discussion in the convention makes it abundantly clear that the Fathers sought to save America from the monarch, and to protect her from the mass. They chose the middle ground between two extremes, both fraught with danger.

They even went so far as to guarantee that no state should be cursed with a democratic form of government, or a monarchical form of government or any other kindred system. The provision is in this language: “The United States shall guarantee to every state in this Union a republican form of government.” That excludes every other form.

## CONFIDENCE IN THE PEOPLE JUSTIFIED

The members of the Constitutional Convention, having been selected because of their aptitude for public matters, their knowledge of public questions and their experience in public affairs, very naturally had confidence that men of like caliber and character would always be selected for important representative positions. They believed the people would choose legislators, executives and judges of aptitude, at least, and would retain them in office until they attained efficiency through experience.

Presumably these delegates anticipated that men would be born with no aptitude for public positions, but they confidently believed even these would be able to select men of aptitude. They may have realized that some men would be unfit for Congress, who, nevertheless, would be competent to select able congressmen. For these, as well as for other reasons, they provided no way by which those whom no one would think of sending to Congress, and who naturally give no attention to public affairs, could instruct their congressmen, who alone must bear the responsibility of legislation. Had such a thing as legislating by referendum been thought of at that time, the Fathers certainly would have expressly prohibited it. Legislation by representatives was considered and express and detailed provision therefor was made.

The preceding differentiation between republic and democracy has no reference, of course, to political parties. Long before the republican party, as now constituted, had an existence, democratic orators grew eloquent over “republican institutions,” meaning thereby representative institutions.

Every protestant church in America is a republic. Its affairs are managed by representatives – by boards. Otherwise there would be no churches. Every bank and every corporation is a republic, managed by boards and officers selected by stockholders. The United States Steel Corporation, for instance, is analogous to a republic, the stockholders being the electors, but if the stockholders were to take charge of that corporation, and direct its management by initiative or referendum, it would be in the hands of a receiver within ninety days.

The United States of America is a great Corporation, in which the Stockholder is the Elector. Stockholders of financial and industrial corporations desire dividends, which are paid in cash. Not desiring office, the stockholders are satisfied to have the corporation managed by representatives of aptitude and experience. The dividends paid by political corporations like the United States and the several states are “liberty and the pursuit of happiness,” “equality before the law,” an army and navy for national defense, and courts of justice for the enforcement of rights and the redress of wrongs. But stockholders in political corporations are not always satisfied with these returns. Some prefer office to dividends payable only in blessings.

In banks and other business corporations, stockholders are apt to insist that representatives and officers who show aptitude and efficiency shall be continued in office so long as dividends are satisfactory. In political corporations the people have recently been pursuing a very different course. They have been changing their representatives so frequently that efficiency, which results only from experience, is impossible.

While stockholders of a corporation would certainly wreck the institution if they attempted to manage its affairs directly or by referendum, it is very appropriate for stockholders, acting on the recommendation of their representatives – the board of directors – to determine an important measure like an issue of bonds, or whether the scope and purpose of the concern shall be enlarged or its capital increased. Analogous to this is the determination of governmental policies at regular elections where the people choose between the programs of different political parties as set forth in their platforms. Thus the people sometimes ratify the policy of protection, and sometimes the policy of free trade, demonstrating that they do not always act wisely by frequently reversing themselves.

Political parties usually omit from their platforms the details of legislation. The only exception that occurs to me was when every detail of a financial policy was incorporated in the platform

submitted for ratification. The coinage was to be “free,” it was to be “unlimited,” and at the “ratio of 16 to 1.” If the people had approved this at the polls their representatives would have had no discretion. There would have been no room for compromise. While the people are presumably competent to choose between policies recommended in the platforms of political parties, it is a far stretch of the imagination to suppose that the average citizen is better prepared to determine the details of a policy than the man he selects to represent him in the halls of Congress. The congressman who concedes that his average constituent is better prepared to pass upon a proposition than he is necessarily admits in the same breath that his district committed a serious blunder in sending him. It ought to have selected a man at least of average intelligence.

The fact that neither stockholders *en masse*, nor employees *en masse* are able to manage a business enterprise does not imply that the principle of a republic may not be advantageously applied to industrial concerns. This question is again referred to in Chapter XXX, and the possible safe, middle course between the industrial autocracy demanded by capital, and the industrial democracy demanded by labor, is suggested and briefly discussed.

## **CHAPTER III**

### **STATESMEN MUST FIRST BE BORN AND THEN MADE**

Some fundamental qualifications for statesmanship. Integrity and wisdom compared.

How are lawyers obtained? Admission to the bar does not always produce even an attorney. And there is a very marked difference between an attorney and a lawyer. But when a young man is admitted to the bar who has aptitude for the law, without which no man can be a lawyer, industry in the law, without which no man ever was a lawyer, then with some years of appropriate environment – the court room and the law library – a lawyer will be produced into whose hands you may safely commit your case.

How are law makers obtained? Many seem to think it only necessary to deliver a certificate of election, and, behold, a constructive statesman, of either gender. I would like to ask whether, in your judgment, it requires any less aptitude, any less industry, or a less period of appropriate environment to produce a constructive law maker, than to develop a safe law practitioner.

I will carry the illustration one step further. Do you realize that it would be far safer to place the man of ordinary intelligence upon the bench, with authority to interpret and enforce the laws as he finds them written in the book, than to give him pen and ink and let him draft new laws? We all recognize that it requires a man of legal aptitude and experience to interpret laws, but some seem to assume neither aptitude nor experience is necessary in a law-maker. If legislators in state and nation are to be abjectly obedient to the wish of their constituents, what use can they make of knowledge and judgment? They will prove embarrassments, will they not?

To interpret the laws requires aptitude improved by experience; it demands special knowledge, both of the general law and of the particular case under discussion. It takes a specialist.

I would rather have the ordinary man stand over my dentist and tell him how to crown my tooth than to have him stand over my congressman and tell him how to vote. He knows, in a general way, how a tooth should be crowned, and further than that I refuse to carry the illustration. Then, I can stand a bad tooth better than I can a bad law. No man ever lost his job because of a bad tooth. But millions have stood in the bread line, and other millions will suffer in like manner because of unfortunate and ill-considered legislation.

## INTEGRITY VERSUS WISDOM

We all demand integrity in office, but integrity is the most common attribute of man. I can go on the street and buy integrity for a dollar a day, if it does not require any work; but aptitude, experience and wisdom are high-priced. If I had to choose between men of probity but wanting in aptitude and experience, and men of aptitude and experience known to be dishonest, I should unhesitatingly choose the crook rather than the fool; either for bank president or congressman. Banks seldom fail because of dishonesty. Banks fail because of bad management. The thief may steal a little of the cream but the careless and the inexperienced spill the milk.

Thus far in our history no man has ever walked the street in vain for work, no man has gone home to find his wife in rags and his children crying for bread, because of dishonesty in public office. The United States can stand extravagance, it can stand graft, it has stood and is standing the most reckless abandon in all its financial expenditures. The worst this nation has yet encountered – and may the good Lord save us from anything more dreadful – is incompetency in the halls of legislation. Extravagance and graft stalk forth at noonday when incompetency occupies the seats intended for statesmen.

None but bolsheviki would consider subjecting an army to democratic command. The personnel of an army may possess equal patriotism without possessing equal aptitude for war. Recent experiences have only emphasized what was said more than a thousand years ago: “An army of asses commanded by a lion will overthrow an army of lions commanded by an ass.”

Strange, is it not, that every one should recognize this principle when applied to an army and to business, and an overwhelming majority overlook it when applied to governmental matters?

## CHAPTER IV

### EXPECTATIONS REALIZED

The capacity of the people to select representatives wiser than their constituents illustrated by historic facts.

America has passed through several crises, and each time has been saved because the people's representatives were wiser than the people. In this respect, the expectation of the Fathers has been realized. I will mention but three instances.

During the Civil War the government resorted to the issuance of paper currency, commonly called greenbacks. While conservative people assumed that these greenbacks would be redeemed whenever the government was able, nevertheless, there being no express provision for their redemption, they went to depreciation, and passed from hand to hand far below par. All this resulted in inflation which inevitably led to a period of depression.

In this connection it is well to remember that whenever we have had a period of depression, and whenever we shall have such a period, there always has been and ever will be a group of people with a panacea for our ills. During the period referred to, a political party, calling itself the "Greenback Party," came into existence and advocated the issuance of an indefinite volume of irredeemable paper currency which, in their ignorance, they called "money." The specious argument was to the effect that when "money" can be made on a printing press, it is silly to have less than enough. They expressly advocated issuing all the currency the people could use without making any provision for its retirement. Whenever the people wanted more, they proposed to print more.

Fully seventy-five percent of the American people, without regard to political affiliation, favored some phase or degree of "greenbackism." While much of this sentiment failed of crystallization, quite a number of congressmen were elected on that issue. If the direct primary law, with which most of the states are now cursed, had been in force at that time, it is probable that no man could have been nominated for Congress, by any party, who was not avowedly in favor of inflation by some method. But the people were saved from themselves exactly as the Fathers had anticipated. The representatives of the people, being wiser than the people, refused the people what most of them desired and gave them what they needed, resumption of specie payment.

Again, in the '90's we had a period of depression, and the panacea then recommended was the free and unlimited coinage of silver, at the ratio of 16 to 1 with gold. The difference between "greenbackism" and "free silverism" was simply one of degree. The greenbacker desired the government to print the dollar mark on a piece of paper, thus producing currency one hundred percent fiat, while the free silverite asked that the government stamp the dollar mark upon a piece of silver, thus producing currency fifty percent fiat.

Fully nine-tenths of the American people desired the free and unlimited coinage of silver. William McKinley, willing as he was to run for president on a gold standard platform in 1896, when in Congress had voted for a clean-cut free silver measure. The lower house of Congress actually passed a free silver bill. But, exactly as the Fathers expected, the people's representatives in the Senate, wiser than the people who had placed them there, refused the people what ninety percent of them wanted and gave them what one hundred percent needed – sound money.

Outside of Russia, there is scarcely a man in all the world who would now recommend the issuance of irredeemable paper currency, what three-fourths of the American people wanted in the '70's; and there is not more than one man in all the world who would now recommend the free coinage of silver, what four-fifths of the American people wanted in the '90's.

The direct primary in 1896 would have nominated a free silver republican, and a free silver democrat in each and every congressional district of the United States, and we would have had a solid



free silver House. If the United States senators had been then elected by the people, preceded by a direct primary, the Senate of the United States would have been solidly for free silver; and we would have passed, as everyone now recognizes, to financial ruin. We were saved, because the United States of America was a republic and not a democracy – because, if you please, we had representative and not direct government.

More recently, Germany and the Central Powers made war upon the United States. This they continued for more than two years. Finally, the President, in his message of April 2, 1917, advised Congress to “declare the course of the Imperial German Government to be, in fact, nothing less than war against the country and the people of the United States.” A resolution to that effect was thereupon passed on April 6, 1917.

If the proposition of going to war with Germany had been submitted to a direct vote of the American people, under a referendum, they would have voted against it, two to one, and in many localities and cities, four to one. Again we were saved, because we had a republican and not a democratic form of government. We were saved because our representatives proved wiser than their constituents.

## CHAPTER V

### INDEPENDENCE OF THE REPRESENTATIVE

The effect of popular instructions to representatives discussed and illustrated.

The Fathers never intended that the people should legislate, interpret the laws or administer justice. They did provide, however, that the people should choose their legislators, their judges and their executives. They sought also to render impossible any interference with the independence of these representatives. Judges are not expected to inquire of bystanders how questions of law shall be decided, or what decrees shall be rendered, or what punishments imposed.

The Fathers did not anticipate that executives would hold their ears so close to the ground as to become nests for crickets. I do not mean to be understood, however, as intimating that the buzzing of insects has never been mistaken for the voice of the people. Members of the House and the Senate were not supposed to conform to Dooley's definition of a statesman: "One who watches the procession until he discovers in which direction it is moving and then steals the stick from the drum major." The Fathers expected officials to be as independent of the voters who select them as officers of a corporation are independent of stockholders.

In proof that Washington did not consider the delegates to the Constitutional Convention bound to follow the wishes of the people they represented I cite what Gouverneur Morris quotes him as saying: "It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God."

Suppose the state should engage in banking. A doorkeeper, a bookkeeper and a president would be necessary. But if the president sought instruction from the street, the bank would be short-lived. If a body of stockholders were to enter a bank, as now operated, and demand a loan without security, either for themselves or for some needy fellow creature, the president would probably say, "You can have another president any day you please, but while I am president, you will furnish collateral." Otherwise, there would be no bank.

L. Q. C. Lamar used to say to his constituents: "If you desire me to represent you in Congress, I will do so." Then, with becoming dignity and in absolute harmony with the principles of the republic, as established by the Fathers, he would add, "But do not, for a moment, suppose you can stand between the plow handles during the day and tell me how to vote." Evidently Mr. Lamar expected to study public questions and to be better informed than his average constituent.

Later, the legislature, recognizing his ability, sent him to the United States Senate. Here he opposed greenback legislation which was favorably considered by the people of Mississippi. Thereupon the legislature passed a resolution demanding either that he vote in harmony with the sentiment of his state, or resign. He refused to do either, but continued to speak, and to vote his convictions based on knowledge. Before his term expired, the wisdom of his course was recognized and he was re-elected to the Senate by the very men who had sought to direct his action in a matter wherein they had no jurisdiction and he had supreme responsibility, and concerning which they knew nothing, while he knew much.

Following the Civil War impeachment proceedings were instituted against Andrew Johnson. Because of the known prejudices of the people of Iowa, Senator Grimes of that state was expected to vote "guilty." He voted "not guilty," and his colleague asked him, "Do you think you are expressing the sentiment of the people of Iowa?" The grand old Roman replied: "I have not inquired concerning the sentiment of the people of Iowa. I vote my convictions." That would be political suicide today.

A few years ago proceedings to expel a certain senator were pending and several of his associates, after hearing the evidence submitted to them in their judicial capacity, expressed the conviction that the accused was innocent, but, because of the prejudices of their states, they would have to vote for expulsion. Senator Depew told me of a member who actually cried as he contemplated voting to expel a man whom he believed to be innocent.

I would like to ask how long you think the United States of America can maintain her proud position among the nations of the world, if oath-bound representatives of the people accept popular sentiment as the guide of their official conduct.

At the unveiling of the monument to Elijah Lovejoy, a letter was read from Wendel Phillips containing this sentence: "How cautiously most slip into oblivion and are forgotten, while here and there a man forgets himself into immortality." In these most trying times our greatest need is men in public life whose ears are always open to counsel but ever closed to clamor – who will approach pending problems that threaten our very existence, with no other care but their country's weal. The corner stone of freedom, as laid by the Fathers, is the absolute independence of the representative, coupled with the unimpeded right of the people to choose again at brief but appropriate intervals.

## HOW WOULD YOU BUILD A SUBMARINE?

Suppose the government should delegate to some congressional district the responsibility of building a submarine. Would anyone think of undertaking the task except on the principle of a republic? You would select some man of mechanical aptitude, plus mechanical experience, and you would hold him responsible for the result. Would you require your representative when selected to listen to popular sentiment, as expressed on the street corners or in the press? Would you have him submit his plans and blue prints to the “people,” by referendum or otherwise?

We all admit that some men know more about farming than others, some more about commerce than others, some more about science than others, but the sentiment is alarmingly general that in the realm of statecraft – the most complex subject ever approached – one man is just as wise as another. At Detroit, Michigan, during the campaign of 1916, Woodrow Wilson used this language: “So I say the suspicion is beginning to dawn in many quarters, that the average man knows the business necessities of the country just as well as the extraordinary man.”

I do not wish to question Mr. Wilson’s sincerity, though I am not unmindful of the fact that he spent the greater part of his active life in college work trying to produce “extraordinary men,” and in that field he was quite successful. Taking issue with his position, but not with his sincerity, I am going to insult popular sentiment and say that I believe there are many men competent to select a competent constructor of a submarine, who are not competent to construct a submarine, or competent to instruct a constructor of a submarine.

But, suppose the people should build such a craft on the principle of a democracy, each one doing what seemed to him wise, without dishonesty or graft. I have no question but that a submarine would be produced that would “sub,” and I am equally certain that it would stay “subbed.”

I want to ask whether, in your opinion, the ship of state – the government of the United States – is any less complicated, any less complex or any less likely to “sub” and stay “subbed,” exactly as each and every republic for twenty-five hundred years did “sub” – if placed in the hands of an inexperienced mass of experimenters in statecraft.

Think this out for yourself. This is your government quite as much as mine, and it will be your government long after the conservative “Old Guard” have left the field of human activities.

## CHAPTER VI

### TREND OF THE TIMES

A consideration of the constitutional guarantee that each state shall have a republican form of government, and the warning of Washington against making changes in the constitution.

Both the trend of thought and the current of events are away from representative government and toward direct government.

Legislating by initiative or by referendum, the recall of judges, and especially the recall of judicial decisions, come dangerously near constituting a democratic form of government, against which the Constitution of the United States guarantees. Its language you remember: "The United States shall guarantee to every state in this Union a republican form of government."

Chief Justice Taney, interpreting this section, said: "It rests with Congress to decide what government is the established one in a state, for, as the United States guarantees to each state a republican form of government, Congress must necessarily decide what government is established in the state before it can determine whether it is republican or not."<sup>1</sup>

Chief Justice Waite used the following language, the vital sentence of which I have italicized: "All the states had governments when the Constitution was adopted. In all, the people participated, to some extent, *through their representatives selected in the manner specially provided*. These governments the Constitution did not change. They were accepted precisely as they were and it is therefore to be presumed that they were such as it is the duty of the states to provide. Thus, we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the Constitution."<sup>2</sup>

It is well to note that this participation in their government, which the learned Chief Justice mentions, was "*through their representatives*," and in no other way.

More than one state has been required to change its constitution before admission into the Union. Congress refused to admit Arizona under a constitution providing for the recall of judges and judicial decisions. It smacked too strongly of direct government. After her admission, however, she amended her constitution and inserted the socialistic – the "democratic" – provisions, the elimination of which Congress had made a condition precedent to admission.

In his work, "The State," Woodrow Wilson calls attention to the fact that constitution-making is fast becoming "a cumbrous mode of legislation." The record in many states justifies this comment.

At the election of 1918, in the state of California there were submitted through referendum nineteen proposed amendments to its constitution, no one of which legitimately belongs in a constitution. They were simply legislative acts sought to be inserted in the organic law, or state charter, for the sole purpose of rendering them more difficult of repeal when proved bad. The "people" had so little confidence in themselves that they deemed it imprudent to trust to their wisdom whether a law should be continued when found beneficial or repealed when its effects were evil, and hence sought to tie their own hands by placing the act in the constitution instead of in the revised statutes.

George Washington, with prophetic vision, foresaw and in his immortal Farewell Address warned against this tendency towards evolutionary revolution and employed this language, the last sentence of which I feel certain he would today italicize:

"Towards the preservation of your government and the permanency of your present happy state, it is requisite not only that you speedily discountenance irregular opposition to its acknowledged

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<sup>1</sup> Luther vs. Borden, 7 Howard 1.

<sup>2</sup> Minar vs. Happersatt, 21 Wall 112.

authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretext. *One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system and thus to undermine what cannot be directly overthrown.*”

This trend towards a democratic form of government, or direct government, finds fitting illustration in the fact that if you were to locate a homestead in any one of several states, prove up and secure your patent, and someone should contest your title, and the court should find the land belonged to you, and should render decision accordingly, the people might reverse this decree and give the land to the contestant. It is not a question whether they are likely to do such a thing. The fact that the people in several states have deliberately provided the machinery by which they can thus defeat justice, constitutes a perpetual menace that should adversely affect the market value of all real estate in those states. When title to property is made to rest upon the sentimental whim of the masses, as distinguished from a decree of court, liberty itself is rendered unstable and organized government is abandoned and socialism is substituted.

## CHAPTER VII

# CONSTITUTIONAL LIBERTY

The necessity for organized government and organized justice as a guarantee of constitutional liberty is sought to be shown. Plato's dream, Macaulay's dire prediction and a threat.

A democratic form of government precludes the possibility of constitutional liberty. Constitutional liberty does exist in what Professor Giddings calls a "democratic state," but cannot in what the same author calls a "democratic form of government." His admittedly correct differentiation cannot be too often repeated.

"A democratic state," says this high authority, "is popular sovereignty," while "a democratic form of government is the actual decision of every question of legal and executive detail by a direct popular vote."

I grant the formality of a constitution may exist under a democratic form of government, but where all functions of government are exercised directly by the people, necessarily there can be no tribunal to enforce the provisions of a constitution. Let me illustrate.

Suppose, if you will, that an uninhabited island has been discovered, and a government is about to be formulated preliminary to its occupation. Undoubtedly, we would agree that the sovereignty of the island should be vested in the people. This, according to Professor Giddings, would make it a "democratic state." The next question would be whether this sovereignty would be exercised directly or through representatives. Shall it be a democratic form of government, or a republican form of government?

Someone would propose that a majority should rule. If I were present, I would promptly suggest that the rights of majorities always have been, and always will be, secure. Minorities, not majorities, need protection. I would ask what protection is to be given me, or anyone who may prove an undesirable citizen. Will we be thrown into jail and kept there indefinitely, without trial and without knowing the cause of our incarceration? Such wrongs were common for centuries and are perpetrated by bolshevists, and defended by socialists today. Very likely the assembly would then promise a speedy trial, with right to summon witnesses, and to be confronted by one's accusers, and other safeguards of liberty such as are now guaranteed in the Constitution of the United States, and that of every state.

But this would not satisfy me. I would ask "How do I know that this promise will be kept?" Then, doubtless, the right to a writ of *habeas corpus* would be promised. And this would not satisfy me. I would ask: "By whom will it be issued, and by whom enforced?" Before we were through, it is quite probable we would create a tribunal, clothe it with greatest dignity, segregate it from the affairs of business and safeguard it against political influence, and for want of a better name, we would call it "The Supreme Court of the Island." This court would be clothed with authority to grant and enforce not only writs of *habeas corpus* but any and all other orders and decrees and judgments necessary to protect the minority, even though a minority of one, in his every constitutional right.

## TREASON AS AN ILLUSTRATION

Treason is the only crime defined in the Constitution. Prior to the year 1352 there was great uncertainty in England as to what constituted treason, and Parliament, for the purpose of restraining the power of the Crown to oppress the subject by arbitrary construction, passed, in that year, what is commonly known as the “Statute of Treason.” All acts that might be construed treasonable were classified under seven branches. The framers of the Constitution, desiring to protect the minority, chose only one of the seven and placed a perpetual bar against any other act being made treason, and further safeguarded the minority by defining the only basis of conviction. Section 3, Article III, is as follows:

“Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.”

Now, suppose confiscationists, whether styling themselves socialists, bolsheviki, single-taxers, or non-partisan leaguers, shall get control and, by referendum, extend the scope of treason to include such offenses as claiming title to real estate, which all the breed insist rightfully belongs to the people *en masse*. Far less degrees of what they consider “crime” were made punishable by death when democracy went mad in France. Of what use would the express provisions of the Constitution be if the power to recall decisions, as well as the judges who render them, is to be exercised by the mass?

Leave it to the people to afford protection from the people and you might just as well abolish all constitutional guarantees. Were the people *en masse* to make the laws, *en masse* to interpret the laws, and *en masse* to enforce the laws, the individual would have no rights that the people *en masse* would be bound to respect.



## SOVIET RUSSIA AND AMERICAN REVOLUTION

In a widely circulated pamphlet, “A Voice Out of Russia,” the author speaks of “a certain divine sense in which the Russian revolution parallels the revolt of the thirteen American colonies, and in which the proletariat of Russia is striving to accomplish for his world much the same ideals which our forefathers laid down for theirs. There was,” he says, “more of the spirit of the people, more of faith and dependence in the proletariat, in American revolutionary doctrines, than we seem disposed to admit today; and by the same token, it is because we have lost our sense of fundamental democracy that we do not care to admit it.”

“Fundamental democracy” is the correct term. But we have not lost it. We are simply in danger of getting it. It is exactly what the Fathers sought to eliminate and prevent.

On the next page of the pamphlet, the author says: “The writers of the American Constitution certainly strove to do away with the artificial complexities of politics, and to bring every function of government within the grasp and comprehension of the whole electorate.”

I submit that that is exactly what the framers of the Constitution did not seek to do. They created representative government and sought to guard against direct government. The author quoted, and every other teacher of revolution, either by peaceful or violent means, is seeking to establish direct government. When they use the word “democracy,” they use it in its dictionary sense. They use it as Rousseau, Robespierre, Lenine, Trotsky and a very large number of others, including some widely known Americans, use it. Why do liberty-loving Americans seek to divorce the word “democracy” from its original meaning and popularize the greatest enemy liberty has ever known?

## PLATO'S DREAM

One of the best and most conservative newspapers in the United States printed late in 1918 a carefully written editorial under the above title, from which I quote a few disconnected sentences, italicizing the most important:

“Twenty-five hundred years ago in Athens, Plato, the philosopher, who is called the ‘father of idealists,’ framed the structure of an ideal government among men, in the form of a republic. ... When the dust of Plato was gathered into a Grecian urn, his dream did not die. The generations harbored and treasured it. Time after time, and in place after place, republics were formed. Men gave their blood and their lives to realize the dream of Plato. But always might prevailed over them. Only America endured to make the dream come true. In these times there are numerous republics but there is not one among them that does not owe its existence to the example and the influence of the United States. Were our republic to crumble, every other on earth would crumble with it... Since the adoption of the Constitution in 1789, one hundred and thirty years have passed and *during that time America has met and overcome every trial to which the ideal republic could possibly be subjected*. It has answered every argument against a republican form of government advanced by the most stubborn objectors.”

The foregoing is historically correct except the last two sentences. America has stood every test except that which ruined every other republic. It has not yet encountered *direct government*, towards which we seem radically tending. It has not withstood what Lord Macauley, a century ago, predicted would prove our overthrow. He declared the republic was “all sail and no ballast.” He predicted great speed for a period; but he warned against the day when those who did not have breakfast and did not expect dinner would elect our congress and our president. The demagogue would be abroad in the land and he would say: “Why do these have and you suffer?”

“Your republic will be pillaged and ravaged in the 20th century, just as the Roman Empire was by the barbarians of the fifth century, with this difference, that the devastators of the Roman Empire, the Huns and Vandals, came from abroad, while your barbarians will be the people of your own country, and the product of your own institutions.”

If “Coxie’s army” had been led by Eugene Debs, or any one of more than a score whose names are revered by many, instead of by a patriotic American, every mile of the road over which it traveled would have reeked with human gore. Had it resorted to bloodshed at that time, however, it would not have proceeded far. But socialism has made great progress since 1895.

Speaking before a Senate committee early in January of this year, the president of the American Federation of Labor is reported to have said: “The people will not countenance industrial stagnation after the war. There can be no repetition in the United States of the conditions that prevailed from 1893 to 1896 when men and women were hungry for the want of employment.”

The same veiled threat has been uttered repeatedly by men high in official position.

Are we face to face with a condition and not a theory? Will laborers revolt if they fail to secure employment, or when compelled to accept a lesser wage? Will farmers turn anarchist if they can find no market for their crops, or when compelled to accept a lesser price? Will bankers become bomb throwers if unloanable funds accumulate? No, America has not withstood every trial to which she can possibly be subjected. The supreme menace stands today with gnashing teeth, glaring into our faces.

## **CHAPTER VIII**

### **WHAT IS A CONSTITUTION?**

The nature of the constitution and the dependence of the minority thereon and hence the necessity for an independent judiciary discussed and illustrated.

A constitution is little less than a firm and binding contract between the majority and the minority, entered into for the sole protection of the minority, with regularly constituted courts to enforce its provisions.

The Supreme Court of the United States, from which every root of the Judiciary Department – one of the three coordinate branches of government – derives its vitality, is our only continuing and unchanging bulwark of liberty.

The executive branch, from President down through all the departments, State, Treasury, War and Navy, is liable to radical change on the fourth day of March every four years. Either house and both houses of Congress frequently change in partisan complexion at a single election. The Supreme Court, the members of which hold by life tenure, remains, theoretically, at least, unchanged.

Unless the people undermine their liberties by “effecting in the forms of the Constitution alterations which will impair the energy of the system,” which Washington warned against, or unless some executive corrupts the personnel of the Supreme Court by filling vacancies with socialists, or other revolutionary elements, Anglican liberty, the hope of the world, is secured in America against everything except bolshevism. With respect to the courts, Washington’s famous order is pertinent: “Place none but Americans on guard tonight.”

## WHO IS AN AMERICAN?

Who is an American, worthy to be placed on guard tonight? Is he American born? He may be, and he may have been born beneath any flag and under any sky. An American is one who believes in and is ready to defend this *republic*. To be ready to defend our territory, or even our flag, is not enough.

Though we continue our socialistic bent and either undermine or overthrow our form of government through peaceful evolution or forceful revolution, with sword or by ballot, the land will remain. The rains will water it, the sun warm it, human life will exist, the Stars and Stripes will still float, but, except from the map, America will be gone forever.

America is more than fertile fields, more than bursting banks, more than waving flags. The America in which one must believe, and for which he must sacrifice, is constitutional liberty and justice according to law, guaranteed and administered by three coordinate branches of government. Just in proportion as we weaken the energy of the system through changes in the Constitution – which Washington so earnestly warned against – we undermine what thus far no one has succeeded in overthrowing.

I repeat, three coordinate branches of government with no subordinate branch! In the America which the world knows, and which we love, laws must be enacted by the legislative branch, and not by the executive or by the proletariat. Laws must be interpreted by an independent judiciary, fearless and unrecalable except by impeachment. And these laws, whose scope is limited by the Constitution, must be administered by the executive and not by the legislative branch. Congress has no more right to direct the manner of execution of its acts than the president has to direct or coerce the nature of its acts. Let each coordinate branch keep hands off the sacred prerogatives of the other. That's America! And the man who defends her traditions and her institutions, regardless of his nativity, is an American who can safely be placed on guard tonight.

## AN ACTUAL MENACE

On February 3, 1919, an editorial writer who has testified that he has six million or more readers, quoted Samuel Gompers, president of the American Federation of Labor, as saying:

“I mean that the people propose to control their government and do not intend any longer to have the governing power exercised by judges on the bench.”

And the editor correctly adds:

“This is as near to an American revolutionary statement as has ever come from a man as important officially as Mr. Gompers.”

Thus the issue is sharply drawn. This organization, if its president has been correctly quoted, intends to abolish one of our coordinate branches of government, to-wit, the courts.

What have the courts done to justify such a radical change in our form of government? When the government was organized the Fathers thought wise to make express provision that no class should ever become the special favorite of legislation. The Constitution forbids class legislation and the courts enforce it. Unless labor union people demand special exemptions from obligations to which all others are amenable, or special privileges denied to others, why do they officially make the revolutionary announcement that the courts are to be abolished? Yet this very thing has the approval of this most widely known and best-paid editorial writer in the world. Pressed in a corner, I presume both would claim that their only desire is to compel the courts promptly to observe popular sentiment instead of studying legal principles and, to that end, propose to subject judges to some kind of recall. And they would doubtless justify all this by the hackneyed phrase, “the people can be trusted.”

Thus they follow Rousseau and Robespierre. The former declared, “The general will, the public will, is always right.” The latter said, “The people is infallible.”

A case that well illustrates this “popular infallibility” as taught by Rousseau and Robespierre, as well as by their present day disciples, occurred in a certain county in Iowa, not fifty miles from my home. A person charged with second degree murder sought his constitutional right of a fair and impartial trial. He made application for a change of venue, alleging that his case had been prejudged and that because of the existing prejudice he could not obtain a fair trial within that county. Five citizens, the minimum requisite number, supported his motion by their affidavits. Promptly, two hundred most reputable citizens filed counter affidavits alleging that there was no prejudice whatever. The judge believed the five. It is probable that he discerned evidence of prejudice in the eagerness with which the two hundred sought to have the case tried in their midst. A change of venue was granted, and that night these two hundred liberty-loving citizens decided they would “no longer have the governing power exercised by judges on the bench,” broke open the jail, hung the accused and would have done violence to the judge if he had not been spirited away.

If you want the opposite view of “popular infallibility,” so you may the better determine for yourself, listen to Colonel Henry Watterson, a democrat of the old school and an American always, in the *Brooklyn Eagle* of February 1, 1919:

“The people,” says Colonel Watterson, “*en masse* constitute what we call the mob. Mobs have rarely been right – never, except when capably led. It was the mob of Jerusalem that did the unoffending Jesus of Nazareth to death. It was the mob in Paris that made the Reign of Terror. From that day to this, mobs have seldom been tempted, even had a chance to go wrong, that they have not gone wrong. ‘The people’ is a fetish. It was the people misled, who precipitated the South into the madness of secession and the ruin of a hopelessly unequal war of sections. It was the people, backing if not compelling, the Kaiser, who committed hari-kari for themselves and their empire in Germany. It is the people, leaderless, who are now making havoc in Russia. Throughout the length and breadth of Christendom in all lands and ages, the people, when turned loose, have raised every inch of hell to the square inch they were able to raise, often upon the slightest pretext, or no pretext at all.”

## OFFICIAL TIMIDITY AND ITS EFFECTS

In some, perhaps most of the states, candidates for either House of Congress, knowing in advance that if, by investigation and by listening to arguments pro and con, they arrive at conclusions based on knowledge that differ from the impressions of their constituents based on prejudice, they will never be returned, make more or less formal announcement that, if elected, they will study no question but, when ready to vote, will inquire of those who have had neither opportunity nor desire to inform themselves, and vote as directed. We pay congressmen and senators of this type – just the same as statesmanlike representatives – seven thousand, five hundred dollars a year, and they vote as they are told to vote. If I am correctly informed, in some states men have been found who will vote as they are instructed for considerably less money even than that.

While the bill was pending to declare war against Germany, I called upon a Congressman who, without question, is the ablest man from his state. He had written to lawyers, bankers, farmers and labor men in his district, asking how he should vote on that momentous question. He handed me a package of replies he had received. I returned them and asked: “Do you agree with the President that Germany is already making war upon the United States?” “Yes,” he replied, “she has waged war against us for more than two years.” “Do you think your constituents know better than you what should be done?” His up-to-date reply was: “My constituents know nothing whatever about it, but I want to be re-elected.”

But not every congressman is that subservient. A certain well-known representative of a strongly German district in Ohio explained his support of the declaration of war in this language:

“If I were to permit any solicitude for my political future to govern my action, I might hesitate, but, gentlemen of the House, the only interest to which I give heed tonight is the interest of the American people; the only future to which I look is the future of my country.”

A few years ago a bill was pending to revise the tariff and a member of Congress from a certain industrial district arose and informed the House that he had written to several labor men in his district and asked them how he should vote and that he had received a telegram saying, “Vote for the bill.” He obeyed. This member did not profess to vote his convictions. In fact, he did not claim to be troubled with convictions. And I submit that if a man is to vote the sentiment of his district, rather than his judgment, it is foolish to waste the time of men of judgment by sending them to Congress. It would be more appropriate and in far better taste to send men who have nothing else to do. A thousand dollars a year ought to be enough for a man who bears no responsibility except to listen well, especially if he be of a caliber willing to act as a “rubber stamp” for the people at home.

Right here I want to venture an opinion, asking no one to agree with me: The gravest danger that confronts the United States of America, or that has confronted her in the last decade, has not been the armed forces against which we sent our brave boys in khaki, but in the fact that there are hundreds of representatives, and thousands of ambitious politicians, who cannot be purchased with the wealth of Croesus, but who will vote for anything and everything if by so doing they can advance their political fortunes.

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