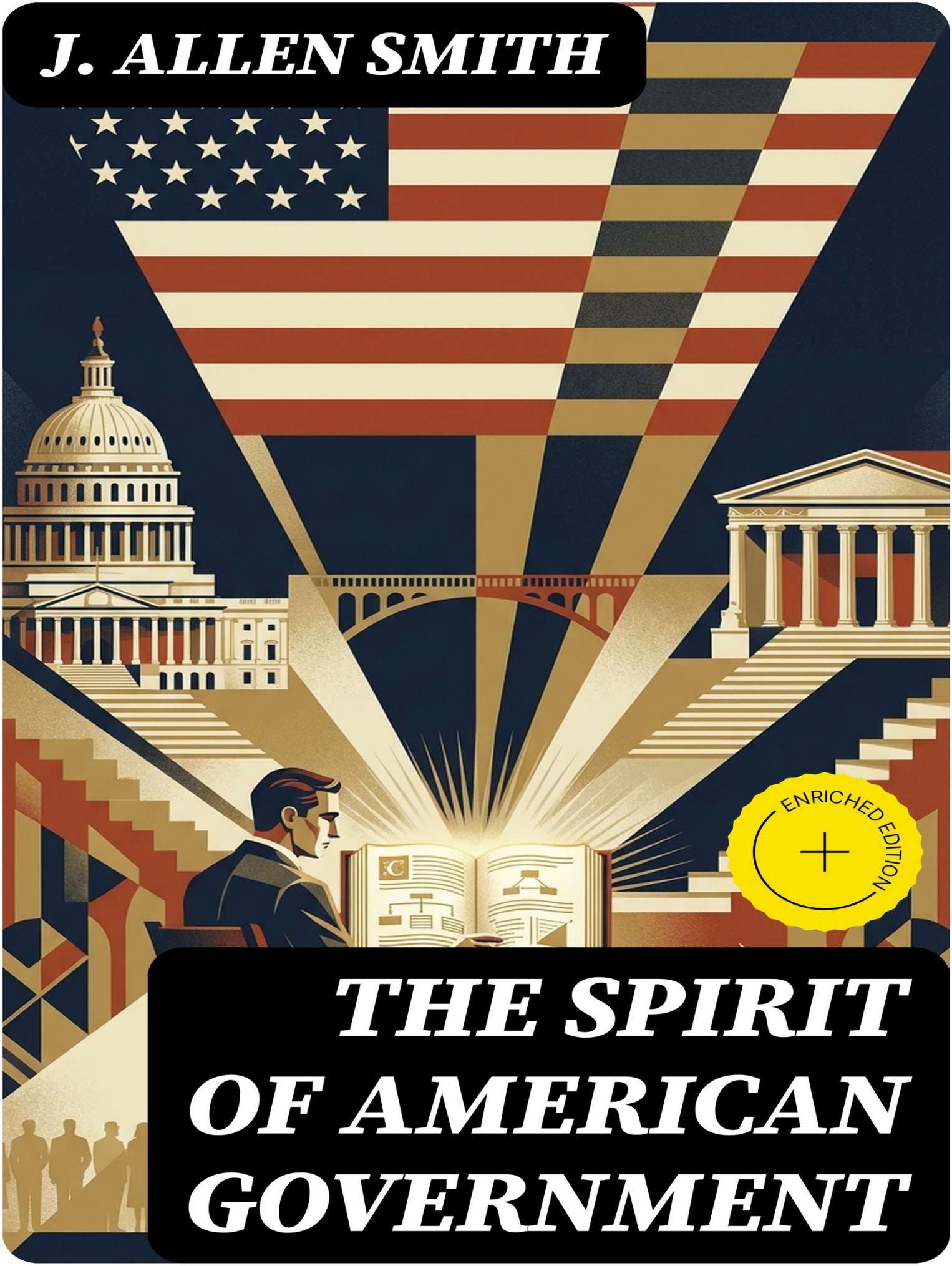
J. ALLEN SMITH



THE SPIRIT OF AMERICAN GOVERNMENT

J. Allen Smith

The Spirit of American Government

Enriched edition. A Study Of The Constitution: Its Origin, Influence And / Relation To Democracy

Introduction, Studies and Commentaries by Jared Black

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PREFACE

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It is the purpose of this volume to trace the influence of our constitutional system upon the political conditions which exist in this country to-day. This phase of our political problems has not received adequate recognition at the hands of writers on American politics. Very often indeed it has been entirely ignored, although in the short period which has elapsed since our Constitution was framed and adopted, the Western world has passed through a political as well as an industrial revolution.

In the eighteenth century the majority was outside of the pale of political rights[1q]. Government as a matter of course was the expression of the will of a minority. Even in the United States, where hereditary rule was overthrown by the Revolution, an effective and recognized minority control still survived through the property qualifications for the suffrage and for office-holding, which excluded a large proportion of the people from participation in political affairs. Under such conditions there could be but little of what is now known as democracy. Moreover, slavery continued to exist upon a large scale for nearly three-quarters of a century after the Constitution was adopted, and was finally abolished only within the memory of many now living.

It could hardly be expected that a political system set up for a community containing a large slave population and in which the suffrage was restricted, even among the free whites, should in any large measure embody the aims and ideas of present day democracy. In fact the American Constitution did not recognize the now more or less generally accepted principle of majority rule even as applying to the qualified voters. Moreover, it was not until several decades after the Constitution was adopted that the removal of property qualifications for voting allowed the people generally to have a voice in political affairs.

The extension of the suffrage was a concession to the growing belief in democracy, but it failed to give the masses an effective control over the general government, owing to the checks in the Constitution on majority rule. It had one important consequence, however, which

should not be overlooked. Possession of the suffrage by the people generally led the undiscriminating to think that it made the opinion of the majority a controlling factor in national politics.

Our political writers have for the most part passed lightly over the undemocratic features of the Constitution and left the uncritical reader with the impression that universal suffrage under our system of government ensures the rule of the majority. It is this conservative approval of the Constitution under the guise of sympathy with majority rule, which has perhaps more than any thing else misled the people as to the real spirit and purpose of that instrument. It was by constantly representing it as the indispensable means of attaining the ends of democracy, that it came to be so generally regarded as the source of all that is democratic in our system of government. It is to call attention to the spirit of the Constitution, its inherent opposition to democracy, the obstacles which it has placed in the way of majority rule, that this volume has been written.

The general recognition of the true character of the Constitution is necessary before we can fully understand the nature and origin of our political evils. It would also do much to strengthen and advance the cause of popular government by bringing us to a realization of the fact that the so-called evils of democracy are very largely the natural results of those constitutional checks on popular rule which we have inherited from the political system of the eighteenth century.

The author acknowledges his indebtedness to his colleague, Professor William Savery, and to Professor Edward A. Ross of the University of Wisconsin, for many pertinent criticisms and suggestions which he has borne in mind while revising the manuscript of this work for publication. He is also under obligation to Mr. Edward McMahon for suggestions and for some illustrative material which he has made use of in this volume.

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Seattle, Washington,
January, 1907.

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CHAPTER I

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THE ENGLISH GOVERNMENT OF THE EIGHTEENTH CENTURY

Constitutional government is not necessarily democratic. Usually it is a compromise in which monarchical and aristocratic features are retained. The proportion in which the old and the new are blended depends, of course, upon the progress the democratic movement has made. Every step toward democracy has been stubbornly opposed by the few, who have yielded to the popular demand, from time to time, only what necessity required. The constitution of the present day is the outcome of this long-continued and incessant struggle. It reflects in its form and character the existing distribution of political power within the state.

If we go back far enough we find government nearly everywhere in the hands of a King and privileged class. In its earlier stages the constitutional struggle was between monarchy and aristocracy, the King seeking to make his authority supreme and the nobility seeking to limit and circumscribe it. Accordingly, government oscillated between monarchy and aristocracy, a strong and ambitious King getting the reins of government largely in his own hands, while the aristocracy encroached upon the power and prerogatives of a weak and incompetent one. Thus democracy played no part in the earlier constitutional struggles. The all-important question was whether the King or the nobility should control the state. Civil wars were waged to decide it, and government gravitated toward monarchy or aristocracy according as the monarchical or aristocratic party prevailed.

Under William the Conqueror and his immediate successors the government of England was practically an absolute monarchy. Only the highest class was consulted in the Great Council and the advice of these the King was not obliged to follow. Later, as a result of the memorable controversy between King John and his feudal barons, the Great Council regained the power which it had lost. Against the King were arrayed the nobility, the church as represented by its official hierarchy, and the freemen of the realm, all together constituting but a small minority of the English people. The Great Charter[1] extorted

from the King on this occasion, though frequently referred to as the foundation of English liberty, was in reality a matter of but little immediate importance to the common people. The benefit of its provisions, while not limited to the nobility, extended, however, only to those classes without whose aid and support the tyrannical power of the King could not be successfully opposed. The church, by reason of the great wealth which it controlled and the powerful influence which it exerted in a superstitious age over the minds of the people, was a factor that could not be ignored. The freemen also played an important part in the constitutional struggles, since they carried the sword and formed the rank and file of the fighting class. The important provisions of the Great Charter relate exclusively to the rights of the church, the nobility and the freemen. The serfs, while not included within the benefit of its provisions, were an overwhelming majority of the English people. This conclusion is irresistible in view of the fact that the Domesday Survey[2] shows that about four-fifths of the adult male population in the year 1085 were below the rank of freemen.[1]

The Great Charter was, it is true, an important step in the direction of constitutional government, but it contained no element of democracy. It merely converted the government from one in which monarchy was the predominant feature, to one in which the aristocratic element was equally important. The classes represented in the Great Council became a constitutional check on the power of the King, inasmuch as he could not levy taxes without their consent. The important constitutional position which this charter assigned to the nobility was not maintained, however, without repeated struggles under succeeding Kings; but it laid the foundation for the subsequent development which limited and finally abolished the power of the monarch.

In the course of time the Great Council split up into two separate bodies, the House of Lords, composed of the greater nobility and the higher dignitaries of the church, and the House of Commons, representing all other classes who enjoyed political rights. When the House of Commons thus assumed a definite and permanent form as a separate body, a new check upon the power of the King appeared. The consent of two separate bodies was now necessary before taxes could be imposed. The development of these checks was hastened by the fact that the King found it easier and safer to get the assent of these bodies to measures which involved an exercise of the taxing

power, than to attempt the collection of taxes without their support. In this way the right of assenting to all measures of taxation came in time to be recognized as belonging to the two houses of Parliament. But this was a right not easily established. It was claimed and fought for a long time before it finally became a firmly established principle of the English Constitution. Around the question of taxation centered all the earlier constitutional struggles. The power to tax was the one royal prerogative which was first limited. In time Parliament extended its powers and succeeded in making its assent necessary to all governmental acts which vitally affected the welfare of the nation, whether they involved an exercise of the taxing power or not. The law-making power, however, as we understand it now was seldom employed, the idea of social readjustment through general legislation being a recent growth. But as revenues were necessary, the taxing power was the one legislative function that was constantly exercised. It is not strange then that the earlier constitutional development should have turned mainly upon the relation of the various political classes to the exercise of this power.

That English constitutional development resulted in a parliament composed of two houses may be regarded as accidental. Instead of this double check upon the King there might conceivably have been more than two, or there might, as originally was the case, have been only one. Two distinct elements, the secular nobility and the dignitaries of the church, combined to form the House of Lords. The House of Commons was also made up of two distinct constituencies, one urban and the other rural. If each of these classes had deliberated apart and acquired the right to assent to legislation as a separate body, a four-chambered parliament, such as existed in Sweden up to 1866 and still survives in Finland, would have been the result.[2]

The essential fact, everywhere to be observed in the development of constitutional government, is the rise to political power of classes which compete with the King and with each other for the control of the state. The monopoly of political power enjoyed by the King was broken down in England when the nobility compelled the signing of Magna Charta. This change in the English Constitution involved the placing of a check upon the King in the interest of the aristocracy. Later, with the development of the House of Commons as a separate institution, the power of the King was still further limited, this time in

the interest of what we may call the commercial and industrial aristocracy.

At this stage of its development the English government contained a system of checks and balances. The King still retained legislative power, but could not use it without the consent of both Lords and Commons. Each branch of the government possessed the means of defending itself, since it had what was in effect an absolute veto on legislation. This is a stage in political evolution through which governments naturally pass. It is a form of political organization intermediate between monarchy and democracy, and results from the effort to check and restrain, without destroying, the power of the King. When this system of checks was fully developed the King, Lords and Commons were three coördinate branches of the English government. As the concurrence of all three was necessary to enact laws, each of these could defeat legislation desired by the other two.

The development of this system of checks limited the irresponsible power of the King only on its positive side. The negative power of absolute veto the King still retained. While he could not enact laws without the consent of the other two coördinate branches of the government, he still had the power to prevent legislation. The same was true of the Lords and Commons. As each branch of government had the power to block reform, the system was one which made legislation difficult.

The system of checks and balances must not be confused with democracy; it is opposed to and can not be reconciled with the theory of popular government. While involving a denial of the right of the King or of any class to a free hand in political matters, it at the same time denies the right of the masses to direct the policy of the state This would be the case even if one branch of the government had the broadest possible basis. If the House of Commons had been a truly popular body in the eighteenth century, that fact would not of itself have made the English government as a whole popular in form. While it would have constituted a popular check on the King and the House of Lords, it would have been powerless to express the popular will in legislation.

The House of Commons was not, however, a popular body in the eighteenth century. In theory, of course, as a part of Parliament it represented the whole English people. But this was a mere political fiction, since by reason of the narrowly limited suffrage, a large part

of the English people had no voice in parliamentary elections. Probably not one-fifth of the adult male population was entitled to vote for members of Parliament. As the right to vote was an incident of land ownership, the House of Commons was largely representative of the same interests that controlled the House of Lords.

That the House of Commons was not democratic in spirit is clearly seen in the character of parliamentary legislation. The laws enacted during this period were distinctly undemocratic. While the interests of the land-holding aristocracy were carefully guarded, the well-being of the laboring population received scant consideration. The poor laws, the enclosure acts[3] and the corn laws, which had in view the prosperity of the landlord, and the laws against combination, which sought to advance the interests of the capitalist at the expense of the laborer, show the spirit of the English government prior to the parliamentary reform of 1832. The landlord and capitalist classes controlled the government and, as Professor Rogers observes, their aim was to increase rents and profits by grinding the English workman down to the lowest pittance. "I contend," he says, "that from 1563 to 1824, a conspiracy, concocted by the law and carried out by parties interested in its success, was entered into, to cheat the English workman of his wages, to tie him to the soil, to deprive him of hope, and to degrade him into irremediable poverty."[3]

But it is not in statute law alone that this tendency is seen. English common law shows the same bias in favor of the classes which then controlled the state. There is no mistaking the influences which left their impress upon the development of English law at the hands of the courts. The effect of wealth and political privilege is seen here as well as in statutory enactment. Granting all that can justly be said in behalf of the wisdom and reasonableness of the common law, the fact nevertheless remains, that its development by the courts has been influenced by an evident disposition to favor the possessing as against the non-possessing classes. Both the common and the statute law of England reflected in the eighteenth century the political supremacy of the well-to-do minority.

CHAPTER II

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THE AMERICAN GOVERNMENT OF THE REVOLUTIONARY PERIOD

The American colonists inherited the common law and the political institutions of the mother country. The British form of government, with its King, Lords and Commons and its checks upon the people, they accepted as a matter of course. In their political thinking they were not consciously more democratic than their kinsmen across the Atlantic. Many of them, it is true, had left England to escape what they regarded as tyranny and oppression. But to the *form* of the English government as such they had no objection. The evils which they experienced were attributed solely to the selfish spirit in which the government was administered.

The conditions, however, were more favorable for the development of a democratic spirit here than in the mother country. The immigrants to America represented the more active, enterprising and dissatisfied elements of the English people. Moreover, there was no hereditary aristocratic class in the colonies and less inequality in the distribution of wealth. This approach to industrial and social equality prepared the mind for the ideas of political equality which needed only the stimulus of a favorable opportunity to ensure their speedy development.

This opportunity came with the outbreak of the American Revolution which at the outset was merely an organized and armed protest against what the colonies regarded as an arbitrary and unconstitutional exercise of the taxing power. As there was no widespread or general dissatisfaction with the *form* of the English government, there is scarcely room for doubt that if England had shown a more prudent and conciliatory spirit toward the colonies, the American Revolution would have been averted. No sooner, however, had the controversy with the mother country reached the acute revolutionary stage, than the forces which had been silently and unconsciously working toward democracy, found an opportunity for political expression. The spirit of resistance to what was regarded as unconstitutional taxation rapidly assumed the form of avowed opposition to the English Constitution itself. The people were ready for

a larger measure of political democracy than the English Constitution of the eighteenth century permitted. To this new and popular view of government the Declaration of Independence gave expression. It contained an emphatic, formal and solemn disavowal of the political theory embodied in the English Constitution; affirmed that "all men are created equal;" that governments derive "their just powers from the consent of the governed;" and declared the right of the people to alter or to abolish the form of the government "and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." This was a complete and sweeping repudiation of the English political system, which recognized the right of monarchy and aristocracy to thwart the will of the people.

To what extent the Declaration of Independence voiced the general sentiment of the colonies is largely a matter of conjecture. It is probable, however, that its specification of grievances and its vigorous arraignment of the colonial policy of the English government appealed to many who had little sympathy with its express and implied advocacy of democracy. It is doubtless true that many were carried along with the revolutionary movement who by temperament and education were strongly attached to English political traditions. It is safe to conclude that a large proportion of those who desired to see American independence established did not believe in thoroughgoing political democracy.

Besides those who desired independence without being in sympathy with the political views expressed in the Declaration of Independence, there were many others who were opposed to the whole Revolutionary movement. The numerical strength of the Tories can not be accurately estimated; but it is certain that a large proportion, probably not less than one-third of the total population of the colonies, did not approve of the war.[4]

"In the first place, there was, prior to 1776, the official class; that is, the men holding various positions in the civil and military and naval services of the government, their immediate families, and their social connections. All such persons may be described as inclining to the Loyalist view in consequence of official bias.

"Next were certain colonial politicians who, it may be admitted, took a rather selfish and an unprincipled view of the whole dispute, and who,

counting on the probable, if not inevitable, success of the British arms in such a conflict, adopted the Loyalist side, not for conscience' sake, but for profit's sake, and in the expectation of being rewarded for their fidelity by offices and titles, and especially by the confiscated estates of the rebels after the rebels themselves should have been defeated, and their leaders hanged or sent into exile.

"As composing still another class of Tories, may be mentioned probably a vast majority of those who stood for the commercial interests, for the capital and tangible property of the country, and who, with the instincts natural to persons who have something considerable to lose, disapproved of all measures for pushing the dispute to the point of disorder, riot and civil war.

"Still another class of Loyalists was made up of people of professional training and occupation—clergymen, physicians, lawyers, teachers—a clear majority of whom seem to have been set against the ultimate measures of the Revolution.

"Finally, and in general, it may be said that a majority of those who, of whatever occupation, of whatever grade of culture or of wealth, would now be described as conservative people, were Loyalists during the American Revolution."[5]

These classes prior to the Revolution had largely shaped and molded public opinion; but their opposition to the movement which they were powerless to prevent, destroyed their influence, for the time being, in American politics. The place which they had hitherto held in public esteem was filled by a new class of leaders more in sympathy with the newly born spirit of liberalism. This gave to the revolutionary movement a distinctly democratic character.

This drift toward democracy is seen in the changes made in the state constitutions after the outbreak of the Revolution. At the close of the colonial period, nearly all the state governments were modeled after the government of Great Britain. Each colony had its legislative body elected by the qualified voters and corresponding in a general way to the House of Commons. In all the colonies except Pennsylvania and Georgia there was also an upper legislative house or council whose consent was necessary before laws could be enacted. The members composing this branch of the legislature were appointed by the governor except in Massachusetts where they were elected by the lower branch of the legislature, subject to a negative by the royal

governor, and in Rhode Island and Connecticut where they were chosen by the electorate.

The governor was elected by the voters only in Rhode Island and Connecticut; in all the other colonies he was appointed by the proprietaries or the Crown, and, though independent of the people, exercised many important powers. He was commander-in-chief of the armed forces of the colony; appointed the judges and all other civil and military officers; appointed and could suspend the council, which was usually the upper branch of the legislature; he could convene and dissolve the legislature and had besides an unqualified veto on all laws; he also had an unrestricted pardoning power.

The possession of these far-reaching powers gave to the irresponsible executive branch of the colonial government a position of commanding importance. This was not the case, however, in Connecticut and Rhode Island. Although the governor in these two colonies was responsible to the voters, inasmuch as he was elected by them, still he had no veto, and the appointing power was in the hands of the legislature.

The tidal-wave of democracy, which swept over the colonies during the Revolution, largely effaced the monarchical and aristocratic features of the colonial governments. Connecticut and Rhode Island, which already had democratic constitutions, were the only states which did not modify their form of government during this period. All the rest adopted new constitutions which show in a marked degree the influence of the democratic movement. In these new constitutions we see a strong tendency to subordinate the executive branch of the government and confer all important powers on the legislature. In the four New England states and in New York the governor was elected by the qualified voters; in all the rest he was chosen by the legislature. In ten states during this period his term of office was one year; in South Carolina it was two and in New York and Delaware it was three years. In addition to this the six Southern states restricted his re-election. Besides, there was in every state an executive or privy council which the governor was required to consult on all important matters. This was usually appointed by the legislature and constituted an important check on the governor.

The power to veto legislation was abolished in all but two states. In Massachusetts the governor, and in New York the Council of Revision composed of the governor and the chancellor and judges of the

Supreme Court, had a qualified veto power. But a two-thirds majority in both houses of the legislature could override the veto of the governor in Massachusetts, or that of the Council of Revision in New York. The pardoning power of the governor was quite generally restricted. In five states he was allowed to exercise it only with the advice or consent of the council.[6] In three states, where the advice or consent of a council was not required, he could, subject to certain restrictions, grant pardons except where "the law shall otherwise direct."[7] The constitution of Georgia in express terms deprived the governor of all right to exercise this power.

The appointing power of the governor was also taken away or restricted. In four of the eleven states adopting new constitutions during this period he was allowed to exercise it jointly with the council.[8] In six states it was given to the legislature, or to the legislature and council.[9] The power of the governor to dissolve the legislature or either branch of it was everywhere abolished.

The supremacy of the legislature under these early state constitutions is seen also in the manner of appointment, the tenure and the powers of the judiciary. In nine states[10] the judges were elected by the state legislature, either with or without the consent of a council. In Maryland, Massachusetts, New Hampshire, and Pennsylvania they were appointed by the governor with the consent of the council. But this really amounted to indirect legislative appointment in Maryland, since both the governor and council in that state were elected annually by the legislature. The legislature also had a voice in the appointment of judges in Pennsylvania, New Hampshire and Massachusetts, since it elected the executive in the first and the council in the others. In nine states, then, the judges were elected directly by the legislature; in one indirectly by the legislature; in the other three the legislature participated in their election through an executive or a council of its own choosing.

In every state the judges could be impeached by the lower branch of the legislature and expelled from office on conviction by the senate or other tribunal, as the constitution prescribed. Moreover, in six states[11] they could be removed according to the English custom by the executive on an address from both branches of the legislature. The term of office of the judges in eight states[12] was during good behavior. In New Jersey and Pennsylvania they were appointed for

seven years, and in Rhode Island, Connecticut, and Georgia they were chosen annually.

The legislature under these early state constitutions was hampered neither by the executive nor by the courts. It had all law-making power in its own hands. In no state could the courts thwart its purpose by declaring its acts null and void. Unchecked by either executive or judicial veto its supremacy was undisputed.

From the foregoing synopsis of the state constitutions of this period it is evident that their framers rejected entirely the English theory of checks and balances. The principle of separation of powers as expounded by Montesquieu and Blackstone, found little favor with those who controlled American politics at this time. Instead of trying to construct a state government composed of coördinate branches, each acting as a check upon the others, their aim was to make the legislature supreme. In this respect the early state constitutions anticipated much of the later development of the English government itself.

The checks and balances, and separation of powers, which characterized the government of England and her American colonies in the eighteenth century, resulted from the composite character of the English Constitution—its mixture of monarchy, aristocracy, and democracy. It is not surprising, then, that with the temporary ascendency of the democratic spirit, the system of checks should have been largely discarded.

This democratic tendency is seen also in our first federal constitution, the Articles of Confederation, which was framed under the impulse of the Revolutionary movement. This document is interesting as an expression of the political philosophy of the Revolution; but like the state constitutions of that period, it has had few friendly critics among later political writers. Much emphasis has been put upon its defects, which were many, while but little attention has been given to the political theory which it imperfectly embodied. That it failed to provide a satisfactory general government may be admitted; but this result must not be accepted as conclusive proof that the principles underlying it were altogether false.

The chief feature of the Articles of Confederation was the entire absence of checks and balances. All the powers conferred upon the general government were vested in a single legislative body called

the Continental Congress, which was unchecked by a distinct executive or judiciary. In this respect it bore a striking resemblance to the English government of to-day with its omnipotent House of Commons. But, unlike the English government of to-day, its powers were few and narrowly limited. Its failure was due, perhaps, not to the fact that the powers granted to the confederation were vested exclusively in a single legislative body, but to the fact that the powers thus granted were not sufficient for maintaining a strong and effective central government.

The reason for the weakness of the general government under the Articles of Confederation is obvious to the student of American history. It was only gradually, and as necessity compelled coöperation between the colonies, that the sentiment in favor of political union developed. And though some tendencies in this direction are seen more than a century before the American Revolution, the progress toward a permanent union was slow and only the pressure of political necessity finally brought it about.

As early as 1643 Massachusetts, Plymouth, Connecticut and New Haven formed a "perpetual confederation" under the name of the "United Colonies of New England." The motive for this union was mainly offence and defence against the Indian tribes and the Dutch, though provision was also made for the extradition of servants and fugitives from justice. The management of the common interests of these colonies was vested in a board of eight commissioners—two from each colony—and, in transacting the business of the confederacy, the consent of six of the eight commissioners was required. Any matter which could not be thus disposed of was to be referred to the four colonial legislatures. The general government thus provided for could not inter-meddle "with the government of any of the jurisdictions." No provision was made for amending the "Articles of Confederation," and only by the unanimous consent of these colonies could any other colony be admitted to the confederacy. This union lasted for over forty years.[13]

Again in 1754 the pressure of impending war with the French and Indians brought together at Albany a convention of delegates from seven colonies north of the Potomac. A plan of union drafted by Benjamin Franklin was recommended by this convention, but it was not regarded with favor either by the colonies or by the English government. The former regarded it as going too far in the direction of subordinating the separate colonies to a central colonial authority, while for the latter it was too democratic. [14]

The union of all the colonies under the Articles of Confederation[6] was finally brought about through the pressure of military necessity during the Revolution. Nor is it surprising, in view of the history of the American colonies, that they reluctantly yielded up any powers to a central authority. We must bear in mind that the Revolution was in a measure a democratic movement, and that democracy was then found only in local government. The general governments of all countries were at that time monarchical or aristocratic. Tyranny in the eighteenth century was associated in the minds of the people with an undue extension or abuse of the powers exercised by the undemocratic central government. It is not surprising, then, that the Revolutionary federal constitution, the Articles of Confederation, should have failed to provide a general government sufficiently strong to satisfy the needs of the country after the return of peace.

It must not be inferred, however, that the political changes which immediately followed the outbreak of the Revolution were in the nature of sweeping democratic reforms. Much that was thoroughly undemocratic remained intact. The property qualifications for the suffrage were not disturbed by the Revolutionary movement and were finally abolished only after the lapse of nearly half a century. The cruel and

barbarous system of imprisonment for debt which the colonies had inherited from England, and which often made the lot of the unfortunate debtor worse than that of the chattel slave, continued in several of the states until long after the Revolution. Marked as was the democratic tendency during the first few years of our independence, it nevertheless left untouched much that the progress of democracy has since abolished.

CHAPTER III

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THE CONSTITUTION A REACTIONARY DOCUMENT

The sweeping changes made in our form of government after the Declaration of Independence were clearly revolutionary in character. The English system of checks and balances was discarded for the more democratic one under which all the important powers of government were vested in the legislature. This new scheme of government was not, however, truly representative of the political thought of the colonies. The conservative classes who in ordinary times are a powerful factor in the politics of every community had, by reason of their Loyalist views, no voice in this political reorganization; and these, as we have seen, not only on account of their wealth and intelligence, but on the basis of their numerical strength as well, were entitled to considerable influence.

With the return of peace these classes which so largely represented the wealth and culture of the colonies, regained in a measure the influence which they had lost. This tended strongly to bring about a conservative reaction. There was besides another large class which supported the Revolutionary movement without being in sympathy with its democratic tendencies. This also used its influence to undo the work of the Revolutionary radicals. Moreover, many of those who had espoused democratic doctrines during the Revolution became conservatives after the war was over.[15] These classes were naturally opposed to the new political doctrines which the Revolutionary movement had incorporated in the American government. The "hard times"

and general discontent which followed the war also contributed to the reactionary movement; since many were led to believe that evils which were the natural result of other causes were due to an excess of democracy. Consequently we find the democratic tendency which manifested itself with the outbreak of the Revolution giving place a few years later to the political reaction which found expression in our present Constitution.

"The United States are the offspring of a long-past age. A hundred years, it is true, have scarcely passed since the eighteenth century came to its end, but no hundred years in the history of the world has ever before hurried it along so far over new paths and into unknown fields. The French Revolution and the First Empire were the bridge between two periods that nothing less than the remaking of European society, the recasting of European politics, could have brought so near.

"But back to this eighteenth century must we go to learn the forces, the national ideas, the political theories, under the domination of which the Constitution of the United States was framed and adopted."[16]

It is the general belief, nevertheless, that the Constitution of the United States is the very embodiment of democratic philosophy**[2q]**. The people take it for granted that the framers of that document were imbued with the spirit of political equality and sought to establish a government by the people themselves. Widely as this view is entertained, it is, however, at variance with the facts.

"Scarcely any of these men [the framers of the Constitution] entertained," says Fiske, "what we should now call extreme democratic views. Scarcely any, perhaps, had that intense faith in the ultimate good sense of the people which was the most powerful characteristic of Jefferson."[17]

21 The 'Alien and Sedition laws' refer to a package of federal measures passed in 1798 (commonly called the Alien and Sedition Acts) under President John Adams, which included provisions restricting criticism of the federal government and enlarging executive power over non-citizens.

22 A political doctrine associated with John C. Calhoun proposing that no important measure should become law without the assent of each major social interest or class, rather than by a simple numerical majority.

23 John C. Calhoun (1782–1850) was a prominent U.S. politician and political theorist from South Carolina who served as Vice President and U.S. Senator and advocated states' rights, nullification, and minority protections for the slaveholding South.

24 An amendment to the U.S. Constitution ratified in 1804 that revised the Electoral College procedure by requiring separate ballots for President and Vice-President.

25 The date designated by the Confederation Congress for commencing proceedings under the new U.S. Constitution; March 4 was used as the start of terms and inaugurations until the 20th Amendment moved those dates (effective 1933).

26 Common name for the Sherman Antitrust Act of 1890, the first major U.S. federal law prohibiting business combinations and practices that restrained trade or attempted to establish monopolies.

27 A legislative practice in which lawmakers trade votes or support for one another's proposals so that each can secure passage of measures important to them.

28 A numbered meeting of the U.S. Congress that sat from March 4, 1889, to March 4, 1891; congressional sessions are commonly identified by ordinal numbers like this.

29 A supermajority equal to two-thirds of the voting members of a legislative body; the U.S. Constitution requires such a margin for actions like treaty ratification in the Senate and certain impeachment and amendment procedures.

30 The power of courts to invalidate laws or official acts judged to be unconstitutional, commonly referred to today as judicial review (established at the federal level by Marbury v. Madison, 1803).

31 A municipal governing body historically used in English and colonial American towns, typically composed of officials such as the mayor, aldermen and councilmen and responsible for local ordinances.

32 A municipal officer in English and American local government historically charged with legal and administrative duties, often acting as a judicial or clerical official within the city council.

33 The informal name given in the text to Pennsylvania laws enacted in 1901 that removed the mayors of Pittsburgh and Allegheny and gave the governor appointment power over their successors until the 1903 municipal election.

34 A reference to the U.S. Supreme Court case Dartmouth College v. Woodward (1819), which held that a corporate charter is a contract protected from state interference and thus limited certain state powers over private corporations.

35 A 1857 U.S. Supreme Court ruling (Dred Scott v. Sandford) that held people of African descent brought into

the United States could not be U.S. citizens and that Congress lacked power to prohibit slavery in federal territories; its effects were later nullified by the Civil War amendments.

36 An American Founding Father (1755/57–1804), the first U.S. Secretary of the Treasury and leader of the Federalist Party, who advocated a strong central government and policies favoring commerce and credit.

37 A reform-minded municipal leader who served as mayor of Brooklyn (1882–83) and of New York City (1902–03) and later as president of Columbia University, noted for advocating administrative and anti-corruption reforms.

38 An American investigative journalist and 'muckraker' (1866–1936) best known for The Shame of the Cities (1904), a series exposing municipal corruption in U.S. cities.

39 An 1810 U.S. Supreme Court case in which the Court held that a state law could not constitutionally void vested rights created under a prior law, an early decision reinforcing contract and property protections against state interference.

40 Common name for Trustees of Dartmouth College v. Woodward (1819), a Supreme Court decision that treated corporate charters as contracts and limited a state's power to modify or revoke such charters.

41 The constitutional mechanism by which U.S. Presidents are chosen via electors apportioned to each state rather than by a direct nationwide popular vote; the framers intended it to be a buffer against direct majority selection and it gives smaller states relatively greater influence per capita.

42 Abraham Lincoln, elected U.S. President in 1860; in that four-way election he won a plurality of the popular vote and a decisive Electoral College victory despite receiving less than a majority (under two-fifths) of the total popular vote.

43 Stephen A. Douglas, U.S. Senator from Illinois and the Northern Democratic candidate for President in 1860.

44 John C. Breckinridge, the Southern Democratic candidate for President in 1860 and the sitting U.S. Vice-President at the time.

45 The British upper chamber of Parliament historically composed largely of hereditary and appointed peers; during 19th- and early 20th-century struggles the elected House of Commons could, and at times threatened to, create new peers to overcome Lords' opposition.

46 Direct-democracy procedures used in many U.S. states whereby citizens can (initiative) propose statutes or constitutional amendments and (referendum) approve or reject laws passed by legislatures, bypassing or supplementing representative bodies.

47 The Wealth of Nations is Adam Smith's influential book on political economy first published in 1776, which lays out foundations of classical free-market economics and argues that self-interest and competition regulate industry.

48 The Principle of Population is an essay by Thomas Malthus (first published 1798) arguing that population tends to grow faster than food supply, producing recurring pressures (checks) such as famine and disease unless checked by moral restraint or other factors.

49 Social Evolution refers to the book Social Evolution (1894) by Benjamin Kidd, in which Kidd applied evolutionary